

# Chapter 1

## Gender and Financial Barriers to Accessing the Courts

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## I. Summary

Equitable access to the courts is essential to achieve justice for all. Financial barriers may deprive low-income people of such equal access to the courts.

To be sure, there is limited Washington-specific data on the populations that these financial barriers impact most. However, based on clear evidence of huge historical income and pay inequities, these barriers likely have the greatest impact on single mothers; Black, Indigenous, and women of color; LGBTQ+ people; and those with disabilities. Such evidence includes data showing that 39.4% of single women with children in Washington live in poverty, and that such single-female-head-of-household families are the ones most likely to live below the poverty line. This income inequality is amplified for Black, Indigenous, and women of color in Washington: 19.2% of white women in our state live below 150% of the poverty line, compared to 41.3% of Hispanic women, 38.4% of Native American women, 35.8% of Black women, 28.1% of women of two or more races, and 21.2% of Asian and Pacific Islander women.

The financial barriers take many forms. Court user fees, such as filing fees, constitute one such barrier – and it is not always easy for a self-represented litigant to figure out how to reduce or waive these. Surcharges (such as the family court service surcharge) can create additional costs on top of the basic filing fee. Many of these surcharges apply only in family law matters, increasing the filing costs of family law cases compared to other civil cases. There are indicators that more women file family law cases than men, suggesting these surcharges specific to family law cases may impact women more.

The law certainly gives courts the power to waive many fees for litigants who are indigent – though obtaining such waivers can be time-consuming and difficult. The fee waivers also do not cover all fees – particularly in a contested family law case. For example, some litigants must pay for guardians ad litem (GAL), parenting seminars, facilitators, and court-ordered drug testing and evaluations. All of these fees and costs must be paid or waived before a litigant can complete a family law case. It is also unclear how fee waivers are being applied to name change recording fees across the various courts. In cases where the name change fees are not waived, such fees may have a disparate impact on indigent transgender and non-binary individuals.

There are also barriers in addition to the costs required for initial access to the court system. These barriers include the fees ordered in cases (such as family law cases), the price of missing work, the cost of childcare, the expense of a lawyer, the money spent copying pleadings, the cost of transportation to and from the courthouse, and other additional costs. For example, evidence from Washington shows that childcare and similar caregiving responsibilities pose barriers to accessing the courts, and that this is particularly true for women. Similarly, a 2015 Washington study found that 76% of low-income individuals with legal problems do not get adequate legal help.

Changes are needed to remove these barriers. Some of the most important changes need to improve all court users' ability to conduct court business are: using low-cost remote means to "come to court," supporting accessing to childcare resources, and ensuring that user fees and other court related fees can be waived for those who can't afford them.

## II. Statutory User Fees

For the purpose of this report, "court user fees" are anything that a civil litigant must pay, or have waived, in order to have a case adjudicated. If not waived, court user fees may prevent indigent litigants from accessing the court system. Access to the courts is a fundamental right.<sup>1</sup> Court user fees include filing fees and surcharges imposed by statute or local ordinances.

### A. Legal overview

#### 1. Brief historical overview

The issue of user fees creating a barrier to court access is not new. In 1495, King Henry VII "will[ed] and intend[ed] indifferent justice to be had and ministered according to his common laws to all his true subjects as well to poor as rich."<sup>2</sup> The English Parliament responded with 11

<sup>1</sup> *King v. King*, 162 Wn.2d 378, 394 n.15, 174 P.3d 659 (2007).

<sup>2</sup> Scott F. Llewellyn & Brian Hawkins, *Taking the English Right to Counsel Seriously in American "Civil Gideon" Litigation*, 45 U. MICH. J.L. REFORM 635, 641–42 (2012) (quoting An Act to Admit Such Persons as Are Poor to Sue in Forma Pauperis, 1495, 11 Hen. 7, c. 12 (Eng.), reprinted in 2 STATUTES OF THE REALM 578 (1816) (with some modifications for modernization)).

Hen 7, c. 12 (1495), which enacted a statutory right to counsel and waiver of court fees for indigent civil plaintiffs.<sup>3</sup> Many states have looked to 11 Hen 7, c. 12 as a model when adopting fee waiver laws and for guidance when interpreting such laws.<sup>4</sup> The Washington Supreme Court cited this law in *O'Connor v. Matzdorff* as support for the idea that courts have inherent power to waive court fees.<sup>5</sup> By at least 1854, Washington State had enacted user fees by statute, which then included \$10 to file a declaration or a petition, \$25 for the clerk to docket a cause, and \$50 for issuing a subpoena for a witness.<sup>6</sup>

## 2. Court user fees in Washington State

Civil litigants are required to pay, or get waived by court order, a filing fee to initiate a case. The statutory basis for the majority of the mandatory fees in superior court can be found at RCW 36.18 *et seq.* and for district court at RCW 3.62.060. RCW 36.18.080 requires that fee schedules be posted in the office of every county officer who is entitled to collect fees. Fee schedules can also be found on websites for the county clerks (for superior courts) and district courts.<sup>7</sup>

User fees in superior court include the filing fee for a petition or a complaint and additional surcharges required by statute. The basic filing fee, not including surcharges, to start a civil action for, among other things, restitution, adoption, or name change is \$200.<sup>8</sup> An unlawful detainer action is less expensive with an initial filing fee of \$45.<sup>9</sup>

Surcharges in addition to the basic filing fee include the courthouse facilitator fee;<sup>10</sup> the judicial stabilization trust account filing fee surcharge;<sup>11</sup> a family court service surcharge;<sup>12</sup> and a domestic violence prevention surcharge.<sup>13</sup> Many of these surcharges, with the exception of the

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 650–51.

<sup>5</sup> *O'Connor v. Matzdorff*, 76 Wn.2d 589, 599–600, 458 P.2d 154 (1969).

<sup>6</sup> LAWS OF 1854, § 1.

<sup>7</sup> See, e.g., *Superior Court & Clerk's Office Fee Information*, KING CNTY. (Dec. 21, 2016), <https://www.kingcounty.gov/courts/clerk/fees.aspx>; *Court Fees*, KING CNTY. (June 23, 2020), <https://www.kingcounty.gov/courts/district-court/court-dates-and-fees/court-fees.aspx>.

<sup>8</sup> RCW 36.18.020(2)(a).

<sup>9</sup> *Id.*

<sup>10</sup> RCW 26.12.240.

<sup>11</sup> RCW 36.18.020(5)(c).

<sup>12</sup> RCW 26.12.260(3).

<sup>13</sup> RCW 36.18.016(2)(b).

judicial stabilization trust account surcharge, apply only in family law matters. The addition of these surcharges greatly increases the cost of filing a family law case. For example, the total cost of filing a dissolution in superior court is \$314. The basic filing fee for a dissolution is \$200 pursuant to RCW 36.18.020(a). Surcharges make up the remaining \$114.

In contrast to a family law case, a non-family law civil case costs \$240 to file. This includes the same basic filing fee of \$200 but the only surcharge is the \$40 judicial stabilization trust account required by RCW 36.18.020(5)(c). There are indicators that more women file family law cases than men, though exact statistics do not exist. Nationally, more women initiate divorce proceedings than men,<sup>14</sup> however no research exists on the number of women who pay to file for divorce versus the number of men. Also, a 2008 study of Family Law Facilitators in Washington found that 69% of those who use Family Law Facilitator services during 2007 were women.<sup>15</sup>

A few civil cases do not have a filing fee or surcharges. Domestic violence protection orders, vulnerable adult protection orders, and sexual assault protection orders can be filed free of charge.<sup>16</sup> There is a clear legislative intent to ensure that a filing fee should not be a barrier when a petitioner must access the courthouse seeking protection. In fact, the American Bar Association's working paper on court fees says, "Fees should only be imposed if, among other things, the individual is able to pay. If a person who has been required to pay a fee subsequently cannot afford to pay, the fee should be waived entirely or reduced to an amount the person can pay."<sup>17</sup>

While district court filing fees and surcharges are less expensive than superior court, they are still a barrier to a litigant who is impoverished. District court does not have jurisdiction over family law matters so there are fewer surcharges. But, as in superior court, surcharges are added to filing fees.<sup>18</sup> The cost to file a civil case in district court is \$83, of which \$43 is the base fee and

<sup>14</sup> Michael J. Rosenfeld, *Who Wants the Breakup? Gender and Breakup in Heterosexual Couples*, in *SOCIAL NETWORKS AND THE LIFE COURSE* 221–243 (Duane F. Alwin, Diane H. Felmlee & Derek A. Kreager eds., 2018).

<sup>15</sup> THOMAS GEORGE & WEI WANG, *WASHINGTON'S COURTHOUSE FACILITATOR PROGRAMS FOR SELF-REPRESENTED LITIGANTS IN FAMILY LAW CASES* 86.

<sup>16</sup> RCW 26.50.040; RCW 74.34.310; RCW 7.90.055.

<sup>17</sup> AM. BAR ASS'N, WORKING GRP. ON BUILDING PUB. TRUST IN THE AM. JUST. SYS., *REPORT TO THE HOUSE OF DELEGATES 10* (2018), <https://finesandfeesjusticecenter.org/content/uploads/2018/12/Ten-Guidelines-on-Court-Fines-and-Fees.pdf>.

<sup>18</sup> RCW 3.62.060. *See also* RCW 7.75.035(1) (allowing for surcharge of \$10 on top of filing fee in district court).

the remainder is made up of surcharges.<sup>19</sup> While these surcharges may seem negligible to some, they are prohibitive for litigants who are indigent, such as a single mother whose sole source of income is a Temporary Assistance for Needy Families (TANF) grant of less than \$600 per month, an individual with disabilities who is receiving Supplemental Security Income (SSI), or an older woman receiving a limited income from social security.

For name change petitions heard in district court, the fee is \$201.50 which includes an \$83 filing fee, a \$10 administrative fee, a \$103.50 county recording fee<sup>20</sup> per named individual, and a \$5 fee to obtain one certified copy of the name change order.

There has been a failure to gather data regarding which demographic groups pay more in user fees. This notable absence makes meaningful differences in how demographic groups are either served or neglected by in the justice system invisible. In order to tackle racism and other systemic forms of oppression, disaggregated data is necessary to accurately capture present inequities and meaningfully endeavor to remedy them. Data collection and analysis must be intersectional and simultaneously consider race, sexual orientation, gender, socio-economic status, immigration status, etc. in order to accurately depict the different experiences of particular demographic groups based on prejudice and discrimination. It is unknown at this time which demographic groups pay more in user fees, or which demographic groups may be unable to access the court because of user fees. However, poverty rates among subpopulations suggests that flat fees may disproportionately impact some groups, especially women (particularly Black, Indigenous and women of color); LGBTQ+<sup>21</sup> communities; and individuals with disabilities. In addition, people with multiple marginalized identities may experience an amplification of financial strain impacting their access to the courts. These income disparities are discussed in detail below.

In recognition of potential disparities in access to justice posed by fines, fees, and surcharges, the National Center for State Courts (NCSC) published its Principles on Fines, Fees, and Bail practices, stating that “courts should be entirely and sufficiently funded from general governmental

<sup>19</sup> *Id.*

<sup>20</sup> RCW 4.24.130(4).

<sup>21</sup> Lesbian, gay, bisexual, transgender, queer, or questioning

revenue sources to enable them to fulfill their mandate,” and that “fees and surcharges should be established only for ‘administration of justice’ purposes.”<sup>22</sup>

Other states are reviewing issues related to statutory user fees. In Illinois, a Statutory Court Fee Task Force was established to evaluate court fees, fines, and surcharges across the state and to propose recommendations to the state legislature. The report was published in 2016. In it, the Task Force noted a trend across the state of increased civil, criminal, and traffic court fees in a movement towards a “self-funded court system.”<sup>23</sup> However, these increases outpaced inflation and showed wide inconsistencies between counties. The Task Force noted that inconsistency among locations and lack of transparency for the user could raise questions of fairness, challenging the legitimacy of the court system. While some civil fees are used to cover the basic costs of providing a service, such as the filing fee, others fund services that may not even be used by the person paying the fee. Therefore, flat fee schedules used to fund public services can be seen as a form of regressive tax and are likely to disproportionately impact court users who are low-income. While Illinois does have a fee waiver system, the Task Force points out that some court users may be low-income yet above the indigency threshold, and therefore denied a waiver. The Task Force generally concluded that, “courts should be substantially funded through general government revenue,” and that court fees should be used to cover the costs of specific actions. Court fees should be consistent across the state and backed with a clear rationale, and they should be reviewed regularly for adjustment or removal. Specifically, the Task Force recommended a state legislative schedule for court fees, to provide a basis for statewide consistency; and further recommended that an additional fee waiver benchmark should be created, to provide partial fee waivers for those court users above the fee waiver limit but still vulnerable to financial hardship.<sup>24</sup>

The Task Force did not conduct a study of the specific impact of civil court fees and surcharges on court users, and to our knowledge no such study exists, either in Washington or in the nation.

<sup>22</sup> NAT'L TASK FORCE ON FINES, FEES & BAIL PRACTICES, PRINCIPLES ON FINES, FEES AND BAIL PRACTICES (2017), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0020/14195/principles-1-17-19.pdf](https://www.ncsc.org/__data/assets/pdf_file/0020/14195/principles-1-17-19.pdf).

<sup>23</sup> STATUTORY CT. FEE TASK FORCE, FINDINGS AND RECOMMENDATIONS FOR ADDRESSING BARRIERS TO ACCESS TO JUSTICE AND ADDITIONAL ISSUES ASSOCIATED WITH FEES AND OTHER COURT COSTS IN CIVIL, CRIMINAL, AND TRAFFIC PROCEEDINGS (2016), [https://courts.illinois.gov/2016\\_Statutory\\_Court\\_Fee\\_Task\\_Force\\_Report.pdf](https://courts.illinois.gov/2016_Statutory_Court_Fee_Task_Force_Report.pdf).

<sup>24</sup> *Id.*

Therefore, there is a lack of evidence regarding the impact of court fees: How often do they represent a negative financial impact on court users, or a barrier to accessing the court? How is their impact felt differently by various demographic groups? How often are fee waiver requests for those above 125% Federal Poverty Level denied? However, the evidence regarding poverty rates among subpopulations noted above suggests there may be a disproportionate impact by gender, race, sexual orientation, and disability.

### 3. Fee waivers and case law

Both the U.S. Supreme Court and the Washington Supreme Court have recognized that fee waivers are essential for litigants who are indigent in civil cases. In 1971, the U.S. Supreme Court held in *Boddie v. Connecticut* that there is a due process right to a civil fee waiver where a state requires court involvement for changes to a “fundamental human relationship.”<sup>25</sup> In *Boddie*, several women who were indigent and were receiving public assistance were unable to pursue divorce proceedings because they were unable to pay the filing fees. But the court system was the only way these women could obtain a divorce. *Boddie* held “a State may not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment, preempt the right to dissolve this legal relationship without affording all citizens access to the means it has prescribed for doing so.”<sup>26</sup> In Washington State there is statutory authority for the court to waive the filing fee: “The court may waive the filing fees provided for under RCW 36.18.016(2)(b) and 36.18.020(2) (a) and (b) upon affidavit by a party that the party is unable to pay the fee due to financial hardship.”<sup>27</sup>

General Rule (GR) 34 was adopted in 2010. The Washington Supreme Court stated in *Jafar v. Webb* that GR 34, Washington’s fee waiver rule, “is broader than these base constitutional principles and requires fee waivers for indigent litigants in all cases.”<sup>28</sup> Under Washington law, a

<sup>25</sup> *Boddie v. Connecticut*, 401 U.S. 381–83, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

<sup>26</sup> *Id.* at 383.

<sup>27</sup> RCW 36.18.022.

<sup>28</sup> *Jafar v. Webb*, 177 Wn.2d 520, 530, 303 P.3d 1042 (2013).

trial court must waive all court fees when a litigant has been determined to be indigent under GR 34.<sup>29</sup>

Pursuant to GR 34, an “individual, on the basis of indigent status ... may seek a waiver of filing fees or surcharges the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief from a judicial officer in the applicable trial court.” There are several ways to show indigency under the rule. An individual is indigent if they are receiving assistance from a needs-based, means-tested program such as TANF, SSI, food stamps, or federal poverty-related veteran’s benefits. An individual can also show they are indigent if their household income is at or below 125% of the federal poverty level or, if the household income is above 125%, they have recurring basic living expenses that make them unable to pay the filing fees and surcharges. They may also show that there are compelling circumstances demonstrating an inability to pay.

The comment to GR 34(a)(2) states:

This rule establishes the process by which judicial officers may waive civil filing fees and surcharges for which judicial officers have authority to grant a waiver. This rule applies to mandatory fees and surcharges that have been lawfully established, the payment of which is a condition precedent to a litigant's ability to secure access to judicial relief. These include but are not limited to legislatively established filing fees and surcharges (e.g., RCW 36.18.020(5)); other initial filing charges required by statute (e.g., family court facilitator surcharges established pursuant to RCW 26.12.240; family court service charges established pursuant to RCW 26.12.260; domestic violence prevention surcharges established pursuant to RCW 36.18.016(2)(b)); and other lawfully established fees and surcharges which must be paid as a condition of securing access to judicial relief.<sup>30</sup>

<sup>29</sup> *Id.* at 527.

<sup>30</sup> GR 34(a)(2) cmt.

The Washington Supreme Court stated in *Jafar*:

The plain meaning of GR 34 establishes that a trial court must waive all fees once a litigant is determined to be indigent under the rule. The language of the rule provides expressly for “waiver,” and no language exists that “waiver” is anything except waiver of all fees.<sup>31</sup>

However, fee waivers must be requested from the court; they are not offered.<sup>32</sup> Nationally, almost half of people who access the courts do so without a lawyer and 80% of family law cases have at least one party without a lawyer.<sup>33</sup> This means that those who cannot afford a lawyer are often left to try and navigate the fee waiver system either on their own or with the help of a Family Law Facilitator. Family Law Facilitators in Washington do not come without their own fees.<sup>34</sup> Family Law Facilitators charge between \$15 and \$30 for each session for their services. In some counties, such as Yakima County, facilitators are fully funded by the facilitators’ fees. Facilitator fees can also be waived with a fee waiver signed by the court. We were unable to find Washington demographic data on pro se litigants (litigants without a lawyer).

While petitioners in name change cases filed in district court may request a fee waiver, the processes seem to be less well known among the district court clerks and far less streamlined. Since most district courts do not hear name change petitions same day, it is not clear when the court will rule on the fee waiver and some clerks will not allow for filing without the petitioner paying the fee.

Most district courts require petitioners to use their court form, rather than the form readily available on the court website. Additionally, many district courts will not waive the recording fee

<sup>31</sup> *Jafar*, 177 Wn. at 529–30.

<sup>32</sup> *Instructions for Motion and Order to Waive Filing Fees -- Seattle Location*, KING CNTY. SUPERIOR CT. CLERK'S OFF. (Feb. 2020), <https://kingcounty.gov/~media/courts/Clerk/forms/waive-ff-inst-sea.ashx?la=en>; *Your Family Law Case: If You Cannot Afford the GAL Fee*, WASHINGTONLAWHELP.ORG (June 27, 2016), <https://www.washingtonlawhelp.org/resource/your-family-law-case-if-you-cannot-afford-the-gal-fee>.

<sup>33</sup> Marsha M. Mansfield, *Litigants Without Lawyers: Measuring Success in Family Court*, 67 HASTINGS L.J. 1389 (2016).

<sup>34</sup> *Family Law Facilitators*, KING CNTY. (Dec. 22, 2020), <https://www.kingcounty.gov/courts/superior-court/family/facilitator.aspx>.

of \$103.50, which is authorized by statute, RCW 4.24.130(4). Since the recording is a requirement of the name change petition process, it appears it should be waived under *Jafar* and GR 34.

#### 4. Additional user fees in domestic relations cases

Statutory filing fees and surcharges are not the only user fees a litigant may be required to pay in order to have their cases adjudicated. There are many other fees that may be required in domestic relations cases. These extra fees can prevent a party from being able to finalize their court case, though current research does not show how often this may occur. Fees may include the cost of a guardian ad litem (GAL), a mandatory parenting class, mandatory mediation, fees related to a mandatory review of final pleadings by a courthouse facilitator, court ordered drug tests, domestic violence and substance abuse evaluations, or other fees such as ex-parte fees, certified copies, and the cost of a transcript of a hearing if a party is seeking revision or reconsideration. If parties wish to present their pleadings to the court without attending a hearing, an ex parte fee is required. Service fees are also charged for copies or certified copies, but not for adjudication.

GALs are often appointed in cases where issues have been raised about a party's parenting or allegations of substance abuse and domestic violence. A GAL's fees can be prohibitive, with an initial retainer of thousands of dollars in some cases (see Table 2 in Appendix I of this chapter for county-by-county figures). Though there are no records of how many litigants are financially burdened by these fees, anecdotal evidence suggests that, among people calling legal resource hotlines in Washington, one of the largest complaints was the huge burden placed on families by GAL fees. A judge will usually order that the parties split the cost, but in some situations, one party may be better situated financially and will bear the initial cost. Most GALs will not begin work until they receive a retainer. Thus, the progress of a case can be significantly delayed due to parties' inability to pay. Some counties, however, have resources to appoint a GAL at county expense so that the parties do not pay this cost (see Table 2). A few counties have Family Court Services which conduct evaluations when the court orders an evaluation.

Most, if not all, counties in Washington require parties seeking a parenting plan to take a parenting seminar. The cost of the seminars varies from county to county, but can be costly. Fore

example in Benton & Franklin Counties the cost is \$115 (see Table 2). Some parenting seminars have a reduced rate based on income. For example, one parenting seminar in NW Washington costs \$125 but if your monthly income is from \$0-1,500, the cost is reduced to \$20.<sup>35</sup> Some counties allow a party to waive the parenting seminar for good cause, but in most counties this requires the party to file a motion and declaration, note up a hearing, serve the other side, and then attend the hearing. The time and effort required to ask for a waiver of the parenting seminar can simply be too much for a litigant with a full-time work schedule or with childcare responsibilities. More research into this topic area is needed to know how many litigants avoid a waiver due to time and monetary constraints.

Mediation is another costly step that is also mandatory in some courts. The cost of mediation varies depending on where a party lives. Some dispute resolution centers offer a sliding scale fee depending on income. If a party must use a private mediator, the cost increases.<sup>36</sup> As with the parenting seminar, the mediation can be waived for good cause, but a party must go through the process outlined above to get a court order waiving mediation (see Table 2 for more county-by-county mediation information).

Many courts add yet another expense that a pro se litigant must pay before finalizing a case. These courts require a pro se litigant to have the proposed final orders reviewed by a legal professional such as a courthouse facilitator, a private attorney, a Limited License Legal Technician, a family court navigator, or a volunteer attorney. The exact process varies from county to county. But in many counties a pro se litigant cannot have their case finalized if they do not complete this step (see Table 2 for more information on facilitator fees).

Some counties allow a waiver of this review requirement, while others do not. For example, Thurston County allows the court to waive this requirement with a court order.<sup>37</sup> On the other hand, Chelan County prohibits a clerk from noting up a case on the non-contested calendar for finalization unless the pro se party seeking the hearing has their pleadings pre-approved by one

<sup>35</sup> RESOLVE IPC, SUCCESSFUL CO-PARENTING & SKAGIT MEDIATION (2021), <https://resolveinterpersonalconflict.com/program-description>.

<sup>36</sup> Mediators approved by San Juan County Superior Court charge \$75–\$240 per hour. See FAMILY LAW MEDIATORS FOR SAN JUAN COUNTY SUPERIOR COURT (2019), <https://www.sanjuanco.com/DocumentCenter/View/97>.

<sup>37</sup> Thurston County Superior Court Local Rule (LSPR) 94.04(c)(2).

of the legal professionals.<sup>38</sup> In Skagit County local rules require all pro se litigants to meet with the courthouse facilitator, who reviews the final documents prior to presentation to a judicial officer at a hearing or trial.<sup>39</sup> Court practices for all of these additional user fees vary from county to county and this is not a complete list.

Additional user fees required by a court prior to finalizing a case must be waived if a litigant is indigent and has a GR 34 Order re Waiver of Civil Fees and Surcharges. “The plain meaning of GR 34 establishes that a trial court must waive all fees once a litigant is determined to be indigent under the rule.”<sup>40</sup> These added user fees create even more barriers to access to the court. When a court waives the filing fee and surcharges, but still requires an indigent litigant to incur other costs in order to finalize a case, the court is denying this indigent litigant access to the courthouse in violation of the law established by the Court in *Jafar*.

### III. Access to Legal Representation

While the Supreme Court has recognized a right to counsel for criminal defendants, until recently no such protection existed for individuals accessing the civil justice system. In April 2021, the Washington State Legislature passed a bill which provides for free legal representation for tenants who are indigent and facing eviction.<sup>41</sup> While this is a huge step forward for access to justice in Washington, the new bill is limited and does not extend to litigants in family law or other matters. The Washington Supreme Court stated that:

It may be that the legislature should expend resources to address the complexity that often accompanies dissolution proceedings. ‘A wise public policy ... may require that higher standards be adopted than those minimally tolerable under the Constitution.’ However, the decision to publicly fund actions other than those

<sup>38</sup> Chelan County Superior Court Rule (LSPR) 94.04(B)(3).

<sup>39</sup> Skagit County Superior Court Rule (SCLSPR) 94.04.2(k).

<sup>40</sup> *Jafar v. Webb*, 177 Wn.2d 520, 527, 303 P.3d 1042 (2013).

<sup>41</sup> ENGROSSED SECOND SUBSTITUTE S.B. 5160, 67th Leg., Reg. Sess. (Wash. 2021).

that are constitutionally mandated falls to the legislature. Outside of that scenario, it is not for the judiciary to weigh competing claims to public resources.<sup>42</sup>

The American Bar Association, noting a gap in access to civil justice for low-income Americans, resolved in 2006 that:

[T]he American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low-income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.<sup>43</sup>

However, implementation of the right to counsel in civil proceedings varies across the country. The Legal Services Corporation (LSC) funds civil legal aid for low-income individuals across the country but notes that due to inadequate funding, in many cases it is only able to provide advice or one-off support to clients, rather than full representation.<sup>44</sup> Nationally, “86% of the civil legal problems reported by low-income Americans in the past year received inadequate or no legal help.”<sup>45</sup> In 2009, LSC noted that for every client served, another client seeking legal help was turned away.<sup>46</sup> The picture appears to be similar in Washington: a 2015 report found that 76% of low-income individuals with legal problems do not get adequate legal help.<sup>47</sup> While there are a

<sup>42</sup> *King v. King*, 162 Wn.2d 378, 397–98, 174 P.3d 659 (2007) (quoting *Lassiter v. Dep’t of Soc. Servs. of Durham Cty., N.C.*, 452 U.S. 18, 33, 101 S.Ct. 2153, 68 L. Ed. 2d 640 (1981)) (internal citations omitted).

<sup>43</sup> WORKING GROUP ON CIVIL RIGHT TO COUNSEL, ABA TOOLKIT FOR A RIGHT TO COUNSEL IN CIVIL PROCEEDINGS ii (2011), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lsc\\_laid\\_toolkit\\_for\\_crtc.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lsc_laid_toolkit_for_crtc.pdf).

<sup>44</sup> LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2017), <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/justice-gap-report>; see “Chapter 16: Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families” for more information on how federal restrictions on legal aid prohibiting organizations that receive federal LSC funding from representing incarcerated litigants in court proceedings impacts incarcerated parents and their children.

<sup>45</sup> *Id.* at 6.

<sup>46</sup> CIV. GIDEON TASK FORCE, ACCESS TO JUSTICE: ASSESSING IMPLEMENTATION OF CIVIL GIDEON IN MINNESOTA (2011), [https://www.mnbar.org/docs/default-source/atj/msba-civil-gideon-task-force---access-to-justice---assessing-implementation-of-civil-gideon-in-minnesota-\(final\)6565E5B78320.pdf?sfvrsn=2](https://www.mnbar.org/docs/default-source/atj/msba-civil-gideon-task-force---access-to-justice---assessing-implementation-of-civil-gideon-in-minnesota-(final)6565E5B78320.pdf?sfvrsn=2). It appears that LSC no longer tracks “client turn-down” rates, or the number of potential clients who qualify for legal aid but who the organization is unable to help.

<sup>47</sup> OFF. OF CIV. LEGAL AID, 2015 WASHINGTON CIVIL LEGAL NEEDS STUDY UPDATE (2015), [https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf).

variety of reasons why low-income people face their legal problems alone, the cost of representation is one factor. 30% of low-income individuals in Washington who tried unsuccessfully to get legal help reported that cost was the main barrier.<sup>48</sup> LSC civil aid in Washington is administered by the Northwest Justice Project, whose lawyers provided support in 13,925 cases in 2018.<sup>49</sup> However, this is only a portion of the individuals who sought legal assistance and there is a lack of evidence regarding how many individuals who qualify for civil legal aid in Washington are unable to obtain it, and how many individuals over the income threshold still find the cost of representation to be prohibitive.

In addition, RCW 26.09.231 requires parties involved in dissolutions (divorces) with children to complete a Residential Time Summary Report (RTSR) (see “Chapter 7: Gender Impact in Family Law Proceedings” for more information). The Washington State Center for Court Research of the Administrative Office of the Courts (WSCCR) analyzed these data in a 2018 report and found that in 77.8% of dissolutions neither party had legal representation, in 14.2% of cases only one party was represented, and in 8.0% of cases both parties were represented.<sup>50</sup> Further analysis by WSCCR not included in their 2018 report, found that in dissolution cases among opposite-sex couples where only one party had legal representation the mother was slightly more likely to have a lawyer than the father (Table 1).<sup>51</sup>

<sup>48</sup> *Id.*

<sup>49</sup> NW. JUST. PROJECT, 2018 ANNUAL REPORT (2018), <https://nwjustice.org/annual-reports>.

<sup>50</sup> A. PETERSON, A, WASH. STATE CTR. FOR CT. RSCH., ADMIN. OFF. OF THE CTS., RESIDENTIAL TIME SUMMARY REPORT 2016 2 (2019), <https://www.courts.wa.gov/subsite/wscrr/docs/ResidentialTimeSummaryReport2016.pdf>.

<sup>51</sup> Personal Communication with Dr. Andrew Peterson, Washington State Center for Court Research (Mar. 3, 2021) (based on analysis of Residential Time Summary Report data).

Table 1. Type of Attorney Representation in Opposite-Sex Dissolution Cases Involving Children in Washington State from Residential Time Summary Reports, 2016

	Frequency	Percent
Both parties self-represented	2,189	76.3%
Father self-represented, mother with attorney	258	9.0%
Mother self-represented, father with attorney	205	7.2%
Both with attorney	216	7.5%

### Footnotes for Table 1.

Only 31.2% of dissolutions with children filed in Washington State in 2016 were accompanied by a completed Residential Time Summary Report, so these data should be interpreted with extreme caution.

Source: Personal Communication with Dr. Andrew Peterson, Washington State Center for Court Research, March 3, 2021 (based on analysis of Residential Time Summary Report data).

It is important to note that there are major limitations of these data including inconsistencies within individual filings, a lack of verification of the accuracy of the information included on the form, and most notably, only 31.2% of dissolutions with children filed in Washington State in 2016 were accompanied by a completed RTSR form. This varied dramatically from county to county with some counties including zero RTSRs with their cases. This makes it impossible to determine if the data are a meaningful representation of dissolution cases in Washington.

Legal representation matters. Decades of research regarding the differences in client outcomes for pro-se litigants or represented litigants have shown that in some areas, legal representation has shown strong positive outcomes, while in others, the impact is smaller or nonexistent. Methodological limitations make it hard to generalize across studies, as it is very difficult to create the conditions for a randomized, controlled trial. However, a meta-analysis (excluding

family law cases) found overall positive outcomes associated with legal representation, especially in cases that are considered legally “complex.”<sup>52</sup> Other reviews have concluded that the evidence supporting positive effects of legal representation is strong in the areas of housing, employment, family law, small claims, tax, bankruptcy, and personal injury; while the evidence is weaker in cases where the litigant is seeking government benefits, and there appears to be no impact or even a negative impact in juvenile cases. The authors note that there may be differences in which types of cases receive representation which could bias these results.<sup>53</sup> The Washington RTSR study referenced above found that “when one parent had an attorney and the other was self-represented (14.2% of cases), the parent with an attorney received, on average, more residential time than a similarly situated parent with no attorney.”<sup>54</sup>

The potential positive outcomes of legal representation for low-income families are wide-ranging. For example, depending on the type of legal case, access to representation can increase access to money, decrease likelihood of rearrest, prevent domestic violence, reduce evictions and prevent homelessness, and improve health by decreasing stress.<sup>55</sup> For immigrants in deportation proceedings, access to legal representation can mean the difference between living with ones’ family or having a loved one sent away: a study in Northern California found that 33% of represented immigrants in deportation proceedings won their cases, while only 11% of unrepresented immigrants did.<sup>56</sup> Finally, for courts, legal representation can have a positive procedural impact. In a multi-state survey of state court judges (with almost half from Washington), judges reported that self-representation often had a negative impact for the court

<sup>52</sup> Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9 SEATTLE J. SOC. JUST. 51 (2010).

<sup>53</sup> Emily S. Taylor Poppe & Jeffrey J. Rachlinski, *Do Lawyers Matter? The Effect of Legal Representation in Civil Disputes*, 43 PEPP. L. REV. 881 (2016).

<sup>54</sup> PETERSON, *supra* note 50, at 2. Dr. Peterson notes the extensive limitations of Residential Time Summary Report data. These data should be interpreted with caution.

<sup>55</sup> Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE J. SOC. JUST. 139 (2010).

<sup>56</sup> Jayashri Srikantiah, David Hausman & Lisa Weissman-Ward, *Access to Justice for Immigrant Families and Communities: A Study of Legal Representation of Detained Immigrants in Northern California*, 11 STAN. J. C.R. & C.L. 207 (2015).

as errors and confusion on the part of pro se litigants slowed down proceedings and took more staff time.<sup>57</sup>

The evidence from Washington State shows a high need for access to representation. The University of Washington's Washington Evictions Study report showed very low representation rates for tenants: only 8% of tenants in evictions proceedings from 2004-2017 had legal representation "at some point" in their court proceeding (in other words, there was an attorney named in their case file—which does not necessarily mean the attorney was physically present to represent them in court). Rates of representation vary widely across the state, with higher rates in King County and lower rates in Pierce, Clark, Spokane, and Whatcom.<sup>58</sup> However, although King County has higher than average rates of legal representation for tenants, a Seattle study found that only about half of tenants appearing in response to eviction proceedings had legal counsel; and while 23.4% of tenants with legal counsel were able to remain in their home, only 14.6% of tenants without legal counsel were.<sup>59</sup>

There is some limited evidence to suggest that representation can increase the odds of positive outcomes for female victims of sexual violence or intimate partner violence (IPV). A study of couples in King County with minor children filing for divorce between 2000-2010 and who have a history of IPV found that over half (62%) of female IPV victim parents had legal representation, either through a legal aid attorney or a private attorney. Analysis showed that when the IPV victim parent had legal representation, that parent was more likely to achieve positive outcomes such as denial of visitation to the abusing parent, treatment ordered for the abusing parent, and to receive sole decision-making. The authors conclude that, "attorney representation, particularly representation by legal aid attorneys with expertise in IPV cases, resulted in greater protections being awarded to IPV victims and their children."<sup>60</sup>

<sup>57</sup> LINDA KLEIN, REPORT ON THE SURVEY OF JUDGES ON THE IMPACT OF THE ECONOMIC DOWNTURN ON REPRESENTATION IN THE COURTS 15 (2010), <https://legalaidresearchnlada.files.wordpress.com/2020/02/aba-coalition-justice-survey-judges-2010.pdf>.

<sup>58</sup> TIMOTHY THOMAS ET AL., THE STATE OF EVICTIONS: RESULTS FROM THE UNIVERSITY OF WASHINGTON EVICTIONS PROJECT (2017), <https://evictions.study/washington/index.html>.

<sup>59</sup> TARA COOKSON ET AL., LOSING HOME: THE HUMAN COST OF EVICTION IN SEATTLE 88 (2018), <https://www.kcba.org/Portals/0/pbs/pdf/Losing%20Home%202018.pdf>.

<sup>60</sup> MARY KERNIC, FINAL REPORT OF THE "IMPACT OF LEGAL REPRESENTATION ON CHILD CUSTODY DECISIONS AMONG FAMILIES WITH A HISTORY OF INTIMATE PARTNER VIOLENCE STUDY" 60 (2010), <https://www.ncjrs.gov/pdffiles1/nij/grants/248886.pdf>.

Finally, a much smaller observational study revealed similar results (and very low rates of representation) for Sexual Assault Protection Order (SAPO) petitioners. In King County in 2010, only eight petitioners and ten respondents of 68 SAPO cases were represented by a lawyer. In cases where representation was imbalanced (one party was represented and the other was not), the party who had representation was more likely to achieve a positive outcome: “a party who is represented when the other side is not has an extremely high likelihood of the case being decided in their favor . . . (and) when both parties are represented, it seems to significantly level the playing field.”<sup>61</sup>

A major limitation in the evidence is that cases are often combined without analyzing the differences between legal aid and full representation. As LSC notes, an individual may get limited legal advice or help filling out forms without actually having an attorney appear in court with them;<sup>62</sup> but there is limited evidence regarding the difference in outcomes along the spectrum of legal support. Having someone with organized paperwork can make a huge difference with how the case is presented compared to someone without any legal help. Additionally, civil legal aid through LSC is provided to individuals whose household has an annual income at or below 125% of the federal poverty level. Sandefur notes that it is likely that many people earn incomes above that limit but still struggle to afford legal representation.<sup>63</sup> There is a lack of data regarding individuals above the qualifying level for civil legal aid and whether and how much cost is a barrier to legal representation.

## A. Innovations to expand access to legal representation

### 1. Non-lawyer legal support

Many state courts have begun to pilot programs that provide support to pro se litigants through non-lawyer navigators.<sup>64</sup> A national survey of such programs identified 23 different programs, mostly new: more than half of the programs surveyed began after 2014. While there is a wide range in the structure of the program and background and roles of the individuals serving as

<sup>61</sup> LAURA JONES, ANALYZING THE IMPACT AND APPLICATION OF THE SEXUAL ASSAULT PROTECTION ORDER (2011).

<sup>62</sup> LEGAL SERVS. CORP., *supra* note 44.

<sup>63</sup> Sandefur, *supra* note 52.

<sup>64</sup> MARY E. MCCLYMONT, NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 43 (2019).

navigators, this national survey found that these programs had three common objectives: to enhance effectiveness of the court; to facilitate access to justice for pro se litigants; and to provide a rich experience for the navigators themselves.<sup>65</sup> The most common tasks taken on by navigators included assistance with legal forms and documents, providing legal and procedural information, and making referrals to formal legal help when necessary—all activities that help to lessen communication and language barriers. Indeed, the survey findings indicated that navigators who speak languages other than English are in particularly high demand.<sup>66</sup> Anecdotal evidence suggests that navigators facilitate pro se litigant court appearances, streamline court processes, save time for court clerks by increasing accuracy and completion of court documents and forms, and reduce court backlog; while providing pro se litigants with increased confidence in navigating the system.<sup>67</sup> See “Chapter 2: Communication and Language as a Gendered Barrier to Accessing the Courts” for more information on communication barriers to the courts.

In 2012, the Washington Supreme Court and the Washington State Bar Association created the Limited Licensed Legal Technician (LLLT) program, enabling traditional paralegals to operate without supervision of attorneys to support pro se litigants in limited activities relating to family law.<sup>68</sup> The program was meant to increase access to justice for low- and moderate-income litigants, and an initial evaluation in 2017 found that clients reported receiving competent assistance, improved legal outcomes, and reductions in stress, fear and confusion.<sup>69</sup> However, the program faced low student enrollment in the training program and low litigant demand, likely due to limited awareness.<sup>70</sup> In June 2020, the Washington Supreme Court voted 7-2 to ‘sunset’ the LLLT program, allowing current LLLTs to continue practicing and those currently in training to finish the training, but closing the program to new applicants. Chief Justice Stephens cited unsustainable costs and low interest as reasons to end the pilot.<sup>71</sup>

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> THOMAS CLARKE & REBECCA L. SANDEFUR, PRELIMINARY EVALUATION OF THE WASHINGTON STATE LIMITED LICENSE LEGAL TECHNICIAN PROGRAM (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2949042](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2949042).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> JUSTICE DEBRA L. STEPHENS, RE: WASHINGTON SUPREME COURT VOTES TO SUNSET THE LIMITED LICENSE LEGAL TECHNICIANS PROGRAM (2020), [https://www.abajournal.com/files/Stephens\\_LLLT\\_letter.pdf](https://www.abajournal.com/files/Stephens_LLLT_letter.pdf).

## 2. Providing access to representation

Court Watch notes that in SAPO petitions in Pierce County, the court assigns an attorney to represent the petitioner when the respondent appears with a lawyer and the petitioner does not, in order to “level the playing field.”<sup>72</sup> Washington State’s Office of Public Defense Parents Representation program provides a free, state-funded lawyer to low-income parents in cases where termination of parental rights or dependency are possible outcomes. Program evaluations have demonstrated better outcomes for children, with increased family reunification, fewer failures and case re-filings, and reduced time to permanent outcomes.<sup>73</sup> As of 2018, the program operates in all 39 Washington counties.<sup>74</sup>

## 3. Pilots in California

The California State Legislature passed legislation to fund pilot projects aimed at increasing access to civil legal representation for individuals who are low-income beginning in 2012, serving over 40,000 litigants who are low-income to date with full representation, limited scope legal assistance (unbundled services), or court-based services. The majority of clients were served in eviction cases, but support was also provided in family law cases including child custody and guardianship. Evaluations of the pilot projects found that clients with representation in these cases achieved greater access to the justice system, increased positive outcomes in court cases, and more efficient court proceedings.<sup>75</sup>

## IV. Additional Financial Barriers

Going to court can be expensive for reasons beyond the fees, fines, and legal representation. To even arrive at a courthouse requires necessary arrangements for “travel, scheduling, and

<sup>72</sup> JONES, *supra* note 61.

<sup>73</sup> Elizabeth Thornton & Betsy Gwin, *High-Quality Legal Representation for Parents in Child Welfare Cases Results in Improved Outcomes for Families and Potential Cost Savings*, 46 FAM. L.Q. 139 (2012).

<sup>74</sup> *Parents Representation Program*, WASH. STATE OFF. OF PUB. DEF. (2020), <https://www.opd.wa.gov/program/parents-representation>.

<sup>75</sup> KELLY JARVIS ET AL., REPORT TO THE CALIFORNIA STATE LEGISLATURE FOR THE SARGENT SHRIVER CIVIL COUNSEL ACT EVALUATION (2020), <https://www.courts.ca.gov/documents/Shriver-20200326-Materials.pdf>.

precisely timed information,”<sup>76</sup> all of which may be difficult depending on a person’s access to housing stability, the internet, transportation, and even time off from work. Income disparity is the foundation that turns basic arrangements into financial barriers to accessing the courts. For example, income disparity is at the root of housing instability, lack of access to the internet to gather information, lack of access to adequate transportation, and lack of ability to take time off from work and still remain housed. Notably, transgender, gender non-binary, and gender-nonconforming individuals experience additional barriers to economic security compared with cis-gender individuals that impede equitable access to court. For instance, a 2015 study on transgender health and economic insecurity in New York found that compared with non-transgender respondents, transgender individuals were twice as likely to be in poverty, currently be homeless, and be unemployed due to systemic discrimination and obstacles in relevant sectors. As such, these barriers to financial stability would then disproportionately obstruct transgender individuals’ ability to equitably access court services.<sup>77</sup> The goal of this subsection of the report is to display the following:

1. How income disparities in Washington State disproportionately affect women, transgender, gender non-binary, and gender-nonconforming individuals, and especially Black, Indigenous and people of color who are women, transgender, gender non-binary, or gender non-conforming.
2. How that disparity turns the small details of the necessary arrangements for going to court into a financial barrier to accessing justice.

There is currently no direct research looking into the financial barriers of accessing civil court. In the absence of direct research, common aspects of physically going to court were analyzed for their financial requirements and then compared to the income disparities present across race and gender.

<sup>76</sup> Maximilian A. Bulinski & J. J. Prescott, *Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy, and Efficiency*, 21 MICH. J. RACE & L. 205, 208–09 (2016).

<sup>77</sup> SOMJEN FRAZER & ERIN HOWE, *TRANSGENER HEALTH AND ECONOMIC INSECURITY: A REPORT FROM THE 2015 LGBT HEALTH AND HUMAN SERVICES NEEDS ASSESSMENT SURVEY* (2015), <http://strengthinnumbersconsulting.com/wp-content/uploads/2017/06/TG-health-and-economic-insecurity-report-FINAL.pdf>.

## A. Income disparities

Washington State and national data show stark income inequities based on gender identity, race, sexual orientation, and disability status. This is found using measures such as wage gaps, median income, and proportion of the population below the poverty level. A 2015 study found that in Washington State, employers pay women \$0.78 for every dollar paid to men.<sup>78</sup> National data show that this wage inequity is even more extreme when race and ethnicity are considered. Nationally, in 2020 employers paid Asian American, Native Hawaiian, and Other Pacific Islander women \$0.85, white women \$0.79, Black women \$0.63, Indigenous women \$0.60, and Latinas \$0.55 for every dollar paid to white men.<sup>79</sup> It is important to note that when data combines diverse populations of people into one category (such as combining all Asian, Native Hawaiian, and Other Pacific Islander populations) disparities within these groups are masked. For example, nationally, employers paid Burmese women only \$0.52 for every dollar paid to white, non-Hispanic men.<sup>80</sup> Another example of this masking of disparities is clear when looking at median income. While aggregated data often suggest that Asian, Native Hawaiian, and Other Pacific Islander populations fair well financially, there is huge income variability across populations in this group. For example, national data show the median annual income for Taiwanese and Indian women in full-time, year-round positions is \$70,000 while this same indicator is \$30,000 for Burmese women and \$35,000 for Hmong women.<sup>81</sup> In Washington, 39.4% of single women with children lived below the poverty line and were the family type most likely to live below the poverty line.<sup>82</sup>

There are significant disparities in poverty rates for women based on race as well: 19.2% of white women in Washington State live below 150% of the poverty line compared to 41.3% of Hispanic women, 38.4% of Native American women, 35.8% of Black women, 28.1% of women of two or

<sup>78</sup> CYNTHIA HESS & JESSICA MILLI, INST. FOR WOMEN'S POL'Y RSCH., *THE STATUS OF WOMEN IN WASHINGTON: FORGING PATHWAYS TO LEADERSHIP & ECONOMIC OPPORTUNITY 2* (2015).

<sup>79</sup> NAT'L P'SHIP FOR WOMEN & FAMS., *QUANTIFYING AMERICA'S GENDER WAGE GAP BY RACE/ETHNICITY* (2021), <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/quantifying-americas-gender-wage-gap.pdf>.

<sup>80</sup> NAT'L P'SHIP FOR WOMEN & FAMS., *supra* note 79.

<sup>81</sup> Robin Bleiweis, *The Economic Status of Asian American and Pacific Islander Women*, CTR. FOR AM. PROGRESS (Mar. 4, 2021), <https://www.americanprogress.org/issues/women/reports/2021/03/04/496703/economic-status-asian-american-pacific-islander-women>.

<sup>82</sup> HESS & MILLI, *supra* note 78, at 14.

more races, and 21.2% of Asian, Native Hawaiian, and Other Pacific Islander women.<sup>83</sup> Relatedly, social categories such as gender, race, and disability status are interrelated and “do not exist independently of one another.”<sup>84</sup> For instance, the same study noted that “Asian American and Pacific Islander women with disabilities were more likely to report being discriminated against in the workplace than those without disabilities.”<sup>85</sup> Workplace discrimination is a contributing factor to income instability and inequality. As such, observing intersections of gender, race, and disability status impacted by financial barriers illustrates critical differences in who is impacted by financial instability and to what extent. As noted above, combining diverse populations, such as all Asian, Native Hawaiian, and Other Pacific Islander populations, in a dataset may mask significant disparities.

According to the 2013 report “The Status of Women in Washington,” the median income for Washington women in 2013 was higher than the national median income for women, while still lower than the median income for men in Washington. However, this does not hold up across all races. In 2013, the median income for women across all racial groups in Washington was \$41,300 but nationwide was \$38,000. The median income for men in Washington was \$53,000 compared to \$48,000 nationally. However, Asian, Native Hawaiian, and Other Pacific Islander and Hispanic women in Washington had median incomes less than the national average for these populations.<sup>86</sup> This suggests that while Washington may be making better progress toward pay equity than the national average for some women, that is not true for all women.

For women across Washington State, employers paid Asian, Native Hawaiian, and Other Pacific Islander women 77.6%, Black women 60.3%, Hispanic women 46.6%, Native American women 60.3%, and white women 74.7% of the income they paid white men for full-time, year-round work.<sup>87</sup> This state trend is reflected in the racial wage gap in King County as well. In 2013, the median income of white households in King County was \$75,437 while for Black households it

<sup>83</sup> *Id.* at 13.

<sup>84</sup> Michelle Maroto, David Pettinicchio & Andrew C. Patterson, *Hierarchies of Categorical Disadvantage: Economic Insecurity at the Intersection of Disability, Gender, and Race*, 33 *GENDER & SOC'Y* 64, 69 (2019).

<sup>85</sup> *Id.* at 70.

<sup>86</sup> HESS & MILLI, *supra* note 78, at 7.

<sup>87</sup> *Id.* at 8.

was \$36,150.<sup>88</sup> As noted above, disparities for specific populations within the larger racial groups are often masked.

Part of the reasons for this income disparity is the level of educational attainment of women and types of occupations women hold.<sup>89</sup> Education is seen as a major component of social mobility and increased income needed to leave poverty behind; and Black, Indigenous, and women of color typically have lower levels of educational attainment when compared to white women in Washington State<sup>90</sup> due to systemic racism and related barriers which impede equitable access to and enjoyment of educational success. For instance, in educational settings Black girls disproportionately experience “overly punitive disciplinary practices,” under resourced teachers, courses, and extracurricular activities, and higher rates of assault, violence, and trauma than “their white counterparts.”<sup>91</sup> As such, Black girls are faced with significantly higher systemic barriers to educational attainment and success than their white peers.

In 2013, Black, Hispanic, and American Indian/Alaska Native (AIAN) women were far less likely to have a Bachelor’s degree than white women in Washington State.<sup>92</sup> While this 2013 study does not sufficiently disaggregate data for Asian, Native Hawaiian, and Other Pacific Islander populations, data from this same time period in King County found that Native Hawaiian and Other Pacific Islander individuals of all gender were also less likely than white individuals to have a Bachelor’s degree.<sup>93</sup> This is likely part of the reason that Black, Indigenous, and people of color were vastly over-represented in King County’s poverty statistics as of 2015 with 15% of Black, 2% of AIAN, 2% of Hawaiian or Other Pacific Islander, and 15% of Asian individuals living in poverty despite representing 6.2%, 0.8%, 0.7%, and 14.8% of the population respectively.<sup>94</sup> That same

<sup>88</sup> FRANCESCA MURN & ALICE PARK, UNDERSTANDING KING COUNTY RACIAL INEQUITIES: KING COUNTY RACIAL DISPARITY DATA (2015), [https://www.uwkc.org/wp-content/uploads/ftp/RacialDisparityDataReport\\_Nov2015.pdf](https://www.uwkc.org/wp-content/uploads/ftp/RacialDisparityDataReport_Nov2015.pdf).

<sup>89</sup> HESS & MILLI, *supra* note 78.

<sup>90</sup> *Id.*

<sup>91</sup> LETICIA SMITH-EVANS ET AL., UNLOCKING OPPORTUNITY FOR AFRICAN AMERICAN GIRLS: A CALL TO EDUCATIONAL EQUITY (2014), [https://www.nwlc.org/sites/default/files/pdfs/unlocking\\_opportunity\\_for\\_african\\_american\\_girls\\_final.pdf](https://www.nwlc.org/sites/default/files/pdfs/unlocking_opportunity_for_african_american_girls_final.pdf); see “Chapter 9: Juvenile Justice and Gender and Race Disparities” for more information on this topic.

<sup>92</sup> *Id.*

<sup>93</sup> MURN & PARK, *supra* note 88, at 11.

<sup>94</sup> *Id.*

year, the median income for Black residents in King County was less than half of the median income of white residents.<sup>95</sup>

Another reason for this vast income difference between men and women in Washington is women spend more time caring for children. According to the 2016 Residential Time Summary Report, 64.0% of children with custody plans in Washington spent more time with their mothers than their fathers and 11.1% of custody plans gave full custody to mothers compared to 2.7% that gave full custody to fathers.<sup>96</sup> The 2019 American Time Use Survey found that women spend twice as much time caring for children as men.<sup>97</sup> This has a clear impact on earnings in Washington State: of all those who said they could not work full time due to childcare responsibilities, approximately 95% were women.<sup>98</sup> The inequal division of unpaid domestic labor such as childcare is discussed further in “Chapter 4: The Impact of Gender on Courtroom Participation and Legal Community Acceptance.”

The wage gap and the impact of caring for children result in a double-hit towards women in Washington achieving self-sufficiency and stability, which are important for accessing civil court. In 2017, the University of Washington published a report on a new measure of poverty, the Self-Sufficiency Standard.<sup>99</sup> This new standard measures how much money a family needs in different areas of Washington to meet basic needs without any type of outside aid, including government or community aid. The Standard also measures tax credits and tax rates as a part of the income needed to support a family’s “basic needs.” Basic needs include food and housing, but no “extras” such as meals-to-go or vacations. The Self-Sufficiency Standard found that an adult with a preschooler will need to earn at almost double that of a single adult to remain self-sufficient.<sup>100</sup>

<sup>95</sup> *Id.*

<sup>96</sup> PETERSON, *supra* note 50, at 3. The Washington State Center for Court Research notes in its report that the limitations of Residential Time Summary Report data are significant and that these data should be interpreted with caution.

<sup>97</sup> U.S. DEP’T OF LAB., BUREAU OF LAB. STAT., AMERICAN TIME USE SURVEY—2019 RESULTS 9 (2020), <https://www.bls.gov/news.release/pdf/atus.pdf#:~:text=AMERICAN%20TIME%20USE%20SURVEY%20%E2%80%94%202019%20RESULTS%20In,the%20U.S.%20Bureau%20of%20Labor%20Statistics%20reported%20today> (data from Table 1: Time spent in detailed primary activities and percent of the civilian population engaging in each activity, averages per day by sex, 2019 annual averages).

<sup>98</sup> HESS & MILLI, *supra* note 78.

<sup>99</sup> DIANA M. PEARCE, THE SELF-SUFFICIENCY STANDARD FOR WASHINGTON STATE 2017 (2017), [http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017\\_SSS.pdf](http://selfsufficiencystandard.org/sites/default/files/selfsuff/docs/WA2017_SSS.pdf).

<sup>100</sup> *Id.*

Considering how women are responsible for the majority of childcare, this places an extraordinary burden on single women to remain self-sufficient. This financial burden plays out in many ways to act as a barrier between those who need to access court business and the courts themselves.

Caring for children only partially explains pay disparities between women and men. When all other factors are controlled for (race, educational attainment, hours worked, region, industry and occupation), there is still a 38% difference in the pay between women and men.<sup>101</sup> This 38% difference can be at least partially explained by different societal expectations for men and women.<sup>102</sup> For example, when women try to negotiate in a similar manner to men, results on income are often negative.<sup>103</sup> And, while tenure is attached to publishing and research, male professors at higher education institutions will sometimes use their parental leave to focus on research and being published while women generally focus on childcare and recovering from birth.<sup>104</sup> And though Black women have higher workforce participation rates than Hispanic, Asian, and white women,<sup>105</sup> their labor was historically tied to a lower social status when compared to white women.<sup>106</sup> This form of historical discrimination can still be seen today in the types of jobs Black, Indigenous, and women of color are most likely to be found working: low-wage, little upper-mobility in terms of promotions, and little stability.<sup>107</sup>

When analyzing data based on gender identity, sexual orientation, and race—national statistics show that the intersection of multiple marginalized identities amplifies income inequities. The 2015 U.S. Transgender Survey found that poverty rates for transgender respondents were twice the rate of the general population and unemployment rates were three times higher than the U.S. unemployment rate. Unemployment rates were even higher among transgender

<sup>101</sup> KEVIN MILLER & DEBORAH J. VAGINS, *THE SIMPLE TRUTH ABOUT THE GENDER PAY GAP* (2018), <https://files.eric.ed.gov/fulltext/ED596219.pdf>.

<sup>102</sup> SARAH JANE GLYNN, *GENDER WAGE INEQUALITY: WHAT WE KNOW AND HOW WE CAN FIX IT* 64 (2018), <https://equitablegrowth.org/wp-content/uploads/2018/04/040918-pay-inequality2.pdf>.

<sup>103</sup> MILLER & VAGINS, *supra* note 101.

<sup>104</sup> *Id.*

<sup>105</sup> *Labor Force Characteristics by Race and Ethnicity, 2017*, BLS REPORTS: U.S. BUREAU OF LAB. STAT. (Aug. 2018), <https://www.bls.gov/opub/reports/race-and-ethnicity/2017/home.htm>.

<sup>106</sup> JOCELYN FRYE, *THE MISSING CONVERSATION ABOUT WORK AND FAMILY* 31 (2016), <https://cdn.americanprogress.org/wp-content/uploads/2016/09/30124619/WorkAndFamily-WomenOfColor-Oct.pdf>.

<sup>107</sup> *Id.*

respondents who were Black, Indigenous, and people of color and those with disabilities. Transgender respondents who were Black, Indigenous, and people of color as well as those with disabilities, who had undocumented status, who were working in the underground economy, or who were living with HIV also had even higher rates of poverty.<sup>108</sup>

Nationally, poverty rates among transgender individuals (data not further disaggregated by sexual orientation or gender) were about 29%, among cisgender bisexual women about 29%, among cisgender bisexual men about 20%, among cisgender lesbian women about 18%, among cisgender straight women about 18%, among cisgender straight men about 13%, and among cisgender gay men about 12%. The odds of transgender people living in poverty are 70% higher than the odds of a cis-straight man and 38% higher than cis-straight women after controlling for other factors such as race, age, education, etc. However Black LGBTQ+<sup>109</sup> individuals had a poverty rate of over 30% compared to a poverty rate of about 25% among Black cisgender straight individuals, about 15% for white LGBTQ+ individuals, and 9% among white cisgender straight individuals.<sup>110</sup> In Washington specifically, 11.5% of cisgender straight people live below the poverty line compared to 18.1% of the LGBTQ+ community.<sup>111</sup>

Many Washingtonians with disabilities also have lower incomes, more food insecurity, higher poverty rates, and lower levels of employment than people without disabilities who were demographically similar. In 2017 the poverty rate for people with disabilities in Washington was 19.5% vs. 10% for people without disabilities. The same report found that individuals with disabilities are paid “62% of the median earnings of Washingtonians without disabilities. Women with disabilities [are paid] 63% of their male counterparts” salary.<sup>112</sup> As previously discussed,

<sup>108</sup> SANDY E. JAMES ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

<sup>109</sup> The report does not run a race/ethnicity analysis for specific populations within the larger LGBT population.

<sup>110</sup> M. V. LEE BADGETT, SOON KYU CHOI & BIANCA D. M. WILSON, LGBT POVERTY IN THE UNITED STATES: A STUDY OF DIFFERENCES BETWEEN SEXUAL ORIENTATION AND GENDER IDENTITY GROUPS 25 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/National-LGBT-Poverty-Oct-2019.pdf>.

<sup>111</sup> *Id.*

<sup>112</sup> WASH. STATE DIV. OF VOCATIONAL REHAB., DISABILITY & DVR STATISTICS REPORT (2017), <https://www.dshs.wa.gov/sites/default/files/dvr/pdf/2017%20Disability%20%26%20DVR%20Statistics%20Report.pdf>

notable differences emerge when observing income disparities while paying particular attention to other factors such as gender, race, and disability status simultaneously.

## B. The high cost of childcare

Childcare is expensive. In 2018, American parents paid an average of \$1,230 per month for infant childcare. Families making the median income for their state could expect to spend almost 18% of their monthly income on childcare.<sup>113</sup> Black families can expect to spend up to 42% of their monthly income on infant childcare. Some parents who can afford to leave the workforce may choose to do so. This can negatively impact life-long earnings. Families that choose to have one parent stay home may face losing up to almost half a million dollars in earnings, retirement savings, and career advancement opportunities.<sup>114</sup> And in 2012, of the 15% of single, Black mothers who reported staying at home, 71% reported living in poverty.<sup>115</sup> Childcare expenses create financial hardships which can impede a litigant's ability to attend court for their court hearing, response to a subpoena or jury summons due to the inability to pay for childcare. In fact, in Philadelphia the impact that the burden of childcare has on jury diversity was the principal argument in a hearing about starting free-onsite childcare in courts in Philadelphia.<sup>116</sup>

In Washington State, childcare is no less expensive. In King County for example, the average cost per month for childcare is almost double the cost in Spokane across all ages and settings. Generally, childcare costs are higher for younger children and care is more expensive at a center than in the home. In 2017, the median monthly childcare cost for an infant in King County was \$1,499 at a childcare center and \$1,083 for home-based care,<sup>117</sup> while in Spokane, families could expect to pay \$849 per month for an infant at a childcare center and \$650 per month for home

<sup>113</sup> Simon Workman & Steven Jessen-Howard, *Understanding the True Cost of Child Care for Infants and Toddlers*, CTR. FOR AM. PROGRESS (Nov. 15, 2018), <https://www.americanprogress.org/issues/early-childhood/reports/2018/11/15/460970/understanding-true-cost-child-care-infants-toddlers>.

<sup>114</sup> Rasheed Malik & Jamal Hagler, *Black Families Work More, Earn Less, and Face Difficult Child Care Choices*, CTR. FOR AM. PROGRESS (Aug. 05, 2016), <https://www.americanprogress.org/issues/early-childhood/news/2016/08/05/142296/black-families-work-more-earn-less-and-face-difficult-child-care-choices>.

<sup>115</sup> Stay-at-Home Mothers on the Rise, PEW RSCH. CTR.'S SOC. & DEMOGRAPHIC TRENDS PROJECT (Apr. 8, 2014), <https://www.pewsocialtrends.org/2014/04/08/after-decades-of-decline-a-rise-in-stay-at-home-mothers>.

<sup>116</sup> Blondell Reynolds Brown, *Councilwoman Blondell Reynolds Brown Hosts Hearing on Childcare in Courts*, PHILA. CITY COUNCIL (Mar. 6, 2019), <http://phlcouncil.com/councilwoman-blondell-reynolds-brown-hosts-hearing-on-childcare-in-courts>.

<sup>117</sup> *Ethnic and Racial Minorities & Socioeconomic Status*, AM. PSYCH. ASS'N (July 2017), <https://www.apa.org/pi/ses/resources/publications/minorities>.

based care.<sup>118</sup> Yet, in terms of affordability, Child Care Aware of Washington concludes that Spokane County is a less affordable county to obtain childcare because the county's median income is significantly lower than both King County and the state average.<sup>119</sup>

Between January and March of 2020, a team of graduate student researchers at the University of Washington School of Public Health conducted an independent evaluation of the two free, onsite childcare centers located in courts in Washington State. The goal of the evaluation was to answer the question: "Are the on-site childcare programs, at the Children's Waiting Room in Spokane, Washington and the Jon and Bobbe Bridge Drop-In Childcare Center at the Maleng Regional Justice Center in Kent, Washington, enabling access to court business?" Of note, the center at the Maleng Regional Justice Center was closed down in 2020 as a result of impacts from the COVID-19 pandemic. Using a survey distributed to parents using both childcare centers, the evaluation found that over 90% of parents and guardians who took the survey strongly agreed that the on-site childcare programs increased their access to court services. Women were statistically more likely to report the childcare centers in the courts increased their access to court business.<sup>120</sup> The full report can be found in Appendix C of this report. The graduate students included several recommendations related to courthouse childcare centers which are discussed further below.

### C. Housing instability

Another primary barrier to court access is housing instability. Housing instability makes it difficult for individuals who have experienced domestic violence to seek safety, and is often the reason behind child welfare interventions. Civil courts provide protection orders to people, usually women, whose partners are abusive or violent. Civil protection orders are an important part of seeking safety; and nationally, about 20% of all women who experience domestic violence receive some type of protection order.<sup>121</sup> In Washington State, orders of protection have no filing fee associated to make them as accessible as possible to survivors. During the COVID-19

<sup>118</sup> *Data & Reports*, SPOKANE REG'L HEALTH DIST. (2021), <https://srhd.org/data-and-reports>; *Advocacy*, CHILD CARE AWARE OF WASH. (2021), <https://childcareawarewa.org/advocacy>.

<sup>119</sup> *Id.*

<sup>120</sup> UNIV. OF WASH. SCH. OF PUB. HEALTH CMTY.-ORIENTED PUB. HEALTH PRAC. PROGRAM, EVALUATION REPORT: ON-SITE CHILDCARE PROGRAMS IN COUNTY COURTHOUSES & THEIR EFFECT ON ACCESS TO THE JUSTICE SYSTEM (2020).

<sup>121</sup> PROTECTION ORDERS AND SURVIVORS, INST. FOR WOMEN'S POL'Y RSCH. (2017).

pandemic, Governor Inslee issued a proclamation urging courts to do everything possible to allow virtual participation in protection order proceedings.<sup>122</sup>

However, financial barriers, including the threat of housing instability, often keep individuals from seeking protection. People experiencing domestic violence are far more likely to also experience housing instability and have civil court needs related to housing and child welfare.<sup>123</sup>

An in-depth review of 84 women whose partners killed them showed significant financial barriers to safety, including a lack of affordable housing. The study also cited that abusers can further economic instability for women by showing up at their workplace or refusing to pay court mandated child support.<sup>124</sup> Washington is one of the 15 states that does not offer economic support as a part of a protection plan for people experiencing domestic violence.<sup>125</sup> And the consequences of leaving an abuser without having stable housing established can be severe: in Washington State a lack of stable housing is often the reason behind child welfare interventions and harms chances for family reunification.<sup>126</sup> See “Chapter 8: Consequences of Gender-Based Violence: Domestic Violence and Sexual Assault” for more information on gender-based violence.

#### D. Access to information and the internet

Another factor to consider when looking at the effects of housing instability on ability to access civil courts is how housing instability and poverty affect access to the internet. It is becoming increasingly important for individuals to be able to access information about the legal system and courts on the internet. In the 2019 National ‘State of the State Courts’ survey, 68% of respondents reported that they would search for information about state courts directly from the state court website, and among respondents under 50 years old, the percentage increased to 72%. Over half of the under-50 respondents also noted they would be likely to search for and trust information

<sup>122</sup> *Domestic Violence Protection Order Process*, WASH. CTS. (2020),

[https://www.courts.wa.gov/dv/?fa=dv\\_order.ordtypes#A1](https://www.courts.wa.gov/dv/?fa=dv_order.ordtypes#A1).

<sup>123</sup> CIV. LEGAL NEEDS STUDY UPDATE COMM., 2015 WASHINGTON STATE CIVIL LEGAL NEEDS STUDY UPDATE (2015),

[https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf).

<sup>124</sup> WASH. STATE COAL. AGAINST DOMESTIC VIOLENCE, ECONOMIC BARRIERS TO SAFETY IN DOMESTIC VIOLENCE SITUATIONS (2012),

<https://wscadv.org/wp-content/uploads/2016/12/housing-and-economic-dvfr-issue-brief-11-2012.pdf>.

<sup>125</sup> INST. FOR WOMEN'S POL'Y RSCH., *supra* note 121.

<sup>126</sup> PARTNERS FOR OUR CHILDREN, POVERTY AND HOUSING INSTABILITY: THE IMPLICATIONS FOR FAMILIES INVOLVED IN THE CHILD WELFARE SYSTEM (2011), [https://partnersforourchildren.org/sites/default/files/august\\_practice\\_brief.pdf](https://partnersforourchildren.org/sites/default/files/august_practice_brief.pdf).

about their state courts on the court's official social media account.<sup>127</sup> However, simply having a website does not automatically ensure access. For example, some websites can be difficult to navigate and make it hard for individuals to access the information they need: in the 2017 'State of the State Courts' survey, 80% of respondents noted that easier navigation of court websites would have a positive impact on their experience.<sup>128</sup>

According to the analysis of the 2017 survey of registered voters for the National Center for State Courts, customer service by state courts is an area requiring improvement, and a need for fixing online access was identified in all of the highly rated solutions.<sup>129</sup> The survey found that older women struggled with forms and procedures while younger and non-white voters were dissatisfied with their interactions with court staff. Several of the proposed policy solutions relied on convenient access to the internet including improving court websites, connecting users with court staff online to answer questions, or even paying fines and fees online. Importantly, however, solutions relying on improving convenient access to the internet must simultaneously seek to remedy individuals' lack of internet access to have a meaningful impact. The aforementioned proposed policy solutions reflected findings from the 2015 survey of registered voters showing that technology-based alternatives to conducting business inside an actual courthouse was favored 3 to 1.<sup>130</sup> This would be in addition to the numerous court forms and user guides already available online, as seen through the King County Superior Court website. It should be noted that only registered voters were included in these surveys and therefore they cannot be considered representative of all people who need to access the courts to conduct court business.

<sup>127</sup> *The State of State Courts:*

*A 2019 NCSC Public Opinion Survey*, NAT'L CTR. FOR STATE CTS. (2020), <https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide/2019-state-of-state-courts-survey>.

<sup>128</sup> *The State of State Courts: A 2017 NCSC Public Opinion Survey*, NAT'L CTR. FOR STATE CTS. (2018), <https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide/2017-state-of-state-courts-survey>.

<sup>129</sup> GBA STRATEGIES, 2017 STATE OF THE STATE COURTS – SURVEY ANALYSIS (2017), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0012/16131/sosc-2017-survey-analysis.pdf](https://www.ncsc.org/__data/assets/pdf_file/0012/16131/sosc-2017-survey-analysis.pdf).

<sup>130</sup> GBA STRATEGIES, ANALYSIS OF NATIONAL SURVEY OF REGISTERED VOTERS (2015), [https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/16164/sosc\\_2015\\_survey-analysis.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/16164/sosc_2015_survey-analysis.pdf).

Despite the importance of the internet as an information tool when accessing the courts, there are disparities in households with internet access nationally and in Washington State. The Census Bureau's 2012 survey showed that nationally 23% of white households did not have any internet access in the home while 38% of Black households and almost 36% of Hispanic households lacked all access to the internet.<sup>131</sup> For instance, an expert in the community noted that Black transgender women reported a lack of internet access as part of the reason why they had not responded timely to a Health Care Authority's notice of rulemaking regarding a gender dysphoria treatment rule. They explained the compounding barriers of lack of access to medical care, employment discrimination and inability to find work, housing instability and discrimination were barriers to access to the internet. In King County, there are significant disparities in internet access based on income. In 2014, households that made less than \$50,000 a year were 5.5 times less likely to have internet access in the home than those who made above \$50,000 a year. In 2013 the median income for Hispanic, Black, and AIAN households was all under \$50,000 in King County while the median income for white households was well over \$50,000.<sup>132</sup> This means that Hispanic, Black, and AIAN households were far more likely to not have access to the internet at home.

Even when information is on a court website, and the user has access to the internet, information is not necessarily accessible to all users. State court websites should be made accessible to people with disabilities, formatted to be accessed with assistive technology such as screen readers or voice recognition software.<sup>133</sup> Additionally, making websites mobile-enabled improves access for individuals who primarily access the internet from a phone; the evidence shows that young adults, people of color, individuals without a college degree, and those with lower household income who own smartphones are more likely to say that their phone is their primary source of internet access.<sup>134</sup> Courts should include user testing in determining how effective people are at

<sup>131</sup> *Computer and Internet Access in the United States: 2012*, U.S. CENSUS BUREAU (2012), <https://www.census.gov/data/tables/2012/demo/computer-internet/computer-use-2012.html>. This data table does not provide data for Native Hawaiian or Other Pacific Islanders or Native Americans.

<sup>132</sup> MURN & PARK, *supra* note 88.

<sup>133</sup> U.S. DEP'T OF JUST., C.R. DIV., DISABILITY RTS. SECTION, ACCESSIBILITY OF STATE AND LOCAL GOVERNMENT WEBSITES TO PEOPLE WITH DISABILITIES (2008), <https://www.ada.gov/websites2.htm>.

<sup>134</sup> KATHRYN ZICKUHR & AARON SMITH, DIGITAL DIFFERENCES (2012), <https://www.pewresearch.org/internet/2012/04/13/digital-differences/>.

being able to access and understand information on the internet. Hawaii, Maryland, Michigan, and Florida are examples of states using ‘responsive design’ to make their courts websites mobile-friendly.<sup>135</sup> When accessed in August of 2020, the Washington State Courts website did not appear to be mobile enabled. Facilitating access to information about the courts and legal system can increase access for all, especially low-income individuals and Black, Indigenous, and people of color.

Some state court systems have gone further by moving proceedings for minor legal disputes like lesser misdemeanors and traffic violations entirely online. The state of Michigan began piloting online proceedings using the platform technology, Matterhorn, in 2014, primarily for traffic violations. Later analysis showed that many user requests on the platform were made during evenings and weekends, potentially indicating greater ease of access for people who are not able to come to court during traditional working hours. Indeed, in a user survey, “more than a third of survey respondents reported that they would not have been able to come to the courthouse in person at all if not for the availability of the online platform.”<sup>136</sup> Users also reported positive experiences, feeling the platform was easy to use and that it enhanced their understanding of the facts of their case during the process.<sup>137</sup> Likewise, the Franklin County, Ohio municipal court developed an online dispute resolution platform in 2016 for income tax disputes, which previously had very high rates of defaults when individuals failed to appear in court. Evaluations found that cases were resolved much more quickly when online dispute resolution was used, and that defendant participation and voluntary dismissal increased, especially for defendants from low- to middle-income neighborhoods. Participants noted that the process reduced the time and financial cost as well as stress associated with physical court appearances. The majority of users in 2019 accessed the system by mobile phone.<sup>138</sup> Remote court access may also be meaningful for individuals who fear coming to the court in person due to their immigration status, though (as noted below) there may be different equity implications of video proceedings.

<sup>135</sup> ROBERT GREACEN, EIGHTEEN WAYS COURTS SHOULD USE TECHNOLOGY TO BETTER SERVE THEIR CUSTOMERS (2018).

<sup>136</sup> J. J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993 (2017).

<sup>137</sup> *Id.*

<sup>138</sup> ALEX SANCHEZ & PAUL EMBLEY, ACCESS EMPOWERS: HOW ODR INCREASED PARTICIPATION AND POSITIVE OUTCOMES IN OHIO (IN TRENDS IN STATE COURTS, 2020) (2020),

[https://www.ncsc.org/\\_\\_data/assets/pdf\\_file/0018/42156/Trends\\_2020\\_final.pdf](https://www.ncsc.org/__data/assets/pdf_file/0018/42156/Trends_2020_final.pdf).

Of note, the COVID-19 pandemic has increased the use of remote video technology and other remote options for accessing court. The pandemic created opportunities for courts to offer virtual participation in new ways. People access court hearings from work without having to take the day off work or without having to arrange transportation or childcare to get to court. Virtual participation increases access to the courts and decreases many of the barriers litigants can face. However, there may be risks with remote proceedings as well. In 2020, prior to the pandemic, the Brennan Center for Justice conducted a literature review of the research on the effects of video court proceedings in civil, criminal, and immigration proceedings. The report highlights findings that suggest that video conferencing may impact court outcomes. For example, they summarize studies finding that video hearings were associated with higher bond amounts, increased likelihood of deportation in immigration courts, and decreased perceptions of credibility. The authors conclude that while video technology may be a valuable tool, that more research is needed and that long-term adoption of remote court proceedings should be approached with caution.<sup>139</sup> The Gender and Justice Commission's evaluation of Domestic Violence—Moral Reconciliation Therapy (DV-MRT) also found that participants noted both pros and cons of attending these court-provided sessions remotely during the pandemic. But overall participants did feel that being able to join remotely: 1) allowed them to better navigate their work schedules and to attend even when they lacked transportation, and 2) made the program more accessible.<sup>140</sup> See Appendix C of the full report for the full DV-MRT evaluation.

## E. Transportation

As previously discussed, traveling to the courthouse is an essential part of conducting court business. However, without a car or access to a functional and punctual public transportation system, arriving at a courthouse during the very specific time window can be difficult. For instance, an attorney working in Washington shared that their clients in rural areas often noted they did not have money to put sufficient gas in their cars to travel to the courthouse or where

<sup>139</sup> ALICIA BANNON & JANNA ADELSTEIN, BRENNAN CTR. FOR JUST., THE IMPACT OF VIDEO PROCEEDINGS ON FAIRNESS AND ACCESS TO JUSTICE IN COURT (2020), <https://www.brennancenter.org/sites/default/files/2020-09/The%20Impact%20of%20Video%20Proceedings%20on%20Fairness%20and%20Access%20to%20Justice%20in%20Court.pdf>.

<sup>140</sup> AMELIE PEDNEAULT, SAMANTHA TJADEN, AND ERICA MAGANA. EVALUATION OF WASHINGTON STATE DOMESTIC VIOLENCE – MORAL RECONCILIATION THERAPY (DV-MRT) PROGRAMS PROCESS AND OUTCOMES (2021).

services were. An evaluation of Washington State’s Transportation Initiative for TANF Adults found five “transportation deserts” in Washington State, all in rural areas.<sup>141</sup> These are areas that lack public transportation and also had lower than average rates of car ownership. The evaluation also found that only 38% of adults using TANF owned personal vehicles. Also, while two-thirds of adults using TANF had preschool aged children, those with children were less likely to own cars. But, while only 8.7% of these adults lived in what the evaluation defined as an area without public transportation and also did not own a car, living in an area “with” public transportation did not mean it was convenient. The evaluation defined living “near public transportation” as simply “Living in a zip code area served by public transit system or within Public Transportation Benefit Area.”<sup>142</sup>

There are disparities in car ownership. Nationally, in 2016 it was found that people with no high school diploma were the least likely to own cars by level of educational attainment, and Black, non-Hispanic families were the racial demographic least likely to own a private vehicle.<sup>143</sup> There is no data on car ownership by demographic in Washington State. However, based on the previously discussed data on level of educational attainment and income levels, it can be reasoned that there are disparities in car ownership in Washington as well. Additionally, in the 2021 legislative session, the Office of the Insurance Commissioner in Washington requested that legislation be enacted to “ban the industry’s use of credit scoring” due to findings that “low-income people in Washington state are more likely to struggle with their credit...for reasons that have nothing to do with their insurance risk. [C]ommunities of color are disproportionately represented in low-income demographics.”<sup>144</sup> As such, penalizing individuals with lower credit scores negatively and disproportionately impacts Black, Indigenous, and other communities of color in spite of lack of association between credit score and risk involved.

<sup>141</sup> BRENT L. BAXTER, WASH. STATE DEP’T OF SOC. AND HEALTH SERVS., EVALUATING THE IMPACT OF WASHINGTON STATE’S TRANSPORTATION INITIATIVE FOR TANF ADULTS (2017), <https://nawrs.org/wp-content/uploads/2017/08/2-3-Baxter-Impact-of-WA-State-Transportation-Initiative.pdf>.

<sup>142</sup> *Id.* at 6

<sup>143</sup> 2016 SCF CHARTBOOK (2016), <https://www.federalreserve.gov/econres/files/BulletinCharts.pdf>.

<sup>144</sup> 2021 Legislative Priorities: Prohibiting the Use of Credit Scoring in Insurance, OFF. OF THE INS. COMM’R WASH. STATE (2021), <https://www.insurance.wa.gov/legislative-priorities>.

## F. The ability to miss work

Of course, having accessible transportation does not guarantee that arriving at the courthouse will be convenient or even possible. Due to the precise nature of scheduling for court and because courthouse operation hours are primarily business hours during the week, going to court may often mean needing to take time off from work. But, for many, time off from work is not as simple as just letting your boss know you cannot come in that day. As seen during the COVID-19 pandemic, taking time off work requires scheduling flexibility and enough of a financial cushion to miss time from work.<sup>145</sup> Washington State passed a law requiring employers to provide paid sick leave, but has no such provisions for other essential appointments, such as court dates.<sup>146</sup>

And without paid leave, many cannot take time from work. Women are twice as likely as men to work part time.<sup>147</sup> A study released in March of 2020 found that about half of all households in the United States do not have an emergency savings fund and that one-fifth of the households in the lowest income brackets have on average only \$900 of available liquid financial assets, usually in a checking account that pays for bills.<sup>148</sup> It also found that after taking into account monthly bills, about a quarter of American households have only \$400 available. In Washington State, the Prosperity Scorecard shows that 26.7% of Washington households live in liquid asset poverty, 15.8% have zero or negative net worth, and that 47.8% of renters in Washington paid more than one third of their monthly income on rent.<sup>149</sup> Additionally, only 66.3% of Washington households had savings for an emergency last year. Due to the previously discussed income disparities these populations are going to be disproportionately women and Black, Indigenous, and people of color. This leaves people with a difficult choice: do they go to court or do they make rent that month?

<sup>145</sup> David Kroman, *As Coronavirus Spreads, Some Can't Afford A Sick Day*, CROSSCUT (Mar. 3, 2020), <https://crosscut.com/2020/03/coronavirus-spreads-some-cant-afford-sick-day>; Usha Ranji, Michelle Long & Alina Salganicoff, *Coronavirus Puts a Spotlight on Paid Leave Policies*, KFF (Dec. 14, 2020), <https://www.kff.org/coronavirus-covid-19/issue-brief/coronavirus-puts-a-spotlight-on-paid-leave-policies>.

<sup>146</sup> Usha Ranji, Michelle Long & Alina Salganicoff, *supra* note 145.

<sup>147</sup> HESS & MILLI, *supra* note 78.

<sup>148</sup> STEPHEN BROBECK, *DO BIG BANKS PROVIDE AFFORDABLE ACCESS TO LOWER INCOME SAVERS?* 21 (2020), <https://consumerfed.org/wp-content/uploads/2020/03/Affordable-Banking-Access-for-Low-Income-Consumers-Report.pdf>.

<sup>149</sup> *Prosperity Now Scorecard*, PROSPERITY NOW, <https://scorecard.prosperitynow.org/data-by-location>.

## V. Recommendations

- Low-income care givers often lack access to safe, affordable, quality, childcare, and this limits their ability to access courts. To remove such barriers and improve all court users' ability to conduct court business using remote means:
  - Courts should retain and expand the best of the remote access opportunities that the courts adopted during the COVID-19 pandemic (e.g., digital platforms accessible via computer or smart phone) – the ones that maximize communication and language access without penalizing litigants for using remote means. Publish (electronically) accessible directions on how to access court business and documents remotely, and limit fees for accessing court business and documents remotely.
  - Courts should consider more flexible hours of operation or, with increased funding, expanded hours of operation.
  - Stakeholders should explore additional way to improve access opportunities such as funding and distributing devices (laptops, tablets, phones, etc.) that can support remote access in community and childcare centers, women's shelters, schools (as appropriate in individual jurisdiction); expanding on-site childcare centers at courthouses; or supporting other means (such as vouchers) to access childcare to attend court.
- The Washington State Legislature should consider funding “navigators” in courts in all counties to assist those seeking help with family law issues, and should also consider funding them for other areas of law.
- Stakeholders should propose an amendment to GR 34 to allow fee waivers based solely on the litigant's attestation of financial status, without additional proof. Allowing presentation of such waivers to the Clerk or other designated non-judicial officer should also be considered to help streamline the procedure. Information about fee waivers should be prominently displayed (in multiple languages) at the courthouse and online.

- Stakeholders should convene a workgroup to analyze the application of GR 34 fee waivers to name change recording fees. The workgroup should consider ways to reduce barriers to name change recording for indigent individuals.
- GR 34 is not always interpreted to extend fee waivers to fees associated with parenting classes, family law facilitators, and other family law costs and fees. GR 34 should be amended to explicitly extend waivers to all such fees.
- Courts should be required to accept electronic (as well as hard copy) filings and submissions of all documents.

## Appendix I. Washington Superior Court User Fee by County

The following table contains Family Law Superior Court fee information collected in March through May of 2021 from a sampling of representative counties in Washington State drawing from diverse geographical areas. This information was collected from court websites and email and phone correspondence with Superior Court Clerks. This table is intended to illustrate financial barriers specific to Family Law that litigants may face, based on county. Additionally, particular attention is paid to whether or not sliding-scale or fee waivers are available for each type of service.

### General Notes:

- Facilitator Fees: Facilitator fees were not applicable in Lewis and Okanogan counties. King, Skagit, Spokane, and Stevens County indicated availability of fee waivers or sliding scale for facilitator fees. All other sampled counties did not clearly indicate whether or not facilitator fees were available on sliding scale or waivable entirely based on demonstrated financial need.
- Title 26 Guardian Ad Litem services: A majority of counties sampled indicated that Title 26 Guardian Ad Litem (GAL) county pay and/or low-income services were available. Available information indicated availability of GAL fee waiver, but did not necessarily provide the actual cost of the reduced services or data verifying that persons in need of sliding scale or waived GAL fees are able to access these services. Collecting data on accessibility to low- or no-cost GAL services is an area which could be explored in future research.
- Parenting Plan Seminar: A majority of counties sampled required the completion of a parenting plan seminar in Family Law cases. Approximately half of counties sampled included approved seminars with services available on a sliding scale rate.
- Mediation: A majority of approved mediation service providers offered classes on a sliding scale rate based on income. Most counties required mediation prior to a hearing.

Table 2. Washington Superior Court User Fee by County

County	Title 26 Guardian Ad Litem	Parenting Plan Seminar	Mediation	Facilitator
Benton/Franklin	(*) <sup>i</sup> \$70-\$275 hourly rate. \$1,600-\$3,750 retainer. <sup>ii</sup>	Required. \$25-\$115. <sup>iii</sup> (↔,◇)	Required. \$62.50-\$250/hr or \$400-\$500 for ½ day. <sup>iv</sup> (↔)	\$15-\$25. <sup>v</sup>
Chelan	(*) <sup>vi</sup> Varied. County: \$700 + rate \$50/hr. Private: GAL registry, pay rate. (◇). <sup>vii</sup>	Required. \$40 per party. <sup>viii</sup> (↔,◇)	Not required. \$25 intake, \$26-\$170/session. <sup>ix</sup> (↔)	\$15-\$30. <sup>x</sup>
Clark	(*, ◇). <sup>xi</sup> Fee ordered and set by court. <sup>xii</sup>	N/A. <sup>xiii</sup>	Required. <sup>xiv</sup> \$0 <sup>xv</sup> - \$250 <sup>xvi</sup> /session. (↔)	\$20. <sup>xvii</sup>
Grant	(*,↔,◇). Cost set by judge. <sup>xviii</sup>	Required. \$35 <sup>xix</sup> -\$54.99. <sup>xx</sup>	Judge ordered. <sup>xxi</sup> \$50-\$200/session. <sup>xxii</sup> (↔,◇)	\$20. <sup>xxiii</sup>
Grays Harbor	(*,↔,◇), set by judge. <sup>xxiv</sup> \$100-\$250. \$2,500 retainer. <sup>xxv</sup>	N/A. <sup>xxvi</sup>	Required. \$150-\$300/hr, parties split cost. <sup>xxvii,xxviii</sup> (↔,◇)	\$20. <sup>xxix</sup>
Jefferson	(*,◇). County pay: \$60/hr, \$500 max. Private: GAL max is \$200/hr. <sup>xxx</sup>	Required. \$50. <sup>xxxi</sup>	Not required. \$40 intake + \$40-\$550/session. <sup>xxxii</sup> (↔,◇)	\$20. <sup>xxxiii</sup>
King	Information unavailable. <sup>xxxiv</sup>	Required. \$40-\$75. <sup>xxxv</sup> (↔,◇)	\$25-\$1,000. <sup>xxxvi</sup> (↔)	\$30. <sup>xxxvii</sup> (↔,◇)
Lewis	(*) <sup>xxxviii</sup> . \$0. <sup>xxxviii</sup>	Required. \$50. <sup>xxxix</sup> (↔)	Required. <sup>xl</sup> Cost varies. <sup>xli</sup> (↔)	N/A. <sup>xlii</sup>
Okanogan	(*,↔,◇). <sup>xliii</sup> Varied. Court appointed GAL fee is \$75/hour. <sup>xliv</sup>	Required. \$50. <sup>xlv</sup>	1st session \$0, follow-up session fee \$50-\$200. <sup>xlvi</sup> (↔)	Free. <sup>xlvii</sup>

County	Title 26 Guardian Ad Litem	Parenting Plan Seminar	Mediation	Facilitator
Pierce	(*) <sup>xlvi</sup> \$75-\$200, retainer \$1,875. <sup>xlix</sup>	Required. \$0-\$60. <sup>l</sup> (↔)	\$50-\$300. <sup>li</sup> (↔)	\$20. <sup>lii</sup>
Skagit	(*) <sup>liii</sup> \$75 to \$245/hr. Retainer fee \$1,500 to \$3,000. <sup>liv</sup>	Required. 5 options from \$45.95-\$99. <sup>lv</sup> (↔)	Required. <sup>lvi</sup> \$75-\$325. <sup>lvii</sup> (↔)	\$20. <sup>lviii</sup> (◇) <sup>lix</sup>
Snohomish	(*) <sup>lx</sup> \$100-\$250/hr. Retainer fee \$2,000-\$6,000. <sup>lxi</sup>	Required. <sup>lxii</sup> \$39.95-\$50. <sup>lxiii</sup> (↔,◇)	Required. \$600. <sup>lxiv</sup> (↔)	\$25. <sup>lxv</sup>
Spokane	(*) <sup>lxvi</sup> . \$50-any cost, GAL discretion, (↔).	Required. \$25-\$31 per person. <sup>lxvii</sup>	Required. \$5-\$275/hr. <sup>lxviii</sup> (↔)	\$0-\$25. (◇). <sup>lix</sup>
Stevens	(*) <sup>lxx</sup> . Varied.	Required. \$54.99. <sup>lxxi</sup> (↔)	Not required. <sup>lxxii</sup> \$10-\$110/hour. <sup>lxxiii</sup> (↔)	\$20; (◇). <sup>lxxiv</sup>
Walla Walla	(*) <sup>lxxv</sup> . \$115/hour. <sup>lxxvi</sup>	Required. No cost or approved plan list. <sup>lxxvii</sup>	Not required. Cost varies. <sup>lxxviii</sup>	\$20. <sup>lxxix</sup>
Whatcom	(*,◇). <sup>lxxx</sup> \$70-\$250/hr, \$500-\$5,000 retainer. <sup>lxxxi</sup>	Required. \$50-\$72.95. <sup>lxxxii</sup> (↔,◇)	Required. Varied cost. <sup>lxxxiii</sup> (↔,◇)	\$20. <sup>lxxxiv</sup>
Whitman	(*) <sup>lxxxv</sup> . Fees set by court.	Court dependent, all classes accepted. <sup>lxxxvi</sup>	Required. \$180-\$350/hr. <sup>lxxxvii</sup> (↔)	\$20-\$30. <sup>lxxxviii</sup>
Yakima	Information unavailable. <sup>lxxxix</sup>	Required. <sup>xc</sup> (↔)	\$25-\$170. <sup>xci</sup> (↔,◇)	\$75. <sup>xcii</sup>

## Table 2 Key

- $\diamond$  = fee is waivable (i.e., available option for court to bear cost, typically determined by demonstrated need)
- $\leftrightarrow$  = fee available on sliding scale
  - sliding scale symbol indicates that at least some of the service provided in that section offers sliding scale. For instance, some counties have multiple provider options for mediation, in that context “ $\leftrightarrow$ ” means that at least one of those providers offers sliding scale services.
- \* = Public (county) pay/low-income GAL service available.
- If neither  $\diamond$  nor  $\leftrightarrow$  symbol is present in a given cell, it means that sliding scale and/or waived fee services were unavailable in this county OR that no information pertaining to the availability was identified in the course of this research.

## Footnotes for Table 2.

<sup>i</sup> Pursuant to 26.12.175 (<https://apps.leg.wa.gov/rcw/default.aspx?cite=26.12.175>): "(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. If both parents are indigent, the county shall bear the cost of the guardian."

<sup>ii</sup> Nine available guardians ad litem, one registered GAL offered bilingual (English and Spanish) services (<http://www.benton-franklinsuperiorcourt.com/information-and-forms-by-case-type/domestic-paternity-case-information-and-forms/title-26-guardian-ad-litem/>).

<sup>iii</sup> Fee based on monthly income and is waivable if indigent. All county approved seminars charge the same rates. (<http://www.benton-franklinsuperiorcourt.com/information-and-forms-by-case-type/domestic-paternity-case-information-and-forms/parenting-seminars/>).

<sup>iv</sup> Benton/Franklin approved mediator list: 30 mediators, four pay by sliding scale, two charge by half day (<http://www.benton-franklinsuperiorcourt.com/information-and-forms-by-case-type/domestic-paternity-case-information-and-forms/>).

<sup>v</sup> Benton/Franklin county facilitator (<https://www.co.benton.wa.us/pview.aspx?id=791&catid=45>): \$25 for 30-minute initial session, \$15 for subsequent sessions. Fees are non-refundable.

<sup>vi</sup> Personal communication with Kim Morrison, Chelan County Superior Court Clerk on March 26, 2021.

<sup>vii</sup> GAL fee information not available online, Title 26 registry does not include GAL fees (<http://www.co.chelan.wa.us/files/superior-court/documents/Title%2026%20GAL%20List.pdf>). GAL fees are decided on case-to-case basis in court. Private pay: GALs set rate; County pay: \$50/hour, typically authorize up to \$700 initially; clients who are indigent are not required to cover this cost, (personal communication with Kim Morrison, Chelan County Superior Court Clerk on March 26, 2021).

<sup>viii</sup> Fee reduction and waiving fee are dependent on court order. Fee paid in advance and is non-refundable (<https://www.co.chelan.wa.us/clerk/pages/parenting-class>).

<sup>ix</sup> Wenatchee Valley Resolution Center: Intake: \$25 non-refundable fee, Session fee: \$26-\$170 per three-hour mediation session based on sliding scale, voluntary process, both parties must agree ([www.wvdr.org](http://www.wvdr.org)).

<sup>x</sup> Appointment: \$30 fee for one-hour, pre-paid appointments (no refunds). Walk-ins: \$15 for 30 minutes, discontinued during COVID-19. Forms: available for fee ranging \$5-\$20 per packet. \$20 for divorce with (or without) children. Free Wednesday Workshop: closed during COVID-19 (<https://www.co.chelan.wa.us/clerk/pages/court-facilitator>).

<sup>xi</sup> GAL fee is ordered and set by court. Fee waiver is available if approved by judge (Personal communication with Scott G. Weber, Clark County Superior Court Clerk on April 2, 2021).

- <sup>xii</sup> 11 GALs listed on registry; fee not available online ([https://clark.wa.gov/sites/default/files/media/document/2021-03/GALRegistry%2026\\_0.pdf](https://clark.wa.gov/sites/default/files/media/document/2021-03/GALRegistry%2026_0.pdf)).
- <sup>xiii</sup> Typically, parenting plan is not required unless some sort of 199 restriction is present, not aware of any classes offered in county (Personal communication with Scott G. Weber, Clark County Superior Court Clerk on April 2, 2021).
- <sup>xiv</sup> Mediation is mandatory unless regarding custody (Personal communication with Scott G. Weber, Clark County Superior Court Clerk on April 2, 2021).
- <sup>xv</sup> Community mediation services, first consult is free. For Clark County Clerk, no fee (Personal communication with office of Scott G. Weber, Clark County Superior Court Clerk on April 2, 2021).
- <sup>xvi</sup> <https://www.mediationclarkcounty.org>. First consultation is free, sliding scale payment for future sessions. "Fees are provided on a sliding fee scale depending on income and range from a \$25 co-pay to \$250 per party per session. There is an initiating party fee of \$25." Cost split between participants.
- <sup>xvii</sup> \$20 fee for a 20-minute appointment, non-refundable, paid in advance (<https://clark.wa.gov/clerk/family-court-facilitator>). Children are not allowed at facilitator meeting. Childcare cost may constitute an additional financial consideration and potential barrier.
- <sup>xviii</sup> Personal communication with Crystal (509-754-2011 ext. 4144), Grant County in April 2021.
- <sup>xix</sup> Parenting NW, completed via email (Personal communication with Parenting Northwest 509-770-9240 in April 2021).
- <sup>xx</sup> <https://www.onlineparentingprograms.com>.
- <sup>xxi</sup> If parties don't agree, commissioner will request mediation. No county approved list of mediators. Can locate and utilize service and submit proof of attendance (personal communication with Kimberly A. Allen, Grant County Superior Court Clerk in April 2021).
- <sup>xxii</sup> Columbia Basin DRC: sliding scale available. Clients pay \$50-\$200 per session. If client is unable to pay any amount, service still available. (<https://www.cbdr.org/>).
- <sup>xxiii</sup> (<http://www.grantcountywa.gov/Clerk/Fee-Schedule/PDF/2018-Fee-Schedule-Eff-2018-10-01.pdf>).
- <sup>xxiv</sup> Fee waiving and sliding scale cost determined either through judge ruling or negotiation with GALs (personal communication with Kym Foster, Grays Harbor County Superior Court Clerk on March 29<sup>th</sup>, 2021).
- <sup>xxv</sup> Six GALs on registry, three indicate retainer cost (<https://cms5.revize.com/revize/graysharborcounty/2021%20GAL%20REGISTRY%20LIST.pdf>).
- <sup>xxvi</sup> Clerk had not heard of parenting seminar, unlikely to be required in this county (personal communication with Kym Foster, Grays Harbor County Superior Court Clerk on March 29<sup>th</sup>, 2021).
- <sup>xxvii</sup> Five mediator options (<https://cms5.revize.com/revize/graysharborcounty/GH%20Family%20Mediator%20Roster%202021.pdf>).

- xxviii Mediation is a new service, compiling list of mediators is required this year but not yet available (personal communication with Kym Foster, Grays Harbor County Superior Court Clerk on March 29<sup>th</sup>, 2021).
- xxix (<https://cms5.revize.com/revize/graysharborcounty/Clerk/FEE%20SCHEDULE%20GH%20COUNTY%202020.pdf>).
- xxx "If indigent client or estate under \$3,000 fees, county pays the cost" (Personal communication Jefferson County Court Administrator on May 7, 2021).
- xxxi "[M]andatory parenting class known as Children in the Middle. It is currently offered once a month and costs \$50. Parties need to register in advance for the class and may not attend together" (<https://www.co.jefferson.wa.us/170/Family-Law-Information>).
- xxxii Peninsula Dispute Resolution Center: sliding scale, based on what clients can pay (<https://pdrc.org/>). Parenting plan mediation: \$40 fee per client intake fee, mediation session fee is sliding scale ranging from \$40-\$550, center charges whatever party can afford to pay (Personal communication with (360)-452-0458 on April 20, 2021).
- xxxiii \$20 fee per visit (<https://www.co.jefferson.wa.us/DocumentCenter/View/71/Courthouse-Facilitator-Information-PDF?bidId=>).
- xxxiv 44 registered GALs, prices not listed on registry which is available only via email, not online (Personal communication with Nadia Camille Simpson, Court Operations Supervisor on April 29<sup>th</sup>, 2021).
- xxxv \$40 per person plus additional processing fees. Potential for \$35 additional fee if registration is submitted late. Sliding scale and waiving fee are contingent on demonstrated need (<https://kingcounty.gov/courts/superior-court/family/parent-seminar.aspx>).
- xxxvi Sliding scale, total cost cannot exceed \$1,000 and no less than \$25, parties pay portion based on personal income, fee reduction request form available (<https://kingcounty.gov/courts/superior-court/family/services/mediation.aspx>).
- xxxvii \$30 fee per visit, waiving or reducing fee is contingent on income (<https://kingcounty.gov/courts/superior-court/family/facilitator.aspx>).
- xxxviii Lewis County GALs are volunteers, no identified cost (<https://lewiscountygala.org>).
- xxxix Consider the Children is a Lewis County superior court approved parenting class (<https://familyess.org/consider-the-children/>). Cost is \$50 per participant for a four-hour class, paid in advance. "Class Fee may be discounted for those whose incomes can be verified to fall below poverty guidelines" (<https://secureservercdn.net/198.71.233.65/97u.7fe.myftpupload.com/wp-content/uploads/2020/09/CTC-Webinar.pdf>).
- xl Mediation is required unless court waives based on good cause shown ([https://lewiscountywa.gov/media/documents/LOCAL\\_COURT\\_RULES\\_LEWIS\\_COUNTY\\_SUP\\_CT\\_Effective\\_September\\_1\\_2019.pdf](https://lewiscountywa.gov/media/documents/LOCAL_COURT_RULES_LEWIS_COUNTY_SUP_CT_Effective_September_1_2019.pdf)).
- xli Center for Constructive Resolution and Conversation (<https://lewiscountycrc.org>) sliding scale available. "The fee depends on the case type and if the parties need DS AND PP or just one or the other as far as the family law cases. Also, generally each party is

responsible for 50% of the fee unless otherwise ordered by the court. Other cases, fee depends on the case type” (Personal communication with Jackie Viall, Program Director at Center for Constructive Resolution and Conversation on April 22<sup>nd</sup> 2021).

<sup>xlii</sup> No family law court facilitators in Lewis County (Personal communication with office of Scott Tinney, Lewis County Superior Court Clerk on April 16, 2021).

<sup>xliii</sup> Sliding scale and/or waiving GAL fees is only available when court approved and appointed (Personal communication with Dennis T. Rabidou, Okanogan Superior Court Administrator on May 5<sup>th</sup>, 2021).

<sup>xliv</sup> “Each GAL has their own fee but when they are appointed by the court the fee is \$75 [per] hour,” GAL registry is unavailable online (Personal communication with Dennis T. Rabidou, Okanogan Superior Court Administrator on May 5<sup>th</sup>, 2021).

<sup>xlv</sup> Course available in English and Spanish. No indication of sliding scale or fee waiving availability (<http://okanogandrc.org/class.html>).

<sup>xlvi</sup> Okanogan County Dispute Resolution Center: Sliding scale based on gross annual income. Minimum is \$50 per session per client, maximum is \$200 per session per client. "If the case has already been filed with the court, no additional charge [] for the first mediation session. Should the mediation require an additional session or sessions, the regular fee schedule will apply (see above)" ([https://okanogancounty.org/superiorcourt/docs/DRChandout\\_e.pdf](https://okanogancounty.org/superiorcourt/docs/DRChandout_e.pdf)).

<sup>xlvii</sup> Appointments with facilitator are free. No children allowed at appointments (Personal communication with (509) 422-7132, office of Okanogan Superior Court Facilitator).

<sup>xlviii</sup> Personal communication with Pierce County Superior Court Administration on May 10, 2021.

<sup>xlix</sup> 16 GALs on registry, five no longer available, three did not clearly state fee for services (<https://www.piercecountywa.gov/1057/2609-Registry-List>).

<sup>l</sup> Eight seminar options. Parenting Seminar *Crossroads of Parenting and Divorce* is free, all other options cost up to \$60, sliding scale payment options available (<https://www.piercecountywa.gov/DocumentCenter/View/3221/Approved-Parenting-Seminar-Providers-?bidId=>).

<sup>li</sup> Cost options: \$200 for representing self (per party), \$250 attorney is representing self, \$300 if wanting shuttle mediation, client speaks to mediator and mediator speaks to other party. There is a \$50 deposit, based on financial aid request fees beyond this deposit can be waived. Pierce County: "Center for Dialog & Resolution CDR) Pierce County" (<https://centerforresolution.org/fees-policies/>).

<sup>lii</sup> (<https://www.piercecountywa.gov/DocumentCenter/View/74989/feesched61018pdf?bidId=>).

<sup>liii</sup> Skagit County pay GALs are available \$50/hour up to \$750 for county pay cases so parties can proceed without having to pay for a GAL (Personal communication with Michelle Cooke, Skagit County Superior Court Manager on May 3, 2021).

- liv (<https://skagitcountywa.gov/utilities/GetPDF/default.aspx?Folder=SupCrtFiles&DocName=GAL26>).
- lv The following approved parenting seminar courses are available in English and Spanish: “Separate Homes Connected Families” Co-Parenting Class, online or in-person, three hours, \$99 (<https://www.voaww.org/drctrainings>); “Successful Co-Parenting” Class, \$50/person, sliding scale: income <\$30k is \$20 or provide proof of no income, four-hour in person class ([https://docs.google.com/forms/d/e/1FAIpQLSeL7ytEW5lvYqz6yWXBdyfqd3E75Yc\\_XxDdTg5IT2pPreMAPA/viewform](https://docs.google.com/forms/d/e/1FAIpQLSeL7ytEW5lvYqz6yWXBdyfqd3E75Yc_XxDdTg5IT2pPreMAPA/viewform)); “Two Families Now” cost is \$49.99 for 30-day access online, four-hour course ([www.TwoFamiliesNow.com](http://www.TwoFamiliesNow.com)); “Children in Between” Class, can present court approved fee waiver, \$45.95 for 30-day access (\$48.95 with fees), four-hour class ([online.divorce-education.com](http://online.divorce-education.com)); “Co-Parenting” Class, \$54.99 with tax, four-hour online course ([www.OnlineParentingPrograms.com](http://www.OnlineParentingPrograms.com)).
- lvi If going to trial, mediation is always required (Personal communication with Michelle Cooke, Skagit County Superior Court Manager on May 3, 2021).
- lvii 26 approved mediators, one mediator offers Spanish/English bilingual services ([https://www.skagitcounty.net/utilities/GetPDF/default.aspx?Folder=SupCrtFiles&DocName=MEDIATOR\\_LIST](https://www.skagitcounty.net/utilities/GetPDF/default.aspx?Folder=SupCrtFiles&DocName=MEDIATOR_LIST)).
- lviii \$20 fee per ½ hour appointment paid in advance. Spanish speaking facilitator available on select days. Fees can be waive based on motion in advance. (<https://skagitcountywa.gov/Departments/SuperiorCourt/familylaw.htm>).
- lix Personal communication with Michelle Cooke, Skagit County Superior Court Manager on May 3, 2021.
- lx Under limited circumstances for those parties who qualify, the Court may appoint and pay for the GAL under Titles 26; the maximum time allowed on these cases is 12 hours (<https://snohomishcountywa.gov/1441/Guardian-ad-Litem-GAL>). County pay GAL registry can be found here: (<https://snohomishcountywa.gov/DocumentCenter/View/80130/Title-26-GAL-Registry--County-Pay>).
- lxi (<https://snohomishcountywa.gov/DocumentCenter/View/80131/Title-26-GAL-Registry--Private-Pay>).
- lxii Personal communication with Snohomish Superior Court Facilitator on May 7<sup>th</sup>, 2021.
- lxiii Approved parenting seminars are Successful Co-Parenting (\$50, low-income rate option of \$20 with verification) and Children in Between (\$39.95 for 30-day access, can submit court approved fee waiver and/or verification of indigency). <https://snohomishcountywa.gov/4132/Parenting-Seminars>.
- lxiv DRC of Snohomish, Island & Skagit Counties: Family mediation is \$600 per session, paid by both parties, non-refundable, \$75 non-refundable service fee paid by each party. Fees available on sliding scale and individuals can file a fee discount application (<https://www.voaww.org/mediation>).
- lxv (<https://snohomishcountywa.gov/Faq.aspx?QID=1336>).
- lxvi Private pay GALs can charge anything. County pay charge base rate of \$50, county pay rate is \$60/hour up to a maximum of \$1,800. Sliding scale is not available. Parties must pay \$50, regardless of income – county can absorb rest of cost if necessary, based on demonstrated need (Personal communication with Spokane County Commissioners Office on April 21, 2021).

<sup>lxvii</sup> All parties required. "Sharing the Children" seminar offered through 1) Fulcrum Institute, cost is \$25-30, not waivable or 2) NW Mediation Center, cost is \$31 per person (<https://www.spokanecounty.org/DocumentCenter/View/2088/Sharing-the-Children-Seminar-PDF?bidId=>).

<sup>lxviii</sup> Mediation required except in cases of domestic violence. Spokane county Family Law Mediators: Fees range from \$5-\$275 per hour, majority of mediators offer sliding scale and split cost of mediation between parties (<https://www.spokanecounty.org/DocumentCenter/View/4338/Family-Law-Mediator-List-PDF?bidId=>). Fulcrum Institute Dispute Resolution Clinic: sliding scale \$10-\$105/hour, not waivable ([www.fulcrumdispute.com](http://www.fulcrumdispute.com)). Northwest Mediation Center: Sliding scale mediation cost up through \$75,000 gross yearly income at which point mediation becomes \$110/hour ([www.nwmediationcenter.com](http://www.nwmediationcenter.com)).

<sup>lxix</sup> Prior to COVID-19, first facilitator visit was free and subsequent visits were each \$25. Petition to waive fee was available. During COVID-19, no charge for facilitator services and assistance occurs via zoom and email (<https://www.spokanecounty.org/1403/Family-Court-Facilitator>).

<sup>lxx</sup> GAL registry available via email. Contact each GAL independently to obtain cost of services. GAL service available via a family court investigator who is qualified as a GAL at county expense given eligibility (Personal communication with Evelyn Bell (Assistant Pam Ray), Stevens County Superior Court Administration on May 3, 2021).

<sup>lxxi</sup> Parenting plan seminar required prior to judge granting a divorce, four-hour class minimum. Online Co-Parenting/Divorce Class four-hour class, \$54.99 with tax, discounted price available if need is demonstrated (<https://www.onlineparentingprograms.com/online-classes/co-parenting-divorce-class.html>).

<sup>lxxii</sup> Court ordered based on if parties are in agreement or not (Personal communication with Office of Stevens County Superior Court Clerk on April 22, 2021).

<sup>lxxiii</sup> Mediation Services: Fulcrum Institute Dispute Resolution: sliding fee scale \$10/hour to \$105/hour depending on how much clients can pay, not waivable, would just be at \$10 (<https://www.fulcrumdispute.com/parentingplans.jsp>). Northwest Mediation Center: sliding scale based on pre-tax household income used to determine sliding scale eligibility, \$75,001 and above = \$110 per hour (<https://www.nwmediationcenter.com/costs>).

<sup>lxxiv</sup> (<https://stevenscountywa.gov/pview.aspx?id=21121&catid=0>).

<sup>lxxv</sup> "WWLGALR 5: APPOINTMENT OF GUARDIAN AD LITEM FROM REGISTRY" (B) Indigent Parties: "If either of the parties is found to be indigent, then the court may appoint a GAL from the list at the expense of the County" ([https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.rulesPDF&ruleId= SUPERIORSUPWAL5.00&pdf=1](https://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&ruleId= SUPERIORSUPWAL5.00&pdf=1)).

<sup>lxxvi</sup> Calculation is based on \$115/hour rate. GAL registry is combined for Title 11 & Title 26. No fees listed on registry (Personal communication with Kayla C. Zimmer, Walla Walla County Administrative Supervisor on April 19, 2021).

- lxxvii Typically completed online, two-hour minimum for class to count., (Personal communication with Kathy Martin, Walla Walla County Superior Court Clerk on March 26, 2021).
- lxxviii No typical mediation provider, determined on case-to-case basis (Personal communication with Kathy Martin, Walla Walla County Superior Court Clerk on March 26, 2021).
- lxxix ([https://www.co.walla-walla.wa.us/document\\_center/clerk/Fees%20Schedule.pdf](https://www.co.walla-walla.wa.us/document_center/clerk/Fees%20Schedule.pdf)).
- lxxx "Affidavit of Indigency" available to file (<https://whatcomcounty.us/455/Guardian-Ad-Litem-GAL>).
- lxxxi (<https://whatcomcounty.us/DocumentCenter/View/698/All-Pre-Approved-Guardians-Ad-Litem-PDF?bidId=>).
- lxxxii Whatcom county approved Parenting Seminars: If a person has a fee waiver from the court is declared indigent by the court they can indicate that status on the registration form. Additionally, active-duty military personnel can receive a discount (<https://whatcomcounty.us/2898/Parenting-Class-Information>).
- lxxxiii "WDRC operates on a sliding fee scale and will never turn anyone away for lack of funds" (<https://www.whatcomdrc.org/family-mediation>).
- lxxxiv (<https://whatcomcounty.us/DocumentCenter/View/678/Filing-Fee-Schedule-PDF?bidId=>).
- lxxxv "Fees are set by the court, in consideration of the GALs hourly fee and the Payor's ability to pay. The county pays/subsidizes GAL Fees in some cases" (Personal communication with Jill Whelchel, Whitman County Superior Court Clerk on March 26, 2021). Unclear what range of charges for GAL is, GAL registry not readily accessible.
- lxxxvi "'Parenting Class' is not required in every case. A court may order it, and it could be a specific provider, but I have not seen that. Unless specified, any class (including low cost online classes) have been accepted" (Personal communication with Jill Whelchel, Whitman County Superior Court Clerk on March 26, 2021).
- lxxxvii One mediator, Northwest Mediation Center, offers sliding scale (<http://whitmancounty.org/DocumentCenter/View/2731/Mediator-List-2021-v2xlsx>).
- lxxxviii Facilitator user: \$30 for 1st hour + \$20 for each additional hour. (<https://www.whitmancounty.org/DocumentCenter/View/1144/Clerk-COVID-19-Updates>).
- lxxxix Information for Yakima County GALs was not available online. Website indicated GAL information could be obtained via conversation with county facilitator; in spite of several attempts, was not able to establish contact with facilitator.
- xc Personal communication with Tracey M. Slagle, Yakima County Clerk on March 26<sup>th</sup>, 2021.
- xc<sup>i</sup> Sliding scale, waivable in extreme situations (<https://www.yakimacounty.us/Faq.aspx?QID=216>).
- xc<sup>ii</sup> Appointment must be made in advance. Spanish interpretive service available. (<https://www.yakimacounty.us/497/Court-Facilitator>).