



**Gender Justice Study Advisory  
Committee**  
September 18, 2019  
10:00 AM – 3:00 PM  
AOC SeaTac Office  
18000 International Boulevard, Suite 1106, SeaTac,  
WA 98188

**MINUTES**

**I. Welcome Advisory Committee Members and Introduction to the Gender and Justice Commission (Commission)**

**Advisory Committee Members Present**

Justice Sheryl Gordon McCloud, Gender Justice Study Co-Chair, Dr. Dana Raigrodski, Gender Justice Study Co-Chair, Director Jim Bamberger (phone), Judge Linda Coburn, Ms. Jeneva Cotton, Judge LeRoy McCullough, Ms. Karen Murray, Judge Kathleen O'Connor (retired), Ms. Becky Row (phone), Ms. Tarra Simmons, Judge Michael Spearman (retired), Director César Torres, Mr. David Ward, Senator Judy Warnick (phone), Secretary Kim Wyman

**Presenters and Staff Present**

Ms. Erin Moody (phone), Ms. Elizabeth Hendren (phone), Judge Maureen McKee, Mr. Rob Mead (phone), Ms. Laura Edmonston (phone), Ms. Ophelia Vidal (phone), Ms. Cynthia Delostrinos, Ms. Kelley Amburgey-Richardson, Ms. Moriah Freed, Ms. Sierra Rotakhina

Justice Gordon McCloud, Gender Justice Study Co-Chair welcomed everyone to the meeting and provided a brief overview of the 1989 Gender Bias in the Courts report and the goals of the current Gender Justice Study. The attendees introduced themselves and shared their primary areas of interest and expertise.

**II. Gender Justice Study Overview**

- This agenda item was moved to follow agenda item III to accommodate presenters' schedules.
- Ms. Kelley Amburgey-Richardson, Senior Court Program Analyst, provided a brief presentation on the Study grant.
  - The grant runs through 2020 and the Advisory Committee will be meeting through the length of the grant.
  - **Update: The grantor approved our request to extend the grant by six months to June 2021, to allow more time to implement the selected pilots.**
  - The Advisory Committee will meet roughly every two to three months to provide guidance and peer review of the study products.

- The Commission will be selecting at least one pilot project this month and will select the other pilots over the coming months to stagger implementation if needed.
- **Update: several pilots and/or research projects have been selected. See specific details throughout.**
- Mr. César Torres, Advisory Committee Member, asked if we are continuing to collect pilot project ideas and Ms. Amburgey-Richardson responded that we are.
- **Update: As we proceed with several selected pilots, we have reserved funds and may select additional pilots if enough time remains on the grant project when they are identified, and we have capacity to manage more.**
- Ms. Sierra Rotakhina, Gender Justice Study Project Manager, provided a brief presentation on the status of the Gender Justice Study and some of the very early high-level findings (presentation on file).

### **III. Possible Pilot Project Presentation**

#### ***Survey on Workplace Harassment in Washington State Courts***

**Update: Selected as pilot project.** The Washington State Center for Court Research (WSCCR) will be designing and administering the survey and analyzing the data. .

- Ms. Erin Moody, Commission Member and Commission Domestic and Sexual Violence Committee Co-Chair, presented a pilot project proposal that would include developing and administering a survey on workplace harassment in Washington State Courts.
  - Ms. Moody is heading up a committee to develop a model workplace anti-harassment policy for courts based on a request by the Board for Judicial Administration (BJA) to do this.
  - They are in the final stages of vetting a draft model policy. The survey would be taken as a baseline before rolling out the policy. The goal would be to administer a follow-up survey at a later date to see what has changed since the baseline survey was conducted.
  - Pilot could include designing and administering survey, collecting and analyzing data, and writing the final report depending on what the grant could fund.
  - The survey would gather information on sexual harassment but other workplace harassment as well, such as mistreatment based on race/ethnicity.
  - Ms. Moody indicated that they have identified a sexual harassment survey being conducted by Women Lawyers on Guard that could serve as a model and be tailored to the needs of Washington State courts.
  - Mr. Torres asked if they had identified a similar survey to use as a model that focused on race/ethnicity. Ms. Moody noted that they have not identified this type of survey, but there may be one out there that could serve as a model that we have not found yet. Part of implementing this pilot, if selected, would be working with an expert to design the survey.
  - Ms. Becky Roe, Advisory Committee Member, noted that a bulk of the proposal seems to focus on the treatment of court personnel. She asked if the survey would

focus only on court employees and not treatment of witnesses, litigants, etc.? Ms. Moody responded that yes, the survey is focused on court employees and that this was intentional as it would be complementary to model policy roll out.

- Mr. David Ward, Advisory Committee Member, asked if the intention is to include LGBTQ harassment as well. Ms. Moody indicated that the survey would include this as well.
- The Committee discussed if the courthouse is a unique workplace due to power differentials and the role of judges or if findings from other workplace harassment surveys would be generalizable. Some members noted that it is a unique workplace.
- The Committee discussed if Court Clerks are included as “personnel” for the survey. Some members indicated that Clerks should be surveyed because they are working in the courtroom environment.
- Judge Linda Coburn, Advisory Committee Member, noted that the group would need to be thoughtful in defining who we are trying to reach with the policy and the survey (i.e. court employees only or people working in the courts as well [e.g. marshals, deputies, etc.]).

#### **IV. Topics Overview & Group Discussion**

- Dr. Dana Raigrodski, Gender Justice Study Co-Chair, provided an overview of the study research questions and meeting materials.
  - Outlined scoping process and noted that the Gender and Justice Commission did narrow down the study priorities, but kept most of the topics they had considered.
  - The Commission is asking for evidence from the field and experts – lived experience. If the Advisory Committee has these resources and can connect us with others who do that would help with the Study’s next steps.
  - The Commission is looking for ideas on how the report can address how the study priorities overlap in a meaningful way.
- Dr. Raigrodski asked which priority topics the Commission should address now.
  - Judge Coburn
    - Domestic Violence (DV) treatment – what is required? Is it effective or not effective?
    - The Moral Reconciliation Therapy (MRT) model is affordable for courts to provide. It important to study whether this is effective.
    - Judge LeRoy McCullough, Advisory Committee Member, said it’s important to understand if people can afford treatment—and not just the class but the time off from work. He noted it is an issue that there are not treatment providers who are people of color. Effective treatment for one group might not be effective for another group.

- Ms. Tarra Simmons, Advisory Committee Member, mentioned the WSIPP study on effectiveness of different reentry models which found that traditional DV treatment is the least effective.
  - Judge Michael Spearman, Advisory Committee Member, is interested in the efficacy of immediate removal of firearms
    - How do you find out about the weapons?
    - How do you secure them? Who secures them?
    - Is there a way to study what happens when we are successful in removing weapons? Consequences when we are not? Ways to eliminate weapons as a means of harm in DV situations?
  - Mr. David Ward, Advisory Committee Member
    - A priority for Mr. Ward is access to court for immigrant victims of violence.
      - a. He referenced a *State v. Romero Ochoa* amicus brief, available here: <https://www.courts.wa.gov/content/Briefs/A08/959056%20Amicus%20Brief%20NW%20Justice%20Project.pdf>
    - Another priority for Mr. Ward is credibility of women in the courtroom – interesting in research being done now about how women, especially women of color, are being held to a different credibility standard.
- Dr. Raigrodski asked if there are other important areas to consider.
  - Judge McCullough indicated that in the Access to Court/Justice category, physical access to court is important. Having DV victims stand in line with the respondent/abuser creates a safety issue which impacts access.
  - Judge Kathleen O’Connor, Advisory Committee Member, noted that the group should find out sooner rather than later what DV entities are doing so we don’t unnecessarily take on work others are doing.

**V. Presentation and Discussions of Topic 1.4 Barriers to Jury Service that Contribute to Lack of Diversity in Juries**

This presentation was provided under agenda item VIII in order to accommodate presenters’ schedules.

**VI. Presentation and Discussions of Topic 2.1: Gender Impact in Civil Proceedings as they Relate to Violence; Domestic Violence, and Sexual Assault**

- Rob Mead, State Law Librarian, presented his research to date on Topic 2.1
- Mr. Mead’s presentation covered current domestic violence and sexual violence data and outlined the changes in the legal environment in these areas over the last 30 years (presentation on file and included in Appendix A below).

## VII. Presentation and Discussions of Topics Related to Mass Incarceration (Topics 2.5, 2.6, 2.7, and 3.2, 3.3, and 3.7)

- Judge Maureen McKee, Gender and Justice Commission Member, presented the legal and social science research conducted to date on several topics related to mass incarceration:
  - Topic 2.5: Criminal proceedings as they relate to increased criminalization and incarceration of women pre- and post- conviction.
  - Topic 2.6: Criminal proceedings as they relate to increased criminalization and incarceration of men pre- and post- conviction and the consequences for women.
  - Topic 2.7: Criminal proceedings as they relate to exceptional sentence availability.
  - Topic 3.2: Collateral consequences for incarcerated parents.
  - Topic 3.3: The burden of mass incarceration on remaining heads of households.
  - Topic 3.7: The impact of a criminal background on access to services.
  
- Ms. Elizabeth Hendren, Commission Member and Co-Chair of the Commission Incarceration, Gender & Justice Committee, joined via phone and was available for questions.
  
- Judge McKee presented national data:
  - U.S. has highest rate of incarceration, followed by China, Russia, Ukraine.
  - Starting in 1970s and 80s, the U.S. embraced a get tough on crime approach.
  - Growth in incarceration is largely due to war on drugs.
  - Rate of female incarceration has grown 750% from 1980-2017, and Black women are disproportionately impacted.
    - Judge McCullough noted it would be interesting to study this topic more.
    - Ms. Simmons suggested that the large percentage of women in federal prison due to taking the fall for partner's drug charges.
    - Ms. Simmons is on the board of the National Council of Formerly Incarcerated Women and Girls and will be attending upcoming conference. Can bring back information to the Advisory Committee.
  - Judges are more likely to give Black and Hispanic women jail time than their White female counterparts.
  - No good data on women vs. men, but we can conclude that even if men are incarcerated at a similar rate, the communities they are from are disproportionately impacted.
  - We need to understand the full impact of male incarceration on women, on their children, and on the family unit.
    - Judge McCullough asked if the social science research has looked into the impact of parental incarceration on children.
      - Ms. Rotakhina noted that there is social science literature on this topic. Ms. Hendren noted that data shows that incarcerated women are more likely than incarcerated men to have their parental rights

terminated, something that disproportionately impacts women of color.

- Judge McKee presented Washington State data:
  - In Washington State, the development of sentencing laws in recent years has potentially been a strong contributor to mass incarceration. For example:
    - Increased penalties for delivery, manufacturing, possession with intent to deliver
    - 3-strikes law, 2-strikes law
    - Hard time for armed crime
    - Enhancements for individuals convicted of crimes with a sexual motivation
    - Street gang sentencing enhancement (125% of presumptive standard range)
  - Interested in study focused on Washington--what percentage of those detained are pre-trial (nationally it's 2/3)?
    - Judge Coburn noted that the State Auditor came out with a report this year about this.
    - Judge Spearman noted bail reform may be something for this group to focus on.
    - The group then discussed bail, bail assessment tools, and existing revolving bail funds in Washington.
  - Ms. Rotakhina presented slides to demonstrate how the different topic areas interconnect and how nuanced the impacts of inequities can be.
    - Ms. Geneva Cotton, Advisory Committee member, noted that there has been closer to an 800% increase in rate of incarceration for women. Data on incarceration by race in Washington shows some differences from national trends.

## VIII. Possible Pilot Projects Presentations

### *Study of Incarceration of Women in Washington State*

**Update: Selected (a portion) as Pilot Project.** The pilot proposal included aspects of both a small-scale analysis of existing, compiled data as well as a more in-depth study that would include collecting qualitative data and mining data from court records etc. Following further consideration, the Study will fund a \$5,000 project to analyze existing data on incarcerated women held by the DOC, the Caseload Forecast Council, and/or AOC. The goal of this formative research will be to better understand the demographics of incarcerated women in Washington and what has led to the increase in incarceration. This analysis should also help identify additional research questions for future research.

- Ms. Hendren presented a pilot proposal to study mass incarceration of women in Washington (proposal on file). The proposed study would research why more women are

ending up in prison in Washington and would start with a manageable piece of research now to inform longer, broader study.

- Ms. Cotton noted that the state Institutional Review Board must approve human subject research within DOC.
- DOC has a lot of the data.
- Ms. Cotton and Ms. Hendren discussed connecting to talk more about the possibility of using DOC data.
- Ms. Simmons noted that the [Criminal Sentencing Task Force](#) out of the William D. Ruckelshause Center is holding its first meeting on 9/30. They are doing complete data collection on sentencing disparities and the first research report due in December. Ms. Simmons is on this Task Force. We need to make sure we're not duplicating efforts.
- Middle ground within the proposal is data analysis of existing data and then gathering some stories--an initial dip in to craft deep dive study for the future.
- Ms. Karen Murray, Advisory Committee Member, noted that it would be interesting to have a student clinic where the students do courtroom observations and gather data.
- The group moved into a conversation about differences in alternative sentencing and Judge O'Connor noted that it would be helpful to understand why some men and women get into programs and some do not (e.g., drug court). Currently, prosecutor has ability to veto. Would look at this and other places where they are gatekeepers into certain programs for first time offenders.
  - Judge McCullough noted that access to therapeutic courts has a similar issue.
  - Judge Coburn noted that therapeutic courts are supposed to be a team approach. Should be a team recommendation.
  - The group contemplated if there are gender disparities in these areas.
  - Ms. Cotton noted that it would be interesting to look at differences by county and if the diversity of judges impacts the decisions.

***Presentation and Discussions of Topic 1.4 Barriers to Jury Service that Contribute to Lack of Diversity in Juries (originally agenda item V)***

**Update: To be included in Study research phase.** This project is a relatively simple analysis of existing jury summons data. Following further consideration, we determined that this could be completed under the umbrella of research we are already doing for the Study rather than separating it out as a pilot project. We have had conversations with the Seattle U professor who originally analyzed this data by race/ethnicity, and he is interested in working on an analysis by gender and gender+. We are moving forward with analyzing this data now.

- Justice Gordon McCloud and Ms. Ophelia Vidal, Research Analyst for the Gender Justice Study, outlined the findings of the legal and social science research on barriers to jury service (analysis on file).
  - The laws are identity-neutral, but they have disproportionate impacts on people in poverty.
  - The Washington State Center for Court Research conducted a study in 2008 on increased juror pay which showed that increased pay did not have an impact on

- responding to jury summons. This study has some limitations though (such as having a higher income, White study population; and a lack of knowledge among potential jurors that the pay had been increased).
- Research showed that poverty is a primary barrier to responding to jury service and that in Washington certain subpopulations are more likely to experience poverty (e.g. women in same sex marriages).
  - Research on race of jurors shows that a lack of diversity does impact jury deliberations and verdicts.
  - Ms. Roe indicated that in her experience, juries are evenly divided between women and men, if not more women.
    - Ms. Vidal noted that we would like to be able to look at the intersection of gender and other identities (e.g. race/ethnicity), so not just men vs. women but white women vs. women of color, etc.
    - Ms. Cynthia Delostrinos, Washington State Supreme Court Commissions Manager, noted that jury summons data exists that the Minority and Justice Commission collected, but we need to find someone to disaggregate it and analyze it. This could be a new pilot project idea.
      - Mr. Torres indicated that this should be a high priority. If the disaggregation starts to show imbalance, then the child care area could be a higher priority.
  - Judge McCullough asked how we encourage more employers to pay employees during jury service? Work with business community?
  - This led to a discussion among the Advisory Committee Members regarding how we would study which employees get paid by employers for jury service, if there is a role for the Commission in encouraging this, and the impacts on small businesses of paying employees to serve on juries.

### *Evaluation of Courthouse Childcare Centers*

**Update: Selected as Pilot Project.** We have an opportunity to partner with the University of Washington School of Public Health on this evaluation. The Master of Public Health students in the Community Oriented Public Health Practice program will design and implement this evaluation as a service-learning project. We are still formalizing a plan with UW and with the childcare centers in Kent and Spokane, but this partnership looks promising and would allow us to complete the evaluation with only minor costs.

- Ms. Vidal presented on the pilot proposal to evaluate one or both of the courthouse childcare centers in Washington to understand their impact on equity (proposal on file).

### *Efficacy and Adaptability of Therapeutic Court Approaches for Domestic Violence Perpetrator Treatment*

**Update: Selected as Pilot Project.** The pilot proposal included several prongs. At this time the Study can fund one prong of that proposal—an evaluation of the efficacy of DV-MRT. We are



working with the Washington State Center for Court Research to develop the framework for this evaluation and to identify the right entity or expert to conduct this evaluation.

- Ms. Sierra Rotakhina presented the pilot project submitted by Ms. Laura Jones and the DV Perpetrator Treatment Work Group (proposal on file).
  - The Advisory Committee discussed the importance of evaluating DV-MRT so judges know what evidence-based, low-cost options they have. They also discussed prioritizing one part of the pilot proposal instead of including all three prongs of the proposal.

## **IX. Possible Pilot Projects Discussion**

- Several Advisory Committee Members shared initial thoughts and recommendations about the pilot project proposals.
- Judge McCullough would prioritize Ms. Hendren’s proposal on mass incarceration of women if it included a look at collateral consequences.
  - Ms. Cotton asked if the purpose of the study is to determine why women are coming into prison. If so, looking at infractions is a separate issue.
  - Mr. Torres asked if infractions impact good conduct time.
    - Ms. Cotton indicated that they do, but it is not as common for women as for men.
    - Ms. Simmons noted that infraction history has an impact on family visits, which is relevant to assessing recidivism. She recommended giving the pilot proposers more money to have them do a broader look.
- Judge Coburn prioritized the following pilot ideas:
  - DV treatment
  - Incarceration of women
  - Disaggregation of jury service data
- Ms. Cotton prioritized the domestic violence perpetrator treatment proposal.
- Ms. Karen Murray prioritized the domestic violence perpetrator treatment proposal.

## **X. Next Steps & Adjournment**

The group discussed meeting scheduling and agreed that meeting every two months would be feasible. Justice Gordon McCloud noted that we will not meet just to meet but will come together when we need to have a substantive discussion with the Advisory Committee.

Some Advisory Committee Members noted that they like the meeting format and materials, though it was a large volume of reading so it is important to continue to provide the summaries in addition to the memos.

# *Appendix A*

## Domestic Violence & Sexual Assault in Washington Since the 1989 Gender Bias Study

Rob Mead, JD, MLS  
State Law Librarian  
Temple of Justice

# SCOPE OF THE PROBLEM(S)

- National Intimate Partner and Sexual Violence Survey (2017 focused on 2010-2012 statistics)
- **5<sup>th</sup> highest lifetime prevalence of intimate partner physical violence** (37.5 percent of women) of the 50 states.
- National prevalence is 32.4 percent and Kentucky was the highest at 42.1 percent.
- WA DV Programs served 24,642 in 2017, up from 21,314 in 2013
- **2<sup>nd</sup> highest lifetime prevalence of contact sexual violence** (44.8 percent of women, second only to Oregon 47.5 percent of women) **and rape** (25.3 percent of women again second only to Oregon at 26.3 percent of women)

- WSCADV – Firearms used in 369 of the 678 Washington DV homicides from 1997 to 2015 – 54% of the killers were already prohibited from owning guns
- NCADV – 1 in 10 women have been raped by an intimate partner
- CDC 2014 - Almost half of female (46.7%) and male (44.9%) victims of rape in the United States were raped by an acquaintance. Of these, 45.4% of female rape victims and 29% of male rape victims were raped by an intimate partner.

# Senate Bill Report – HB 1163 – 2017 – Summary of Testimony

“DV offenders are the most dangerous offenders we deal with and have the highest recidivism rates among offenders. Fifty-four percent of mass shootings are related to DV and police are three times more likely to be murdered responding to a DV call than any other call with shots fired. Progression of violence is prevalent among offenders.”

# ISSUE #1 - RECIDIVISM

WSIPP 2013 study of FY 2001 to FY 2008 data

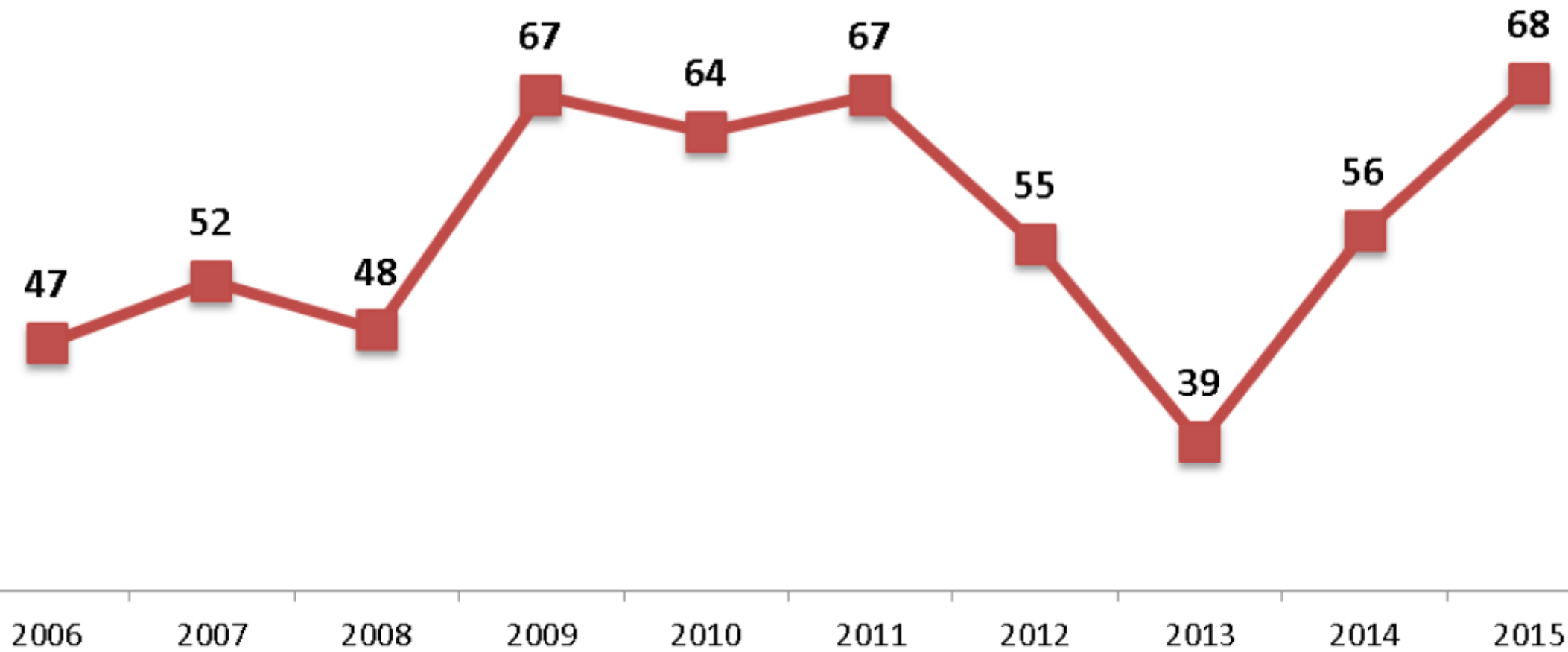
- Of DV offenders, 36% were convicted of new felony/misdemeanor within 36 months compared to 30% of non-DV offenders
- Of DV offenders, 18% were convicted of new DV within 36 months compared to 4% of non-DV offenders

## ISSUE #2 - LETHALITY

- Presence of a firearm increases the chance of a DV homicide by 500%
- Nearly 1 million women alive in the US have been shot or shot at by an intimate partner
- 2019 amendment of RCW 9.41.800 requires the **immediate** surrender of **all** firearms and other dangerous weapons
- It also prohibits batterers from accessing, obtaining, or possessing any firearms or other dangerous weapons
- Local law enforcement required to use databases to assist in locating the batterer and in serving the order and seizing the weapons

Fatalities ranged from 39 to 68 per year.

### Washington State domestic violence fatalities by year





# ISSUE #3 – RACE AND CULTURE

- Missing and Murdered Indigenous Women (MMIW)
- HB 2951 2018 ordered the WSP to conduct the study done by Captain Alexander
- 4 in 5 indigenous women experience violence in their lifetime and 1 in 3 in the previous year
- 32 of the 56 known missing indigenous women in WA came from King or Yakima counties
- HB 1163 Section 7 and Section 8 work groups noted the need for culturally appropriate assessment and treatment options and input from various cultural communities

# ISSUE #4 LEGAL DEFINITION OF DV

## RCW 26.50.010(3) – “Narrow range of behavior applied over a wide range of relationships”

- 2019 Amendment in response to the Section 7 and 8 Working Groups:

(3) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, ~~((between family or household members; (b)))~~ sexual assault ~~((of one family or household member by another;))~~, or ~~((c))~~ stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner; or (b) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

# ISSUE #5 - ASSESSMENT

- Working Group 8 found the need for an actuarial risk assessment that was validated and had the “highest degree of predictive accuracy” for Washington
- Legislature directed WSU’s Department of Criminal Justice to develop such for implementation by July 1, 2020
- Need for thoughtful implementation in climate of bail reform and serious questions about racial bias being baked into risk assessment tools

# ISSUE #6 TREATMENT

- Working Group 7 called for end of “one size fits all” DV treatment
- 2013 WSIPP critique of Duluth model led to decreased referrals to batterer intervention programs by courts
- DSHS WAC 388-60A regulation for DV treatment
- Implements Colorado’s 4 tier cognitive behavioral therapy approach
- Legislature in 2019 directed the Harborview Center for Sexual Assault and Traumatic Stress to develop a “training curriculum for domestic violence perpetrator treatment providers that incorporates evidence-based practices and treatment modalities”

# ISSUE #7 SEXUAL VIOLENCE RESPONSES SINCE 1989

- Sexual Assault Protection Orders – 2006
- 2013 Jennifer Paulson Stalking Order Protection Act
- Community Protection Act 1990 – National Leader in Civil Commitment of Sexually Violent Predators
- Backlog of Sexual Assault Kits – 2019 Legislature appropriated \$10.3 million to test the nearly 10K untested kits