



GENDER AND JUSTICE COMMISSION

FRIDAY, MARCH 12, 2021 (9:30 AM – NOON)
JUSTICE SHERYL GORDON MCCLOUD, CO-CHAIR

JUDGE MARILYN PAJA, CO-CHAIR

ZOOM: [HTTPS://WACOURTS.ZOOM.US/J/94622039447](https://wacourts.zoom.us/j/94622039447)

PHONE: 253-215-8782 US (TACOMA)

MEETING ID: 946 2203 9447



Agenda		Page
9:30 AM – 9:45 AM WELCOME AND INITIAL BUSINESS		
<ul style="list-style-type: none"> ➤ Welcome and Introductions ➤ Approval of January 22nd Meeting Minutes 	<p>Justice Sheryl Gordon McCloud, Judge Marilyn Paja, Co-Chairs</p>	1
9:45 AM – 10:20 AM REPORTS		
<ul style="list-style-type: none"> ➤ Supreme Court Symposium Planning Update <ul style="list-style-type: none"> ➤ Behind Bars: The Increased Incarceration of Women and Girls of Color ➤ GJC was asked to co-sponsor in 2020 ➤ Event now scheduled for June 2, 2021 ➤ Law Student Liaison Virtual Event – April TBD <ul style="list-style-type: none"> ➤ Practical Advice for Gender-Related Issues in the Legal Profession ➤ Panel discussion with break-out rooms - GJC volunteer speakers needed ➤ Discuss potential topics ➤ Legislative Update: E2SHB 1320 <ul style="list-style-type: none"> ➤ Status of bill ➤ Discussion 	<p>Elizabeth Hendren, Marla Zink</p> <p>Ivy-Rose Kramer</p> <p>Judge Paja, Chief Judge Smith Chief Judge Demmert, Riddhi Mukhopadhyay, Kelley Amburgey-Richardson</p>	
10:20 – 10:30 AM STRETCH BREAK		
10:30 AM – 11:50 AM GENDER JUSTICE STUDY		
<ul style="list-style-type: none"> ➤ Presentation and Discussion of Topics 2.8/2.11: Gender Impact in Washington Justice Systems: Commercial Sex and Exploitation [working title] ➤ Discussion of Draft Study Recommendations 	<p>Dr. Dana Raigrodski, Judge Barbara Mack, ret.</p> <p>Justice Sheryl Gordon McCloud,</p>	<p>10</p> <p>62</p>



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	Dr. Dana Raigrodski, Sierra Rotakhina	
11:50 AM – 12:00 PM ADJOURNMENT		
➤ Next Steps and Adjournment	Justice Sheryl Gordon McCloud, Judge Marilyn Paja, Co-Chairs	
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➤ 2021 Gender & Justice Meeting Dates		85
NEXT MEETING – May 21, 2021 – Via Zoom		



Gender and Justice Commission
Friday, January 22, 2021
9:30 AM – 12 PM
Zoom Webconference



MEETING NOTES

Members & Liaisons Present

Justice Sheryl Gordon McCloud (Chair)
 Judge Marilyn Paja (Vice Chair)
 Dua Abudiab
 Honorable Melissa Beaton
 Judge Anita Crawford-Willis
 Chief Judge Michelle Demmert
 Laura Edmonston
 Judge Rebecca Glasgow
 Justice Steven González
 Professor Gail Hammer
 Kelly Harris
 Lillian Hawkins
 Elizabeth Hendren
 Ivy Rose Kramer (L&C)
 Commissioner Jonathon Lack
 Judge Eric Lucas
 Erin Moody
 Sal Mungia
 Dr. Dana Raigrodski
 Jennifer Ritchie
 Barbara Serrano
 Olivia Shangrow (SU)
 Judge Jackie Shea-Brown

Members & Liaisons Absent

Lucy Bauer (UW)
 Brielle Douglas (GU)
 Ali Johnson (UW)
 Riddhi Mukhopadhyay
 Bailey Reese (GU)
 Sonia Rodriguez True
 Chief Judge Cindy Smith
 Vicky Vreeland

Guests

Hailey Broeker (L&C)
 Jessica Campbell
 Julia Joanna Fleming
 Katy Penrod (UW)

Staff

Kelley Amburgey-Richardson
 Kathryn Akeah
 Cynthia Delostrinos
 Moriah Freed
 Sierra Rotakhina

WELCOME AND INITIAL BUSINESS

Welcome and Call to Order

The meeting was called to order at 9:32 AM.

- Justice Gordon McCloud welcomed everyone and called roll.
- Members introduced themselves and shared which committee or project they are on, what their interest areas are.

November 6, 2020 Meeting Minutes

The meeting minutes were approved as presented.

CO-CHAIR AND STAFF REPORTS

Co-Chair Report – Justice Sheryl Gordon McCloud, Judge Marilyn Paja

Priorities for the New Year

- Justice Gordon McCloud
 - Interested to hear from committee members later and then set larger priorities.
- Judge Paja
 - Involved with Washington Pattern Instructions Committee project re: gender pronouns in jury instructions.
 - Legislative session has gotten busy. Please be on the lookout for things we might be interested in and share.

Staff Report – Kelley Amburgey-Richardson, Cynthia Delostrinos

Staffing Update

- The STOP grant funder has approved use of funds to hire a half-time person to work on DV/SA projects, specifically updating GJC’s bench guides.
- We have seen how having additional staffing has improved the capacity of the Commission to expand our work and look forward to having another member on the team.

LEGISLATIVE SESSION

GJC Statement

GJC is a judicial branch Commission. We typically do not take positions on proposed legislation. Our goal is to “eliminate gender bias in the legal profession and within the law and justice system.” In order to achieve that goal, we have to stay informed about current events, including developments in other branches that might impact our goals.

When would GJC take a position?

- Commission is named in the bill
- Bill impacts administration of justice, especially if there is a gender issue
- We want to know about everything. We want our advocacy groups to keep us informed.
- We will sometimes, but rarely take a position.

What has this looked like in the past?

- Letter of support from Co-Chairs
 - E.g., GJC wrote a letter in support of certain sections of E2SHB 1517 (2019) when we were named to convene DV work groups.
- Public testimony (volunteers needed)
 - E.g., GJC Co-Chair, Judge Paja, testified in support of a bill in 2020 that prohibited immigration enforcement actions in court houses, highlighting gender impacts.
 - Testimony included impact on immigrant women who are victims of crime.
 - Justice Gordon McCloud asked members to think about if they would be willing to provide testimony for GJC during session. It is helpful to have members in mind should the need arise.
 - If a member were asked, staff would assist with preparing content for remarks. ‘

Bills Tracking

- Kelley Amburgey-Richardson prepares a regular bill tracking report like the one shared earlier this week.
- Please share any bills that you think should be added.

ACTION: Let Kelley Amburgey-Richardson know if you would be willing to provide legislative testimony on behalf of GJC. Email any bills of interest that should be added to the bill tracker.

Member Input

- Bills members’ agencies are putting forward or expect to see introduced
 - Jennifer Ritchie is testifying in support of SB 5163 this morning.
 - Erin Moody - Legislation being proposed re: protection orders also includes some interesting changes to weapons surrender laws. DSV committee has been involved in this issue, will be keeping an eye on this. Addresses 5th amendment issue with weapons surrender. Interesting, important thing to keep an eye on.
 - Dr. Raigrodski – are we intentionally trying to provide joint feedback, joint letters with other commissions or ATJ Board, TSCC?
 - Judge Paja – in the past, we have had a member who provided information, we have not had a committee. Staff get information from BJA/AOC about bills with court impact that AOC is tracking. We need to rely on members to bring us information about bills. If you have a bill you want GJC to know about, do something about, send us the background and ask.
 - In some cases, co-chairs have coordinated with other commissions on letters.
 - Session moves very quickly, we have an executive committee of co-chairs and staff that addresses time sensitive issues.
 - Data collection has been an issue across the board.

- Commissioner Lack – the inclusion of “other” or “non-binary” on court forms would be helpful.
- We have to be cautious as a judicial branch commission. We don’t want to take on an issue that the Supreme Court will have to address.
- HB 1293 caught Justice Gordon McCloud’s eye. Are other members interested in this bill?
 - Elizabeth Hendren is interested as well, would want to know how directly DV has to be connected to the crime. Sometimes it is not as direct and it makes it difficult to access relief.
- Barbara Serrano is interested in looking at HB 1293 more closely, potentially asking Washington Women Lawyers to support it.
 - She is WWL’s VP of Governmental Affairs.
 - Also interested in HB 1320.
 - HB 1068 – WWL voted to support this. Signed on in support in advance of hearing.
 - Judge Paja noted that the bills WWL is tracking may be of interest to GJC.
- Judge Glasgow – Rep. Tarra Simmons has been working on an LFO reform bill. Not sure what is in it yet. The Commission may want to take a look and support portions or all of it.
- Elizabeth Hendren – last session we had the new Uniform Guardianship Act.
 - Something that tied in with this is a visitor to go see parents in prison to explain what is going on.
 - Very important for incarcerated parents being able to participate in cases involving their children.
 - SCJA sent a letter to Sen. Pederson asking for portions of this bill to have delayed implementation and this provision would be included. This is an unintended consequence.
 - Hasn’t seen anything dropped yet, but we should keep an eye on this too.

COMMITTEE AND MEMBER REPORTS

Committee Priorities for 2021

Justice Gordon McCloud introduced this agenda item. She is interested in hearing about committee priorities so it can help shape overall efforts.

TSCC – Chief Judge Cindy Smith

- Trying to find out what happens to Tribal Court protection orders. Whether they get entered into state database, are they actually enforced?

- Federal government passed POWERS Act, required Federal District Courts to do training about missing and murdered Indigenous women and girls.
- The last training was not as effective as it could have been.
- Judge Smith is hoping to use this as a seed to train lawyers to represent Native women victims. Working with Women Spirit on this. Requires understanding the culture issues too.
 - Justice Gordon McCloud – it is great to think about having lawyers for this. Particularly with the rise in DV with COVID.
 - Please let us know if there is anything GJC can do to support.
 - Not sure it would be us, but attorney fee statutes could be an incentive.
 - Dr. Raigrodski – should informed learned through this work be in GJC study section?
 - Yes, Chief Judge Smith has connected Judge Shea-Brown with Women Spirit for feedback on the section.
 - Judge Shea-Brown is grateful to have this connection and it has been very helpful.
- TSCC is involved in a few presentations this year at DMCJA and SCJA re: Tribal Court jurisdiction.
- Kathryn Akeah has developed and disseminated a newsletter spotlighting Tribal Courts.

Domestic and Sexual Violence Committee – Judge Jackie Shea-Brown and Erin Moody, Co-Chairs

- The committee is hoping to have more robust, regular meetings this year. We've adapted due to COVID.
- Looking to liaison with DV/SA groups and improve those relationships.
- Judge Shea-Brown is looking to launch case law updates.
- DV Work Groups presented to DSV committee in December. Looking to take up the mantle since they were a temporary body.
 - Will be working to provide feedback on draft amendments to court rule.
 - Erin Moody has been working with various people about Seattle Muni DVIT pilot and evaluation.
 - Kelly Harris volunteered to help with this. His office started this up a few years ago. If we need anyone there, he will make it happen.

Incarceration, Gender & Justice Committee – Elizabeth Hendren, Chair

- Elizabeth Hendren provided background about the committee's work for new members, particularly on court access for incarcerated parents, legal resources for incarcerated parents.
- The committee has been looking at the issue of visitation during COVID.
 - Visitation is important. Children and parents benefit from visitation with incarcerated parents.

- DOC has suspended all in-person visits. Complicated issue because we don't want to bring COVID into a facility.
- They have done some things like implemented limited video visits (but expensive and not accessible to all families), making stamps/JPAY more accessible. This was only DOC facilities.
- Looking at needs in juvenile facilities.
- Cannot hold clinic in the facility like she used to. Before, it was primarily volunteers who represented people but now they can't go in facilities unless it's a structured attorney visit.
- COVID has improved some things about access. Looking to leverage that to improve access more.

Education – Judge Rebecca Glasgow, Chair

- One priority is gathering education recommendations from Gender Justice Study chapters and starting to make judicial education proposals related to those recommendations.
- Has a goal to connect with chairs of study to figure out the best way to pass information along to them.
- Asked committee to think about education more broadly. Is interested in working with the Communications Committee to do broader public education about the results of the study.
- Judge Paja – in the past we have done some experimental foraying into public education, packaging some content we have used for judges/court to other audiences. We have limited capacity and resources but it is possible.
- Online learning
 - Dr. Raigrodski – recommended recording modules, doing on-demand training.
 - Judge Glasgow - AOC Educators have quickly adjusted due to COVID.
 - Adapting methods of providing education when judges from various levels want it (e.g., Friday Forums).
 - When jury trials start up there is going to be a huge backlog. Judges are not going to be able to leave for a 3-day conference. It will be important to have on-demand options.
 - Commissioner Lack – there is a reluctance to record judicial education sessions because we want judges to be free to ask questions. Particularly true with Judicial College. These are new judges who need to be able to ask questions freely about subjects they are not familiar with at all. Does not think Judicial College should be recorded.
 - Dr. Raigrodski – Trainings could be recorded, then facilitated discussions could be conducted amongst the judges that were not recorded

Communications Committee – Judge Marilyn Paja, Chair

- In the past the committee’s main project has been working on the Annual Report.
- We have been a small committee and look forward to new members.
- Work annually on a Women’s History Month presentation.
 - We are working to determine if this possible, what format, what audience, if it will actually take place in March.
 - Chief Judge Demmert – Elizabeth Peratrovich was able to get the first civil rights legislation passed long before the 60’s and MLK. Happy to be a resource for more information about her.
- Co-Chairs have talked about a virtual Color of Justice program with NAWJ.
 - Whether this is possible, could be statewide.
 - Justice Whitener did a great program of this in Pierce County. Worked with SCJA to put this on three times/year in different regions.
 - NAWJ and SCJA are interested in partnering on this. Need to set up some meetings.
- Have been asked to really consider dissemination of Gender Justice Study.
 - We have our work cut out for us! Will be scheduling meetings with Barbara Serrano and Dr. Raigrodski.
 - Let Judge Paja or Kelley Amburgey-Richardson know if you are interested in joining.
- Laura Edmonston volunteered to help with the CLE.

ACTION: Let Judge Paja or Kelley Amburgey-Richardson know if you are interested in joining the Communications Committee.

ACTION: Laura Edmonston will assist with the Women’s History Month CLE.

Gender Justice Study – Justice Gordon McCloud and Dr. Raigrodski, Co-Chairs, Sierra Rotakhina, Project Manager

- Sierra Rotakhina is working on a chart of recommendations from the study. This was for the Advisory Committee, and Justice Gordon McCloud is hearing that it needs to go to the Commission as well.
- Our goal to provide all of you and other stakeholders with a list of priorities for the next five years.
- Sierra Rotakhina provided background on the study for new members. There is also a general update in the packet on page 12.
- Research
 - We have done the bulk of the research.
 - The next few months will be getting stakeholder feedback and incorporating it into the current drafts.
- Pilot Projects
 - We have about 700 responses to the Harassment Survey.

- DV-MRT Pilot – 7 courts have agreed to participate. This one is going very well.
- Two pilots are already finished – childcare center evaluation and evaluation of existing data on mass incarceration of women.

External Committees/Task Forces

ATJ Board – Sal Mungia

- Sal Mungia is the immediate past ATJ Board President and is GJC’s liaison to the board.
- He shared that the board is continuing to engage in anti-racism work.
- This legislative session
 - The Legal Services Corporation is asking for a 200% increase in federal funding.
 - Office of Civil Legal Aid has put in its annual budget request.
 - There is a bill to provide legal representation for people facing unlawful detainer actions.
 - The Equal Justice Coalition’s virtual Lobby Day is scheduled for 2/8.
- The Goldmark lunch is scheduled for 2/5. It is virtual and free this year.
- ATJ Board conference in August. They are currently inviting proposals.

Race and Justice Task Force – Lillian Hawkins

- Lillian Hawkins was appointed recently and has attended one meeting so far. She provided a brief history of the Task Force and its current work.
- The Task Force was created 10 years ago to document and address racism in the criminal justice system.
- This is Task Force 2.0, which continues to work to address racial disparity in the criminal justice system. Due to the call to action from Supreme Court, it is growing and expanding.
- At the December meeting, Snohomish County presented on how they reduced their jail population during COVID.
- There is collaboration between many criminal justice partners about how to use what we learned during COVID to implement long term criminal justice reform.
- Looks forward to tapping GJC to help with the Task Force as she learns more and gets integrated.

Racial Justice Consortium – Dua Abudiab and Judge Rebecca Glasgow

- Will send around information via email due to time constraints. The group has not met yet since GJC’s representatives were appointed.

Court Recovery Task Force – Judge Marilyn Paja and Judge Jackie Shea-Brown

- The Board for Judicial Administration convened this Task Force.
- Provided overview of the purpose of group for new members.
- GJC is participating as a non-voting member.

- Have contributed information on therapeutic courts, DV treatment in rural communities and positive impact of zoom, issues with visitation for incarcerated people.
- The family law committee is working on improvements to customer services.
- Have been asking for information/help from commissioners and will continue to do that.

Self-represented Litigants Work Group – Professor Gail Hammer

- This group is a very hardworking bunch.
- They are working to developing a statewide portal, a training curriculum and a desk book for judges.
- They are planning court audits and listening sessions to look at how self-represented people navigate the system.
- Considering a pilot project to get them immediate advice and guidance.

NEXT STEPS AND ADJOURNMENT

Next Steps and Adjournment – Co-Chairs

- Thank you to everyone for your contributions.
- The Co-Chairs will be reviewing these committee priorities with staff with a goal of developing overarching GJC priorities for 2021.

The meeting adjourned at approximately 12:05 p.m.

Gender & Justice Commission:

We appreciate this opportunity to share our draft section on commercial sexual exploitation. Please keep in mind that this is a work in progress. We have provided some comments in the draft to give you a sense of work that still needs to be done. Also, bear with us as we have not yet had time to focus on re-checking our citations for accuracy and form. Finally, we will adapt to final decisions about formatting, structure, etc., to make the entire report uniform.

We are interested in any feedback you have. Specific areas where we would like focused feedback:

- Are there areas you think we are missing? Are there topics you would like to see expanded or reduced? (particularly since this is a hefty section with a lot of data and footnotes)
- Are there any changes in tone you think we should consider?
- Are there resources you think we should consider that you do not see cited?
- Are there additional recommendations we should be making, or do you have feedback on the draft recommendations already included?

Sincerely,

Dr. Dana Raigrodski and Judge Barbara Mack

2.8/2.11 Commercial Sex and Exploitation: The Intersection of Gender Based Violence, Racism and Poverty

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I. Executive Summary

Will be added

II. Background – scope of the problem

a. Commercial Sex in Washington and nationally – scope of the problem

In addressing the issue of commercial sex, it is important to understand the terms. In this report “child” and “minor” mean a person under the age of 18. “Youth” is a person up to the age of 24, usually between the ages of 18 and 24.¹ A “victim” or “survivor” is a person who has suffered direct harm, whether emotional, physical, or financial as result of being sexually exploited. “Survivor” may describe a person who has left or is still being sexually exploited. In most of this report we use the word “sexual exploitation” interchangeably with “sex trafficking.” For many, the word “trafficking” has implied the need to travel or being controlled by a third party. Sexual exploitation (and trafficking) are far more complex in today’s world, and sexual exploitation is a more accurate descriptor of the dynamic.

The issue of adult prostitution and sexual exploitation of adults (when not clearly amounting to trafficking) generates controversy. Some view all adults engaged in commercial sex as victims or survivors of exploitation, while others view them as sex workers opting to engage in the sex industry. Research and data on 18-24 year old youth and on adults engaged in commercial sex, suggest that most were groomed and coerced into prostitution as minors, and may be controlled by pimps, experience multiple traumas, and face significant barriers to exiting prostitution. Although some see adult “prostitution” as a commercial transaction between two consenting adults, it is now widely recognized that the seller is often forced by another person, by economic circumstances, by addiction, or by behavioral health issues, to sell his/her/their body for the sexual gratification of others. Thus, some see all prostitution as part of the spectrum of sexual exploitation of adults.

It is almost impossible to estimate the size of the underground sex trade because 1) it is underground, and 2) where there is data (e.g., child welfare, law enforcement, courts, public health) the databases may not speak to each other either within the state or without. The lack of data is a source of harm for two reasons: 1) it is a barrier to understanding the extent of human trafficking and sexual exploitation, and 2) databases that do exist don’t or can’t communicate with each other. Thus, a child who has run away from foster care in Washington, may be trafficked in Las Vegas, and get picked up for theft in Arizona, and the child welfare, juvenile justice, and health care databases that have records in each state may not know about the history in the other states. These problems may be compounded with regards to adults who, as discussed further in this report, are less likely to be identified and treated as victims and survivors of sexual exploitation.

In Washington there is little statewide data on the prevalence of commercial sex and commercial sexual exploitation.² However, a national study published in 2014 estimated that between 2003

¹ As used in this report, “youth” may include minors, unless specifically noted.

² To the extent that arrest and charging data sheds light on the scope of the problem in Washington state it is discussed further later in this report.

and 2007, the commercial sex economy in Seattle alone doubled in size from \$50.3 million to \$112 million and was the fastest growing venue in the country.³ Commercially sexually exploited (CSE) children and youth are overrepresented among those experiencing homelessness or who have run away, both nationally and in Washington. Congress authorized The National Center for Missing and Exploited Children (NCMEC) to operate the official national resource center and information clearinghouse for missing and exploited children. Child welfare agencies are required to report children missing from care to NCMEC (and law enforcement) within 24 hours.⁴ In 2019, of 29,000 reported cases of missing children, 26,300 (91%) were endangered runaways and 1 in 6 of them likely victims of child sex trafficking. In Washington, it was estimated in 2018 that there are 2,000-3,000 sexually exploited children and youth in WA.⁵

[Note: should try and use CSE rather than CSEC – since the latter connotes that just children (hence not youth) are covered. Or, if we keep CSEC – make it clear in the definitions that it goes up to 24? Since many of the research and data sources use CSEC, though they are including youth 18-24 as well, should we just stick with that?]

The rise of online platforms has exacerbated the scope, size and nature of the commercial sex industry.⁶ The explosion of social networking, gaming, and cryptocurrencies have added an

³ <http://www.urban.org/sites/default/files/publication/22376/413047-estimating-the-size-and-structure-of-the-underground-commercial-sex-economy-in-eight-major-us-cities.pdf>. In 2010, the National Institute of Justice funded the Urban Institute's Justice Policy Center to measure the size and structure of the underground commercial sex economy in eight major US cities, including Seattle.

⁴ Preventing Sex Trafficking and Strengthening Families Act of 2014

⁵ Boyer, "Commercially Sexually Exploited Children in Seattle/King County 2019 Update." In 2019, Dr. Debra Boyer issued "Commercially Sexually Exploited Children in Seattle/King County 2019," updating her 2008 report "Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle." While informative, these studies are limited because only children and youth who accessed legal and social services in 2018 are included, so the vast majority of CSEC are not included. The 2019 study was only able to evaluate sexually exploited minors and youth who had engaged with social and legal services in 2018. Nevertheless, Dr. Boyer was able to conclude that service planning estimates should cover 500-700 youth 24 and under, and 300-400 for those under 18 in King County. Id

⁶ Prior to 2018 Backpage.com and other websites were posting ads selling sexually exploited children and adults for sexual acts. Backpage and others asserted that the Communications Decency Act of 1996, [Pub. L. No. 104-104, 110 Stat. 133 \(1996\)](#) codified in [47 USCA §§ 230, 560, 56](#), provided immunity from prosecution and from liability, since it was simply posting the ads. A number of lawsuits were filed across the country, including in Washington. In 2018, in response to public outrage and the lawsuits, Congress passed as a package the Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), [Pub. L. 115-164, §4, 132 Stat. 1253 \(2018\)](#), amending the CDA. It clarifies that the CDA "was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims; (2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done nothing to prevent the trafficking of children and victims of force, fraud, and coercion."

While FOSTA-SESTA has led to the shutter of some websites and platforms that facilitated sex trafficking and commercial sexual exploitation, others have resumed or started, and some are now on the dark web. For example, in June 2020 a U.S. Attorney's Office in Texas shut down the website CityXGuide.com — a leading source of online advertisements for prostitution and sex trafficking that users described as "taking over from where Backpage left off." The site was seized, and its owner charged in a 28-count federal indictment. See <https://www.justice.gov/usao-ndtx/pr/us-attorney-s-office-shuts-down-website-promoting-prostitution-and-sex-trafficking>. Some sex worker advocates assert FOSTA/SESTA put their lives and livelihood at risk by eliminating an online infrastructure they had come to depend on. See e.g. <https://why.org/segments/fosta-sesta-was-supposed-to-thwart-sex-trafficking-instead-its-sparked-a-movement/>. Some urban areas have seen an increase in sex trafficking on the street. December 2019 Human Trafficking Laws and Investigations Legislative Report, at p.4, <https://www.commerce.wa.gov/serving-communities/crime-victims-public-safety/office-of-crime-victims-advocacy/human-trafficking/statewide-human>

increasingly dangerous, hidden, and anonymous way for individuals and organized groups of predators to groom, recruit, stalk, and exploit youth from as young as 7 or 8 to young adults. According to the Department of Justice, organized groups of predators are on every single gaming site.⁷ There are estimated to be several thousand individuals (minors and adults) in the sex trade in King County alone. The King County Prosecuting Attorney's Office identified numerous websites where people can buy sex in the greater Seattle area. Backpage.com (taken down in 2018 by the Department of Justice), for example, featured an average of 36,897 prostitution ads in Seattle per month for May – September, 2016, with an average of 1,720 unique phone numbers per month in the Seattle escort section alone (out of specific sections for 12 cities across Washington State).⁸ A 2014 study concluded that in one 24-hour period on the Seattle section of Backpage.com, there were 6,800 sex buyers actively soliciting paid sex.⁹ In 2018 there were an estimated 1,971 - 2,475 buyers responding over a 24-hour period to Chat Bots (posing as children) run by Seattle Against Slavery.¹⁰ A local sex buyer “review board” seized by authorities in January, 2016 was reported by its owner to have 18,000 members.¹¹

Due to the COVID-19 pandemic, 2020-21 has been particularly fraught with danger for children and youth and marginalized communities, including those vulnerable to sexual exploitation. In pre-pandemic 2019 the Polaris Project, home of the national human trafficking hotline, saw a 20% increase in the number of victims and survivors who contacted the hotline directly about their own situations. In the first month after the COVID-19 shelter-in-place orders in spring, 2020, the number of crisis trafficking cases handled by the hotline increased by more than 40%.¹² The National Center for Missing and Exploited Children (NCMEC) also manages the national CyberTipline.¹³ In pre-pandemic 2019, NCMEC received 16.9+ million cybertips,¹⁴ and responded to more than 10,700 reports regarding possible child sex trafficking. By September 2020, NCMEC's online enticement reports increased 98.66% over those reported during the same time period in 2019; CyberTipline reports increased 63.1% over the same time period in 2019.¹⁵

[Note: need to add Dr. Boyer/Covid 19- Nordic Model report]

b. Vulnerability to Exploitation and Harm caused

trafficking-reports/. here have been reports that in 2019 the amount of sex work on Aurora Avenue in Seattle increased dramatically, driven, in part, by the shutdown of Backpage.com. <https://crosscut.com/2019/10/alternatives-stretched-and-neighbors-angry-seattle-police-return-arresting-sex-workers>.

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⁸ 2017 WA AGO grant report – Dana has early draft on file. Need to get full report

⁹ *Id.*, citing Dominique Roe-Sepowitz & Stephanie Bontrager Ryon, Demand Abolition: Reduction Initiative Baseline Measures in Seattle (Ariz. State University, Office of Sex Trafficking Intervention Research 2014).

¹⁰ Boyer, “Commercially Sexually Exploited Children in Seattle/King County 2019 Update”

¹¹ 2017 WA AGO grant report; [Online sex forum leader gets 3 years after 'unprecedented' prostitution sweep \(seattlepi.com\)](#); [Inside the fight to take down online prostitution review boards - ABC News \(go.com\)](#)

¹² crisis cases are those where some assistance (shelter, transportation, or LE) is needed within 24 hours). These numbers include sex and labor trafficking of youth and adults.

¹³ The cybertipline deals with reports of suspected child sexual exploitation/abuse, usually internet-based abuse/exploitation.

¹⁴ The 2019 reports to the CyberTipline included 69.1 million files, with 27,788,328 images, 41,280,816 videos, and 89,053 other files.

¹⁵ Per NCMEC – enticement “online enticement of children for sexual acts.” [CyberTipline \(missingkids.org\)](https://www.missingkids.org/CyberTipline)

According to the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States,

The sex trafficking of children and youth is one of the most complex and least understood forms of child abuse. Individuals who cause or induce children and youth to engage in commercial sex take advantage of societal, community, relationship, and individual vulnerabilities for personal or monetary gain. Children and youth who have experienced trafficking often experience significant mental, physical, and sexual trauma due to their exploitation. A child’s victimization can last for days or years, but the consequences can be severe and prolonged regardless of the duration of the trafficking experience. No child is immune to the crime of sex trafficking. However, research shows that lesbian, gay, bisexual, transgender, queer (or questioning), Two-Spirit, and other (LGBTQ2S+) children and Black, Latinx, and Native American children are disproportionately victimized by this crime. While research suggests that boys are under-identified among this victim population, the majority of studies to date have found girls represent a significantly larger percentage of identified victims. Additional research is needed to understand the impact of these demographic characteristics on the sex trafficking of children and youth. However, as states move forward in addressing this issue, they should seek to assess and mitigate systems, structures, and policies that may contribute to and sustain the disproportionate victimization of these populations. As an issue that affects the health, safety, and well-being of individuals, families, communities, and societies, it is appropriate to consider human trafficking as a major public health problem.¹⁶

The voices and experiences of those in “The Life” further underscore complex vulnerabilities and systemic issues, from birth into inequality, adverse childhood experiences and underlying trauma, to failed social and institutional safety nets to systemic discrimination. As Ne’cole, a survivor and service provider, describes: “So many factors are at play. Early sexual abuse, generational trauma, economic status... Just being a person of color—there’s an X on your back.”¹⁷

These inequities in rates of sexual exploitation are discussed in more detail in subsection c. below.

Research shows that nearly 1 in 4 girls experience sexual abuse in childhood and 1 in 13 boys experience sexual abuse in childhood.¹⁸ Children and youth are vulnerable to manipulation and exploitation because of immature brain development and hormonal changes, but individual, family and community factors significantly increase the risk. Children and youth with prior sexual or physical abuse or neglect; those from families with substance abuse, family violence, or behavioral health issues; those who are experiencing homelessness or have run away; and those who have been kicked out of their homes are at “especially high risk.”¹⁹

¹⁶ Report of the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States: Best Practices and Recommendations for States (September, 2020),

¹⁷ Available at [The Life Story](https://www.thelifestory.org/), <https://www.thelifestory.org/>

¹⁸ Sexual Violence is Preventable | Centers for Disease Control and Prevention (CDC)

¹⁹ *Child Sex Trafficking and Commercial Sexual Exploitation: Health Care Needs of Victims*, Greenbaum, Crawford-Jakubiak, PEDIATRICS, vol 135, number 3, 2015, American Academy of Pediatrics.

There is a growing, though still small, body of research on familial trafficking and family involvement in commercial sexual exploitation. The Counter Trafficking Data Collaborative (CTDC) is a new data portal initiated by the UN Migration Agency, in partnership with the Polaris Project. The CTDC reports that almost half of child human trafficking cases began with some family member involvement.²⁰ The most comprehensive U.S. study to date “found high rates of family members trafficking children for illicit drugs; high severity of abuse using the Sexual Abuse Severity Score, with higher severity of abuse for children living in rural communities,” among other findings.²¹ More than half of the children in the sample had attempted suicide in their lifetime. 82% of familial traffickers traded their children in order to get drugs, and in all cases the caregiver used threats, bribes, intimidation, physical force, parental authority, and weapons to recruit and maintain control. The most common motivation of relative traffickers was financial gain, and for some, the primary motivation was money for drugs. These children often regularly attend school, may get good grades, participate in extra-curricular activities, and are cautious about what they tell adults. “When trauma emanates from within the family children experience a crisis of loyalty and organize their behavior to survive within their families.”²²

Judge Robert Lung is a Colorado judge and important national voice in efforts to provide more services for boys. He serves on the National Advisory Committee on Sex Trafficking of Children and Youth and speaks nationally about familial sex trafficking, commercial sexual exploitation of boys, trauma, and resilience. Judge Lung was groomed (abused) by his physician father from the age of 2-3 and trafficked by his father as part of a pedophile ring until he was about 12. He corroborates the research about how children who are trafficked by their families adapt in order to survive.²³

Adults who are involved in commercial sex often have histories of childhood abuse and exploitation. A Canadian controlled study of 45 women formerly involved in prostitution found 73% had been sexually abused in childhood, compared to 29% of a control group in a random population survey.²⁴ It was modeled on a 1982 study of 200 women engaged in prostitution in the San Francisco area in the United States.²⁵

Sexually exploited children and adults share many common characteristics both in the pathways leading into the sex trade and the barriers to exit. Prostitution-involved adults likely started in their youth, average age of entry being between 12-15. Research and data on youth ages 18-24, as well as on many adults in commercial sex work suggests that many adult individuals in the sex industry entered prostitution as minors, experience multiple traumas, and face many barriers to exiting

²⁰ [Counter-trafficking Data Brief 081217.pdf \(iom.int\)](#)

²¹ *Familial Sex Trafficking of Minors: Trafficking Conditions, Clinical Presentations, and System Involvement*, Ginny Sprang and Jennifer Cole, 2/2018. Journal of Family Violence.

²² *Familial Sex Trafficking of Minors: Trafficking Conditions, Clinical Presentations, and System Involvement*, Ginny Sprang and Jennifer Cole, 2/2018. Journal of Family Violence, citing *Developmental trauma disorder: toward a rational diagnosis for children with complex trauma histories*, van der Kolk, B. A. (2005), *Psychiatric Annals*, 35, 401–408. <https://doi.org/10.3928/00485713-20050501-06>.

²³ [Expert discusses complexities of human trafficking in virtual forum | News | bakersfield.com](#)

²⁴ *Juvenile Prostitution and Child Sexual Abuse: A Controlled Study*, Bagley and Young, *Canadian Journal of Community Mental Health*, Vol 6, No. 1, 2009.

²⁵ *Entrance into Prostitution*, Silbert and Pines, *Youth and Society*, vol 13, No. 4, 1982.

prostitution.²⁶ The prevailing understanding of “juvenile prostitution” and of commercial sexual exploitation and prostitution in general is the image of force and abusive male dominance by pimps and clients alike. This narrative does not account for the social and economic factors that funnel children and youth – particularly teenagers ages 15 and older – into survival sex, wherein a disproportionate number of youth of color and LGBTQ youth exchange sex for necessities and develop complex peer networks outside of “pimps” and “traffickers.”²⁷ One study of over 600 active sex workers and pimps from 2008-2013 found minors were almost twice as likely to “self-initiate” into the sex trade than adults due to the social and economic environments that required their self-sufficiency and survival.²⁸ Qualitative research into the experiences of sexually exploited youth identify lack of steady employment and access to education, and unstable housing as primary motivations for entering the sex trade.²⁹ Tellingly, although 87.2% of youth wanted to leave sex work, their barrier to leaving wasn’t due to the pimp/trafficker.³⁰ Rather, barriers to exiting were similar to the social and environmental factors that resulted in their entrance into commercial sexual exploitation. Those barriers often remain and may increase for prostitution-involved adults. For example, in King County, survival sex on the street is very high right now due to the economic impact of the Covid-19 pandemic.³¹ [Note: Add Boyer/Covid]

Abundant literature documents the trauma experienced by the sexually exploited. Researchers studied 30 years of records of 1969 women known to have been involved in prostitution in Colorado Springs, CO, including health records, death records, and law enforcement records.³² The data are stunning. The average age of death was 34. The leading causes of death were homicide (19%) drug ingestion (18%), accidents (12%) and alcohol related causes (9%). Of 21 murders, 9 occurred within 3 years of the first observed prostitution, all 9 victims were active in prostitution at the time of their deaths. Eight of those were killed while soliciting. Although murder accounted for 19 percent of all confirmed deaths, it accounted for half of the deaths in the active sub cohort. “The vast majority of murdered women in our sample were killed as a direct consequence of prostitution.” The study noted that buyers perpetrate a large proportion of the

²⁶ See infra. See also <https://www.endingexploitation.com/about-ending-exploitation-collaborative.html>. The “Ending Exploitation Collaborative” is a partnership including the WA Attorney General's Office, King County, the Seattle City Attorney’s Office, the survivors-led Organization for Prostitution Survivors (OPS), Businesses Ending Slavery & Trafficking (BEST) and Seattle Against Slavery.

²⁷ Phillips, J. (2015). Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States. *UCLA Law Review*, 62(1642) (citing Dank,

[Surviving the Streets of New York: Experiences of LGBTQ Youth, YMSM, and YWSW Engaged in Survival Sex \(urban.org\)](#); Conner, B. (2016). In Loco Aequitatis: The Dangers of Safe Harbor Laws for Youth in the Sex Trade. *Stanford Journal of Civil Rights & Civil Liberties*, 12(1), 43–120

²⁸ Phillips, Id. (citing cite Marcus et al, who did this research. [Conflict and Agency Among Sex Workers and Pimps: A Closer Look at Domestic Minor Sex Trafficking | National Institute of Justice \(ojp.gov\)](#)

²⁹ Conner, B. (2016). In Loco Aequitatis: The Dangers of Safe Harbor Laws for Youth in the Sex Trade. *Stanford Journal of Civil Rights & Civil Liberties*, 12(1), 43–120

³⁰ Phillips, J. (2015). Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States. *UCLA Law Review*, 62(1642)

³¹ OPS Talks Episode 2: Impacts of COVID-19 on CSE Survivors in King County, available at <http://seattleops.org/ops-talks/> -

³² *Mortality in a Long-term Open Cohort of Prostitute Women*, John J. Potterat, Devon D. Brewer, Stephen Q. Muth, Richard B. Rothenberg, Donald E. Woodhouse, John B. Muth, Heather K. Stites, and Stuart Brody, *American Journal of Epidemiology*, vol. 159, No. 8, 2004,

lethal and nonlethal violence experienced and cited to a study from Canada with like results. The Colorado study indicated that their research probably reflects circumstances for nearly all people involved in prostitution in the United States and other countries and is consistent with studies on murder rates in Canada and the UK. The researchers concluded “Women engaged in prostitution face the most dangerous occupational environment in the United States.”

All researchers in all countries agree that a high percentage (estimates range from about 70% to 90%+) of people who are trafficked have experienced physical and/or sexual violence prior to being victims of sexual exploitation.

It is clear and undisputed that sexual violence, including child and adult sexual abuse and sexual exploitation have enormous social and economic costs: medical, mental health, housing, criminal justice involvement, and substance abuse treatment, among others.

c. Prevalence and Disparities amongst vulnerable and marginalized populations

Nationally and in Washington State, poverty, racism, and gender inequality significantly increase vulnerability to CSE.³³ Exploiters specifically target minors and youth who are vulnerable due to poverty and who belong to marginalized groups. Gender-based discrimination and violence increase vulnerability of women, girls, and transgender youth and adults to CSE. Sex buyers are almost exclusively men, and usually white, well-educated men. Although most of those who are CSE are women and girls, several studies have found that among youth experiencing homelessness, the proportion of boys and girls who disclose sexual exploitation is similar. Even when men, boys, and transgender people are exploited, the buyers are men. As noted earlier, age, prior experiences of physical or sexual abuse, and alienation from one’s family increase vulnerability and risk. People experiencing homelessness, or who have been “kicked out” of their homes, youth who identify as LGBTQ2i, and Black, Indigenous and people of color are particularly at risk.³⁴ The following subsections focus primary on data about gender, sexuality, age, and race or ethnicity.

Gender and Sexuality

It is widely believed that girls and women are the majority of those trafficked for sexual exploitation, but numbers vary, and numbers of trafficked boys and men may be much higher than most people believe. More recent research indicates that there are likely similar numbers of boys and girls involved in child sex trafficking.³⁵ One national study in 2016 found that 36% of the youth ages 13 through 24 involved in the study were cis male, 60% were cis female, 4% were trans female, and less than 1% were trans male.³⁶ A 2008 study on CSEC in New York City

³³ Washington State Department of Commerce, “Statewide Coordinating Committee on Sex Trafficking: Report on Committee Activities and Plan to Address Sex Trafficking (2014), <http://www.commerce.wa.gov/wp-content/uploads/2016/03/Commerce-Sex-Trafficking-Final-2014.pdf> .

³⁴ Id.

³⁵ Development Services Group, Inc. 2014. “Commercial Sexual Exploitation of Children/Sex Trafficking.” Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. <https://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>.

³⁶ *Youth Involvement in the Sex Trade: a National Study* at page 35, Rachel Swaner, Melissa Labriola, Michael Rempel, Allyson Walker, and Joseph Spadafore, Center for Court Innovation, 2016.

estimated that of the total CSEC population age 18 and under in 2005 and 2006 in the city: an estimated 53.5% were male, 42% were female, and 4.5% were transgender (though the report authors emphasized that this was likely an underestimate for transgender youth).³⁷ In another study in New York City researching survival sex amongst LGBTQ youth, young men who have sex with men, and young women who have sex with women, found that 47% of the study sample identified as male, 36% as female, 16% as transgender, and 3% as any other gender (i.e. androgynous, femme, gender nonconforming, and genderless).³⁸ The Cole and Sprang study of familial trafficking cited above found 41.9% of familial trafficking victims were boys.³⁹ Other research supports that the percentage of CSEC youth who are boys likely falls in this range.⁴⁰ These disparities are explained below.

Washington State data indicates that sexually exploited children and youth are mostly female. However, as noted, male victims are likely significantly undercounted. Similarly, statewide data show that sexually exploited adults are mostly female, though adult male victims may likewise be undercounted. National Human Trafficking Hotline data from Washington indicates that a large proportion of those accessing this resource identify as female (Table 1).

[Note: We are working on standard formatting for tables and figures throughout the report that will be ADA accessible.]

Table 1. National Human Trafficking Hotline Data,⁴¹ Reported Cases & Victim Demographics, Washington State, 2014-2019

Reported Cases & Victim Demographics*	Total Reported Cases**	Adults	Minors	Female	Male	Transgender and Gender Non-Conforming	U.S. Citizens / Lawful Permanent Residents	Foreign Nationals
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³⁷ Ric Curtis, Karen Terry, Meredith Dank, Kirk Dombrowski, and Bilal Khan. Commercial Sexual Exploitation of Children in New York City, Volume One: The CSEC Population in New York City: Size, Characteristics, and Needs at page 34. (2008). Available at <https://www.ojp.gov/pdffiles1/nij/grants/225083.pdf>; Meredith Dank et al. Surviving the Streets of New York: Experiences of LGTBQ Youth, YMSM, and YWSW Engaged in Survival Sex at page 13. (2015). Available at <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>.

³⁸ Meredith Dank et al. Surviving the Streets of New York: Experiences of LGTBQ Youth, YMSM, and YWSW Engaged in Survival Sex at page 13. (2015). Available at <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>.

³⁹ *Familial Sex Trafficking of Minors: Trafficking Conditions, Clinical Presentations, and System Involvement* at page 187, Ginny Sprang and Jennifer Cole, 2/2018. All data were extracted from clinical records so it is not clear if this is self-identified gender or sex assigned at birth. The authors indicate that 58.1% of the sample was female but do not clarify if the remaining part of the sample was male or another gender.

⁴⁰ Development Services Group, Inc. 2014. “Commercial Sexual Exploitation of Children/Sex Trafficking.” Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. <https://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>;

⁴¹ National Human Trafficking Hotline (NHTH) statistics are based on aggregated information learned through signals – phone calls, texts, online chats, emails, and online tip reports – received by the Trafficking Hotline, but does not define the totality of human trafficking or of a trafficking network in any given area.

2019	272	183	45	210	43	7	25	40
2018	228	118	44	149	24	--	33	17
2017	167	111	37	136	23	< 3	46	26
2016	170	121	58	140	27	< 3	49	29
2015	135	90	33	121	11	< 3	49	23
2014	122	84	37	104	12	< 3	42	22

*The total reported cases encompass sex trafficking, labor trafficking, sex and labor cases, and unspecified cases. Of these, the majority of cases involve sex trafficking, with labor trafficking-only cases representing 10-15% of the total. Not all callers provide demographic information so numbers may not add up to the total number or reported cases.

Source: Adapted from information available from National Human Trafficking Hotline, Hotline Statistics (Jan. 8, 2021), <https://humantraffickinghotline.org/states>

Seattle/King County data provided by the King County Prosecuting Attorney’s Office shows the breakdown by gender in charges for commercial sexual exploitation of minors (Table 2):⁴²

Table 2: King County CSEC Charges by Gender, 2018-19

CSEC Charges	2018 (N=38)	2019 (N=42)
Female Victim	100%	100%
Male Victim	0%	0%
Female Defendant	--	5%*
Male Defendant	--	95%

* Female defendant charged with promoting CSAM

Source: KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2018 & 2019 UPDATE, data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney, King County Prosecutor Office, and available at <https://www.kingcountycsec.org/data>

Dr. Boyer’s Seattle-area study of CSEC youth who had accessed legal and social services found that 85% of the study population were identified as female in their CSEC case file (Table 3). Five percent and 3% of the study population were identified as “transgender” or “intersex and other.”⁴³

⁴² KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2018 & 2019 UPDATE, data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney, King County Prosecutor Office, and available at <https://www.kingcountycsec.org/data>

⁴³ Debra Boyer, *Commercially Sexually Exploited Children in Seattle/King County 2019 Update* at page 26. (2020).

While there is a lack of data (or even reliable estimates) on the percent of the youth or adult populations who identify as transgender or intersex in King County or Washington State, Dr. Boyer’s data suggest that these populations are also disproportionately represented among CSEC.

Table 3. Gender Distribution of CSEC within Seattle/King County Study Sample, 2018 Data (Boyer, 2020)

Gender (N-172)	% (Number)
Female	85% (146)
Male	7% (12)
Transgender	5% (8)
Intersex and Other	3% (6)

Notes: The study author notes both that this is likely an undercount of all CSEC, with particular undercounting for male, transgender, and intersex and other youth. It is not clear from the source if gender was self-identified.

Source: Adapted from information available from Debra Boyer, Commercially Sexually Exploited Children in Seattle/King County 2019 Update (2020).

Additionally, this study found that 69% had been sexually abused prior to first CSE, 55% had experienced addiction, 80% had mental health issues, and 90% had experienced trauma/PTSD, . Most of the CSE youth had run away, were experiencing homelessness, and/or were involved with foster care.⁴⁴

These datasets rely entirely on populations who are accessing services and resources, so it is difficult to determine how accurately they reflect the population impacted by sexual exploitation. Dr. Michael Pullmann took a different approach by identifying CSEC within the child welfare system, pursuant to an outcomes evaluation under a five-year federal grant. Dr. Pullmann’s analysis of child welfare and juvenile justice records in Department of Children, Youth, and Families (DCYF) Regions 3 and 4, which includes King, Snohomish, Skagit, Whatcom, San Juan, and Island Counties concluded 89.2% of the 83 state-dependent youth who were confirmed or highly suspected of commercial sexual exploitation were female. The analysis also found that these youth had many referrals to child welfare, frequent living situation changes, and frequent juvenile detention episodes. About 87% of the youth ran away from child welfare placement at least once; of those who ran away the average number of runaway events was just under nine, and runaway episodes made up nearly 19% of days CSEC youth were in the care of child welfare.⁴⁵

⁴⁴ Debra Boyer, *Commercially Sexually Exploited Children in Seattle/King County 2019 Update* (2020) at page 8.

⁴⁵ Michael D. Pullmann, Norene Roberts, Elizabeth M. Parker, Kelly J. Mangiaracina, Leslie Briner, Morgan Silverman, Jeremy R. Becker, *Residential instability, running away, and juvenile detention characterizes commercially sexually exploited youth involved in Washington State’s child welfare system*, *Child Abuse & Neglect*, Volume 102 (2020).

Washington data is similar to that from other states. Hawaii Child and Family Service (Hawaii's largest family-centered nonprofit) participated in a study with Arizona State University. Of 363 people who were getting services from the agency and completed the survey, 26.7% had sex trafficking experiences. Of the respondents who reported sex trafficking experiences, 75% female, 23% male, 1% transgender, and 1% nonconforming; 64% of those trafficked identified as all or some native Hawaiian, 23% were children when first trafficked, and 25% were first trafficked by a family member. Where trafficking began as a minor, the average age of first trafficking was 11.3 years of age.⁴⁶

Increasing numbers of male victims of commercial sexual exploitation are being identified, but they are still mostly “invisible” in data, referrals, training, etc. For example, the King County CSEC Taskforce, which keeps data on referral numbers and sources, used to assume all referrals (ages 12-24) were female victims, but in 2014 started tracking referral reports by gender, race and ethnicity, and the taskforce estimates that 40-50% of victims are male.⁴⁷ [Note: check and update]

In 2013 ECPAT USA examined available information about CSE Boys (CSEB) and services available to them. ECPAT found the scope of CSEB is vastly under reported. Most researchers who have studied boys conclude that CSEB are not identified or served due to shame and stigma about being gay or perceived as gay; lack of screening and intake by law enforcement and social services because they don't believe boys are victims of CSE; limited outreach by social services to areas known for male prostitution; oversimplification of the reality that boys are not generally pimped, which hides the need and misinforms potential services.⁴⁸ In an Office of Juvenile Justice and Delinquency Prevention literature review, the authors indicate:⁴⁹

The gender disparity in awareness and research could be due to the fact that boys are less likely to be identified as commercially sexually exploited or at risk for victimization. Currently, very few organizations provide services for boys and young men who are victims of sexual exploitation. Consequently, few resources provide valuable information about exploitation of boys and young men. It is known that many CSE boys are homeless or runaways and are significantly less likely than girls to have a pimp or other adult exploiting them. Boys and young males likely share many of the risk factors for involvement in CSE as girls, such as child maltreatment and family violence.

⁴⁶ Dominique Roe-Sepowitz and Khara Jabola-Carolus, *Research Report - Sex Trafficking in Hawai'i: Part III* (2020). Available at: <https://hoolanapua.org/wp-content/uploads/2020/06/Final-Report-Sex-Trafficking-in-Hawaii-Part-III-01092020.pdf>

⁴⁷ 4/7/17 Interview by Jennifer Ritchie and Dana Raigrodski Meeting with Kelly Mangiaracina, Task Force Coordinator for the King County Task Force on Commercially Sexually Exploited Children (CSEC). Notes on file.

⁴⁸ Brian Willis et al. And Boys Too: An ECPAT-USA discussion paper about the lack of recognition of the commercial sexual exploitation of boys in the United States. (2013). Available at <https://d1qkyo3pi1c9bx.cloudfront.net/00028B1B-B0DB-4FCD-A991-219527535DAB/1b1293ef-1524-4f2c-b148-91db11379d11.pdf>.

⁴⁹ Development Services Group, Inc. 2014. “Commercial Sexual Exploitation of Children/Sex Trafficking.” Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. <https://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf> (internal citations omitted)

Impacts on boys are the same as they are on girls— risk of suicide, depression, anxiety, self-harm like cutting, post-traumatic stress disorder, distrust, isolation, sexually transmitted infections, substance abuse, and physical injuries such as bruising, fractures, cuts, and forced tattooing. However, the literature disagrees on whether these impacts manifest differently in behaviors of boys vs. girls.⁵⁰ This is a meaningful area for future study as it could inform gender-responsive trauma treatment. Some facilities provide services to male trafficking survivors.⁵¹

For the reasons mentioned, sexually exploited boys are less likely to self-identify, and are often not identified because those with whom they come in contact are inadequately trained. It is notable that when the King County CSEC Task Force began its “And Boys Too” training for service providers and others in 2014, identification of boys increased significantly. In 4/2014, of youth referred to the Bridge Collaborative, 4% identified as males. By 9/15 the number of boys referred had doubled to 8%, and by 3/16 it had tripled to 13% of youth referred.

Disproportionate victimization of indigenous communities and communities of color

It is well documented nationally and locally that sexual exploitation has disproportionate impacts on indigenous communities, and that deep historical roots inform the exploitation. In 2013 Lisa Brunner of the National Indigenous Women’s Resource Center testified to Congress:

Native women experience violent victimization at a higher rate than any other U.S. population. Congressional findings are that Native American and Alaska Native women are raped 34.1%, more than 1 in 3, will be raped in their lifetime, 64%, more than 6 in 10, will be physically assaulted. Native women are stalked more than twice the rate of other women. Native women are murdered at more than ten times the national average. Non-Indians commit 88% of violent crimes against Native women. Given the above statistical data and the historical roots of violence against Native women, the level of human trafficking given the sparse data collected can only equate to the current epidemic levels we face within our tribal communities and Nations.⁵²

A 2016 news article, citing the South Dakota District U.S. Attorney’s Office as the source, reported that in South Dakota, Native American women and girls represent 40% of sex trafficking victims,⁵³ despite comprising only about 8% of the population in that year.⁵⁴

⁵⁰ *Familial Sex Trafficking of Minors: Trafficking Conditions, Clinical Presentations, and System Involvement*, Ginny Sprang and Jennifer Cole, 2/2018.

⁵¹

⁵² Human Trafficking Search. Trafficking in Tribal Nations: the impact of sex trafficking on Native Americans. (2018). Accessed February 19, 2021. Available at: <https://humantraffickingsearch.org/traffickingofnativeamericans/>.

⁵³ Danielle Ferguson, Argus Leader, “Law enforcement, Native Communities focus on sex trafficking prevention training” (2016). Accessed February 19, 2021. Available at: [Law enforcement, Native communities focus on sex trafficking prevention training \(argusleader.com\)](http://www.leadere.com/story/news/2016/02/18/law-enforcement-native-communities-focus-on-sex-trafficking-prevention-training/801127001/)

⁵⁴ Census Data Center: South Dakota State University. 2012-2016 American Community Survey 5-Year Estimates, Comparative Demographic Estimates: South Dakota. (2017). Available at https://openprairie.sdstate.edu/cgi/viewcontent.cgi?article=1011&context=census_data_newsreleases.

Experts have found that traffickers are targeting Native Americans nationally.⁵⁵ Washington is no different. Nearly every Native American woman in a Seattle survey (94%) said she was raped or coerced into sex. The survey was done in 2010, co-produced by the Urban Indian Health Institute (UIHI) and the CDC.⁵⁶ The Seattle Times reported that it remained hidden in a drawer until discovered by a new director of the UIHI, six years later.⁵⁷ This was one of the first surveys to study American Indians living in urban communities. While not specific to sex trafficking, the report reveals a horrific level of sexual violence. Additionally 53% of all respondents lacked permanent housing, and 86% reported being affected by historical trauma. Of these, 94% of women had been raped or coerced in their lifetime, 42% attempted suicide at some point and 34% binge drank after they were initially attacked. Of the 70% of women whose first experience of sexual violence was rape, 82% were raped before age 18.⁵⁸ Significantly, the report was deliberately hidden for all those years because the Seattle Indian Health Board believed the information would reflect negatively on the Native community.⁵⁹ This reaction is the embodiment of the guilt, shame and stigma suffered by survivors of sexual violence and exploitation.

A 2019 UIHI report found that participants in community meetings identified human trafficking as one of four key issues underlying the problem of murdered and missing Indigenous women in Washington. The report emphasizes that “there is a lack of reliable data on the rates of human trafficking of Native women and girls in Washington. However, just because the data has not been collected does not mean it is not happening. The lack of data contributes to the scope of the problem.”⁶⁰

Efforts to shed light on these issues and to improve data collection and research no doubt benefit from Washington’s strong, outspoken, nationally involved Native American survivor community with survivor led and/or trauma responsive organizations: Innovations Human Trafficking Collaborative; Mother Nation – Honoring the Beauty and Strength of Native Women and their families; Cowlitz Indian Tribe: Pathways to Healing.⁶¹ [Note: others to add?]

⁵⁵ Cecily Hilleary. Sex Traffickers Targeting Native American Women. VOA. (2015). Accessed February 19, 2021. Available at: <https://www.voanews.com/usa/sex-traffickers-targeting-native-american-women>; Alexandra Sandi Pierce. American Indian Adolescent Girls: Vulnerability to Sex Trafficking, Intervention Strategy. Available at <https://humantraffickinghotline.org/sites/default/files/AI%20Girls%20and%20Vulnerability%20to%20Sex%20Trafficking%20-%20Pierce.pdf>.

⁵⁶ Urban Indian Health Institute. Our Bodies, Our Stories: Sexual Violence Among Native Women in Seattle, WA. (2018). Available at <file:///C:/Users/rotak/Downloads/Our-Bodies-Our-Stories-2020-revision.pdf>.

⁵⁷ Vianna Davila. Nearly every Native American woman in Seattle survey said she was raped or coerced into sex. The Seattle Times. (2019). Accessed February 19, 2021. Available at <https://www.seattletimes.com/seattle-news/homeless/survey-reveals-high-rates-of-sexual-assault-among-native-american-women-many-of-them-homeless/>.

⁵⁸ Urban Indian Health Institute. Our Bodies, Our Stories: Sexual Violence Among Native Women in Seattle, WA. (2018). Available at <file:///C:/Users/rotak/Downloads/Our-Bodies-Our-Stories-2020-revision.pdf>.

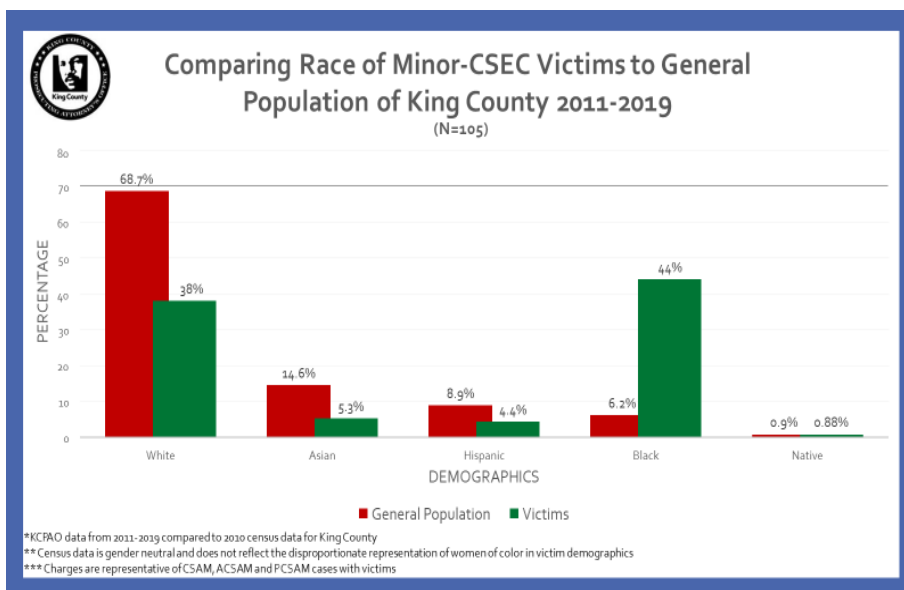
⁵⁹ Vianna Davila. Nearly every Native American woman in Seattle survey said she was raped or coerced into sex. The Seattle Times. (2019). Accessed February 19, 2021. Available at <https://www.seattletimes.com/seattle-news/homeless/survey-reveals-high-rates-of-sexual-assault-among-native-american-women-many-of-them-homeless/>.

⁶⁰ Abigail Echo-Hawk, Adrian Dominguez, Lael Echo-Hawk. MMIW: We Demand More: A corrected research study of missing and murdered Indigenous women & girls in Washington State at page 18. (2019). Available at [file:///C:/Users/rotak/Downloads/UIHI-MMIWG-We-Demand-More-20190920_1%20\(10\).pdf](file:///C:/Users/rotak/Downloads/UIHI-MMIWG-We-Demand-More-20190920_1%20(10).pdf).

⁶¹ Innovations Human Trafficking Collaborative. Accessed February 19, 2021. Available at <https://www.innovationshtc.org/>; Mother Nation. Accessed February 19, 2021. Available at <https://mothernation.org/>;

Communities of color are also disproportionately victims of exploitation. King County has kept records of the demographics of victims and defendants in charged cases. Between 2011 and 2019, of 105 CSEC cases, minor victims were 44% Black, 5% Hispanic, 6% Asian, 1% Native, and 6% unknown. King County’s general population is 6.2% Black (Figure 1).⁶² It is important to note that Native Americans are often undercounted in datasets,⁶³ as are Hispanic individuals.⁶⁴ In addition, disparities within populations are often masked when diverse populations are grouped together within a larger category such as “Asian.”⁶⁵ This dataset does not include any information on Native Hawaiian and other Pacific island populations.

Figure 1. Comparing Race/Ethnicity of Minor-CSEC Victims to General Population of King County, 2011-2019



Source: Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges. King County Prosecuting Attorney’s Office. (2019) Accessed February 19, 2021. Available at <https://www.kingcountycsec.org/data>.

Buyers, on the other hand, are disproportionately white, well-educated, and well-off (Figures 2 and 3).⁶⁶

Cowlitz Indian Tribe. Pathways to Healing. Accessed February 19, 2021. Available at <https://www.cowlitz.org/services/pth.html>.

⁶² Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges. King County Prosecuting Attorney’s Office. (2019) Accessed February 19, 2021. Available at <https://www.kingcountycsec.org/data>.

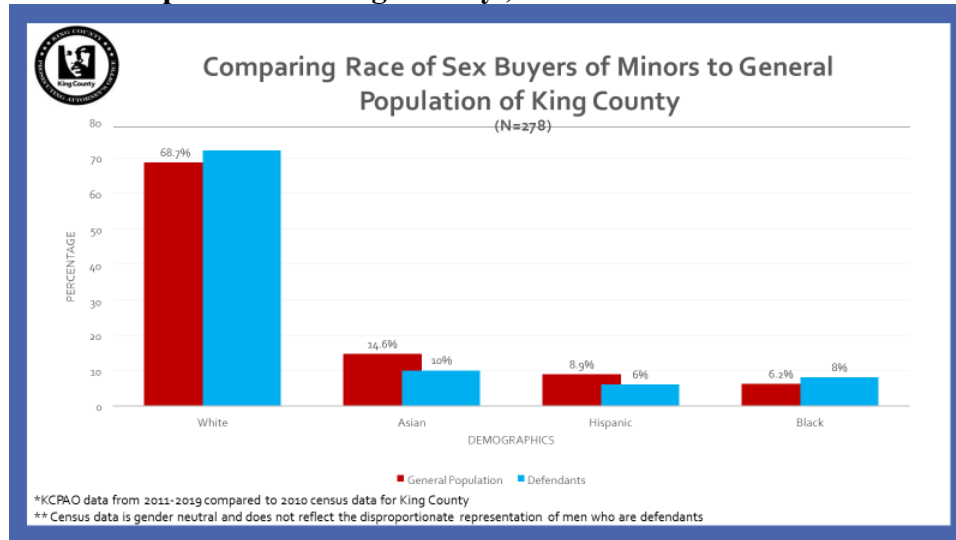
⁶³ Abigail Echo-Hawk, Adrian Dominguez, Lael Echo-Hawk. MMIW: We Demand More: A corrected research study of missing and murdered Indigenous women & girls in Washington State at page 18. (2019). Available at [file:///C:/Users/rotak/Downloads/UIHI-MMIWG-We-Demand-More-20190920_1%20\(10\).pdf](file:///C:/Users/rotak/Downloads/UIHI-MMIWG-We-Demand-More-20190920_1%20(10).pdf).

⁶⁴ Cite to Pilot project on incarceration of women once published (or reference appendix if published as part of this report).

⁶⁵ Washington State commission on Asian Pacific American Affairs. AAPI Data Disaggregation. Accessed February 19, 2021. Available at <https://capaa.wa.gov/resources/>.

⁶⁶ Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges. King County Prosecuting Attorney’s Office. (2019) Accessed February 19, 2021. Available at <https://www.kingcountycsec.org/data>.

Figure 2. Comparing Race/Ethnicity of Sex Buyers of Minors to General Population of King County , 2013-2019



Source: Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges. King County Prosecuting Attorney’s Office. (2019). Accessed February 19, 2021. Available at <https://www.kingcountycsec.org/data>.

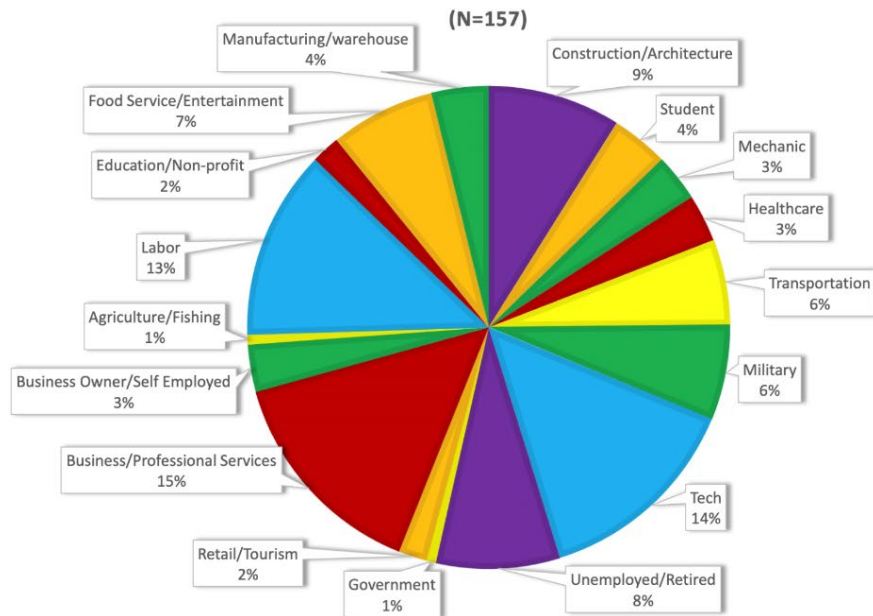
As Figure 3 demonstrates, many of the buyers are educated and largely employed: 14% worked in the tech industry, and 15% in business/professional services.⁶⁷

Figure 3: Commercial Sexual Abuse of Minors Buyers’ Occupations, King County, 2013-2018

⁶⁷ Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges. (2018). Accessed February 19, 2021. Available at <https://static1.squarespace.com/static/5b71c32bec4eb7c684a77ff4/t/5f21bfe771945a3a215cac17/1596047339095/2018+King+County+CSE+Data+%28updated+7-26-19%29.pdf>.



CSAM BUYERS' OCCUPATIONS 2013-2018



*Only cases with confirmed occupations are represented, 66.5% of all cases have confirmed current occupations
 **Of the proportion of cases with confirmed occupations, 92% of represented defendants are employed

Source: Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges. (2018). Accessed February 19, 2021. Available at <https://www.kingcountycsec.org/data>.

Dr. Boyer’s Seattle area study discussed above, also found that many of the CSEC victims in King County were disproportionately Black, Indigenous, or youth of color.⁶⁸ For example, 8.5 percent of King County’s general youth population (ages 0-22 years) was Black in 2018,⁶⁹ but Black youth comprise 31% of CSEC in the study sample (Table 4).⁷⁰

[Note: Need to add population data (denominator data) to last column of the following table]

Table 4: Race/Ethnicity Distribution for Sample from Seattle-Area CSEC Study, 2017-2019

Race/Ethnicity	Study Population % (N=154)	King County Youth Population Age 0-22 years, 2018
Asian	< 1% (2)	
Black/African American	31% (47)	8.5%

⁶⁸ Boyer, *Commercially Sexually Exploited Children in Seattle/King County 2019 Update* (2020).

⁶⁹ Washington State Office of Financial Management 2018 Population Estimates. Accessed February 19, 2021. Available at <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/estimates-april-1-population-age-sex-race-and-hispanic-origin>.

⁷⁰ Boyer, *Commercially Sexually Exploited Children in Seattle/King County 2019 Update* (2020).

Native Hawaiian/Pacific Islander	0 (2 reported NH/PI and African American)	--
Caucasian/White	40% (61)	
American Indian/Alaskan Native	10% (15)	
Hispanic/Latinx	8% (13)	
Other- Reported Two Or More Ethnicities	10% (16)	

Source: Adapted from information available from Boyer, *Commercially Sexually Exploited Children in Seattle/King County 2019 Update* (2020) and Washington State Office of Financial Management 2018 Population Estimates. Accessed February 19, 2021. Available at <https://www.kingcountycsec.org/data>.

Dr. Pullmann’s analysis of child welfare and juvenile justice records in Washington State discussed above concluded that, of the 89.2% of the 83 state-dependent youth who were confirmed or highly suspected of commercial sexual exploitation, 57.8% were white, 19.3% were Black, 13.3% were more than one race, 20.5% were Latinx, 7.2% were American Indian/Alaskan Native, and 2.4% were Asian/Native Hawaiian/Other Pacific Islander.⁷¹

Gender and racial/ethnic disproportionality among exploited children is evident statewide as well. In 2016, The Center for Children & Youth Justice (CCYJ) also collected limited data from 14 juvenile courts and youth-serving agencies in five counties in Washington State. Similar to the King County data, CCYJ’s statewide data demonstrates that victims are disproportionately Black, Ingenious and youth of color; 51% of the victims identified were Black/African American, multi-racial, Hispanic/Latino, or Native American/Alaskan Native compared to X% of the general population. In terms of gender, 73% were female, 25% were male, and 3% were transgender.⁷²

Age

As the data so far already bears out, a high number of the individuals trafficked and exploited in the commercial sex industry in Washington, and across the United States, are children and youth (up to age 24). Tragically, the average age of entry into pornography and prostitution in the U.S. is twelve.⁷³ Of the more than 23,500 endangered youth who have runaway reported in 2019 to the National Center for Missing and Exploited Children, one in six were likely victims of child sex trafficking.⁷⁴ As noted earlier, it was estimated in 2018 that the CSEC prevalence alone in Washington State ranges from 2,000 to 3,000 children and youth.⁷⁵ In Seattle/King County, there

⁷¹ Michael D. Pullmann, Norene Roberts, Elizabeth M. Parker, Kelly J. Mangiaracina, Leslie Briner, Morgan Silverman, Jeremy R. Becker, *Residential instability, running away, and juvenile detention characterizes commercially sexually exploited youth involved in Washington State’s child welfare system*, Child Abuse & Neglect, Volume 102 (2020).

⁷² 2017 AGO report

⁷³ <https://www.atg.wa.gov/sex-trafficking>, citing to The U.S. Department of Justice Child Exploitation and Obscenity Section

⁷⁴ <https://www.missingkids.org/theissues/trafficking#bythenumbers>

⁷⁵ Boyer, “Commercially Sexually Exploited Children in Seattle/King County 2019 Update”

were 473 identified CSEC in 2018 versus 238 (18 and under) in 2008. Of the 473 in 2018, 231 were 18 years of age and under, and 242 were between 19-24 years of age.⁷⁶

The Seattle area study by Dr. Boyer discussed above found that the ages of the study population ranged from 12 to 24-years, of which 73% were ages 12-17 years and 27% were ages 18-24 years. The mean age at first CSE was 14.4 years.⁷⁷

III. Bias in Washington justice system response

Broadly speaking, the criminal justice system addresses commercial sex through several overlapping frameworks: sex trade offenses such as prostitution, solicitation and patronizing; commercial sexual exploitation; and human trafficking. Those frameworks are often in tension with each other, as will be demonstrated below.

As new evidence has exposed wide-spread exploitation and abuse in the commercial sex environment, the last two decades have led to the recognition and criminalization of sex trafficking and commercial sexual exploitation of both minors and adults. Of those involved in commercial sex, most are victims of commercial sexual exploitation [CSE] and may experience trafficking, coercion, force, fraud, and threats, and violence from buyers and third-party exploiters. Women, children, and marginalized people are most likely to be victims of CSE and sex trafficking.⁷⁸ They are also most likely to have been criminalized historically for commercial sex related offenses.⁷⁹

Washington state arrest and charging data reflect these long-standing disparities in the legal system response – disparities that have perpetuated the impact on the most vulnerable and marginalized populations along lines of gender, race and age. The more recent arrest and charging data also evidences some of the progress made in Washington state towards alleviating these disparities, as will be discussed in later parts of this report.

a. Systemic bias in the legal system framing of sex trade offenses, commercial sexual exploitation, and human trafficking

⁷⁶ In 2007, the City of Seattle commissioned Dr. Debra Boyer to assess the number of youth and young adults, aged 24 years and younger, who were victims of commercial sexual exploitation in the Seattle area. The final report, “Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle”, was published in 2008. A decade later, Stolen Youth commissioned Dr. Boyer to update the earlier study. In November 2019, Dr. Debra Boyer published “Commercially Sexually Exploited Children in Seattle/King County 2019 Update”. Dr. Boyer’s data is drawn from CSE and prostitution involved minors and, in the updated report, young adults up to 24 years of age, who had engaged with social and legal services in 2006/7 and 2018 respectively.

⁷⁷ For those aged 12-17 years, 27% were ages 15 or younger, and 18% were ages 14 or younger. Only two cases reported first CSE as above age 18; one at age 19 and the other at age 21 (data were collected on Age at First CSE for 99 cases ages 12-24 years). Debra Boyer, *Commercially Sexually Exploited Children in Seattle/King County 2019 Update* (2020).

⁷⁸ See Part II *supra*

⁷⁹ See *infra* further down in this sub-section

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA).⁸⁰ The TVPA and its progeny make it illegal to recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patronize, or solicit by any means a person or to benefit from such activities knowing that the person will be caused to engage in commercial sex acts, either when induced by force, fraud, or coercion with regards to adults,⁸¹ or where the person is under 18.⁸² Coercion means threats of serious harm to or physical restraint against any persons; any scheme plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of law or the legal practice. Serious harm means physical or nonphysical harm, “including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.”⁸³ In the case of minors, use of force, fraud or coercion is not required, and consent of the victim is not a defense. Federal law also prohibits using mail or computers to induce a minor to engage in prostitution,⁸⁴ and prohibits travel with intent to engage in illicit sexual conduct with a minor.⁸⁵

In 2003, Washington was the first state to pass a law criminalizing human trafficking, using similar definitions and criteria.⁸⁶ Trafficking in the First Degree and Trafficking in the Second Degree were both defined as class A felonies, and the law added Trafficking to the crimes included in the Criminal Profiteering Act.⁸⁷

In 2007, the WA Legislature created four new crimes relating to child sexual exploitation in order to prevent any benefit or profit from minors engaged in sexual conduct (defined broadly): Commercial Sexual Abuse of a Minor (CSAM) (replacing the crime of patronizing a juvenile prostitute),⁸⁸ Promoting Commercial Sexual Abuse of a Minor,⁸⁹ Promoting Travel for Commercial Sexual Abuse of a Minor,⁹⁰ and Permitting Commercial Sexual Abuse of a Minor.⁹¹ A person is guilty of commercial sexual abuse of a minor if they: provide anything of value to a minor or a third person as compensation for a minor having engaged in sexual conduct (defined broadly) with him or her; provide or agree to provide anything of value to a minor or a third person pursuant to an understanding that in return such minor will engage in sexual conduct with him or her; or solicit, offer, or requests to engage in sexual conduct with a minor in return for anything of value.⁹² A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits

⁸⁰ Trafficking Victims Protection Act of 2000, Division A of Pub. L. No. 106-386, 114 Stat. 464 (2000) (reauthorized regularly since), mostly codified in 22 U.S.C. §§ 7101-7112

⁸¹ 22 U.S.C. § 7102

⁸² 18 USC 1591(a).

⁸³ 18 USC 1591(e).

⁸⁴ 18 USC 2422

⁸⁵ 18 USC 2424

⁸⁶ RCW 9A.40.100.

⁸⁷ RCW 9A.82.010.

⁸⁸ RCW 9.68A.100.

⁸⁹ RCW 9.68A.101,

⁹⁰ RCW 9.68A.102,

⁹¹ RCW 9.68A.103.

⁹² RCW 9.68A.100.

from a minor engaged in sexual conduct or a sexually explicit act.⁹³ A person (not the minor or the buyer) “profits from commercial sexual abuse of a minor” if he or she accepts or receives money or anything of value pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of CSAM.⁹⁴ Consent of the minor is not a defense to any of the CSAM offenses,⁹⁵ and neither is not knowing the age of the victim.⁹⁶

In 2010, The Legislature enacted ESSB No. 6476, which increased the seriousness level of CSAM offenses for sentencing purposes.⁹⁷ In 2015, the Legislature tasked the CSEC Statewide Coordinating Committee with reviewing implementation and barriers to implementation of ESSB 6467 (2010). In 2016 the CSEC Committee reported that insufficient dedicated law enforcement resources exist to properly investigate these complex crimes, particularly outside of large urban areas.⁹⁸

Prostitution – the exchange of sex for money or other items of value – has long been outlawed in WA State. Prostitution and patronizing a prostitute are misdemeanors, and penalties include a fine of up to \$1,000, up to 90 days in jail, or both.⁹⁹ It is also a crime in Washington to promote prostitution,¹⁰⁰ to provide or sell travel services knowing they will be used to patronize prostitutes,¹⁰¹ and to permit prostitution in a building that you rent, own, or reside in.¹⁰²

With regard to minors, under Washington Law, there is now a presumption that a youth arrested for prostitution or prostitution loitering meets the criteria for certification as a victim of a severe form of trafficking and is also a victim of commercial sexual abuse of a minor.¹⁰³ That

⁹³ RCW 9.68A.101. A person, acting other than the prostituted person or the customer thereof, “advances commercial sexual abuse or sexually explicit act of a minor” when he or she causes or aids a person to commit or engage in CSAM, procures or solicits customers for CSAM, provides persons or premises for the purposes of CSAM, operates or assists in the operation of a house or enterprise for the purposes of engaging in CSAM, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor. RCW 9.68A.101(a), (c).

⁹⁴ RCW 9.68A.101(b).

⁹⁵ RCW 9.68A.100, 101, 102, 103

⁹⁶ RCW 9.68A.110.

⁹⁷ The level of seriousness for promoting CSAM and CSAM were raised - CSAM was increased from a Level III seriousness to a Level VIII offense. Promoting CSAM was raised from a Level VIII seriousness to a Level XII offense. RCW 9.94A.515. In addition, CSAM was changed from a class C to class B felony; promoting CSAM was changed from class B to class A felony.

⁹⁸ <https://www.atg.wa.gov/commercially-sexually-exploited-children-statewide-coordinating-committee>

⁹⁹ RCW 9A.88.030 & 9A.88.110.

¹⁰⁰ RCW 9A.88.070 & .080. Promoting prostitution in the first degree, a class B felony, is when a person knowingly advance prostitution by compelling a person by threat or force to engage in prostitution, compelling a person with a mental incapacity or developmental disability that renders the person incapable of consent to engage in prostitution, or profiting from prostitution that results from either of the above. Penalties include a fine of up to \$20,000, up to ten years in prison, or both. RCW 9A.88.070. Promoting prostitution in the second degree, a class C felony, is when a person knowingly advances (cause or aid) prostitution (not through the use of threat or force), or profits from prostitution. Penalties include a fine of up to \$10,000, up to five years in prison, or both. **RCW 9A.88.080**

¹⁰¹ RCW 9A.88.085. Promoting travel for prostitution is a class C felony, when a person offers or sells travel services when the purpose of the travel is to engage in what would be patronizing a prostitute if the behavior took place within Washington state. penalties include a fine of up to \$10,000, up to five years in prison, or both. **RCW 9A.88.085**

¹⁰² RCW 9A.88.090. It is a misdemeanor to permit prostitution in a building that you possess or control (this including places that you rent, own, or reside in), if you know about the prostitution and do nothing to stop it. Penalties include a fine of up to \$1,000, up to 90 days in jail, or both. **RCW 9A.88.090.**

¹⁰³ RCW 13.40.219. For further discussion see infra later in this section

recognition, in part, led to the recent Washington legislation decriminalizing prostitution for those under 18. The decriminalization provision will go into effect on 1/1/2024 in order to allow the state to establish the services needed for these youth.¹⁰⁴

As the following data shows, for too long the legal system viewed both minors and adults who engage in commercial sex as criminals. Most were not recognized as the victims they are. The issue of youth (18-24) and adult prostitution and sexual exploitation (when not formally amounting to trafficking) still generates controversy and mixed legal system responses. Current research and data on youth and many adults in commercial sex supports viewing “prostitution” as part of the spectrum of gendered violence and of sexual exploitation of both minors and adults. The legal system response has not fully caught up with that recognition.

The most vulnerable and marginalized populations are doubly harmed by their exploitation, and their treatment within the legal system. As Andrea, a survivor and advocate, pointedly notes: “Society needs to shift its view of prostitution... We need to stop blaming victims or questioning ‘how did you get yourself into that?’.”¹⁰⁵ In later parts, this report explores efforts in Washington state to correct course and recommends steps to reduce such bias within the legal system.

The annual crime reports issued by the Washington Association of Sheriffs and Police Chiefs offer useful statewide data and cover both human trafficking and prostitution offenses.¹⁰⁶ Relevant data for the last fifteen years (2004-2019) are presented in **Tables 5-7 below** (not all data was similarly collected every year). The data, however, limits our ability to draw inferences about gender, race and age disparities and systemic biases discussed further in this report.

While the dataset provides good insights into the number of arrests, as well as the number of offenses reported, it does not include the number of resulting charges. It does not indicate if any given individual was subject to multiple arrests or repeat offenses. Except for the reported offense data, arrest data for prostitution offenses also does not differentiate between those who sell themselves and those purchasing or assisting/promoting. Considering the legal system tendency to

¹⁰⁴ E3SHB 1775 amending RCW 9A.88.030.

¹⁰⁵ Available at [The Life Story](https://www.thelifestory.org/), <https://www.thelifestory.org/>

¹⁰⁶ Washington Association of Sheriffs and Police Chiefs, CJIS Statistics and Reports (date accessed), <https://waspc.memberclicks.net/crime-statistics-reports>.

As defined by the reports, Human Trafficking offenses are defined as the inducement of a person to perform a commercial sex act, labor, or service, through force, fraud, or coercion. Human Trafficking can also occur if a person under 18 years of age has been induced or enticed, regardless of force, fraud, or coercion, to perform a commercial sex act. These offenses are categorized under two types of criminal activity: 1) Commercial Sex Acts, which are defined as inducing a person by force, fraud, or coercion to participate in commercial sex acts, or in which a person induced to perform such act(s) has not attained 18 years of age; 2) Involuntary Servitude, which is defined as the obtaining of a person(s) through recruitment, harboring, transportation, or provision, and subjecting such persons by force, fraud, or coercion into voluntary servitude, peonage, debt bondage, or slavery (not to include commercial sex acts).

Prostitution offenses are defined as unlawfully engaging in or promoting sexual activities for profit. These offenses are currently categorized under three types of criminal activity: 1) Prostitution, which is to unlawfully engage in sexual relations for profit; 2) Assisting/Promoting Prostitution, defined as soliciting customers or transporting persons for prostitution purposes; to own, manage, or operate a dwelling or other establishment for the purpose of providing a place where prostitution is performed; or to otherwise assist or promote prostitution; 3) Purchasing Prostitution, which is to purchase or trade anything of value for commercial sex acts. However, prior to 2013 Purchasing Prostitution was not included in either the offense or arrest data.

perceive those providing sex as criminals rather than victims of exploitation, that lack of differentiation is significant. Systemic biases may also influence whether certain conduct is reported and charged under one category or another. For example, prostitution related offenses may be categorized differently than trafficking and sexual exploitation offenses, when they are often both on the sexual exploitation spectrum.

Lastly, the arrest and charging data provides only a partial picture of disparities and inequities in the criminal justice system. We do not know whether gender, race, or ethnicity, for example, impact the conviction or incarceration rate of prostitution involved and CSE adults. This research gap in Washington State should be addressed in the future.

Tables 5-7 demonstrate the small number of sexual exploitation instances that, in the eyes of law enforcement, amount to trafficking, compared to the high number of instances that constitute “prostitution” offenses. When viewed over time, the number of trafficking offenses and arrests has increased, and the number of prostitution offenses and arrests has decreased. This is due in large part to recognition that prostitution is often exploitation, and to better identification of sexual exploitation and of victims. The decrease in the number of prostitution offense arrests of women and of juveniles illustrates the shift in paradigm.

Table 5. Washington Association of Sheriffs and Police Chiefs Data, Reported Offenses, Washington State, 2012-2019

Reported Offenses*	2019	2018	2017	2016	2015	2014	2013	2012
Total Human Trafficking Offenses**	56	45	30	18	23	6	3	—
Commercial Sex	53	36	29	17	23	6	3	—
Involuntary Servitude	3	9	1	1	0	0	0	—
Total Prostitution Offenses	638	445	920	773	762	807	647	613
Prostitution	335	309	603	628	630	639	555	552
Assisting/Promoting	109	74	202	110	100	118	92	61
Purchasing***	194	62	115	35	32	50	20	—

* Prior to 2011, only arrest information is provided in for Prostitution Offenses (some individual reporting agency numbers are included but do not add up to the aggregate state numbers)

** Human Trafficking offenses were added to the collected data in 2013

*** Purchasing commercial sex was not included in prostitution offenses until 2013 report

Sources: *Adapted from information available from: NEED TO LIST ALL REPORTS DATA WERE PULLED FROM*

Table 6. Washington Association of Sheriffs and Police Chiefs Data, Human Trafficking Arrests, Washington State, 2013-2019

Human Trafficking Arrests*	Total arrests	Adults	Juveniles	Male**	Female**
2019	29	29	0	29	0
2018	16	16	0	15	1
2017	4	4	0	4	0
2016	0	0	0	0	0
2015	10	10	0	10	0
2014	0	0	0	0	0
2013	0	0	0	0	0

* Human trafficking arrest data is not broken down between sex trafficking and labor trafficking. This dataset does not indicate if any given individual is subject to multiple arrests or repeat offenses.

** The reports categorize gender as a binary male/female. No data is provided for transgender and gender non-conforming individuals, or for LGBTQ+ in general.

Sources: *Adapted from information available from: NEED TO LIST ALL REPORTS DATA WERE PULLED FRO*

Table 7. Washington Association of Sheriffs and Police Chiefs Data, Prostitution Offenses Arrests, Washington State, 2004-2019

Prostitution Offenses Arrests*	Total arrests	Adults	Juveniles	Male**	Female**
2019	338	333	5	251	87
2018	258	254	4	168	90
2017	658	651	7	551	107
2016	546	537	9	396	150
2015	403	400	3	231	172
2014	477	467	10	272	205
2013	404	398	6	208	196
2012	359	341	18	180	179
2011	659	640	19	266	393
2010	840	805	35	320	520

2009	961	885	76	309	652
2008	872	810	62	227	645
2007	1053	991	62	333	720
2006	1476	1426	50	424	1052
2005	1659	1621	38	477	1182
2004	1255	1223	32	325	930

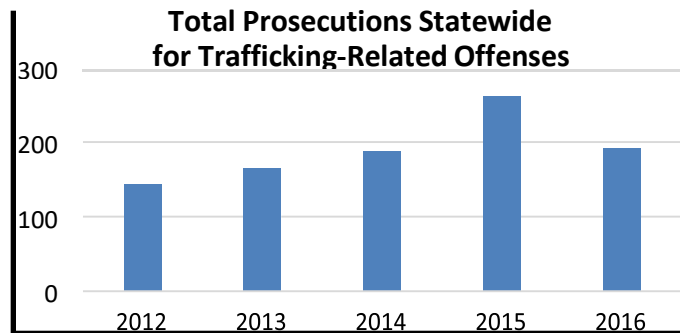
* Arrest data is not broken down by the three categories: prostitution, assisting and promoting, and purchasing. Consequently, it is not possible to learn from this data either the gender or the percentage of arrestees that were the individuals selling sex as opposed to their customers and pimps

** The reports categorize gender as a binary male/female. No data is provided for transgender and gender non-conforming individuals, or for LGBTQ+ in general.

Sources: *Adapted from information available from: NEED TO LIST ALL REPORTS DATA WERE PULLED FROM*

Available data on resulting charges and prosecutions is not as easily discernable. For example, according to a 2017 Washington Attorney General Office grant report the annual prosecutions of trafficking-related offenses number in the hundreds (Figure 4). The number of prosecutions appear higher than the corresponding years number of reported trafficking offenses and arrests (Figure 5) because, for this count, “Trafficking-related” offenses included Trafficking 1 & 2, Commercial Sexual Abuse of a Minor, Promoting Commercial Sexual Abuse of a Minor, and Promoting Prostitution 1 & 2.¹⁰⁷

Figure 4. Total Statewide Prosecutions for Trafficking-related Offenses, Washington State, 2012-2016.

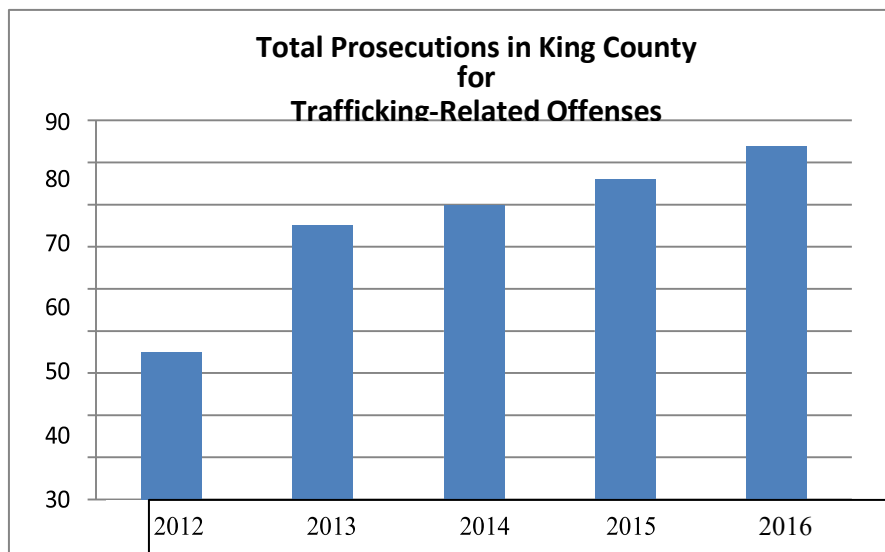


Source: 2017 AGO report citing Source: King County Prosecuting Attorney’s Office

¹⁰⁷ In comparison, According to the United States Attorney’s Office for the Western District of Washington, between 2010 and 2018, 39 cases were prosecuted under 18 USC 1591 (Sex Trafficking of Children and/or by Force, Fraud, and Coercion, 18 USC 2421 Transport Generally, 18 USC 2422 Coercion and Enticement, and 18 USC 1590 Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor). Of these cases, 22 prosecutions were related to Sex Trafficking of Children. See *Stolen Youth’s Call to Action* 2019 Update (citing Kate Crisham, Assistant United States Attorney, United States Attorney’s Office for the Western District of Washington)

Trafficking-related prosecutions (defined as above) in King County represent a significant portion of the cases initiated statewide (therefore also highlighting the lack of prosecutions in the rest of the state)

Figure 5. Total Prosecutions for Trafficking-related Offenses, King County, WA, 2012-2016.



Source: 2017 AGO report citing Source: King County Prosecuting Attorney's Office

2019 data provided by the King County Prosecuting Attorney's Office (KCPAO) shows both the number of charges for commercial sexual exploitation of adults (data re CSEC follows later) and breakdown along gender, race and age.¹⁰⁸ In 2019, there were a total of 37 charges for adult commercial sexual exploitation, of which 68% were for promoting prostitution in the 2nd degree, 24% for promoting prostitution in the 1st degree, and 8% for human trafficking in the 2nd degree. All victims were identified as female, with 75% of the defendants identified as male and 25% as female. Of 25 adult CSE victims, 48% were identified as White, 28% as Black, 4% as Native/Indian, and the race of 20% was unknown. Lastly, of those 25 victims, 32% were between the ages of 18-25, 52% between 26-35, 12% between 36-50, and 4% with unknown age.

[Note: add information on what proportion of the population each racial group made up in 2019]

The criminal justice system frames prostitution and commercial sexual exploitation in ways that often misunderstand the pathways leading into the sex trade as well as the barriers to exit.¹⁰⁹ A study in 2010 examined how the police conceptualize juveniles involved in prostitution as victims of CSEC or as delinquents. Studying case files of 126 youth allegedly involved in prostitution

¹⁰⁸ KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2019 UPDATE, data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney, King County Prosecutor Office, and available at <https://www.kingcountycsec.org/data>

¹⁰⁹ See supra under II.c – vulnerabilities to exploitation and harm

provided by police agencies in 6 major U.S. cities, the study found that 60% of youth in this sample were conceptualized as victims by the police and 40% as offenders. Police considered youth with greater levels of cooperation, greater presence of identified exploiters, and no prior record as more likely to be victims, and seemingly considered local youth more often as victims.¹¹⁰ The study utilized a predictive model to correctly predict 91% of youth's culpability status correctly.¹¹¹ It also appeared that the police used criminal charges as a paternalistic protective response to detain some of the youth treated as offenders, even though they considered these youth victims.¹¹²

Social and economic factors (such as lack of steady employment and access to education, and unstable housing) funnel youth into survival sex., including a disproportionate number of youths of color and LGBTQ youth.¹¹³ Research and data on youth ages 18-24, and on older adults in commercial sex work suggest that a significant percentage of adults in the sex industry entered prostitution as minors, experience multiple traumas, and face many barriers to exiting prostitution.¹¹⁴ Although 87.2% of youth wanted to leave sex work they faced barriers to exiting sex work that were similar to the social and environmental factors caused them to become sexually exploited.¹¹⁵ Those barriers often remain and may increase as these youth age.

The criminal justice system framework leaves little room for these complex narratives, especially when dealing with youth (18-24) and adults involved in the sex trade. Consequently, when law enforcement, prosecutors, and legal systems see the people, they are labeled as “criminals” and prosecuted, instead of as victims of their social environments, circumstances, and trauma. A Seattle based sex worker said:¹¹⁶

What I do fear...is arrest. Because I'm an independent provider, with no pimp to speak of or trafficking excuse to get me out of legal trouble, I fall outside of the victim narrative. While they may offer services or diversion to someone with a good enough human trafficking angle, I have no such options or excuses. Since I'm not a victim, I'm a criminal. And since I sometimes work with a friend of mine, I could also be charged with felony promotion of prostitution. This is my biggest fear.

¹¹⁰ Halter, S. (2010). Factors That Influence Police Conceptualizations of Girls Involved in Prostitution in Six U.S. Cities: Child Sexual Exploitation Victims or Delinquents? *Child Maltreatment*, 15(2), 152–160. <https://doi.org/10.1177/1077559509355315>

¹¹¹ Id.

¹¹² Id.

¹¹³ Phillips, J. (2015). Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States. *UCLA Law Review*, 62(1642); Conner, B. (2016). In Loco Aequitatis: The Dangers of Safe Harbor Laws for Youth in the Sex Trade. *Stanford Journal of Civil Rights & Civil Liberties*, 12(1), 43–120

¹¹⁴ See infra. See also <https://www.endingexploitation.com/about-ending-exploitation-collaborative.html>. The “Ending Exploitation Collaborative” is a partnership including the WA Attorney General's Office, King County, the Seattle City Attorney's Office, the survivors-led Organization for Prostitution Survivors (OPS), Businesses Ending Slavery & Trafficking (BEST) and Seattle Against Slavery.

¹¹⁵ Phillips, J. (2015). Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States. *UCLA Law Review*, 62(1642)

¹¹⁶ Original Work: A Full Contact Sex Worker Tells a Story, 1/20/2020, available at <https://seattle.swopusa.org/2020/01/20/original-work-a-full-contact-sex-worker-tells-a-story/>

In Part IV, this report will address the concerted effort in Washington State’s legal response to recognize the intersection of prostitution, commercial sexual exploitation, and trafficking. At the same time, despite decriminalization for minors and safe harbor protections for young and adult trafficking victims, challenges remain. A variety of systems must better address the exploitation and vulnerabilities of those involved in commercial sex.

b. Systemic bias is magnified by disparities based on victim demographics

The data provided in Part II show significant disparities in the commercial sex trade and commercial sexual exploitation in Washington State. These disparities are perpetuated by inequities in the criminal justice system.

As evident from Table 8, women and girls who engage in prostitution in Washington State have been disproportionately criminalized. Unfortunately, this particular data set does not allow us to draw inferences about the criminalization of LGBTQI+ populations who are involved in the sex trade, though national data suggests that they are disproportionately criminalized as well. Washington State data also bears out the disproportional criminalization of Black, Indigenous and people of color who are involved in the sex trade.

[Note: Many tables need to be updated to include rates rather than discrete numbers, to be reformatted for ease of reading, etc.]

Table 8. Washington Association of Sheriffs and Police Chiefs Data, Prostitution Offense Arrestees by Race, Washington State, 2004-2019

Race of Prostitution Offenses Arrestee*	White	Black	American Indian/ Alaskan Native	Asian	Native Hawaiian/ Pacific Islander	Unknown
2019	170	76	3	26	3	60
2018	148	60	6	28	0	17
2017	413	99	13	93	1	39
2016	345	86	15	64	0	36
2015	213	103	3	58	0	26
2014	277	114	3	60	04	23
2013	256	83	7	21	--	33
2012**	209	106	8	21	--	15
2011 – A/J	433/15	145/4	19/0	43/0	--	--
2010 – A/J	533/20	211/10	21/2	40/3	--	--
2009 – A/J	605/34	238/39	14/1	28/2	--	--
2008 – A/J	564/26	185/31	26/4	35/1	--	--
2007 – A/J	737/38	204/22	30/1	20/1	--	--
2006 – A/J	1015/36	296/14	58/0	56/0	--	--
2005 – A/J	1145/24	373/8	46/3	57/3	--	--
2004 – A/J	918/23	222/7	43/9	40/2	--	--

* Native Hawaiian/Pacific Islander identity was only added in 2014.

** Starting with the 2012 report race data is not broken down between adults and juveniles.

Sources: Adapted from information available from: NEED TO LIST ALL REPORTS DATA WERE PULLED FROM

These disparities are consistent with national data, much of which focuses on children and youth and to a lesser extent on adults. For example, a 2007 study in Hennepin County, Minnesota, found roughly 24% of the women arrested for prostitution identified as American Indian/Alaskan Native, over 12 times their representation in the county population. A study in Anchorage, Alaska using 2009-2010 data found about one third of the women arrested for prostitution were Alaska Native, but Alaska Natives make up only 16% of the population statewide.¹¹⁷

Nation-wide, CSE girls have historically been prosecuted at higher rates than those who exploit them,¹¹⁸ particularly when their behaviors fell outside of stereotypical narratives of what victimhood looks like.¹¹⁹ Commercially sexually exploited youth whose trauma results in adaptive behaviors and attachment to pimps often are not seen as victims. Exploited youth frequently do not see themselves as victims. They see themselves as the survivors they are, who did what they had to do to eat, have a place to stay, get drugs, etc. Girls who end up in court may face more restrictive interventions. This can be due to lack of shelters or placements capable of serving the needs of CSE victims, but sometimes also due to paternalistic views. Some judges still believe that “jail is the safest of many bad options.”¹²⁰

The impact on CSE girls of color has been even more disparate. Black children are more likely to come into contact with the criminal justice system, are more likely to be criminally prosecuted, and are more likely to be charged as adults.¹²¹ Gendered and racialized biases against Black girls often cast them as more mature, thus possessing more agency than their white counterparts. This can impact how they are perceived and treated in the legal system generally and in the context of commercial sexual exploitation specifically.¹²²

[Note: should we just cross ref to Juvenile section or pull directly from two articles that focus on CSE but the data provided re girls of color is more general to treatment in juvenile system as a

¹¹⁷ Alexandra Sandi Pierce. American Indian Adolescent Girls: Vulnerability to Sex Trafficking, Intervention Strategy. Available at pages 38.

<https://humantraffickinghotline.org/sites/default/files/AI%20Girls%20and%20Vulnerability%20to%20Sex%20Trafficking%20-%20Pierce.pdf>

¹¹⁸ Annitto, M. (2011). Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors. Yale Law & Policy Review, 30(1)

¹¹⁹ For example, CSEC individuals may not quickly cooperate with law enforcement or case workers.

[Note: Move elsewhere? There has been a great deal of judicial training over the last 15-20 years on trauma, adolescent brain development, and how to respond to these youth. There is much more to be done, and WA may be behind on judicial trauma training. The NCJFJC has weeklong trainings on Child Abuse and Neglect and a National Judicial Institute on Domestic Child Sex Trafficking, usually twice a year. In addition NCJFJC does trauma audits for courts (King County had one many years ago), works with the National Traumatic Stress Network, and co-branded a bench card on child trauma: [NCTSN Bench Cards for the Trauma-Informed Judge | The National Child Traumatic Stress Network](#)]

¹²⁰ Jasmine Phillips, Black Girls and the (Im)possibilities of A Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States, 62 UCLA L. Rev. 1642 (2015)

¹²¹ Priscilla A. Ocen, (e)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors, 62 UCLA L. Rev. 1586 (2015)

¹²² cross ref to juvenile section?

whole: Priscilla A. Ocen, (e)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors, 62 UCLA L. Rev. 1586 (2015); Jasmine Phillips, Black Girls and the (Im)possibilities of A Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States, 62 UCLA L. Rev. 1642 (2015)]

Complicated tribal/state jurisdictional issues leave Indigenous girls more vulnerable to commercial sexual child exploitation with fewer protections afforded by anti-trafficking laws. Indigenous girls in the United States face increased risk of sexual violence and commercial sexual exploitation, yet they by and large remain unprotected from state and federal laws.¹²³ This is in large part due to legal loopholes that prevent non-Native exploiters and traffickers from being prosecuted in tribal courts. Most sex traffickers are non-Native and specifically target tribal lands, knowing that there are no clear avenues for prosecutorial consequences and/or that police in any jurisdiction are reluctant to get involved. This not only makes Indigenous girls more vulnerable to commercial sexual exploitation, but also often prevents them from seeking prosecution.¹²⁴

[Note: See OTIP's work on sex trafficking: [Native Empowerment Dialogue on Human Trafficking: There Is Hope | The Administration for Children and Families \(hhs.gov\)](#) (the women in this photo are all from WA, and should be included in this work. They can address from personal experience jurisdictional issues and the intersection between sex trafficking and MMIP). [Combating Human Trafficking in Native Communities - FY 2019 \(hhs.gov\)](#)]

Sexually exploited boys also see disparate interactions and outcomes. Increasing numbers of male victims are being identified but still are mostly “invisible” in data, referrals, training, etc. National statistics from the Department of Justice indicate that boys are charged with prostitution in fewer numbers.¹²⁵ Yet boys who are commercially sexually exploited are more likely to be arrested for other crimes. While Safe Harbor Laws are intended to protect CSEC victims, CSE boys are less likely to be diverted and receive services and more likely to be incarcerated. At least one study found that male minors are less likely than female minors to be referred to services by law enforcement agencies.¹²⁶ Additionally, CSE boys are more likely to face bias in the courts due to expectations of gender conformity and prejudice against non-heterosexual sexual orientations.¹²⁷ As noted earlier, many are less likely to disclose for fear that they will be perceived as gay, when they are not.

[Note: add info from [Missing Male Victims of Child Sex Trafficking \(missingkids.org\)](#). Everything we say about boys needs to include the lack of identification and the reasons why it's so difficult to identify]

¹²³ Johnson, A. (2012). A Perfect Storm: The U.S. Anti-Trafficking Regime's Failure to Stop the Sex Trafficking of American Indian Women and Girls. *Columbia Human Rights Law Review*, 43(2), 617–710; Mandeville, G. (2015). Sex Trafficking on Indian Reservations. *Tulsa Law Review*, 51(1), 181–208.

¹²⁴ Id.

¹²⁵ Bastedo, T. A. (2013). The Commercial Sexual Exploitation of Male Minors in the United States: A Snapshot with Strategic Implications for Prevention Education (p. 31). *Love146*.

¹²⁶ Id.

¹²⁷ Annitto, M. (2011). Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors. *Yale Law & Policy Review*, 30(1)

As noted earlier, children and youth who have run away or are experiencing homelessness are especially vulnerable to commercial sexual exploitation. Within this group, children youth of color and LGBTQI individuals are significantly overrepresented.¹²⁸ This is influenced by high rates of homelessness experienced by LGBTQ youth, which leave LGBTQ minors at higher risk for survival sex work.¹²⁹ Trans youth in particular are at risk, being three times more likely to enter the sex trade.¹³⁰ LGBTQ youth are also highly represented in populations detained by the police. A 2010 study found that queer, lesbian, and bisexual girls were twice as likely as their heterosexual peers to be held for prostitution—11% compared with 5%.¹³¹ The statistics are starker for queer, gay, and bisexual boys: 1% of heterosexual boys are detained for prostitution compared with 10% of their gay, bisexual, and queer peers.¹³² One must remember, however, that so many boys are exploited by men and are seen as LGBTQ when they are actually heterosexual. It is the nature of survival sex. Yet, in the criminal justice system, LGBTQI youth may have not been perceived as victims of violence or trafficking, and Safe Harbor recourses may have resulted themselves in unsafe custodial and detention placements, partially due to hostility toward their sexual orientation or gender identity.¹³³

The discussion above shows that discretion exercised by law enforcement, prosecutors and judges may disproportionately leave women and girls of color, LGBTQ individuals, and boys more likely to be diverted through the justice system with less access to social services.

Prostitution is “gender-based violence: violence by men against women, male, female, and transgender children, transgender people and other men. Exploited people suffer significant trauma. The harm is often hidden and compounded by the widely shared view that prostitution is a ‘victimless crime’ and is ‘freely chosen’ by people who are sexually exploited.”¹³⁴ Prostitution-involved adults are increasingly recognized as victims of CSE. Often, their victimization is not identified until after they go through the court process, if they are identified at all.¹³⁵ In the past, police mostly enforced prostitution laws for street level sex workers, who are likely women of color, transgender sex workers, and immigrants, people in difficult socioeconomic circumstances.¹³⁶ In a 2012 analysis of New York City cases, identified victims were primarily

¹²⁸ Dr. Debra Boyer, “Commercially Sexually Exploited Children in Seattle/King County 2019 Update” (2019) citing Michelle Page. *Forgotten Youth: Homeless LGBT Youth of Color and the Runaway and Homeless Youth Act*, 12 *NWJ. L. & Soc.Pol’y*.17 (2017)

¹²⁹ The Commercial Sexual Exploitation of LGBTQ Youth | National Council on Crime & Delinquency. (n.d.). Retrieved November 4, 2019, from <https://www.nccdglobal.org/newsroom/nccd-blog/commercial-sexual-exploitation-lgbtq-youth>

¹³⁰ Id?

¹³¹ Irvine, A. (2010). We’ve Had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Nonconforming Youths in the Juvenile Justice System. *Columbia Journal of Gender and Law*, 19(3), 675–702.

¹³² Need source

¹³³ Conner, B. (2016). In Loco Aequitatis: The Dangers of Safe Harbor Laws for Youth in the Sex Trade. *Stanford Journal of Civil Rights & Civil Liberties*, 12(1), 43–120

¹³⁴ <http://seattleops.org/about-us/>

¹³⁵ Serita, T. (2012). In our own backyards: the need for a coordinated judicial response to human trafficking. *New York University Review of Law & Social Change*, 36, 635

¹³⁶ Benitez, N., Berisha, L., Delago, A. & Lowitz, R. (2018). Annual review article: Prostitution and sexwork. *The Georgetown Journal of Gender and the Law*, 19, 331; Wiechelt, S. & Shdaimah, C. (2011). Trauma and substance abuse among women in prostitution: Implications for a specialized diversion program. *Journal of Forensic Social Work*, 1(2), 159–184.

women of color (young African American and Hispanic, older Asian), although a growing number of transgender women and gay male victims were being identified.¹³⁷ Many court systems now have diversion programs for victims of CSE.¹³⁸ Diversion programs provide resource referrals for assistance with substance abuse, domestic violence, sexual assaults, housing, welfare, and vocational rehabilitation. It is not clear whether sexually exploited women are the primary beneficiaries of diversion programs and whether male prostitutes or victims of commercial sexual exploitation are similarly diverted.

[Note: check with Kitsap superior court girls court and a district court adult human trafficking diversion court to see if they have stats.]

In sum, explicit and implicit biases at various decision points in the justice system are likely to perpetuate disparities and inequities. Protective CSE laws and policies may only be invoked when individuals are identified as victims. Whether or not a person is identified as a victim can be influenced by bias, and thus enable gender and race to determine outcomes.

**c. Disparities in response to exploitation when framed as prostitution offenses:
Biased treatment of “sellers” and “buyers”**

Historically, exploited people have been criminalized rather than being recognized as likely victims, and were historically sanctioned disproportionately to their exploiters, both 3rd party exploiters (promoters) and buyers. While statewide prostitution offense arrest data (see Table 7 supra) is not broken down by the three categories of prostitution related offenses, we can infer from the male/female arrest breakdown that until 2010, those selling sex were being arrested two to three times more than those exploiting them.

King county data shows both these prior biases and how things have changed with the recognition and identification of exploited people as victims. A 2010 to 2014 snapshot of prostitution and patronizing arrests from King County illustrates the trend, at least in some parts of Washington, to redirect arrest and prosecution from the individuals selling sex to their customers and third party exploiters. This trend is further corroborated by 2008-2019 King County prostitution versus patronizing charging data.¹³⁹

[We are interested in feedback about which of the following figures we should keep in. These are available from other sources but are not compiled or easily accessible in one place.]

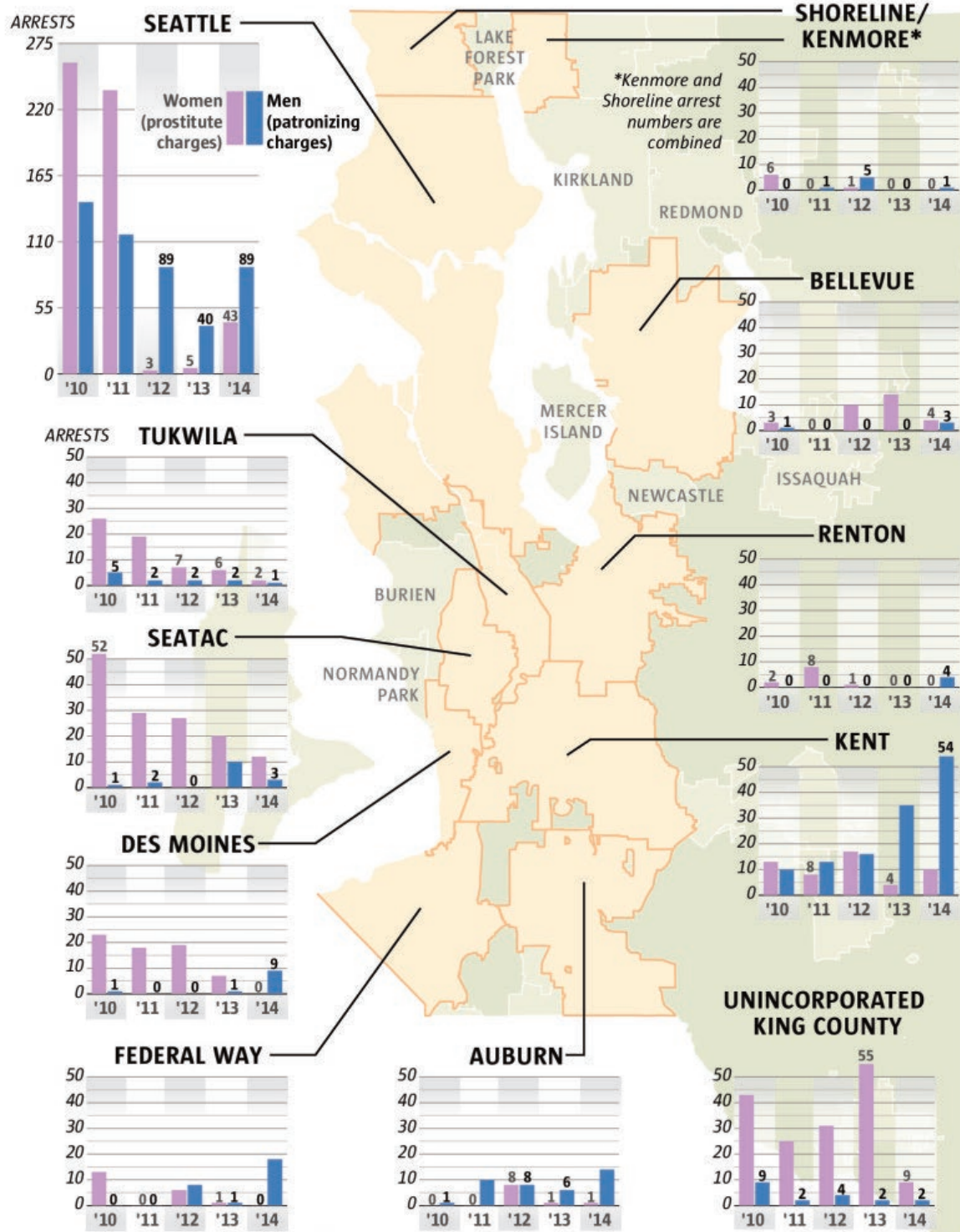
¹³⁷ Serita, T. (2012). In our own backyards: the need for a coordinated judicial response to human trafficking. *New York University Review of Law & Social Change*, 36, 635

¹³⁸ Add WA diversion laws

¹³⁹ KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2019 UPDATE, data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney, King County Prosecutor Office, and available at <https://www.kingcountycsec.org/data>. King County police agencies are responsible for 91% of the arrests for “patronizing” or sex buying in the state. See State of Washington, Department of Commerce (March 2019) Criminal Penalty Fees Related to Sexual Exploitation Crimes: RCW 43.280.100. Report to the Legislature.

Risk of arrest increasing for sex buyers

In 2014, King County police agencies shifted focus and are now arresting more men on patronizing charges while arrests for prostituted women are declining. Seattle, Federal Way, Des Moines, Renton, Kent and Auburn collectively arrested three men to every woman in such cases.

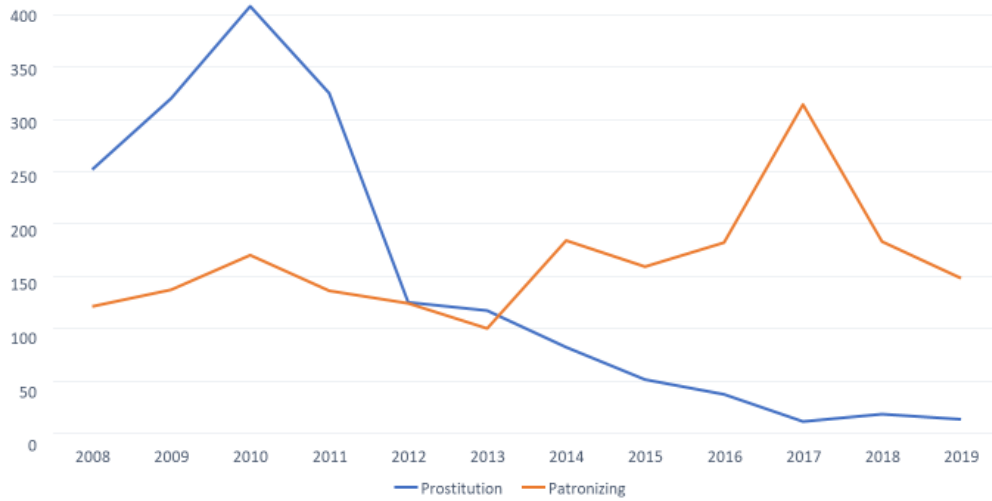


Source: King County Prosecuting Attorney's Office

MARK NOWLIN / THE SEATTLE TIMES



Patronizing vs. Prostitution Charges by Year 2008-2019



*2019 numbers not representative of the King County Sheriff's Office or its contracted cities



Prostitution Charges 2008-2019

Agency	Total	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
Auburn	10	0	0	0	0	0	1	1	8	0	0	0	0
Bellevue	40	0	0	0	0	9	4	14	10	0	3	No data	No data
Bothell	4	0	0	0	0	0	0	4	0	0	0	0	0
Burien	5	-	1	1	0	0	0	0	2	1	0	0	0
Des Moines	130	0	0	0	0	0	0	7	19	18	23	38	25
Federal Way	43	0	0	0	0	0	0	1	6	0	13	8	15
Issaquah	1	0	0	0	0	0	0	1	0	0	0	0	0
KCSO	212	-	3	0	1	1	9	56	32	25	43	19	23
Kenmore	0	-	0	0	0	0	0	0	0	0	0	0	0
Kent	94	0	5	0	2	1	10	4	17	8	13	20	14
Kirkland	9	0	0	0	2	0	3	4	0	0	0	0	0
Redmond	5	0	3	0	0	1	0	0	0	0	0	0	1
Renton	38	1	1	3	0	1	0	0	1	8	2	9	13
SeaTac	186	2	0	0	0	4	12	20	27	29	52	36	6
Seattle	969	10	5	7	32	34	43	5	3	236	259	190	155
Shoreline	23	-	0	0	0	0	0	0	1	0	6	6	10
Tukwila	127	-	0	0	0	0	2	6	7	19	26	43	24
Totals	1909	13	18	11	37	51	84	123	133	344	440	369	286

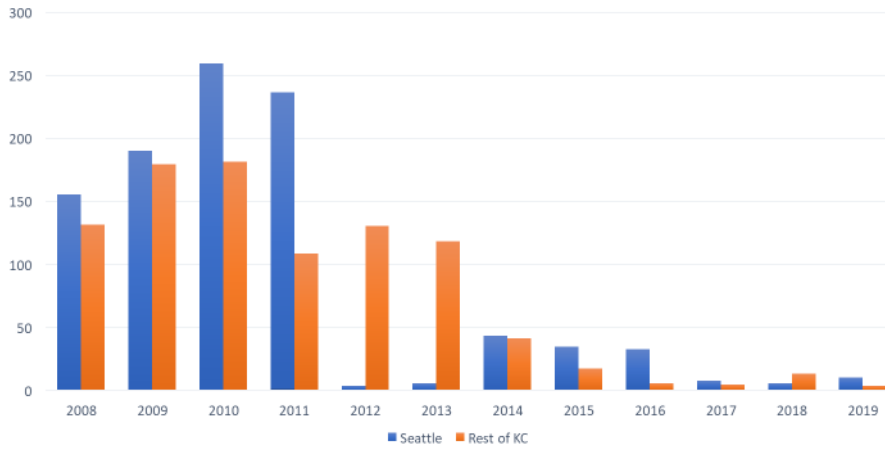


Patronizing Charges 2008-2018

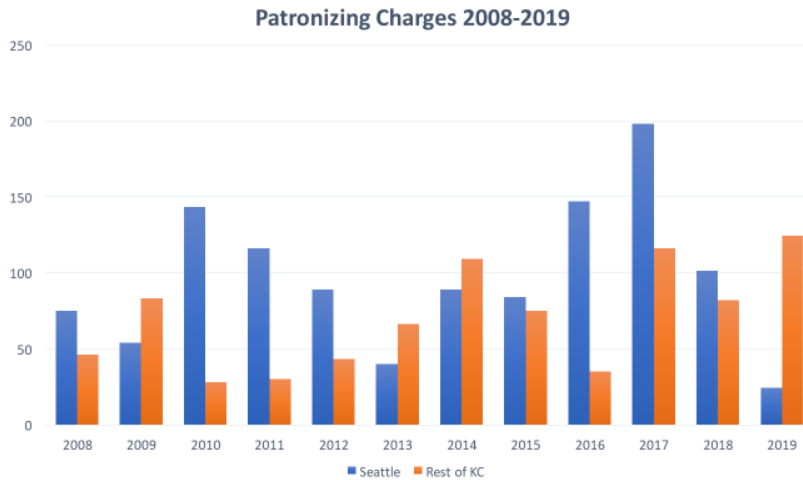
Agency	Total	2019	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008
Auburn	57	7	11	0	0	0	14	6	8	10	1	0	0
Bellevue	118	13	0	101	0	0	3	0	0	0	1	No data	No data
Bothell	1	1	0	0	0	0	0	0	0	0	0	0	0
Burien	0	-	0	0	0	0	0	0	0	0	0	0	0
Des Moines	39	27	0	0	0	0	9	1	0	0	1	0	1
Federal Way	84	0	0	11	0	28	18	1	8	0	0	12	6
Issaquah	0	0	0	0	0	0	0	0	0	0	0	0	0
KCSO	49	-	6	1	4	2	2	2	4	2	9	7	10
Kenmore	1	-	0	0	0	1	0	0	0	0	0	0	0
Kent	358	67	57	0	19	30	54	35	16	13	10	41	16
Kirkland	10	0	0	0	0	1	0	9	0	0	0	0	0
Redmond	3	0	3	0	0	0	0	0	0	0	0	0	0
Renton	11	1	0	0	1	0	4	0	0	0	0	5	0
SeaTac	38	8	5	0	0	3	3	10	0	2	1	6	0
Seattle	1160	24	101	198	147	84	89	40	89	116	143	54	75
Shoreline	19	-	0	0	0	0	1	0	5	1	0	5	7
Tukwila	49	-	0	3	11	10	1	2	2	2	5	7	6
Totals	1997	148	183	314	182	159	198	106	132	146	171	137	121



Prostitution Charges 2008-2019



*2019 numbers not representative of the King County Sheriff's Office or its contracted cities



*2019 numbers not representative of the King County Sheriff's Office or its contracted cities

Overall, there has been a positive law enforcement shift away from arresting and charging sexually exploited people and towards the arrest and conviction of sex buyers. That shift in focus has been guiding prosecutorial policies in King County, particularly in Seattle, since 2011. King County partners have collaborated on a strong cross-sector approach - the “Ending Exploitation Collaborative” – a partnership including the Washington Attorney General's Office, The King County Prosecuting Attorney's Office, the Seattle City Attorney's Office, the survivor-led Organization for Prostitution Survivors (OPS), Businesses Ending Slavery & Trafficking (BEST), the Center for Children and Youth Justice, and Seattle Against Slavery.¹⁴⁰ Addressing demand is also on the forefront of national anti-exploitation organizations and the federal government.¹⁴¹

The Collaborative advances a comprehensive strategy to end commercial sexual exploitation by reducing demand, ending the cycle of prostitution-related crime, and facilitating exit from prostitution by providing survivor services. The approach of the collaborative is informed by the understanding that:

The misconception that prostitution is a free choice and a victimless crime affects the ability of individuals, social services, and systems to help victims of CSE. Survivors experience stigma and judgment because of a pervasive belief they have chosen prostitution and are responsible for the harm and violence they suffer. In fact, most people become involved in prostitution as adolescents and have histories of child abuse. Prostitution represents a continuum of violence; the molested 4-year-old becomes the raped 11-year-old, and then the prostituted 14-year-old. The trauma from child abuse, continued abuse and violence in the life, and the subculture of the life are significant barriers to exiting and building more stable lives.¹⁴²

The approach being implemented in Seattle/King County tries to balance between increased accountability for buyers and increased services for those engaged in prostitution rather than

¹⁴⁰ <https://www.endingexploitation.com/>

¹⁴¹ See e.g. [Who Buys Sex? - Demand Abolition](#). Research done by Demand Abolition, 2018.

¹⁴² <https://www.endingexploitation.com/barriers-to-services.html>

prosecuting them. It moves toward the Nordic Model (also called the equality model), which criminalizes sex buying and third-party profiteers and decriminalizes and offers services to those who sell themselves for sex.

[Note: There are some compelling international studies that support this approach. Here's one: [Prostitution Policy in Sweden – targeting demand | Sharing Sweden](#). + Dr. Boyer has specific updated research in light of Covid – add in]

Seattle has been following this model informally for a decade. The Seattle City Attorney's Office (SCAO) reversed arrest policies and flipped prosecution priorities in 2009/2010, recognizing that individuals engaged in prostitution were often victimized by the pimps/traffickers and buyers, and re-victimized by the police arresting them and the prosecutors punishing them. SCAO may charge the individuals engaged in prostitution under some circumstances with the goal of providing services towards exit in every case (though in practice, this doesn't usually happen the first time). If the adult engaged in prostitution is charged, then it will be in community court with an order for continuance of disposition. The goal is not to convict but rather dismiss in six weeks after connecting the person with service providers. SCAO has been coordinating with the courts to have services in place, but the services through the Court Resource Center (drug treatment, mental health, job training) are not specifically tailored to exploited individuals, many of whom suffered severe trauma.¹⁴³

2019, however, saw a troubling reemergence of Seattle police returning to arresting street-based sex workers, in a marked departure from Seattle's approach since 2012.¹⁴⁴ Most of those arrests serve only to temporarily remove the individuals engaged in prostitution from the area and SCAO continues to not charge them.¹⁴⁵ Nonetheless, the arrests themselves perpetuate the criminalization of such individuals and continue to inflict disproportionate harm on vulnerable and marginalized populations.

A potentially more encouraging development has been the recent repeal of the City of Seattle prostitution loitering ordinance from Seattle's Municipal Code,¹⁴⁶ which will be discussed further in Part IV. It should be noted the repeal may unintentionally have a negative impact for youth: previously, youth could be detained for loitering and taken to a receiving center under the new safe harbor bill; now police will have to detain under a mental health hold.

The increased focus on arrest and conviction of sex buyers is part of a broader effort to address demand for commercial sex. As the 2014 survey and report by the Statewide Coordinating Committee on Sex Trafficking noted: "The connection between prostitution and trafficking is essential in understanding how trafficking can be addressed through demand reduction...reducing the number of men buying sex is an emerging strategy to reduce the harm and violence inherent in

¹⁴³ 3/27/17 interview by Jennifer Ritchie and Dana Raigrodski with [Kelly Harris](#), Chief of the Criminal Division at Seattle City Attorney's Office, and [Heidi Sargeant](#), Assistant City Prosecutor Vice/High risk Victims & Narcotics, Seattle CAO. Notes on file.

¹⁴⁴ <https://crosscut.com/2019/10/alternatives-stretched-and-neighbors-angry-seattle-police-return-arresting-sex-workers>

¹⁴⁵ Id.

¹⁴⁶ <https://komonews.com/news/local/seattle-city-council-repeals-problematic-prostitution-loitering-law-affecting-minorities>, 6/22/2020

sex trafficking.¹⁴⁷ Because “[d]emand for illegal commercial sex drives this industry [...] a criminal justice emphasis on demand is necessary to reduce sex trafficking and prostitution.”¹⁴⁸

Both the legislature and some law enforcement agencies have shifted their focus to demand reduction through imposing perpetrator fees and fines and post-conviction education requirements. For example, beginning in 2012, the King County Prosecuting Attorney’s Office and the Organization for Prostitution Survivors (OPS) offered a sex buyers intervention program for all convicted sex buyers. The Stopping Sexual Exploitation Program for Men is a ten-week men's accountability class now operated by Seattle Against Slavery, and currently implemented in six jurisdictions in King County.

[Note: Check if outcomes data is available on recidivism. Some of the men who complete the program become peer mentors for others].

Unfortunately, although Seattle Police Department and the City Attorney’s Office have committed to focusing law enforcement efforts on arresting and charging buyers of commercial sex, and have the highest statewide rate of arrests and charges for “patronizing,” as of 2019 the Seattle Municipal Court has chosen not to refer buyers to the Stopping Sexual Exploitation Program for Men.¹⁴⁹

d. Mandatory statutory fees and fines for sexual exploitation offenders are not being imposed

Under Washington law, courts are required to assess mandatory fees for those convicted of sexual exploitation crimes, including trafficking, CSAM and patronizing a prostitute. The fees are in addition to other criminal penalties, including statutory fines and jail time, and are directed to prevention of sexual exploitation, victim services and police investigation of exploitation cases. While courts may reduce these fees by up to two-thirds if the judge finds, on the record, that a defendant cannot pay, they cannot entirely waive the fees.¹⁵⁰

If a person is convicted of a trafficking crime, or given a deferred prosecution or entered into a statutory or non-statutory diversion agreement for Trafficking the court must assess a fee of \$10,000.¹⁵¹ The court “shall not” reduce, waive, or suspend payment of the fee unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce (but not waive) the fee by up to two thirds.¹⁵² The fees are remitted to the jurisdiction where the offense occurred and are split between law enforcement (for the purpose increasing investigation efforts) and local prevention efforts such as education programs for offenders, and rehabilitative services for victims, such as mental health and substance abuse counseling,

¹⁴⁷ Washington State Department of Commerce, “Statewide Coordinating Committee on Sex Trafficking: Report on Committee Activities and Plan to Address Sex Trafficking, pp. 33-38 (2014), <http://www.commerce.wa.gov/wp-content/uploads/2016/03/Commerce-Sex-Trafficking-Final-2014.pdf>.

¹⁴⁸ Id.

¹⁴⁹ Dr. Debra Boyer, “Commercially Sexually Exploited Children in Seattle/King County 2019 Update” (2019)

¹⁵⁰ RCW 9.68A.105, 9A.88.120, and 9A.88.140

¹⁵¹ RCW 9A.40.100.

¹⁵² Id.

parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.¹⁵³

In 2010 the legislature added a mandatory fee of \$5,000 to CSAM/CSEC crimes,¹⁵⁴ and provided that the arresting officer must impound the suspect's vehicle if it was used in the commission of these offenses.¹⁵⁵ 98% of the fees go back to the jurisdictions,¹⁵⁶ and are split between law enforcement (to increase related investigations) and prevention efforts and victim services (similar to those for trafficking fees).

The Legislature also imposed additional fees for those convicted, deferred, or diverted for promoting or patronizing prostitution.¹⁵⁷ Vehicles may be impounded for patronizing prostitution and for promoting prostitution-related crimes.

Proceeds and property may be seized and forfeited for promoting prostitution in the first degree.¹⁵⁸ 98% of the fees go back to the jurisdictions¹⁵⁹ and are split as described above. Law enforcement agencies are also authorized to seize any proceeds or property that facilitate prostitution crimes.¹⁶⁰ Of those seized proceeds or property, 90% shall be used by the seizing law enforcement agency for the expenses of the investigation and seizure and to enforce the related crimes, and 10% shall be deposited in the Prostitution Prevention and Intervention Account, managed by the Department of Commerce.

Various statutes authorize law enforcement agencies to seize and civilly forfeit proceeds or property that facilitate or are proceeds of the sexual exploitation of children.¹⁶¹ The disposition of the proceeds of forfeiture varies depending on the statute.

Data of King County charges for commercial sexual exploitation of adults shows that between 2013 and 2018 the amount of CSE related fines totaled \$715,692.67, with the average fines ordered per case ranging between \$2500 to \$4500.¹⁶²

¹⁵³ Id.

¹⁵⁴ A person convicted of CSAM, promoting CSAM, promoting travel for CSAM, or who has been given a deferred prosecution or entered into a statutory or non-statutory diversion agreement for the aforementioned offenses must be assessed a fee of \$5,000. RCW 9.68A.105

¹⁵⁵ RCW 9A.88.140(2). Suspect must pay a fine of \$2500 to redeem the impounded vehicle. RCW 9A.88.140(4)(a).

¹⁵⁶ Unlike trafficking offenses, for CSAM and prostitution offenses, two percent of the fee revenue is remitted to Department of Commerce for the Prostitution Prevention and Intervention Account (PPIA).

¹⁵⁷ RCW 9A.88.120.

¹⁵⁸ 9A.88.15.

¹⁵⁹ Unlike trafficking offenses, for CSAM and prostitution offenses, two percent of the fee revenue is remitted to Dept. of Commerce for the Prostitution Prevention and Intervention Account (PPIA).????????

¹⁶⁰ RCW 9A.68A.110

¹⁶¹ RCW 9.68A.120 authorizes civil forfeiture of property or proceeds from child-pornography related crimes. The money laundering act (9A.83.030), the Criminal Profiteering Act (9A.82.100), Promoting Prostitution (9A.88.150), and the Felony Forfeiture statute (10.105.010) apply to forfeiture of CSAM related crimes.

¹⁶² KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2019 UPDATE, data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney, King County Prosecutor Office, and available at <https://www.kingcountycsec.org/data>

Issues with imposition of CSAM specific fees were noted in a 2016 CSEC Statewide Coordinating Committee Report.¹⁶³ Attorneys and judges must know the fees exist in order for them to be assessed. Judges must impose the fees and should understand they can only be reduced by up to two-thirds if the court finds the defendant is indigent. The current standardized version of the Felony Judgment and Sentence Form does not separate the CSAM, Promoting CSAM, and promoting travel for CSAM fee of \$5,000 from the Trafficking and Promoting Prostitution offenses. Updating the standardized Felony Judgment and Sentences form by creating a separate section for CSAM, promoting CSAM, and promoting travel for CSAM would make the required fee clear to prosecutors, defendants and the courts.¹⁶⁴ King County has started the process of implementing these changes.¹⁶⁵

[Note: FJ&S pattern forms are developed at the state level, but they are not required. Counties can use their own forms, and it sounds like many counties do. Do we add note about the need to make this change at the state level AND to do education at the county level to either adopt the pattern form or make this change to their forms as well. Also -seek update from King County]

However, at this time many fees are left on the table because they are not being ordered.¹⁶⁶ In 2019, Washington courts could have ordered persons convicted of these crimes to pay \$474,350 in sexual exploitation criminal fees. Instead, judges in superior, district, and municipal courts ordered just \$257,496 and collected only \$174,891.¹⁶⁷ Since 2014, although more than \$1.1 million in fees have been generated, courts in Washington have failed to impose \$1.6 million in mandatory fees on eligible criminal defendants.¹⁶⁸

e. Efforts to address the intersection of prostitution, commercial sexual exploitation and trafficking are too narrow, creating challenges for exploited youth and adults particularly where there are co-occurring crimes

Since the early 2000s, Washington State has made significant progress on issues of human trafficking and commercial sexual exploitation. A concerted effort to address these issues has resulted in safe harbor legislation and the ability to vacate many convictions. Washington has worked to reduce the involvement of prostituted youth in the criminal justice system. There are ongoing system challenges when sexually exploited youth are arrested and adjudicated for other charges and the youth are identified as sexually exploited.¹⁶⁹ Adult prostitution remains a criminal offense, and where no force or coercion is known to be involved adults have almost no available

¹⁶³ <https://www.atg.wa.gov/commercially-sexually-exploited-children-statewide-coordinating-committee>

¹⁶⁴ Add pincite from CSEC 2016 report

¹⁶⁵ There is now a one page handout breaking down the statutorily authorized penalty fines and revenue from seized property due to trafficking, prostitution and commercial sexual exploitation crimes, and how they are to be dispersed. There is an effort to circulate the handout to courts and prosecutors around the state. Source: Gauen, Benjamin, Senior Deputy Prosecuting Attorney, King County Prosecutor Office.

¹⁶⁶ Add pincite from 2016 CESC Report

¹⁶⁷ Ending Exploitation Collaborative criminal penalty fines and fees guidelines, available at http://www.endingexploitation.com/uploads/7/5/6/9/75693599/uncovering_fines_and_fees_1_.pdf

¹⁶⁸ Ending Exploitation Collaborative criminal penalty fines and fees guidelines, citing to Department of Commerce 2020 Report on Criminal Penalty Fees related to Sexual Exploitation Crimes.

¹⁶⁹ Boyer, "Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle" at 5. Debra Boyer, Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle (City of Seattle Human Services Dep't Domestic Violence & Sexual Assault Prevention Div. 2008).

defenses to the charge or pathways to vacating the conviction. This is especially true for youth, since protective legislation and policies are, for the most part, not in place for the 18-24-year age group. This constitutes a failure to recognize what the great bulk of current research shows: most people, including adults, who are sexually exploited, are forced or coerced either by third parties, or by poverty, substance abuse, or homelessness to engage in prostitution.¹⁷⁰

The criminalization of prostituted adults (including 18-24 year old youth) still exists, even after the enactment of human trafficking and CSEC/CSAM laws. The Washington legislature has taken several steps to move away from criminalization and toward victim-centered approaches, particularly as it relates to children. Those steps include affirmative defenses for minor and adult trafficking victims, pathways for vacating prostitution convictions for minors and adults, decriminalizing prostitution by minors, and providing receiving centers for exploited youth who would have been detained for prostitution in the past.

In 2010, ESSB 6467 established partial protections for minors alleged to have committed prostitution. Laws like this one recognize sexually exploited minors as victims of a crime by granting immunity from prosecution or diverting minors from juvenile delinquency proceedings and directing them to services. Under these protections, if a minor is charged with a first prostitution or prostitution loitering offense, the prosecutor must divert the case.¹⁷¹ –For subsequent allegations the prosecutor has discretion to divert if the county has a program that provides wraparound services, including safe and stable housing, mental health counseling, comprehensive case management, education and employment training delivered onsite etc'.¹⁷² If a diverted youth completes the program, charges won't be filed and the arrest won't appear on the youth's criminal record. In 2012, the Washington State Legislature went a step further and created an affirmative defense to the charge of prostitution for minors and adults if the offense was committed as the result of being a victim of trafficking or of promoting prostitution in the first degree.¹⁷³ In 2019, HB 1382 was passed to provide immunity from prosecution for CSE victims of any age if the victim is seeking emergency assistance.¹⁷⁴ Finally, in April 2020 the governor signed into law E3SHB 1775 amending RCW 9A.88.030 and decriminalizing prostitution for anyone under the age of 18, starting January 1, 2024.¹⁷⁵ The decriminalization of prostitution for minors, however, goes hand in hand with requiring the Department of Children, Youth, and Families (DCYF) to fund and establish (by January 1, 2021) receiving centers in both Western and Eastern Washington for youth ages 12–17 who have been, or are at risk for being commercially sexually exploited. While the Bill envisions youth being referred to the centers by law enforcement, DCYF, juvenile courts, community service providers, a parent or guardian, and even the youth themselves, law enforcement may still take the youth into protective custody in

¹⁷⁰ Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder; Farley et al. [Prostitutionin9Countries.pdf \(prostitutionresearch.com\)](#). “89% of 785 people in prostitution in 9 countries wanted to escape from prostitution.” More than 75% of those (78% in the U.S. cohort) said they needed a home or a safe place; 67% of those in the U.S. said they needed drug/alcohol treatment.

¹⁷¹ RCW 13.40.070(7)

¹⁷² RCW 13.40.213(1)

¹⁷³ RCW 9A.88.040.

¹⁷⁴

¹⁷⁵ E3SHB 1775 amending RCW 9A.88.030. need proper cite

certain circumstances.¹⁷⁶

The legislature also allowed minors who were convicted of prostitution resulting from being trafficked by force, fraud, or coercion to request the court to vacate the conviction.¹⁷⁷ Further legislation, allowed for vacating of prostitution convictions for children and adults, when the person can show by preponderance of evidence that they committed the prostitution offense as a result of being a victim of Trafficking, Promoting Prostitution in the first degree or Commercial Sexual Abuse of a Minor.¹⁷⁸ However, a person was not eligible to vacate the prostitution conviction if they had other convictions or pending charges. As a result of critique that the law is too narrowly defined and overly prescriptive, the Legislature passed further amendments, allowing a person to vacate convictions for trafficking or CSAM related prostitution offenses even if they had other prostitution convictions/pending charges. Lastly, 2017 amendments allow for vacating trafficking or CSAM prostitution offenses even if the person has convictions/charges for other crimes, if the person can prove by a preponderance of the evidence that those other crimes were committed as a result of being a victim of trafficking, CSAM, promotion of CSAM, or promotion of prostitution in the first degree. In order to meet the preponderance of evidence burden of proof, the person must show, among other things, that they were under the age of 18 or that force or coercion was used.¹⁷⁹

As a result, prostitution arrests and charges of minors have steadily declined. Arrest and charging data in Table 9 demonstrate the shift from arrest and prosecution of minors for prostitution, to reframing their status as commercially sexually abused and in need of protection and referral to services.

[Note: Is Table 9 helpful or should it be deleted].

Table 9. Washington Association of Sheriffs and Police Chiefs Data, Prostitution Offense Arrestees by Age, Washington State, 2004-2019

Age of Prostitution Offenses Arrestee*	10 & Under	11 to 12	13 to 14	15	16	17	18 to 19	20 to 24	25 & Up**
2019	0	0	0	1	1	3	9	42	282
2018	0	0	0	1	0	3	11	31	212
2017	0	0	0	2	3	2	21	80	550
2016	0	0	1	1	2	5	15	75	447

¹⁷⁶ Id. See also FINAL BILL REPORT E3SHB 1775. For detailed analysis of balancing decriminalization with protective and law enforcement considerations see, for example, Boyer, “Commercially Sexually Exploited Children in Seattle/King County 2019 Update”

¹⁷⁷ RCW 9.96.060.

¹⁷⁸ RCW 9.96.060 & .070.

¹⁷⁹ RCW 9.96.070

2015	0	0	0	1	1	1	19	69	312
2014	0	0	0	5	1	4	12	72	383
2013	0	0	0	2	3	1	23	81	294
2012***	0	0	1	4	5	8	29	56	256
2011 – F/M	0/0	0/0	1/0	3/0	5/2	7/1	46/6	68/24	263/233
2010 – F/M	0/0	0/0	0/0	5/1	11/3	13/2	64/7	113/35	314/272
2009 – F/M	0/0	0/0	4/0	16/2	17/3	31/3	110/25	171/54	303/222
2008 – F/M	0/0	0/0	5/1	15/0	14/2	21/4	87/18	153/38	350/164
2007 – F/M	0/0	0/0	6/2	7/1	21/2	20/3	92/8	189/55	385/262
2006 – F/M	0/0	0/0	6/0	9/2	17/0	14/2	139/14	264/53	603/353
2005 – F/M	0/0	0/0	4/0	6/1	10/1	12/4	179/11	312/67	659/393
2004 – F/M	0/0	0/0	1/0	5/0	9/2	15/0	108/11	168/41	624/271

* Arrest data is not broken down by the three categories: prostitution, assisting and promoting, and purchasing.

Consequently, it is not possible to learn from this data the percentage of arrestees that were the individuals selling sex as opposed to their customers and pimps, nor their age or gender.

** In the reports, those over 25 are broken out by age groups every five years up to 65 & over.

*** Starting with the 2012 age data is not broken down between females and males.

**** The reports categorize gender as a binary male/female. No data is provided for transgender and gender non-conforming individuals, or for LGBTQ+ in general.

Sources: *Adapted from information available from: NEED TO LIST ALL REPORTS DATA WERE PULLED FROM*

Key barriers remain. Even with decriminalization and diversion and a presumption that a minor is a victim, there is a lack of resources for commercially sexually exploited children involved in the juvenile justice system. The new legislation provides for LE to detain a juvenile they reasonably believe “may be the victim of sexual exploitation,” and directs LE to transport to an evaluation and treatment center.....¹⁸⁰ [need to write out paragraph]

Notably, CSEC (and CSE adults) continue to often face multiple criminal charges that are related to their exploitation. Prostitution-involved youth and adults are often arrested and prosecuted for charges other than prostitution, which is up to the discretion of officers and prosecutors if multiple crimes are involved. They often have co-occurring criminal involvement and they are prosecuted for other crimes stemming from their exploitation and poverty, such as drug possession, trespass, burglary, shoplifting and other theft, forgery, etc. These individuals often reoffend and are seen repeatedly in the court system, and their CSE involvement may or may not

¹⁸⁰ Add pin cite

surface. For example, of the group of Seattle/King County CSEC minors studied by Dr. Boyer in 2006/2007, many were arrested on multiple offenses multiple times (Table 10).¹⁸¹

Table 10: Arresting Offenses Among Youth, King County, 2004-2006

Study Group (N=31) Arresting Offense	# of Charges Within Study Group *
Prostitution/Prostitution Loitering	102
Theft	31
Obstruction / Resisting / Escape / False Statement	27
Assault	23
VUCSA Controlled Substance Violation	21
Firearms/Weapon	8
Criminal Trespass	7
Kidnapping/Intimidating Witness	3
Robbery	2
Domestic Violence Call	2
Motor Vehicle Violations/Possession/Taking a Motor Vehicle / Stolen Property	21
*A filing may have multiple charges.	
<i>Source: Adapted from information available at Dr. Debra Boyer, “Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle” at page 20. (2008). Available at https://www.kingcountycsec.org/data.</i>	

As of 2019, at least in Seattle/King County, minors were being diverted for prostitution related charges and it is not uncommon for Seattle/King County prosecutors to divert other cases when sex trafficking and CSE are known.¹⁸²

Lastly, while arrests and prosecution of minors have declined statewide, sexually exploited people who are 18 – 24-years old, whether or not exploited first as children remain subject to arrest, prosecution, and incarceration. Though the Seattle/King County Nordic/Equality Model, for example, is intended to apply to sexually exploited people, regardless of age, it is implemented via internal policy directives and can be altered at any time.

IV. Promising approaches and Recommendations

a. Addressing Gender, Race and Age Disparities

¹⁸¹ Dr. Debra Boyer, “Who Pays the Price? Assessment of Youth Involvement in Prostitution in Seattle” at page 20. (2008). Available at <https://static1.squarespace.com/static/5b71c32bec4eb7c684a77ff4/t/5f21d74994f7832d9b15a254/1596053322562/Boyer+Who+Pays+the+Price.pdf>.

¹⁸² Dr. Debra Boyer, “Commercially Sexually Exploited Children in Seattle/King County 2019 Update” (2019)

Washington State has made significant progress in reducing the involvement of all prostituted/CSE minors in the criminal justice system. It has legislated a survivor-centered approach to sexually exploited youth and adults. These actions will help alleviate the gender, racial and socio-economic inequities that the criminal justice system in Washington has perpetuated. This section addresses other efforts, current and potential, including those directed at gender and racial disparities.

The recent repeal of the City of Seattle prostitution loitering ordinance was aimed at preventing disproportionate negative impact on people of color, women and LGBTQ individuals.¹⁸³ The repeal followed the recommendation of the 2018 Seattle Reentry Workgroup Final Report, which recommended repealing this ordinance because it targeted individuals in the commercial sex industry, a group already at high risk for trafficking, abuse, and other exploitation, and had disparate impact on women, LGBTQ and communities of color.¹⁸⁴

[Note: the Seattle Workgroup Reentry Report relies for this conclusion on an article written for a local weekly NY newspaper that folded in 9/18. That article had no data either. Surely there is some good data to support this]

Exploited people may be charged for crimes that are a direct or indirect result of their exploitation, such as drug possession, trespass, shoplifting, forgery, burglary, robbery, and others. While CSEC minors are less at risk due to the systemic changes described above, the issue remains significant for youth (18-24) and adults in the sex trade. Kitsap County, has a human trafficking diversion program for adult victims of human trafficking charged with low level felonies, which are not necessarily prostitution charges (for example, forgery, possession of meth).¹⁸⁵ The program is in district court and prosecutorial diversion is the same model as most drug courts in Washington.

To be eligible to participate, the defendant must have personally engaged in exchanging sexual services for anything of value within the last two years and that experience contributed to the current offense. Violent or serious violent offenses, currently or in the criminal history, preclude eligibility, though an exception for a violent offense may be made if the crime was committed as part of the defendant themselves being actively victimized to the extent of Human Trafficking in the second degree.¹⁸⁶ The diversion program is a two-year program structured as a victim-witness program.¹⁸⁷ Many participants end up in long term treatment programs for mental health, drug treatment and life skills. Most of the participants in the diversion program have children: most don't have custody at the time they enter the program, and many get their children back while in the program. There are housing programs that allow for children.¹⁸⁸

¹⁸³ <https://komonews.com/news/local/seattle-city-council-repeals-problematic-prostitution-loitering-law-affecting-minorities>, 6/22/2020

¹⁸⁴ [Seattle Reentry Workgroup Final Report](#)

¹⁸⁵ 3/27/17 interview by Dana Raigrodski with Coreen Schnepf, Sr. Deputy Prosecuting Attorney at Kitsap County Prosecutor's Office. Notes on file.

¹⁸⁶ https://www.kitsapgov.com/pros/Pages/Human_Trafficking_Diversion_Eligibility_Criteria.aspx

¹⁸⁷ [Explain what it means... victims are expected to collaborate with LE in the prosecution of the traffickers](#)

¹⁸⁸ 3/27/17 interview by Dana Raigrodski with Coreen Schnepf, Sr. Deputy Prosecuting Attorney at Kitsap County Prosecutor's Office. Notes on file.

b. Providing and broadening education on the scope, dynamics and disparities related to commercial sexual exploitation

In order to develop a system that addresses the dynamics and remedies the disparities of sexual exploitation, everyone in the system must be trained, and training should be updated regularly.

In 2014, the Statewide Coordinating Committee on Sex Trafficking recommended multidisciplinary collaborative training for law enforcement and prosecutors. It also recommended judicial training to ensure appropriate treatment of sex trafficking and CSE cases, including during pre-trial release, sentencing and provision of victim protections in all jurisdictions within the state by establishing funding to bring trainers to areas of the state where training is needed.¹⁸⁹

In 2015, the Washington Legislature responded, requiring the Department of Commerce Office of Crime Victims Advocacy (OCVA) to establish a statewide training program on Washington's human trafficking laws for criminal justice personnel.¹⁹⁰ The new law requires training of law enforcement, prosecutors, and court personnel on Washington's anti-trafficking laws, and the investigation and adjudication of sex trafficking cases. The training must encourage "interdisciplinary coordination among criminal justice personnel, build cultural competency, and develop understanding of diverse victim populations, including children, youth, and adults."

OCVA has issued required biennial reports to the Legislature in 2017 and in 2019 on the statewide training program. In the first biennial report in 2017, OCVA reported completing six trainings for a total of 161 individuals.¹⁹¹ Court clerks and law enforcement/prosecutor trainee groups demonstrated increased knowledge from pre- to post-test in the trafficking of girls and women, lesbian, gay, bi-sexual, transgender, queer, questioning, two-spirit3 (LGBTQ2) individuals, boys, men, and people of color.

From July 2017 - June 2019, OCVA provided four day-long trainings (in Yakima, Mt. Vernon, Vancouver and Bellingham) and two four-hour trainings (for the Tulalip Indian Tribe) on sex trafficking for 168 individuals. The trainings included law enforcement from city and state jurisdictions, as well as Tribal law enforcement. State and tribal prosecutors attended, as well as professionals from the Attorney General's Office. Seventy-five percent of the trainees were law enforcement personnel, 10% were prosecutors (no prosecutors attended the tribal training) and 15% were other criminal justice personnel.¹⁹² Again, participants, especially those without previous trafficking training, demonstrated significant increase in understanding human trafficking of LGBTQ individuals, of men, and of people of color.¹⁹³

¹⁸⁹ Washington State Department of Commerce, "Statewide Coordinating Committee on Sex Trafficking: Report on Committee Activities and Plan to Address Sex Trafficking, pp.45-50 (2014), <http://www.commerce.wa.gov/wp-content/uploads/2016/03/Commerce-Sex-Trafficking-Final-2014.pdf>.

¹⁹⁰ RCW 43.280.095

¹⁹¹ Human Trafficking Laws and Investigations Legislative Report 2017, <http://www.commerce.wa.gov/wp-content/uploads/2018/06/Commerce-Human-Trafficking-Training-2017.pdf>.

¹⁹² Human Trafficking Laws and Investigations – Legislative Report Dec. 2019, <https://www.commerce.wa.gov/wp-content/uploads/2020/04/FINAL-Human-Trafficking-Laws-and-Investigations.pdf>

¹⁹³ Id.

Upon the request of the Tulalip Indian Tribal police, in 2018 the U.S. Attorney's Office and OCVA developed a training program to meet the unique needs and challenges posed by human trafficking in Indian country in Washington. The training for tribal law enforcement similarly demonstrated significant increase in knowledge of the human trafficking of LGBTQ individuals, boys and men.¹⁹⁴

Over the last five years, the King County CSEC Taskforce has been offering multiple trainings to participants across the community,¹⁹⁵ with a focus on trauma-informed and trauma-responsive services and on the intersectionality of poverty, racism, and gender issues affecting CSEC. Regularly offered trainings include:

- CSEC 101: Responding to the Sexual Exploitation and Trafficking of Youth
- CSEC 102: And Boys Too
- CSEC 103: At the Margins: The Sex Trafficking of LGBTQ+ Youth
- CSEC 201: Engaging Men to End Commercial Sexual Exploitation
- CSEC 202: Understanding Running Away Behavior
- CSEC 401: Survivor Centered Programming
- CSEC 402: Queer Like Me

It should be noted that training opportunities and emphasis are not consistent across the state. In addition, most of the trainings so far have focused on law enforcement, prosecutors, service providers, and some court clerks. Training for judges, and particularly training focused on intersectional disparities and inequities, is still insufficient and should be significantly increased. In both 2017 and 2019, OCVA recommended more narrowly defining court personnel as judges and court clerks in RCW 43.280.095,¹⁹⁶ in order to help identify, develop, and implement trainings specific to the duties and responsibilities of these positions.¹⁹⁷

Training for judges, court clerks, prosecutors and law enforcement should be expanded and sustained to provide ongoing, current evidence-based information about the complexities of human trafficking, CSE and prostitution and the impact on and bias against women, children and youth of color, boys and men, indigenous communities, LGBTQ populations, and economically marginalized populations including the un-housed. Training must include mandatory fees and

¹⁹⁴ Id.

¹⁹⁵ In 2018, there were 52 trainings with 974 attendees. In 2019, at the time of Dr. Boyer's report, there have been 40 trainings with 628 attendees. see Dr. Debra Boyer, "[Commercially Sexually Exploited Children in Seattle/King County 2019 Update](#)" (2019). Trainings have been offered to service providers, school personnel, law enforcement (when the TF began) health-related facilities (children's hospital), foster families, and many others

¹⁹⁶ The current description of "court personnel" covers a wide array of staff involved in the criminal justice system.

¹⁹⁷ OCVA submitted a proposal for three trainers to provide a three-hour session at the 60th Washington Annual Judicial Conference held in September 2018. The proposed session: "Washington - Our State, Our Communities: A Judicial Response to Sex Trafficking" focused on providing insight on sex trafficking and the sexual exploitation of children and youth. The proposal was not accepted. In May 2017, OCVA communicated with the Washington Association of Prosecuting Attorneys (WAPA) to assess if a brief training could be included at one of the statewide trainings WAPA sponsored in the fall or spring of 2018. WAPA expressed interest, but due to having a speaker on human trafficking at the last annual training, they declined. See OCVA 2019 Report.

seizure laws associated with trafficking/CSAM/prostitution so that they are imposed regularly and consistently. Creating bench cards may be a useful tool.

c. Next Steps [initial ideas]

Washington State has made significant progress on issues of human trafficking and CSE, with parallel progress on reducing disproportionate gendered and racialized impact of the criminal justice system response to commercial sex on the most marginalized individuals. Washington has reduced the involvement of CSEC, many of whom are at risk LGBTQ individuals, boys, and girls of color, in the criminal justice system. However, many of these protections do not apply to 18-24-year old youth. The criminalization of adult prostitution remains, and where no force or coercion are involved adults have almost no available defenses to the charge or pathways to vacating the conviction. Recommended next steps include:

(1) The Washington Legislature should consider legislation to amend the definition of “coercion” in trafficking/CSE/prostitution laws to include supplying, furnishing, or providing any drug or illegal substance to a person, including to exploit the addiction of the person or cause the person to become addicted to the drug or illegal substance.¹⁹⁸ This will bring more young adults and adults engaged in prostitution under the protective legal framework in a manner that more accurately reflects their status in the spectrum of commercial sexual exploitation.

[Note: initially phrased as soft recommendation. With all the data we’re seeing on this, maybe we should make a strong recommendation here]

(2) The legislature and/or local jurisdictions should implement the Nordic/Equality Model, which decriminalizes those selling sex, but criminalizes those who exploit women and children by buying sex.

[Note: initially phrased as soft recommendation but should we make a strong recommendation here; See also Dr. Boyer 8/20 Covid and CSE research]

(3) Alternatively, establish more girls’ courts and adult diversion courts. The legislature may consider a statewide authorization for a diversion program like Kitsap County’s, similar to the law authorizing drug courts and other therapeutic courts.¹⁹⁹

(4) Failing either of the above, local diversion programs should be greatly expanded.

(5) The state should fund and develop a reliable, comprehensive and centralized data collection and information sharing system that protects the rights of survivors.

¹⁹⁸ Similar legislation was proposed in 2019 at the federal level. Protecting Rights Of Those Exploited by Coercive Trafficking Act of 2019, 2019 CONG US S 2197, July 22, 2019, 116th CONGRESS, 1st Session. That legislation has stalled.

¹⁹⁹ RCW 2.30.010 lists drug courts, family dependency or family drug courts, mental health courts, DUI court, DV court, etc. We could add a section to this for trafficking survivor courts.

Everyone involved in issues related to trafficking and CSE decries the lack of data. Here is the problem: there is law enforcement data, court data, child welfare data, public health data, school-related data, etc. on youth. The data is inconsistent because there is no uniform trauma or CSEC screening forms, and because the data is only as good as the information entered. The databases are all on different systems, and those systems don't, won't or can't communicate with each other. This is a national problem, which some institutions are working on. The result is that a Washington child might be trafficked to Nevada, run away California, get picked up for an offense there, and none of the state systems know about each other. Here is a real example – a Washington resident moves to another state, has a baby, child is taken away and placed with the maternal grandfather who trafficked his children. State doesn't know and doesn't have the records that would show it. The state should fund and develop a reliable, comprehensive and centralized data collection and information sharing system that protects the rights of survivors.

(6) A statewide policy recognizing human trafficking and sexual exploitation in all its forms as a public health issue, including the following:

- Prevention focused on families and family support
- Statewide in-school education programs
- Training for all teacher education programs on how to recognize child victims of trauma (and end the school to prison pipeline)

The Centers for Disease Control and Prevention (CDC) has described sex trafficking as a serious public health problem that negatively affects the well-being of individuals, families, and communities.²⁰⁰ The U.S. Department of Health & Human Services has emphasized the need to use a public health approach in addressing trafficking,²⁰¹ and the National Human Trafficking Training and Technical Assistance Center at HHS also recommends a public health approach.²⁰² The public health approach emphasizes the use of rigorous scientific research to develop an evidence base that drives the development of policies, procedures, and programs. It relies on continual surveillance of child and youth trafficking and determination of major vulnerability and resilience factors related to victimization. It strives to change the cultural beliefs and practices that increase the risk of trafficking and thwart exploitation through prevention and intervention.

One of the most important facets of the public health approach is its focus on multidisciplinary collaboration, which incorporates knowledge and experience from a variety of stakeholders. The four-step process employed in public health is a good model for a state's approach to combating the sex trafficking of children and youth: 1) define and monitor the problem; 2) identify risk and protective factors; 3) develop and test prevention strategies; and 4) ensure widespread adoption of programs that have been proven effective. In developing recommendations for states to improve their efforts to combat the sex trafficking of children and youth, the Committee recognizes that many states have taken significant steps to adopt a public health approach by viewing children

²⁰⁰ Centers for Disease Control and Prevention, Violence Prevention: Sex Trafficking (Jan. 8, 2021), <https://www.cdc.gov/violenceprevention/sexualviolence/trafficking.html>

²⁰¹ U.S. Department of Health and Human Services National Human Trafficking Training and Technical Assistance Center, Public Health Approach (Jan. 8, 2021), <https://nhttac.acf.hhs.gov/soar/eguide/guiding-principles/applying-public-health-approach-to-human-trafficking>.

²⁰² Public Health Approach Essential Services of Public Health Three Levels of Prevention | NATIONAL HUMAN TRAFFICKING TRAINING AND TECHNICAL ASSISTANCE CENTER (hhs.gov)

and youth as victims and providing them with protection and support. A national effort is underway to create a social safety net that treats children and youth as victims, not perpetrators.”

- (7) Adopt multidisciplinary team approaches to sexual exploitation cases and utilize multidisciplinary collaborations with courts as convenors (like the King County CSEC Taskforce).
- (8) Mandatory extensive training, regularly refreshed, for judges and court personnel (not just juvenile and dependency judges) on how to recognize trauma, appropriate responses and services, and how to talk to traumatized people who appear in our courts.
- (9) In juvenile courts having designated probation counselors who are trained in how to identify and respond to sexually exploited children.
- (10) All courts and courtrooms should be trauma-responsive

This report also endorses specific recommendations made by Dr. Boyer regarding co-occurring crimes and CSEC in the 2019 report:²⁰³

- (11) *Extending non-criminalization to other crimes resulting from CSE*

CSE youth and adults often face multiple criminal charges that are related to their exploitation. Criminal history and incarceration are significant barriers to exiting from CSE. Not considering the impact of CSE victimization on related crimes is not only concerning, but perpetuates gender, race and poverty injustice.

The case can be made for extending non-criminalization to other crimes that include prostitution related offenses.²⁰⁴ In 2016, the CSEC Statewide Coordinating Committee recommended consideration of amending State law to exempt victims of CSAM from criminal liability for crimes related to their exploitation. Prosecutors in Washington already often divert minors not only for the prostitution related charges but for other charges stemming from the exploitation.

[Note: Can it be generalized for WA or is it really Seattle/King County]

As Dr. Boyer observes, “this recommendation will likely generate resistance and there is much to debate regarding extending non-criminalization, to which crimes, and to what age groups, for example. The conversation needs to take place.”

- (12) *Adopt a CSE victim/defendant protocol for the criminal justice system for CSE-survivors charged with related crimes*

²⁰³ Reproduced here in abbreviated version

²⁰⁴ Various state non-criminalization laws include a diverse range of offenses and reflect states’ varying policy positions on what can be attributed to trafficking victimization, as well as the different offenses that victims are most susceptible to committing and, therefore, face punishment for in each state.

[Note: we are carefully thinking about this one due to the guilt, shame, stigma that goes along with being identified as a trafficking victim and the risk that CSE individuals, who may have credibility issues in the courtroom, could be harmed by other crimes being tied to their CSE status]

Aside from extending non-criminalization, there are protocols from analogous Domestic Violence situations that could assist CSE victim/defendants now and ensure consideration of CSE history in criminal proceedings.²⁰⁵ The King County Coalition on Ending Gender-Based Violence developed the Victim Defendant Project.²⁰⁶ The Project resources include a suggested protocol for judges to consider when domestic violence survivors are charged with a crime, and training for defense attorneys and prosecutors. A similar protocol could be developed for CSEC and all victims of CSE and sex trafficking to ensure trauma history and sex trafficking victimization are included in all phases of court proceedings.²⁰⁷ A fully developed criminal justice protocol for CSE would address all phases of the criminal justice process; particularly important phases are at charging decisions, and sentencing. This recommendation would require training across the criminal justice system to include defense and prosecuting attorneys, and judges.

It is also key to engage CSE survivors to lead development of the CSE Victim/Defendant Protocol. They are the experts and their lived experiences should inform proposed protocol and policies in general, especially in light of the disproportionate gender and race representation and negative impacts on marginalized groups.

²⁰⁵ The similarities of CSE survivors to DV survivors are apparent. For detailed analysis and suggestion see Boyer (2019)

²⁰⁶ Boyer citing Victim Defendant Project. King County Coalition on Ending Gender-Based Violence. <https://endgv.org/wp-content/uploads/2016/03/Vic-DefIssuesforJudges1.pdf>. See also: https://endgv.org/wp-content/uploads/2016/03/Steps_in_criminal_case1.pdf.

²⁰⁷ See Boyer 2019 report for the specific of the suggested protocol.

Chapter of the Report	Priority Areas Included	Draft Recommendations
a. Financial Barriers	1.1 Litigants’ financial barriers such as user fees, costs of legal representation, childcare and travel to and from the courthouse. (1989 & New)	Recommendations still being drafted.
b. Communication Barriers	1.2 Litigants’ communication barriers in matters such as obtaining domestic violence protective orders, participating in family law hearings, and interacting with GAL and CASA representatives. (New)	See Appendix A for further detail on each Communication Barriers section recommendation, <ol style="list-style-type: none"> 1. Every court should have a robust language access plan. 2. Make online services accessible. 3. Translate forms and provide assistance understanding forms. 4. Recruit multilingual court staff and a robust pool of qualified interpreters. 5. Address the need for ASL court interpreter certification. 6. Conduct a language access audit by independent third party. 7. Provide resources to develop new interpreters in a wide variety of languages. 8. Need better data collection in WA to improve language access.
c. Immigration Status Barriers	1.3 Immigration status barriers that may be preventing complainants and witnesses from coming to court.(New)	Recommendations still being drafted.
d. Barriers to Jury Service	1.4 Barriers to jury service such as low juror pay, lack of childcare, etc., that contributes to lack of diversity in juries. (New)	<ol style="list-style-type: none"> 9. Future research should include broader pilot projects involving juror compensation in different counties and levels of court with more diverse subpopulations. Results of any research could support amendments to the statutes setting the range of jury compensation. 10. Washington should consider legislation like New York’s regulations requiring larger employers to provide paid time off for jury service.

		<p>11. The Commission should seek funding to analyze any available county data related to the reasons why jurors are excused for hardship.</p> <p>12. Free childcare programs for people needing to conduct business at Washington courthouses should be expanded to additional courts. Washington courts that provide free childcare should ensure that information about the availability of free childcare is included in the juror summons and discussed with people claiming childcare as their reason for needing to be excused from jury service. Courts should consider whether they can accommodate parenting schedules for jurors who need to pick up children after school or from their childcare.</p> <p>13. The Commission should seek funding for further study of court data to determine whether the anecdotal experiences of litigators, for example that women are disproportionately excused in certain types of cases, are reflected in the data. The Commission should also seek funding for analysis of county/court data to determine whether women of color or LGBTQ+ people are disproportionately excused either for hardship or for cause. The Commission should develop best practices for courts to account for the barriers to service for LGBTQ+ jurors, including adding nonbinary gender choices to all forms and referring to a juror by their chosen name and gender identity in court.</p> <p>14. The Commission should support public education to ensure that people with felony convictions understand what is required to be eligible for jury service. The Commission should consider supporting proposed legislation that makes it easier for formerly incarcerated people to vote.</p>
<p>e. DV/SA</p>	<p>2.1 Gender impact in civil proceedings as they relate to violence; domestic violence, and sexual assault. (1989)</p> <p>3.6 Treatment of domestic violence perpetrators. (1989)</p>	<p>15. Analyze the firearm surrender reports prepared by Administrative Office of the Courts to determine the level of compliance with orders to surrender weapons and continue to focus on how to raise compliance;</p> <p>16. Undertake a study of barriers to enforcement of forfeiture laws and develop recommendations to address said barriers;</p> <p>17. Establish a reliable funding scheme for all court-ordered DV perpetrator treatment and monitor the status of adoption of the recommendations by the Domestic Violence Work Groups;</p> <p>18. Analyze Washington-specific information related to mandatory arrest and explore alternatives to mandatory arrest that continue to acknowledge the seriousness of domestic violence, but that also allow domestic violence victims to retain more autonomy;</p> <p>19. Monitor the Urban Indian Health Institutes’ recommendations and status of adoption of the Washington State Patrol’s recommendation to study and develop a centralized database related to Missing and Murdered Indigenous Women and Girls (MMIWG);</p> <p>20. Monitor progress on the rape kit backlog;</p>

		<p>21. Implement processes that allow courts to appoint an attorney for the petitioner in Sexual Assault Protection Order cases, pursuant to RCW 7.90.070; and</p> <p>22. Continue to support (and require) continuing education related to domestic and sexual violence for all professionals working within the legal system.</p> <p>23. Given the reluctance of victims of domestic and sexual violence to engage with the justice system, and the lack of support from that system, we find that supporting education for professionals working within the legal system and the continued data collection and evaluation of the system’s response is essential but not sufficient. There should also be a concurrent emphasis on prevention and providing services for survivors outside of the justice system to meet basic and other civil legal needs (housing, employment, benefits, safety, and more).</p>
<p>f. Family Law</p>	<p>2.2 Gender impact in civil proceedings as they relate to Family Law including divorce, maintenance, property division, custody, and child support. (1989)</p>	<p><u>For the Washington Legislature</u></p> <p>24. Increase funding for civil legal aid to provide greater legal representation for both parties in family law cases, particularly in cases involving minor children.</p> <p>25. Consider adopting a law that would provide for appointment of counsel at public expense for indigent parents in cases involving the establishment of parenting plans and child support for minor children.</p> <p>26. Because couples are increasingly forming committed intimate relationships without marrying, consider codifying the equitable committed intimate relationship doctrine recognized by Washington courts, while also authorizing courts in adjudicating cases involving committed intimate relationships to:</p> <ul style="list-style-type: none"> ○ Award attorney’s fees on the same basis allowed in dissolution proceedings under RCW 26.09.140 (i.e., need and ability to pay) ○ Order maintenance on the same basis allowed in dissolution proceedings under RCW 26.09.090. ○ Consider the parties’ separate property for distribution on the same basis allowed in dissolution proceedings under RCW 26.09.080. <p>27. Provide funding for all judicial officers and court-appointed guardians ad litem and parenting evaluators to receive regular training on domestic violence and implicit bias, including training on implicit bias based on gender and intersecting implicit biases.</p>

		<p>28. Consider repealing requirements related to the filing of “residential time summary reports” (RTSRs) in dissolution cases involving children (RCW 26.09.231, RCW 26.18.230). When this requirement was enacted in 2007 it had the potential to provide useful data regarding differences in residential time decisions between mothers and fathers. However, there has consistently been poor compliance with this law, resulting in data that is not complete or reliable. In its place, consider adopting a requirement that an appropriate entity conduct an annual record review based on a sample of cases to collect the data currently required by RCW 26.18.230, and to publish an annual report based on the data collected. As the 2016 RSTR Report noted, such a change “would likely result in a lower total cost in addition to a more accurate view of what happens in dissolution cases with children.”*</p> <p><u>For the Washington Supreme Court</u></p> <p>29. Adopt court rules to require guardians ad litem, parenting evaluators, and mediators in family law cases to have substantial training on domestic violence and implicit bias, including training on implicit bias based on gender and intersecting implicit biases.</p> <p><u>For the Washington State Bar Association</u></p> <p>30. Adopt a continuing legal education (CLE) requirement that lawyers must complete implicit bias training during every three-year reporting period, including training on implicit bias based on gender and intersecting implicit biases.</p> <p>31. Regularly offer CLE programs than provide training on implicit bias in family law cases, including training on implicit bias based on gender and intersecting implicit biases.</p>
g. Economic Consequences	2.3 Gender impact in civil proceedings as they relate to economic consequences including fee awards and wrongful death. (1989)	Recommendations still being drafted.
h. Workplace Harassment and Discrimination	2.4 Gender impact in civil proceedings as they relate to workplace sexual harassment and discrimination. (New)	<p>32. Increase protections:</p> <p>Expanding civil rights protections to employers of all sizes could increase coverage for more workers. In Washington State, the WLAD applies to employers with eight or more employees, though the Washington Supreme Court has found smaller employers to be subject to wrongful discharge in violation of public policy.¹ However, statute could</p>

¹ *Roberts v. Dudley*, 140 Wn.2d 58, 77, 993 P.2d 901 (2000)

		<p>expand protection to all employees. Currently, 15 states and Washington DC ensure workplace civil rights protections covering employers with one or more employee.²</p> <p>33. Reduce barriers to reporting:</p> <p>The EEOC and/or WSHRC could set up a collaboration or information-sharing agreement with other agencies charged with workplace oversight, such as Washington State Department of Labor & Industries or the U.S. Occupational Safety and Health Administration. This could help workers in remote or rural areas get information about their rights or report violations of workplace civil rights.³</p> <p>34. Increase public knowledge and accountability:</p> <p>State courts can enable the study and tracking of employment law cases by adding a field on court intake forms to note when an employment discrimination case is filed. In the King County Superior Court case intake form, the closest category provided is “Tort, Other.”⁴ A review of the Pierce County Superior Court, Clark County Superior Court and Spokane County Superior Court websites shows that none includes a specific category to track employment discrimination lawsuits. The lack of these data severely restricts the ability for researchers and the public to evaluate employment discrimination litigation in the state of Washington.</p> <p>Non-disclosure agreements in employment contracts, confidential settlement agreements in litigation, and confidential arbitration proceedings also obscure the public’s knowledge of the prevalence and outcomes of workplace harassment complaints and litigation. Legal limits to the extent of these agreements would help future employees and plaintiffs recognize patterns in discriminatory behavior that might help their cases. Likewise, public access to workplace demographics for large companies (such as gender and race, ethnicity, wage, and salary data) would be an important tool to demonstrate patterns of discriminatory behavior for future plaintiffs.⁵</p>
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² Maya Raghu & Joanna Suriani, *#meetoowhatnext: strengthening workplace sexual harassment protections and accountability*, NATIONAL WOMEN’S LAW CENTER (2017).

³ Sarah M Block, *Invisible Survivors: Female Farmworkers in the United States and the Systematic Failure to Report Workplace Harassment and Abuse*, 24 TEXAS JOURNAL OF WOMEN, GENDER, AND THE LAW 127 (2014).

⁴ King County Superior Court Case Assignment Area Designation and Case Information Cover Sheet (CICS), King County Superior Court, accessed August 2020.

⁵ BERREY, NELSON, AND NIELSEN, *supra* note 6.

		<p>The WSHRC does not publish data on workplace discrimination complaints filed. These data would also help researchers understand which industries and populations are utilizing that system—and, just as importantly, which workers and industries known to be vulnerable to discrimination and harassment are underrepresented in claims and therefore may not be able to access the system. There is a need for a funded data analyst position in the WSHRC to compile, analyze and publish these data.</p> <p>35. Reduce bias and discrimination in workplaces:</p> <p>Ordering employers to provide workplace sexual harassment training is not an uncommon outcome of litigation by the EEOC.⁶ In Washington State, SB5258 passed in 2019 and requires employers in certain industries (including hotels and motels, retail, security, and others with employees working in isolated conditions) to provide mandatory workplace sexual harassment and discrimination training.⁷ State government employees must complete sexual harassment training at minimum every five years.⁸ However, the social science evidence regarding the effectiveness of sexual harassment training in preventing sexual harassment is mixed. A review of 60 published, empirical studies on sexual harassment training reported consistent findings that training increases knowledge of sexual harassment behaviors and increases internal reporting—but only mixed evidence supporting a reduction in prevalence of sexual harassment behaviors. The authors note a need for more research:</p> <p>...although the reviewed studies, considered in light of theory and research from the broader training and [sexual harassment] SH literatures, support the conclusion that training alone is very unlikely to significantly reduce SH in the workplace, they also support the conclusion that training can play an important role in contributing to the prevention or reduction of SH if (a) it is conducted in accordance with science-based training principles and (b) the organizational context is supportive of the SH training efforts.⁹</p>
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⁶ See for example the settlement between EEOC and Marelli Tennessee USA in August 2020, <https://www.eeoc.gov/newsroom/marelli-pays-335000-settle-eeoc-sexual-harassment-lawsuit>: “Marelli also agreed to provide annual sexual harassment training and to conduct employee exit interviews.”

⁷ ESSB 5258 – 2019-20

⁸ WAC 357-34-100

⁹ Mark V. Roehling & Jason Huang, *Sexual harassment training effectiveness: An interdisciplinary review and call for research*, 39 J ORGAN BEHAV 134–150 (2018), P. 146.

		<p>Likewise, all state agencies and institutes of higher education must provide training on implicit bias to all recruitment staff.¹⁰ However, without state standards for evidence-based, effective trainings, these requirements will likely have limited effect in reducing discrimination, harassment and implicit bias.</p> <p>36. Reduce bias in the courts:</p> <p>Anti-bias training for judges could include the most recent findings from social science about how implicit bias functions and how to counter it in their own decision-making processes,¹¹ as well as how to recognize it in employment litigation. Given the known impact of jury diversity on court outcomes (see section X on barriers to jury service which impact jury diversity), increasing jury diversity would be a common-sense first step to increasing equity in court decisions. Additionally, educating jurors about implicit bias and encouraging conscious strategies to specifically raise issues of bias during deliberation and to shift perspectives to populations of other identities could help interrupt the process of implicit bias in decision-making.¹²</p>
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¹⁰ Washington State Office of Financial Management, “State Human Resources directive 20-02,” <https://www.ofm.wa.gov/sites/default/files/public/shr/Directives/WorkforceDiversityDirective.pdf>

¹¹ Kang, Bennett, and Carbado, *supra* note 135.

¹² *Id.*

<p>i. Mass Incarceration</p>	<p>2.5 Gender impact in criminal proceedings as they relate to increased criminalization and incarceration of women pre- and post- conviction. (New)</p> <p>2.6 Gender impact in criminal proceedings as they relate to increased criminalization and incarceration of men pre- and post- conviction and the consequences for women. (New)</p> <p>2.7 Gender impact in criminal proceedings as they relate to exceptional sentence availability. (New)</p>	<p>Section 2.5 Recommendations:</p> <p>37. The Pilot Study sets forth comprehensive recommendations for data collection as well as additional analyses and research. We recommend they be followed and that the study be expanded to canvas the entire state, that better data be collected and reviewed for the Hispanic/Latinx population in particular, and that the intersectional research on women of different identities be studied throughout the different stages of the criminal justice system from community support to policing to charging to incarceration and reentry. See Pilot Study at 30-31.</p> <p>38. Resources should be devoted to study why such a large percentage of incarceration derives from violations of conditions of probation or parole while recidivism is decreasing and whether other sanctions could be equally or more effective. As the Sentencing Guidelines Commission’s 2019** report recommended, Washington recidivism data should be subject to the rigorous statistical analysis necessary to interpret results and institute effective reform and recorded in a standardized report.</p> <p>39. Decriminalize minor, non-violent offenses.</p> <p>40. Decriminalize poverty and trauma.</p> <p>41. A commission or work group should be established to study the state’s response to COVID-19 in our prisons and jails, including why so many outbreaks occurred, what various stakeholders could have done to prevent suffering and death, and the effect of the releases that occurred on recidivism, safety, and health.</p> <p>42. Data should be collected on gender and intersectionality of COVID-19 releases and reductions to prison and jail populations to determine whether there were any disproportionalities and, if so, why.</p> <p>43. A study of recidivism and crime rates in light of the reduced jail and prison populations during COVID-19 should be undertaken. This period could serve as a lived experiment in reduced incarceration.</p> <p>44. As the Washington Courts study recommended, identify barriers and explore methods for continual and consistent reduction of jail populations, including compliance with Supreme Court Emergency Orders proscribing the issuance of bench warrants for failure to appear.</p> <p>45. We recommend Washington State collect more accurate and complete demographic information throughout the criminal justice system</p> <p><i>Section 2.5: Recommendations for Projects to Address the Identified Disparities</i></p> <p>46. The “One Strike Initiative” of 1996 allows Public Housing Authorities to obtain criminal records of all adult applicants and tenants;*** Washington should look at amending this practice to make housing opportunities more equitable.</p>
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47. Bloom and colleagues (2004) argue that lack of education, increased by the fact that only 52 percent of correctional facilities for women provide postsecondary education, continues the cycle of underemployment and interaction with the criminal justice system.*** Can we increase the number of incarcerated females receiving higher education?
48. Family members are less likely to care for a child during their parents' incarceration due to the fact that they are provided with less financial support than nonrelative foster caregivers. Can we alter this discrepancy?
49. A project aimed at decreasing the impact of minor probation violations on the violator.
50. Study whether policing and/or prosecuting practices impact the disproportionate conviction and sentencing rates for Black and AIAN women and across offense categories found in the six-county Pilot Study. We also recommend finding a way, if possible, to cover disparities affecting the Latinx population and other intersectional data that has been limited to date.
51. Study the effect the increasing detention of girls, and especially the disproportionate effect on AIAN, Latinx, and Black girls, has on this state's large incarcerated-female population.
52. Study the effect of the changed legislation to allow young inmates to be housed within the Juvenile Rehabilitation Administration until the age of 25.
53. Study the impact and data from the Seattle Community Court program with an eye towards whether such a program should be enacted more broadly and whether any changes need to be made.
54. Study the impact of pretrial reform on wellbeing, recidivism, and incarceration, including bail reform and more widespread pretrial services, such as those enacted by Yakima County.
55. Consider legislation to retroactively account for trauma-based criminalization and incarceration, such as N.Y. Penal Law § 60.12, which sets forth resentencing relief and alternative sentences for defendants who can establish that they were victims of domestic violence and meet statutory criteria.

Section 2.6 Recommendations:

56. Eradicating disparities in conviction and sentencing in Washington. For example, more should be done to study the disparities in conviction and sentencing data across offense type, including the root causes and to address those disparities retroactively and prospectively.
57. Eradicate mass incarceration in Washington through second-look legislation, broader clemency standards, or other mechanisms of review to shorten long sentences, changes in sentencing laws to reduce the length of incarceration (such as reducing the low and high ends of the standard sentencing ranges by half), examining and eliminating policing and prosecutorial practices that contribute.
58. Simplify sentencing laws to make them more readily understandable to individuals, practitioners, and judges.

- 59. Study the interplay between judicial discretion and racial/ethnic disparities to determine whether increasing judicial discretion in sentencing will lead to more equitable sentences.
- 60. Eliminate mandatory stacking for multiple sentencing enhancements, allowing judges to run any enhancements concurrently. Consider eliminating altogether sentencing enhancements, consecutive sentences, life without parole, and mandatory minimums. Make these changes retroactive, with a mechanism for resentencing or review as necessary, and prospective.
- 61. Provide for more equitable application of good time credits earned in prison so that they are earned at equal rates (of 33 percent or higher) for all offenders, regardless of the underlying offense, and applied to sentencing enhancements in addition to the underlying sentence. Again, such change should be applied retroactively and prospectively in the interests of justice as well as to make meaningful change to mass incarceration.
- 62. Provide for increased rehabilitative and therapeutic services in custody and upon release to a term of supervision.
- 63. Since most Washington families report spending almost three hundred dollars each month to maintain their relationship with their incarcerated relatives, consider providing funding to assist or determining ways to reduce these costs.
- 64. Offering or connecting health care and insurance for single-parent homes due to incarceration.

Section 2.7 Recommendations:

- 65. Study the effects of sentencing policies and practices on gender.
- 66. Study the application of upward and downward sentencing enhancements. Such study should include intersectional analysis.
- 67. Primary caregiving should be recognized as a mitigating factor. The burden of caregiving falls predominately on women and families without resources are most significantly affected when a caregiver is incarcerated. Family structures can also provide support to rehabilitating offenders. Courts should be able to consider the role of the offender within their family when determining sentences.
- 68. Undertake research to compare sentences across gender and within the female population intersectionally, including analysis for Native Americans, Pacific Islanders, and Asians.

<p>j. Commercial Sexual Exploitation (children and adults)</p>	<p>2.8 Gender impact in criminal proceedings as they relate to commercial sexual exploitation. (New)</p> <p>2.11 Gender impact for juveniles as they relate to commercial sexual exploitation of children. (New)</p>	<p>Washington State has made significant progress on issues of human trafficking and CSE, with parallel progress on reducing disproportionate gendered and racialized impact of the criminal justice system response to commercial sex on the most marginalized individuals. Washington has reduced the involvement of CSEC, many of whom are at risk LGBTQ individuals, boys, and girls of color, in the criminal justice system. However, many of these protections do not apply to 18-24-year old youth. The criminalization of adult prostitution remains, and where no force or coercion are involved adults have almost no available defenses to the charge or pathways to vacating the conviction. Recommended next steps include:</p> <p>69. The Washington Legislature should consider legislation to amend the definition of “coercion” in trafficking/CSE/prostitution laws to include supplying, furnishing, or providing any drug or illegal substance to a person, including to exploit the addiction of the person or cause the person to become addicted to the drug or illegal substance. This will bring more young adults and adults engaged in prostitution under the protective legal framework in a manner that more accurately reflects their status in the spectrum of commercial sexual exploitation. [Note: initially phrased as soft recommendation. With all the data we’re seeing on this, maybe we should make a strong recommendation here]</p> <p>70. The legislature and/or local jurisdictions should implement the Nordic/Equality Model, which decriminalizes those selling sex, but criminalizes those who exploit women and children by buying sex. [Note: initially phrased as soft recommendation but should we make a strong recommendation here; See also Dr. Boyer 8/20 COVID and CSE research]</p> <p>71. Alternatively, establish more girls’ courts and adult diversion courts. The legislature may consider a statewide authorization for a diversion program like Kitsap County’s, similar to the law authorizing drug courts and other therapeutic courts.</p> <p>72. Failing either of the above, local diversion programs should be greatly expanded.</p> <p>73. The state should fund and develop a reliable, comprehensive and centralized data collection and information sharing system that protects the rights of survivors.</p> <p>Everyone involved in issues related to trafficking and CSE decries the lack of data. Here is the problem: there is law enforcement data, court data, child welfare data, public health data, school-related data, etc. on youth. The data is inconsistent because there is no uniform trauma or CSEC screening forms, and because the data is only as good as the information entered. The databases are all on different systems, and those systems don’t, won’t or can’t communicate with each other. This is a national problem, which some institutions are working on. The result is that a Washington child might be trafficked to Nevada, run away California, get picked up for an offense there, and none of the state systems know about</p>
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each other. Here is a real example – a Washington resident moves to another state, has a baby, child is taken away and placed with the maternal grandfather who trafficked his children. The State doesn't know and doesn't have the records that would show it. The state should fund and develop a reliable, comprehensive and centralized data collection and information sharing system that protects the rights of survivors.

74. A statewide policy recognizing human trafficking and sexual exploitation in all its forms as a public health issue, including the following:

- Prevention focused on families and family support
- Statewide in-school education programs
- Training for all teacher education programs on how to recognize child victims of trauma (and end the school to prison pipeline)

The Centers for Disease Control and Prevention (CDC) has described sex trafficking as a serious public health problem that negatively affects the well-being of individuals, families, and communities. The U.S. Department of Health & Human Services has emphasized the need to use a public health approach in addressing trafficking, and the National Human Trafficking Training and Technical Assistance Center at HHS also recommends a public health approach. The public health approach emphasizes the use of rigorous scientific research to develop an evidence base that drives the development of policies, procedures, and programs. It relies on continual surveillance of child and youth trafficking and determination of major vulnerability and resilience factors related to victimization. It strives to change the cultural beliefs and practices that increase the risk of trafficking and thwart exploitation through prevention and intervention.

One of the most important facets of the public health approach is its focus on multidisciplinary collaboration, which incorporates knowledge and experience from a variety of stakeholders. The four-step process employed in public health is a good model for a state's approach to combating the sex trafficking of children and youth: 1) define and monitor the problem; 2) identify risk and protective factors; 3) develop and test prevention strategies; and 4) ensure widespread adoption of programs that have been proven effective. In developing recommendations for states to improve their efforts to combat the sex trafficking of children and youth, the Committee recognizes that many states have taken significant steps to adopt a public health approach by viewing children and youth as victims and providing them with protection and support. A national effort is underway to create a social safety net that treats children and youth as victims, not perpetrators.”

- 75. Adopt multidisciplinary team approaches to sexual exploitation cases and utilize multidisciplinary collaborations with courts as convenors (like the King County CSEC Taskforce).
- 76. Mandatory extensive training, regularly refreshed, for judges and court personnel (not just juvenile and dependency judges) on how to recognize trauma, appropriate responses and services, and how to talk to traumatized people who appear in our courts.
- 77. In juvenile courts having designated probation counselors who are trained in how to identify and respond to sexually exploited children.
- 78. All courts and courtrooms should be trauma-responsive

This report also endorses specific recommendations made by Dr. Boyer regarding co-occurring crimes and CSEC in the 2019 report:

- 79. Extending non-criminalization to other crimes resulting from CSE

CSE youth and adults often face multiple criminal charges that are related to their exploitation. Criminal history and incarceration are significant barriers to exiting from CSE. Not considering the impact of CSE victimization on related crimes is not only concerning, but perpetuates gender, race and poverty injustice.

The case can be made for extending non-criminalization to other crimes that include prostitution related offenses. In 2016, the CSEC Statewide Coordinating Committee recommended consideration of amending State law to exempt victims of CSAM from criminal liability for crimes related to their exploitation. Prosecutors in Washington already often divert minors not only for the prostitution related charges but for other charges stemming from the exploitation.[Note: Can it be generalized for WA or is it really Seattle/King County]

As Dr. Boyer observes, “this recommendation will likely generate resistance and there is much to debate regarding extending non-criminalization, to which crimes, and to what age groups, for example. The conversation needs to take place.”

- 80. Adopt a CSE victim/defendant protocol for the criminal justice system for CSE-survivors charged with related crimes [Note: we are carefully thinking about this one due to the guilt, shame, stigma that goes along with being

		<p>identified as a trafficking victim and the risk that CSE individuals, who may have credibility issues in the courtroom, could be harmed by other crimes being tied to their CSE status]</p> <p>Aside from extending non-criminalization, there are protocols from analogous Domestic Violence situations that could assist CSE victim/defendants now and ensure consideration of CSE history in criminal proceedings. The King County Coalition on Ending Gender-Based Violence developed the Victim Defendant Project. The Project resources include a suggested protocol for judges to consider when domestic violence survivors are charged with a crime, and training for defense attorneys and prosecutors. A similar protocol could be developed for CSEC and all victims of CSE and sex trafficking to ensure trauma history and sex trafficking victimization are included in all phases of court proceedings. A fully developed criminal justice protocol for CSE would address all phases of the criminal justice process; particularly important phases are at charging decisions, and sentencing. This recommendation would require training across the criminal justice system to include defense and prosecuting attorneys, and judges.</p> <p>It is also key to engage CSE survivors to lead development of the CSE Victim/Defendant Protocol. They are the experts and their lived experiences should inform proposed protocol and policies in general, especially in light of the disproportionate gender and race representation and negative impacts on marginalized groups.</p>
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<p>k. Juvenile Law</p>	<p>2.9 Gender impact for juveniles as they relate to shifts in juvenile law focus such as limiting or increasing judicial discretion. (New)</p> <p>2.10 Gender impact for juveniles as they relate to effects of treatment. (New)</p>	<p>81. Across all phases of the juvenile justice system (initial referral, diversion/prosecution, detention, adjudication, disposition, use of manifest injustice/decline, and outcome), standardize data collection to identify unique individual factors (gender, race/ethnicity, age, LGBTQ+, developmental challenges, status as a parent) in addition to charge/offense.</p> <p>82. Standardize school-based referral data as above to identify locations with the greatest need and develop restorative programs to reduce referrals.</p> <p>83. Through the analysis of uniform, detailed data, identify system-disparities, use of discretion, and focus of education and resource development.</p> <p>84. Develop gender-responsive and culturally-competent resources for status and juvenile offenders that can be matched to need derived from individualized assessment.</p> <p>85. The Gender and Justice Commission should follow the status of the Kitsap County girls' court, review the outcomes of the evaluation being conducted by the Washington State Center for Court Research, and in three and five years consider new recommendations or actions based on this monitoring.</p> <p>86. Juvenile Rehabilitation Administration should maintain an inventory of the gender and LGBTQ-specific programming and services offered at Echo Glen Children's Center and Ridgeview Group Home in Yakima and track outcomes. Conduct regular monitoring and evaluation of existing programs, identify gaps in gender-responsive programming, and identify solutions to address those gaps.</p> <p>87. Superior courts in each county should maintain an inventory of the gender and LGBTQ-specific programming and services offered through its juvenile court. Conduct regular monitoring and evaluation of existing programs, identify gaps in gender-responsive programming, and identify solutions to address those gaps.</p>
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<p>n. Treatment of Lawyers, Litigants, Judges, and Court Personnel</p>	<p>2.12 Treatment of lawyers, litigants, judges, and court personnel: Courtroom treatment of litigants, legal professionals, jurors, and other court personnel. (1989)</p> <p>2.13 Treatment of lawyers, litigants, judges, and court personnel: Credibility of women in the courtroom. (1989)</p> <p>2.14 Treatment of lawyers, litigants, judges, and court personnel: Acceptance of women in legal and judicial communities. (1989 & New)</p>	<p>Recommendations still being drafted.</p>
<p>o. Court Personnel Practices and Procedures Including the Application to Gals and Guardians</p>	<p>2.15 Treatment of lawyers, litigants, judges, and court personnel: Court personnel practices and procedures, including their application to GALs and guardians. (New)</p>	<p>This section being integrated into other sections where appropriate.</p>
<p>p. Representation of Women as ADR Neutrals</p>	<p>2.16 Treatment of lawyers, litigants, judges, and court personnel: Representation of women as ADR neutrals. (New)</p>	<p>This section being integrated into other sections where appropriate.</p>

<p>q. Legal Financial Obligations (LFOs)</p>	<p>3.1 Legal financial obligations. (New)</p>	<p>88. Streamline data collection and access. The Commission may wish to make recommendations to increase and enhance LFO data collection and accessibility. Presently, researchers gather data primarily from the Washington Administrative Office of the Courts, and in some cases, local jurisdictions.</p> <p>Consider endorsing select December 2020 recommendations from the Washington State Criminal Sentencing Task Force:</p> <p>89. RECOMMENDATION 40 from the Task Force Report</p> <ul style="list-style-type: none"> a. Address interest on restitution: <ul style="list-style-type: none"> i. Change current law to give judges the discretion to waive or suspend interest on restitution, rather than it being mandatory, based on a finding of current or likely future ability to pay. ii. Where imposed, allow accrual of interest to begin following release from the term of total confinement. iii. Lower the current 12 percent interest rate. <p>90. RECOMMENDATION 41 from the Task Force Report</p> <ul style="list-style-type: none"> a. Automatically waive existing non-restitution interest. <p>91. RECOMMENDATION 42 from the Task Force Report</p> <ul style="list-style-type: none"> a. Authorize courts to relieve, either in part or full, restitution payments owed to entities by individuals who a court determines lack the means to make payments now or in the realistic future. <p>92. RECOMMENDATION 43 from the Task Force Report</p> <ul style="list-style-type: none"> a. Expand eligibility of individuals able to seek relief from LFOs to include persons who are incarcerated. Incarcerated individuals requesting relief would still be subject to the same criteria as those in the community (i.e., the court has discretion to determine whether individuals or family members are experiencing hardship). Additionally, the court could consider pausing the accumulation of interest during a period of incarceration.
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93. RECOMMENDATION 44 from the Task Force Report

- a. Create statutory authority for courts to review and adjust or waive fines.

94. RECOMMENDATION 45 from the Task Force Report

- a. Consider developing and implementing guidance for local jurisdictions to follow governing the transfer of LFOs to collection agencies.

95. RECOMMENDATION 46 from the Task Force Report

- a. Victim Penalty Assessment (VPA):
 - i. Upon motion by the defendant, the court be given the discretion to reduce or waive the VPA upon a finding by the court that the defendant lacks the present and future ability to pay.
 - ii. The court be given the discretion to eliminate stacking of multiple VPAs (*multiple VPAs imposed at same time*) based on a finding that the defendant lacks the present and future ability to pay.
- b. DNA Collection Fee and Criminal Filing Fee:
 - i. Upon motion by the defendant, the court should be given the discretion to waive all but one previously imposed DNA collection fee.
 - ii. Upon motion by the defendant, the court should be given the discretion to waive any criminal filing fee(s) imposed at sentencing upon a finding by the court that the defendant is indigent and lacks the ability to pay.

96. RECOMMENDATION 47 from the Task Force Report

- a. Address the statute of limitations to enforce collection of LFOs:
 - i. Reduce available time for which the court has jurisdiction to collect LFOs.

		<p>ii. Jurisdiction will be retained where restitution is owed and there is a willful failure to pay.</p> <p>97. In addition to the Criminal Sentencing Task Force LFO recommendations, Dismantle Poverty in Washington recently recommended reforming LFO laws, including for example, eliminating fees charged in connection with payment plans—i.e., “pay to pay” fees.</p>
<p>r. Collateral Consequences and Other Impacts of Incarceration</p>	<p>3.2 Collateral consequences for incarcerated parents. (New)</p> <p>3.3 The burden of mass incarceration on remaining heads of households. (New)</p> <p>3.7 The impact of a criminal background on access to services. (New)</p>	<p>Recommendations still being drafted.</p>
<p>s. Gender Responsive Programming in DOC and Court Ordered Programs</p>	<p>3.4 The availability of gender responsive programming and use of trauma informed care in DOC and court ordered programs. (New)</p>	<p>Recommendations still being drafted.</p>
<p>t. Consequences of Sexual Assault in Jails</p>	<p>3.5 The consequences of sexual assault in jails or state prisons. (New)</p>	<p>Recommendations still being drafted.</p>

<p>or State Prisons</p>		
<p>u. Prosecutorial Discretion</p>	<p>New topic</p>	<p>Recommendations still being drafted.</p>
<p>*Washington State Center for Court Research, <i>Residential Time Summary Report</i> (2016), at 3, available at http://www.courts.wa.gov/subsite/wscrr/docs/ResidentialTimeSummaryReport2016.pdf ** Sentencing Guidelines Commission. Fiscal Year 2019: Review of the Sentencing Reform Act at . (2019). https://sgc.wa.gov/sites/default/files/public/SGC/publications/SRA_review_report_rev20190802.pdf. ***Barbara Bloom, Barbara Owen & Stephanie Covington, <i>Women Offenders and the Gendered Effects of Public Policy</i>, 21 REVIEW OF POLICY RESEARCH 31–48 (2004).</p>		

Appendix A:

Gender and Justice Study Recommendations

Prepared by Robert Lichtenberg, Senior Program Analyst,
Supreme Court Interpreter Commission
January 26, 2021

1. Every court should have a robust language access plan.

Despite the requirement to have a language access plan, many courts have not created a plan for ensuring access to court systems for LEP persons. Additionally, courts are required to update their plans annually and make them available to the public, these plans are not translated nor are the majority of the plans submitted “robust”. They do not provide sufficient information to the public about how an interpreter may be requested or which forms are translated or how to find them. Most of the LAPs come across as policy statements about language access in general but do not provide process information for staff or the public on what to do or when to request language access services. Websites are by and large not translated so ease of access and accessing translated court forms differs from jurisdiction to jurisdiction and many do not reference translated forms being available on the AOC Forms website. Stakeholder Responsible: AOC (translation issues), local courts for local forms, and Interpreter Commission (language access issues in general)

2. Make online services accessible. Instructions for accessing translated forms is in English! Many online service forms need to be translated for LEP persons and also need to have compatibility with screen reading software used by blind individuals with their braille reader. Most court websites fail these two critical access thresholds. Stakeholder responsible: BJA, AOC Accommodations Staff, Interpreter Commission

3. Translate forms and provide assistance understanding forms.

This requires a joint AOC-Associations workgroup because many forms are local and a review should be done to identify those that can be made uniform and then translated. Currently, individual jurisdictions have their own translation process for local forms. Separately, the AOC is responsible for translating a limited number of pattern forms. Other pattern forms are not translated by the AOC. There is no centralized translation unit across all court jurisdictions so this has resulted in very poor ability of any one entity to tackle the problem.

4. Recruit multilingual court staff and a robust pool of qualified interpreters

Either locally, regionally, or as a state, we need to invest in bilingual staff and professional interpreter development.

5. Address the need for ASL court interpreter certification.

6. Conduct a language access audit by independent third party.

The first step is a thorough assessment of the language access plans and services available in all courts in Washington State. This information does not currently exist in one place. I recommend that the Interpreter Commission create audit thresholds for pass/fail and have courts align their plans to at least pass muster on critical access issues and have a timeline for completing other “auditable” items before we do an audit. I previously suggested the Commission do a random audit of plans and provide commentary but this recommendation was not followed up on. Also, the AOC needs to be involved in order to assist courts in meeting audit recommendations **Stakeholder group: Interpreter Commission and AOC**

7. Provide resources to develop new interpreters in a wide variety of languages.

Of critical importance to not just the courts, but also to many executive branch agencies, including OSPI, DOC, and DOT is the need for a formal program of study to become an interpreter by taking and passing courses for specialization in medical, legal, and educational environments. It takes much training to become an interpreter and language fluency alone is rarely sufficient. I would encourage the

AOC to partner with other state agencies to petition the Legislature for an appropriation to community colleges to create dedicated language interpretation programs.

8. Need better data collection in WA to improve language access.

This is very true for court records where the language is supposed to be captured in AOC's database. District and Municipal Court staff are not required to enter the language field in CMS for LEP parties so there is a data undercount and many gaps.

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Judicial Officer & Law Student Reception	Nominations Committee	TBD
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Law Student Liaisons*	Judge Paja, Co-Chair	
Jennifer Ritchie	Committee Chairs	
Vicky Vreeland		

Gender and Justice Commission

2021 Meeting Dates

Virtual Meetings held via Zoom Videoconference

Contact Moriah Freed (Moriah.Freed@courts.wa.gov) for Zoom access information.

Date	Time	Location
January 22 nd	9:30 AM – 12:00 PM	Zoom Videoconference
March 12 th	9:30 AM – 12:00 PM	Zoom Videoconference
May 21 st	9:30 AM – 12:00 PM	Zoom Videoconference
June 2 nd Supreme Court Symposium	9:00 AM – 12:00 PM	Temple of Justice Olympia, WA
September 10 th	TBD	TBD
November 19 th	TBD	TBD

Please contact Kelley Amburgey-Richardson with any questions at (360) 704-4031 or Kelley.Amburgey-Richardson@courts.wa.gov.