

Chapter 10

Commercial Sex and Exploitation

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I. Summary

Commercial sexual exploitation (CSE), including sex trafficking, mainly targets women, children, young adults (up to age 24), and individuals identifying as LGBTQ+, primarily in communities in poverty, Indigenous communities, and communities of color. Economic and social marginalization drives people into the commercial sex industry and exploitation, which in turn perpetuates that economic and social marginalization. The most targeted and marginalized populations have been doubly harmed by exploitation and by poor treatment within the legal system.

While data is limited, CSE is widespread in the sex industry in Washington State and nationally. State and national data show significant disparities based on gender and gender identity, sexuality, age, class, race, ethnicity, and Indigenous identity. Prior experiences of abuse, trauma, homelessness and alienation from one's family increase vulnerability and risk, now exacerbated by the COVID-19 pandemic. Washington data indicates that CSE survivors are mostly female, although male and LGBTQ+ survivors are likely significantly undercounted. A significant number of those trafficked and exploited in the commercial sex industry are children and youth (up to age 24). Third-party exploiters and many sex buyers target women and girls of color, which contributes to their overrepresentation among those who are sexually exploited. Sex buyers are almost exclusively men and high-frequency buyers are often high earners. In Washington, human trafficking is deeply and historically connected to missing and murdered Indigenous women and people.

Inequities in the justice system amplify disparities for survivors of exploitation and for individuals in the sex industry generally. Washington's justice system addresses commercial sex through overlapping frameworks: sex industry offenses such as prostitution and patronizing, commercial sexual abuse of minors (CSAM), and human trafficking. Those frameworks are often in tension with each other due to misconceptions about the pathways into the sex industry and the barriers to leaving it. Individuals in the sex industry, including the many who are exploited, have been criminalized rather than recognized as victims or survivors, and have been sanctioned disproportionately to their exploiters. Washington data shows that women and girls have been

disproportionately criminalized. The data does not provide much information about the criminalization of LGBTQ+ populations, though national data suggests they are also disproportionately criminalized. Washington data also shows the disproportional criminalization of Black, Indigenous, and people of color. Exploiters, on the other hand, have often escaped prosecution or faced limited sanctions.

Increased knowledge about the impacts of sexual exploitation has led to greater recognition that sex work often masks sexual exploitation. As a result, the criminal justice system now is better equipped to identify and serve survivors. Since the early 2000s, Washington has made significant progress on issues of human trafficking and CSE, due in large part to a concerted effort to provide cross-disciplinary training to identify and respond earlier to CSE children and youth. Washington has also reduced the disproportionate gender and race impact of the justice system response to individuals in the sex industry, including victims of exploitation. Current responses focus on holding exploiters accountable, on ending the cycle of CSE-related crime, and on facilitating a way out of the sex industry by providing services and enhancing economic and social safety nets. Washington has increased the accountability of traffickers and exploiters, who are almost exclusively men, and has legislated a survivor-centered approach to sexually exploited minors and, to some extent, adults. The number of arrests and charges for trafficking, CSAM, and patronizing is increasing, while the number of prostitution arrests and charges is decreasing. Washington has made significant progress in reducing the involvement of CSE minors in the justice system, many of whom are at-risk girls, LGBTQ+ minors and young adults, boys, and Black and Brown minors and young adults. These actions are helping to alleviate the historic gender, racial, and socioeconomic inequities in the justice system.

However, many of the new protections apply only to minors. Even with new protections and better identification, lack of services and facilities statewide remains a challenge. Adult prostitution is still a criminal offense. Where no force or coercion is involved, until the recent passage of SB 5180 (effective date 7/25/21), adults had few available defenses to the charge or easily accessible ways to vacate prostitution convictions. Challenges still exist for sexually exploited people, both minors and adults, who are arrested and adjudicated for other crimes. The bulk of current research shows that most people who are sexually exploited have histories

of child abuse and became involved in the sex industry as minors, when coerced into prostitution by families, by third parties or because of poverty, substance abuse, or homelessness. The lack of protective legislation and policies for 18 to- 24-year-olds constitutes a failure to recognize this reality. CSE survivors and sex workers suffer from shame and stigma imposed on them by society because of a pervasive belief that they are responsible for the harm, violence, and criminalization they suffer. Explicit and implicit biases at various decision points in the justice system can perpetuate disparities and inequities. Protective CSE laws and policies may only be available when individuals are identified as victims or survivors. Bias can affect whether or not a person is identified as a victim or survivor and at which stage of their involvement in the justice system, which means gender and race may determine outcomes.

To reduce CSE and the disproportionate gender and race impact of the justice system’s response, Washington should continue to develop multidisciplinary systems-wide responses with a focus on “upstream” prevention and a public health approach. Washington should also strive to further reduce justice system involvement for minor and adult CSE survivors, increase accountability of exploiters, provide for comprehensive continuing cross-sector education, and improve data collection on commercial sexual exploitation.

II. Background

A. Commercial sex in Washington and nationally

To understand issues surrounding commercial sex, exploitation, and justice system responses, we must use consistent, easily understood, terms. On these issues, many of the terms used in the law and in society are contested and reflect complex histories, policies, and practices. This chapter aims to prioritize the lived experiences and terminology of those most directly impacted—those who self-identify as survivors of sexual exploitation, those who self-identify as sex workers, or both. Focusing this study on systemic disparities and inequities within laws and policies, and drawing on available data, this chapter also uses legal and social science terminology such as “victim” or “prostitution.” The latter, for example, is often disfavored due to the stigma and criminality it connotes; this chapter uses it sparingly as indicated by the context.

In this report “child” and “minor” mean a person under the age of 18; young adult refers to those between the ages of 18 and 24; “Youth” is a person up to the age of 24.¹ This report uses CSEC and CSE Youth interchangeably unless specifically noted.² A “victim” or “survivor” is a person who has suffered direct harm, whether emotional, physical, or financial, as a result of being sexually exploited by others. The legal system primarily refers to individuals who are sexually exploited as “victims;” service providers and exploited individuals mostly prefer “survivors.” As used in this chapter, “survivor” may describe a person who was or is still engaged in the sex industry. The words “sexual exploitation” or commercial sexual exploitation (CSE) may be used interchangeably. For many, the word “trafficking” implies the need for forced travel or control by a third party. But as statutorily defined, “trafficking” of an adult requires use of force, fraud, or coercion, which is not required where the victim is a minor; travel or movement is not required. Sexual exploitation and trafficking are far more complex in today’s world, particularly because exploiters target individuals by preying on systemic and personal vulnerabilities, and sexual exploitation is a more accurate descriptor of the dynamic. “Sex work” is used to mean the exchange of sexual services between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer. The term “sex work” is often used to describe situations where adults engaging in commercial sex have consented to do so, and exclude situations where consent is absent for reasons including threat or use of force, deception, fraud, abuse of power, or involvement of a minor.³ “Consent” due to poverty, homelessness, substance abuse, or mental health does not fit within this definition.

The issue of adult sex work and sexual exploitation of adults (when not clearly amounting to trafficking) generates differing perspectives, including among survivors and sex workers. Some view adults engaged in commercial sex as victims or survivors of exploitation and see sex work as part of the spectrum of sexual exploitation of adults. Others view adults as sex workers opting

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

² The CSEC acronym connotes “children,” which may be perceived as minors under the age of 18, but data, studies, and services often cover youth up to age 24.

³ AMNESTY INT’L, AMNESTY INTERNATIONAL POLICY ON STATE OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE HUMAN RIGHTS OF SEX WORKERS 3 (2016), <https://www.amnesty.org/download/Documents/POL3040622016ENGLISH.PDF>.

to engage in the sex industry like any other labor market. Adult involvement in commercial sex exists on a spectrum of coercion, circumstances, and choice. Some are coerced into the sex industry by violence, fraud, or threats. Some engage in sex work by choice, free of economic or other pressures. Most trade sex for economic or physical survival—such as out of necessity for safety, subsistence, housing, healthcare, or childcare—where other labor pathways may be blocked or insufficient to meet basic needs. Opinions vary greatly on where and how to draw the line between consent and coercion, between choice and exploitation.

This report strives to give voice to the different perspectives concerning adults in the sex industry. It critically examines the notion of “consenting adults” and expands our understanding of coercion. Research and data on adults engaged in commercial sex suggest that many were groomed and coerced into the sex industry as minors, and were controlled by third parties, experienced multiple traumas, and faced significant barriers to exiting “the life.”⁴ Many others, especially those already marginalized because of gender identity, race and ethnicity, immigration status, and abilities, are specifically targeted by exploiters and forced by poverty, survival needs, substance use disorder, or mental health conditions, to engage in prostitution.

Without comprehensive, accurate data we cannot understand the extent or demographics of human trafficking and sexual exploitation. Lack of data means lack of public awareness, and even where there is data, the databases (e.g., child welfare, law enforcement, courts, public health) may not speak to each other either within the state or between states. 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 for each state may not know about the history in the other states. For adults in the sex industry, criminalization and marginalization compound the problems.⁵

⁴ “The life” is a short-hand term many survivors use to describe their history of exploitation: “Some call it sex trafficking, commercial sexual exploitation, sex work, prostitution. But many survivors just call it the Life.” THE LIFE STORY: MOMENTS OF CHANGE, https://thelifestory.org/assets/downloads/about/handouts/en/TLS_Handouts_TheLife.pdf.

⁵ The sex industry is a criminalized industry. Adults who identify as sex workers are often not connected to services or other efforts to collect data. Moreover, among those who are sexually exploited, young adults and adults,

In Washington, there is little statewide data on the prevalence of commercial sex and commercial sexual exploitation.⁶ However, a national study published in 2014 estimated that between 2003 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.⁷ In King County alone, it is estimated that about 500 youth are sold every night.⁸ Commercially sexually exploited children and youth are overrepresented among those who are experiencing homelessness or who have run away, both nationally and in Washington. At the national level, data about missing and exploited children is reported to and collected by the National Center for Missing and Exploited Children (NCMEC) as authorized by Congress. Child welfare agencies are required to report children missing from care to NCMEC (and law enforcement) within 24 hours.⁹ In 2020, of 29,800 reported cases of missing children, 26,500 (91%) were endangered runaways and one in six of them were likely victims of child sex trafficking.¹⁰ In Washington State, based on the population of 13,000-15,000 homeless youth and young adults in Washington State who are surviving homelessness on their own, a 2019 report estimated that in 2018 the CSEC prevalence statewide ranged from 2,000 to 3,000.¹¹

particularly boys, men, and LGBTQ+ people, are less likely to self-identify or be identified and treated as victims and survivors of sexual exploitation.

⁶ To the extent that arrest and charging data sheds light on the scope of the problem in Washington State, it is discussed later in this report.

⁷ URB. INST., ESTIMATING THE SIZE AND STRUCTURE OF THE UNDERGROUND COMMERCIAL SEX ECONOMY IN EIGHT MAJOR US CITIES 22 (2014), <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 U.S. cities, including Seattle. *Id.* at 1.

⁸ Hanna Scott, *Parents, Pay Attention – Backpage Is Out, Sugaring Is In*, MYNORTHWEST (May 15, 2021), <https://mynorthwest.com/2900940/backpage-out-sugaring-in-parents-pay-attention>.

⁹ Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014).

¹⁰ *Missing Children Statistics*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN (2021), <https://www.missingkids.org/footer/media/keyfacts#missingchildrenstatistics>.

¹¹ DEBRA BOYER, COMMERCIALLY SEXUALLY EXPLOITED CHILDREN IN SEATTLE/KING COUNTY 2019 UPDATE 17 (2019), <https://static1.squarespace.com/static/5b71c32bec4eb7c684a77ff4/t/5dee96855704156dcb240b01/1575917194777/Commercially+Sexually+Exploited+Children+in+King+County+2019+Update+%28003%29.pdf>. 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*. *Id.* at 7. 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 CSE youth 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

The rise of online platforms has exacerbated the scope, size and nature of the commercial sex industry.¹² Prior to the 2018 passage of the Stop Enabling Sex Traffickers Act (SESTA) and Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA), and before the shutdown of Backpage.com, the King County Prosecuting Attorney’s Office identified at least ten websites (and there are likely many more) offering sex for sale in the greater Seattle area. According to King County Prosecuting Attorney’s Office data from that time, Backpage.com alone (taken down in 2018 by the Department of Justice [DOJ]) featured an average of 36,897 sexual services 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). In January 2016, authorities seized The Review Board, a local internet platform established to post reviews on sex acts and prostitutes. Its owner reported the site had 18,000 members.¹³ Many adult sex workers and advocates assert that FOSTA-SESTA put their

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.* at 8.

¹² 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 as 47 U.S.C. §§ 230, 560, 56, (CDA), 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. No. 115-164, §4, 132 Stat. 1253 (2018), amending the CDA. It states 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 shuttering of some websites and platforms that facilitated sex trafficking and commercial sexual exploitation, others have resumed or started, and many 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 sex work 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* Press Release, Erin Dooley, Office of the United States Attorney, N. Dist. of Tx., U.S. Attorney’s Office Shuts Down Website Promoting Prostitution and Sex Trafficking, Indicts Owner (June 19, 2020), <https://www.justice.gov/usao-ndtx/pr/us-attorney-s-office-shuts-down-website-promoting-prostitution-and-sex-trafficking>.

¹³ *See* Lynsi Burton, *Online Sex Forum Leader Gets 3 Years After ‘Unprecedented’ Prostitution Sweep*, SEATTLEPI (Dec. 6, 2018), <https://www.seattlepi.com/local/crime/article/Online-sex-forum-leader-gets-3-years-after-13447512.php>; Juju Chang & Jackie Jesko, *Inside the Fight to Take Down Online Prostitution Review Boards*, ABC NEWS (June 27, 2017), <https://abcnews.go.com/US/inside-fight-online-prostitution-review-boards/story?id=48308991>; Lynn Thompson, *Busted: How Police Brought Down a Tech-Savvy Prostitution Network in Bellevue*, SEATTLE TIMES (July 26, 2017), <http://projects.seattletimes.com/2017/eastside-prostitution-bust>.

lives and livelihood at risk by eliminating an online infrastructure they had come to depend on. They suggest that SESTA-FOSTA pushed people from online-based work with pre-screening and negotiations into riskier street-based work, exposed people to increased violence and exploitation by both clients and the police, and took away many sex workers' income, destabilizing their economic and housing security.¹⁴ However, it is well documented that the online environment makes it much easier for those looking to sexually exploit minors and young adults. For example, in 2018, there were an estimated 1,971 to 2,475 buyers responding over a 24-hour period to Chat Bots (posing as children) run by Seattle Against Slavery.¹⁵ Online platforms have made it easier to groom and recruit children and youth on gaming and social networking sites, and for families and others to abuse children and sell online access to the abuse. The explosion of social networking, gaming, and cryptocurrencies has added an increasingly dangerous, hidden, and anonymous way for individuals and organized groups of predators to groom, recruit, stalk, and exploit children as young as six. According to federal and state law enforcement officials nationwide, organized groups of predators operate on every single gaming

¹⁴ See e.g., Liz Tung, FOSTA-SESTA Was Supposed to Thwart Sex Trafficking. Instead, It's Sparked a Movement WHY (July 10, 2020), <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. WASH. STATE DEP'T OF COM., OFF. OF CRIME VICTIMS ADVOC. & PUB. SAFETY, HUMAN TRAFFICKING LAWS AND INVESTIGATIONS 4 (2019), <https://deptofcommerce.app.box.com/s/aocg76el1m0zydezrm1cuck3syhsl1bt>. The ACLU cited research from two surveys of sex workers by sex worker organizations indicating FOSTA-SESTA had negative consequences on sex workers' safety, including having to take on riskier clients, receiving physical and/or verbal threats or being physically exploited, lacking a dependable screening mechanism and being more desperate for clients. ACLU, IS SEX WORK DECRIMINALIZATION THE ANSWER? WHAT THE RESEARCH TELLS US 6 (2020), <https://www.aclu.org/report/sex-work-decriminalization-answer-what-research-tells-us>. There 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. David Kroman, *With Alternatives Stretched and Neighbors Angry, Seattle Police Return to Arresting Sex Workers*, CROSSCUT (Oct. 2, 2019), <https://crosscut.com/2019/10/alternatives-stretched-and-neighbors-angry-seattle-police-return-arresting-sex-workers>.

¹⁵ BOYER, *supra* note 11, at 9.

site.¹⁶ “‘Sugaring’ is another trend that poses a threat to children and young adults.”¹⁷ According to King County Senior Deputy Prosecuting Attorney Benjamin Gauen, “[s]ugaring is a concept where you are essentially signing up for some sort of relationship or construct where you have a sugar baby and a sugar daddy. The sugar daddy is the one with the resources and the power and the privilege, and they give things of value, which could be a trip or a dinner or cash or clothing or jewelry, whatever it is, to the sugar baby in exchange for something.”¹⁸ Sugar daddies are usually older men, and often target vulnerable young college and high school students. To be sure, “sugar daddies” have been around for a long time – but without the added dangers of the on-line and social media saturated environment. In this context, “[i]t’s a new frontier of exploitation. It’s marketed in a way where you’re trying to sanitize the harms of exploitation or prostitution. And it’s packaged in a way where folks think they’re avoiding legal liability, when in fact, this is still exploitation. It’s just got a creative marketing lingo to it.”¹⁹

A local survivor, who became a “sugar baby” as a homeless 14-year-old in order to survive, explained: “It’s not all hunky-dory, like, yes, I’m getting my tuition paid and they are paying for an apartment,” explained the former sugar baby, who shared her story on the condition of anonymity. “I had experienced sexual abuse, you know, sex was desensitized, and it was kind of like, I get this has already been taken from me, like, at least let me monetize off of it. Like, I mean, you know, on my terms.”²⁰ But “[w]hen you get down to the nitty gritty, it’s also you have a lot of clients who will retaliate if you don’t text them back fast enough...if you are not holding up

¹⁶ The DOJ held a series of nationwide video discussions in March and April, 2020 in preparation for a DOJ report to congress under the PROTECT Our Children Act. Judge Mack participated. There was detailed discussion and widespread agreement among federal and state officials (FBI, local law enforcement, state and federal prosecutors, Homeland Security), victim advocates, as to the following: the biggest change in child sexual abuse materials in the last four years, particularly affecting law enforcement and victim resources, is that groups of offenders are targeting and grooming hundreds of thousands of children and youth on TikTok and other sites, then migrating to other sites, often on the dark web. Thorn (www.thorn.org) has been working with Microsoft to implement use of a tool to prevent grooming on gaming sites.

¹⁷ Scott, *supra* note 8; *The Bitter Truth About Sugar Dating*, NAT’L CTR. ON SEXUAL EXPLOITATION (Feb. 2, 2020), <https://endsexualexploitation.org/articles/the-bitter-truth-about-sugar-dating>.

¹⁸ Scott, *supra* note 8.

¹⁹ *Id.*

²⁰ *Id.*

exactly like what the standard is in their eyes. Like they own you. And that is what they feel is that they own you because they are giving you this monetary thing.”²¹

Due to the COVID-19 pandemic, 2020-21 has been particularly fraught with danger for children, youth, and marginalized communities, including those targeted for 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 COVID-19 shelter-in-place orders in the spring of 2020, the number of crisis trafficking cases handled by the hotline increased by more than 40%.²² NCMEC, mentioned above, also manages the national CyberTipline.²³ In pre-pandemic 2019, NCMEC received 16.9+ million cybertips,²⁴ and responded to more than 10,700 reports regarding possible child sex trafficking. In 2020, NCMEC’s online enticement reports doubled compared to 2019; all CyberTipline reports increased 28% from 2019 to 2020.²⁵ With school closures, children and youth increased their online activities, often without supervision. Almost every child has a camera on their phone, and most children are comfortable performing on camera. This normalized behavior makes it easier to do things with and for peers, which becomes exploitable by offenders who pretend to be peers. Many parents and caregivers are unaware of security settings or the dangers of new smartphone applications where grooming and exploitation occur. The lack of caregiver knowledge, social isolation, and increased proximity to strangers online makes young people more vulnerable to online grooming and exploitation. The person seeking

²¹ *Id.*

²² 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.

²³ *CyberTipline*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (2021), <https://www.missingkids.org/gethelpnow/cybertipline>. The CyberTipline deals with reports of suspected child sexual exploitation/abuse, usually internet-based abuse/exploitation.

²⁴ *CyberTipline* NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://www.missingkids.org/gethelpnow/cybertipline>. 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. Kirolos Barsoum, *Protecting America’s Families Since 1984*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (Dec. 9, 2020), <https://www.missingkids.org/blog/2020/protecting-our-nations-children-since-1984>.

²⁵ Brenna O’Donnell, *COVID-19 and Missing & Exploited Children*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (APR. 30, 2021), <https://www.missingkids.org/blog/2020/COVID-19-and-missing-and-exploited-children>. NCMEC defines enticement as “online enticement of children for sexual acts.” *The Issues: Online Enticement*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (2021), <https://www.missingkids.org/theissues/onlineenticement>.

to victimize children is no longer outside the schoolyard, he is on a phone in the child's bedroom or bathroom.

B. Vulnerability to exploitation and harm caused

Sexual exploitation is driven by two powerful market forces: the demand for sex from women and children by men; and economic marginalization that particularly affects LGBTQ+ people, people with disabilities, and Indigenous and other marginalized communities.

It is undisputed that a high percentage (estimates range from about 70% to over 90%) of people who are trafficked experienced physical and/or sexual violence prior to being victims of sexual exploitation. 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.²⁶

The voices and experiences of victims and survivors underscore complex vulnerabilities and intersectional systemic issues for those from marginalized communities, from birth into inequality, adverse childhood experiences and underlying trauma, to failed social and institutional safety nets and systemic discrimination. As Ne'cole, a survivor and service provider, says: "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."²⁷ Racial disproportionality in rates of sexual exploitation is discussed in more detail in subsection C below.

Research shows that nearly one in four girls and one in 13 boys experience sexual abuse in childhood.²⁸ The number for boys may be as high as one in six.²⁹ According to the Centers for Disease Control and Prevention (CDC), 91% of child sexual abuse is perpetrated by someone whom the child or the child's family knows.³⁰ Individual, family, and community factors significantly increase the risk of vulnerability of children and youth, adding to issues related to adolescent brain development and hormonal changes. 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."³¹

²⁶ NAT'L ADVISORY COMM. ON THE SEX TRAFFICKING OF CHILDREN & YOUTH IN THE U.S., BEST PRACTICES AND RECOMMENDATIONS FOR STATES 7-8 (2020), https://www.acf.hhs.gov/sites/default/files/documents/otip/nac_report_2020.pdf.

²⁷ THE LIFE STORY, <https://www.thelifestory.org>.

²⁸ *Preventing Child Sexual Abuse*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 30, 2021), https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fchildabuseandneglect%2Fchildsexualabuse.html.

²⁹ 1IN6, INC., THE 1 IN 6 STATISTIC (2016), <https://www.acesdv.org/wp-content/uploads/2014/06/1-in-6-factsheet.pdf>; CATHERINE TOWNSEND, ESTIMATING A CHILD SEXUAL ABUSE PREVALENCE RATE FOR PRACTITIONERS: A REVIEW OF CHILD SEXUAL ABUSE PREVALENCE STUDIES (2016), <http://www.d2l.org/wp-content/uploads/2017/02/PREVALENCE-RATE-WHITE-PAPER-D2L.pdf>.

³⁰ *What Is Child Sexual Abuse?*, CTRS. FOR DISEASE CONTROL & PREVENTION (2021), <https://www.cdc.gov/violenceprevention/childsexualabuse/fastfact.html>.

³¹ Jordan Greenbaum & James E Crawford-Jakubiak, *Child Sex Trafficking and Commercial Sexual Exploitation: Health Care Needs of Victims*, 135 PEDIATRICS 566 (2015).

It is no surprise that disability, particularly intellectual disability, is a risk factor for CSE for both children and adults. According to Tina Frundt, founder and executive director of Courtney's House in Washington, D.C., 32% of the more than 70 trafficked minors in her program are on the autism spectrum.

According to the Administration for Children and Families Child Welfare Information Gateway, "children with disabilities are at least three times more likely to be abused or neglected than their peers without disabilities, and they are more likely to be seriously injured or harmed by maltreatment."³² The risk of maltreatment may vary depending on the particular kind of disability. While this data does not relate specifically to sexual exploitation, we know that child abuse puts children at higher risk for future commercial sexual exploitation. The risk factors for children with disabilities may be societal (isolation, discrimination, lack of support); disabilities can affect family dynamics; and children and adults with disabilities are more vulnerable to coercion and manipulation.³³ "Children with disabilities may have a limited ability to protect themselves or to understand what maltreatment is or whether they are experiencing it."³⁴ In addition, "children with disabilities who rely on caregivers for their daily needs may experience a lack of independence and privacy and not know when the behavior is inappropriate."³⁵ A study of 54 juvenile sex trafficking cases in Dade County, Florida, found that nearly 30% of those juveniles had intellectual disabilities.³⁶

Other parts of this chapter show that youth with full mental capacity may not understand what abuse and exploitation are. It follows that those with mental disabilities may not understand what is happening to them, are less likely to be able to leave caregivers, may be less able to communicate, and if they disclose, may be disbelieved due to their disability. Just as sexual

³² CHILD WELFARE INFO. GATEWAY, THE RISK AND PREVENTION OF MALTREATMENT OF CHILDREN WITH Disabilities 1 (2018), <https://www.childwelfare.gov/pubPDFs/focus.pdf> (internal citations omitted).

³³ *Id.* at 3 (internal citations omitted).

³⁴ *Id.* at 4 (internal citations omitted).

³⁵ *Id.* See also Joan A. Reid, *Sex Trafficking of Girls With Intellectual Disabilities: An Exploratory Mixed Methods Study*, 30 SEXUAL ABUSE 107 (2018).

³⁶ *id.*

exploitation subjects people to shame and stigma, so do physical, mental, and cognitive disabilities, compounding the effects of both.

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.³⁷ 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.³⁸ More than half of the children in the sample had attempted suicide in their lifetime. Eighty-two percent 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, or weapons to recruit and maintain control. The most common motivation of familial 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 extracurricular 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.”³⁹

Judge Robert Lung is a Colorado judge and 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 two to three years and trafficked by his father as part of a pedophile ring until he was about 12. He

³⁷ COUNTER-TRAFFICKING DATA COLLABORATIVE, FAMILY MEMBERS ARE INVOLVED IN NEARLY HALF OF CHILD TRAFFICKING CASES 1, https://www.iom.int/sites/default/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf.

³⁸ Ginny Sprang & Jennifer Cole, *Familial Sex Trafficking of Minors: Trafficking Conditions, Clinical Presentations, and System Involvement*, 33 J. FAM. VIOLENCE 185, 185 (2018).

³⁹ *Id.* at 187 (quoting B. A. van der Kolk, *Developmental Trauma Disorder: Toward a Rational Diagnosis for Children with Complex Trauma Histories*, 35 PSYCH. ANNALS, 401, 406 (2005)).

corroborates the research about how children who are trafficked by their families adapt in order to survive.⁴⁰

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.⁴¹ It was modeled on a 1982 study of 200 women engaged in prostitution in the San Francisco area in the United States.⁴²

Sexually exploited children and adults share many common characteristics both in the pathways leading into the sex industry and the barriers to exiting. 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 adults in the sex industry entered as minors, experience multiple traumas, and face many barriers to exiting.⁴³ Traditionally, “juvenile prostitution” and commercial sexual exploitation have evoked images of force and abusive male dominance by third party exploiters and clients alike. While this is true for some, it does not account for the social and economic factors that funnel children and youth – particularly teenagers age 15 and older – into survival sex.

One study of over 600 active sex workers and pimps from 2008-2013 found minors were almost twice as likely as adults to “self-initiate” into the sex industry due to the social and economic

⁴⁰ Steven Mayer, *Expert Discusses Complexities of Human Trafficking in Virtual Forum*, BAKERSFIELD CALIFORNIAN (Feb. 25, 2021), https://www.bakersfield.com/news/expert-discusses-complexities-of-human-trafficking-in-virtual-forum/article_d60a6c8e-7706-11eb-a1a5-9f4675de2b7f.html. https://www.bakersfield.com/news/expert-discusses-complexities-of-human-trafficking-in-virtual-forum/article_d60a6c8e-7706-11eb-a1a5-9f4675de2b7f.html

⁴¹ Chris Bagley & Loretta Young, *Juvenile Prostitution and Child Sexual Abuse: A Controlled Study*, 6 CAN. J. CMTY. MENTAL HEALTH 5, 5-23 (1987).

⁴² See Mimi H. Silbert & Ayala M. Pines, *Entrance Into Prostitution*, 13 YOUTH & SOC'Y 471 (1982).

⁴³ See *infra*. See also ENDING EXPLOITATION COLLABORATIVE, <https://www.endingexploitation.com/about-ending-exploitation-collaborative.html>. The “Ending Exploitation Collaborative” is a partnership including the Washington 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.

environments that required selling themselves to survive.⁴⁴ Lack of employment that allows financial stability, lack of access to education, and lack of financially accessible or transitional housing push CSE youth into the sex industry. In the sex industry, they develop complex peer networks outside of “pimps” and “traffickers.”⁴⁵ In two studies, 86% to 93% of youth wanted to leave sex work, and their pimp/trafficker wasn’t the barrier to leaving.⁴⁶ Rather, barriers to leaving were similar to the social and environmental factors that resulted in their entrance into commercial sexual exploitation. Those barriers often remain into adulthood and may increase for adults in the sex industry.

A disproportionate number of Black, Indigenous, and youth of color; LGBTQ+ youth; and particularly LGBTQ+ youth of color, are forced by their circumstances to exchange sex for necessities. LGBTQ+ youth seem to be some of the most targeted for exploitation due to a lack of family support and social safety nets, and biases against LGBTQ+ identities.⁴⁷ Lack of acceptance and discrimination against LGBTQ+ youth include religious persecution, abuse in their homes, communities and schools, and lack of access to health care, often resulting in homelessness. In 2013, LGBTQ+ youth comprised 20-40% of the more than 1.6 million young people who experienced homelessness.⁴⁸ This speaks to the disproportionate number of young people

⁴⁴ ANTHONY MARCUS ET AL., NAT’L INST. OF JUST., CONFLICT AND AGENCY AMONG SEX WORKERS AND PIMPS: A CLOSER LOOK AT DOMESTIC MINOR SEX TRAFFICKING (2014), <https://nij.ojp.gov/library/publications/conflict-and-agency-among-sex-workers-and-pimps-closer-look-domestic-minor-sex>; The 2021 Gender Justice Study uses the race and ethnicity terms used in the underlying sources when citing data in order to ensure we are presenting the data accurately and in alignment with the how the individuals self-identified. When talking more broadly about the body of literature we strive to use the most respectful terms. See Section V of the full report (“2021 Gender Justice Study Terminology, Methods, and Limitations”) for a more detailed explanation of terminology used throughout the report.

⁴⁵ MEREDITH DANK ET AL., URB. INST., SURVIVING THE STREETS OF NEW YORK: EXPERIENCES OF LGBTQ YOUTH, YMSM, AND YWSW ENGAGED IN SURVIVAL SEX 79 (2015), <https://www.urban.org/sites/default/files/publication/42186/2000119-Surviving-the-Streets-of-New-York.pdf>. See also 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, 1646 (2015). See also Brendan M. Conner, *In Loco Aequitatis: The Dangers of Safe Harbor Laws for Youth in the Sex Trade*, 12 STAN. J. C.R. & C.L. 43 (2016).

⁴⁶ DANK ET AL., *supra* note 45, at 60-62: “Almost all youth wanted to stop trading sex: three-quarters of respondents wanted to stop at some point (67%), while another 21 percent said they had already recently stopped.” See also Phillips, *supra* note 45, at 1665.

⁴⁷ CTR. FOR CHILDREN & YOUTH JUST., THE IMPACT OF COVID-19 ON COMMERCIAL SEXUALLY EXPLOITED CHILDREN IN WASHINGTON (2021) (on file with authors).

⁴⁸ MARY CUNNINGHAM ET AL., URB. INST., HOMELESS LGBTQ YOUTH 1 (2014),

from the LGBTQ+ community who have no supportive housing and experience intersectional marginalization in their families, religions, and communities. As a consequence, LGBTQ+ youth engage in the illicit economy in order to survive.

Abundant literature documents the trauma experienced by individuals in the sex industry. Researchers studied 30 years of records of 1,969 women known to have been involved in sex work in Colorado Springs, CO, including health records, death records, and law enforcement records.⁴⁹ The data are harrowing. The average age of death was 34, with the leading causes of death being homicide (19%) drug ingestion (18%), accidents (12%) and alcohol related causes (9%).⁵⁰ Of 21 murders, nine occurred within three years of the first observed sex work, all nine victims were actively in the sex industry at the time of their deaths, eight of whom were killed while soliciting.⁵¹ Although murder accounted for 19% of all confirmed deaths, it accounted for half of the deaths in the active sub cohort.⁵² “[T]he vast majority of murdered women in our sample were killed as a direct consequence of prostitution.”⁵³ The Colorado study noted that buyers perpetrate a large proportion of the lethal and nonlethal violence experienced and cited a study from Canada with similar findings. The Colorado study indicated that its research probably reflects the circumstances of nearly all people involved in the sex industry 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.”⁵⁴

The COVID-19 pandemic has exacerbated the vulnerability of, and harm to, sexually exploited youth and adults in Washington State. Survival sex is high due to the economic impact of the COVID-19 pandemic.⁵⁵ Actual (as opposed to fictional) CSAM victims in charged cases in King

<https://www.urban.org/sites/default/files/publication/22876/413209-Homeless-LGBTQ-Youth.PDF>.

⁴⁹ John J. Potterat et al., *Mortality in a Long-Term Open Cohort of Prostitute Women*, 159 AM. J. EPIDEMIOLOGY 778, 778 (2004).

⁵⁰ *Id.* at 781.

⁵¹ *Id.*

⁵² *Id.* at 782.

⁵³ *Id.*

⁵⁴ *Id.*, at 784.

⁵⁵ *Episode 2: Impacts of COVID-19 on CSE Survivors in King County*, OPS TALKS, <http://seattleops.org/ops-talks/>.

County rose 162.5% in 2020 over 2019.⁵⁶ Young people (up to age 24) are particularly at risk due to unmet basic needs worsened by the pandemic, increasing the trading of sex for housing, drugs, food, places to shower, and other basic needs.⁵⁷ Risky behavior among CSE youth has also increased, including substance use, foregoing condoms, staying with unsafe people, and sharing personal contact information on public forums and social media.⁵⁸ Internet-based sexual exploitation dramatically increased, with young people turning to dating apps, sugaring sites, and social media as tools to meet basic needs.⁵⁹ There is heightened concern about increased familial trafficking in homes where adults lost jobs and income sources.⁶⁰

Similarly, data collected by Dr. Debra Boyer through interviews with survivors, both staff and those seeking services, at three agencies serving commercially sexually exploited individuals in Seattle/King County, show that women are experiencing more physical and sexual violence from sex buyers and that women who have exited sex work are facing challenges to their stability and security.⁶¹ Many women who may have worked indoors are now forced to the street: as many as 50% of women on the Aurora “track” were new to the area.⁶² Competition and more dangerous buyers make this environment more aggressive, violent, and unsafe.⁶³ Loss of income, food insecurity, and housing instability remain core issues. Many are unsheltered due to diminished income and lack of access to motel rooms.⁶⁴ Many women who previously exited sex work lost their current jobs and income and were in danger of losing their housing, so returned to sex work.⁶⁵ Young people who felt unsafe at home or who were groomed online were increasingly on the street or living outside the home.

⁵⁶ BENJAMIN GAUEN, KING COUNTY. PROSECUTING ATT’YS OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2020 UPDATE (2021), available at KING COUNTY. CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

⁵⁷ CTR. FOR CHILDREN & YOUTH JUST., THE IMPACT OF COVID-19 ON COMMERCIAL SEXUALLY EXPLOITED CHILDREN IN WASHINGTON (2021).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Debra K. Boyer, *Prostitution During the Pandemic: Findings Show Need for Nordic Model*, 5 DIGNITY 1, 7 (2020).

⁶² *Id.* at 4.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 4-5.

Trauma, and particularly sexual exploitation of youth and adults engender enormous social and economic costs (medical, mental health, housing, criminal justice involvement, and substance abuse treatment, among others). Those social and economic impacts should inform the search for solutions.

C. Prevalence and disparities among targeted and marginalized populations

Nationally and in Washington State, poverty, racism, and gender inequality significantly increase vulnerability to commercial sexual exploitation.⁶⁶ Exploiters target minors and youth who are vulnerable due to poverty and who belong to marginalized groups.⁶⁷ Gender-based discrimination and violence increase the vulnerability of women, girls, and transgender youth and adults to CSE. Sex buyers are almost exclusively men and those who buy frequently are “much more likely than other men to make \$100,000 or more annually.”⁶⁸ Although most of those who are subject to 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 family increase vulnerability and risk. People experiencing homelessness, or who have been “kicked out” of their homes, people who are socially marginalized and criminalized, youth who identify as LGBTQ+, and Black, Indigenous, and people of color are particularly at risk.⁶⁹ The following subsections focus on data about gender, sexuality, age, and race or ethnicity.

⁶⁶ See generally WASH. STATE DEP’T OF COM., 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>.

⁶⁷ While these groups have historically been targeted and still are, unfettered online access makes every child vulnerable to exploitation.

⁶⁸ DEMAND ABOLITION, WHO BUYS SEX? UNDERSTANDING AND DISRUPTING ILLICIT MARKET DEMAND 4 (2018), <https://www.demandabolition.org/wp-content/uploads/2019/07/Demand-Buyer-Report-July-2019.pdf>.

⁶⁹ *Id.*

1. Gender and sexuality

It is widely believed that girls and women constitute the majority of those sexually exploited. Available Washington State data seems to support that. However, the proportion of sexually exploited boys and men may be much higher than most people believe. Data about non-binary and transgender individuals is even scarcer, since often data is only presented in binary male-female genders. In a 2012 analysis of New York City cases, identified victims were primarily women of color (young Black and Hispanic, older Asian), although a growing number of transgender women and gay male victims were being identified.⁷⁰

Some recent research indicates that there are likely similar numbers of boys and girls involved in child sex trafficking.⁷¹ A national study in 2016 found that 36% of youth ages 13 through 24 involved in the study were assigned male at birth, 60% were assigned female at birth, four percent were transgender female, and less than one percent were transgender male.⁷² A 2008 study on CSE youth in New York City estimated that of the total CSE population age 18 and under in 2005 and 2006: an estimated 53.5% were male, 42% were female, and 4.5% were transgender male and female (though the report authors emphasized that this was likely an underestimate for transgender youth).⁷³ Another New York City study of survival sex among 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 three percent as any other gender (i.e., androgynous, femme, non-binary, and genderless).⁷⁴ The Cole and Sprang study of familial trafficking cited above found 41.9% of familial trafficking victims

⁷⁰ See Toko Serita, *In Our Own Backyards: The Need For a Coordinated Judicial Response to Human Trafficking*, 36 N.Y.U. REV. L. & SOC. CHANGE 635 (2012).

⁷¹ OFF. OF JUV. JUST. & DELINQUENCY PREVENTION, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN/SEX TRAFFICKING 3 (2014), <https://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>.

⁷² RACHEL SWANER ET AL., CTR. FOR CT. INNOVATION, YOUTH INVOLVEMENT IN THE SEX TRADE: A NATIONAL STUDY 35 (2016), https://www.courtinnovation.org/sites/default/files/documents/Youth%20Involvement%20in%20the%20Sex%20Trade_3.pdf.

⁷³ RIC CURTIS ET AL., CTR. FOR CT. INNOVATION, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY, VOLUME ONE, THE CSEC POPULATION IN NEW YORK CITY: SIZE, CHARACTERISTICS, AND NEEDS 34 (2008), <https://www.ojp.gov/pdffiles1/nij/grants/225083.pdf>;

⁷⁴ DANK ET AL., *supra* note 45, at 13.

were boys.⁷⁵ Other research supports that the total percentage of CSE youth who are boys likely falls in this range.⁷⁶

Washington State data indicates that sexually exploited children and youth are mostly female, although male victims are likely significantly undercounted due to underscreening. Similarly, statewide data show that sexually exploited adults are mostly female, though adult male victims may likewise be undercounted due to underscreening. National Human Trafficking Hotline data from Washington indicates that a large proportion of those accessing the Hotline identify as female (Table 1). That is consistent with the knowledge that males are less likely to disclose.

⁷⁵ Sprang & Cole, *supra* note 38, at 187. 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.

⁷⁶ OFF. OF JUV. JUST. & DELINQUENCY PREVENTION, *supra* note 71, at 3.

Table 1. National Human Trafficking Hotline Data,⁷⁷ Reported Cases & Victim Demographics, Washington State, 2014-2019

Reported Cases & Victim Demographics	Total Reported Cases*	Adults	Minors	Female	Male	Transgender and Gender Non-Binary	U.S. Citizens/ Lawful Permanent Residents	Foreign Nationals
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

Footnotes for Table 1.

*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 of reported cases.

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

⁷⁷ 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.” *Hotline Statistics*, NAT’L HUM. TRAFFICKING HOTLINE, <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):⁷⁸

Table 2. King County CSEC⁷⁹ Charges by Gender, 2018-2020

CSEC Charges	2018 (N=38)	2019 (N=42)	2020 (N=40)
Female Victim	100%	100%	82%
Male Victim	0%	0%	18%
Female Defendant	--	5%*	0%
Male Defendant	--	95%	100%

Footnotes for Table 2.

* Female defendant charged with promoting CSAM

Source: KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2018 & 2019 UPDATE, and 2020 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 King County-area study of CSEC 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 three percent of the study population were identified as “transgender” and “intersex and other” respectively.⁸⁰ 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 disproportionality represented among CSEC.

⁷⁸ BENJAMIN GAUEN, KING COUNTY PROSECUTING ATTY’S OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2018 & 2019 UPDATE (2019), and 2020 UPDATE (2021), data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney’s Office and available at KING COUNTY. CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

⁷⁹ Includes charges for CSAM and Promoting CSAM (including Attempted CSAM and Attempted Promoting CSAM), and, for 2020, Human Trafficking in the 2nd Degree (involving minors).

⁸⁰ BOYER, *supra* note 11at 26.

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

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

Footnotes for Table 3.

Notes: The study author notes 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).

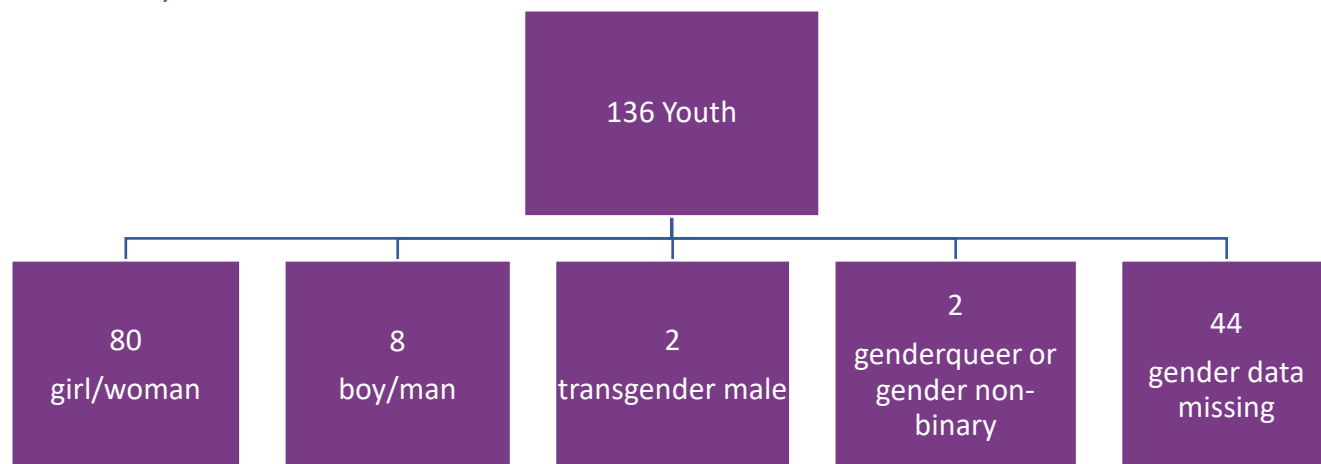
Dr. Boyer also found that of the 172 CSE in her study, 69% had been sexually abused prior to being sexually exploited, 55% had experienced addiction, 80% had mental health issues, and 90% had experienced trauma/PTSD. Most of the CSEC had run away, were experiencing homelessness, and/or were involved with foster care.⁸¹

2020 referral data from service providers in Skagit, Pierce and, Benton/Franklin Counties suggests patterns similar to the pattern in Seattle/King County: of 136 youth confirmed or highly suspected to be CSEC, 122 were assigned female sex at birth and 14 were assigned male sex at birth. The data on gender-identity shows a more nuanced picture (see Figure 1). In addition, of the 136

⁸¹ *Id.* at 8. See also "Chapter 9: Juvenile Justice and Gendered and Racialized Disparities."

participants, 36 identified as straight, six as bisexual, one as gay or lesbian, and information for 91 participants was not collected.⁸²

Figure 1. Self-Identified Gender of Youth Confirmed or Highly Suspected to be CSEC from Service Providers in Skagit, Pierce, and Benton/Franklin Counties, 2020 Referral Data



Source: CTR. FOR CHILDREN & YOUTH JUSTICE., 2020 CSEC REFERRAL DATA REPORT (2021) (on file with authors).

This data relies entirely on people who are accessing services and resources, so it is difficult to determine how accurately it reflects the population impacted by sexual exploitation. Dr. Michael Pullmann took a different approach, identifying CSEC within the child welfare system, as part of an outcomes evaluation pursuant to a five-year federal grant. Dr. Pullmann analyzed child welfare and juvenile justice records in the Department of Children, Youth & Families (DCYF) Regions 3 and 4, which includes King, Snohomish, Skagit, Whatcom, San Juan, and Island Counties. He concluded 89.2% of the 83 state-dependent youth who were confirmed or highly suspected of commercial sexual exploitation were female. 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

⁸² CTR. FOR CHILDREN & YOUTH JUSTICE., 2020 CSEC REFERRAL DATA REPORT (2021) (on file with authors). It should be noted that these three counties encompass only 18% of the state's population.

number of runaway events was just under nine; and runaway episodes comprised nearly 19% of days CSE youth were in the care of child welfare.⁸³

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% were female, 23% male, one percent transgender, and one percent 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.⁸⁴

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 Task Force shares data on referral numbers and sources provided by the Bridge Collaborative. In 2014, with the hiring of a new DCYF CSEC liaison, the Task Force began its “And boys, too” training and asked the Collaborative to break out its data by gender. The Task Force generally agrees with nationally representative studies suggesting that about half of trafficked youth are male identified, and lower numbers in King County are due to service providers and other systems not identifying boys.⁸⁵ It is notable that when “And Boys Too” training for service providers and others began in 2014, identification of boys increased significantly. In April of 2014, of youth referred to the Bridge Collaborative, four percent identified as males. By September 2015 the number of boys referred had doubled to eight percent, and by March 2016 it had tripled to 13% of youth referred.

⁸³ See Michael D. Pullmann et al., *Residential Instability, Running Away, and Juvenile Detention Characterizes Commercially Sexually Exploited Youth Involved in Washington State's Child Welfare System*, 102 CHILD ABUSE NEGLECT 1 (2020).

⁸⁴ DOMINQUE ROE-SEPOWITZ & KHARA JABOLA-CAROLUS, RESEARCH REPORT - SEX TRAFFICKING IN HAWAII'I: Part III 22 (2020), <https://hoolanapua.org/wp-content/uploads/2020/06/Final-Report-Sex-Trafficking-in-Hawaii-Part-III-01092020.pdf>.

⁸⁵ Information provided by Kelly Mangiaracina, Task Force Coordinator for the King County Task Force on Commercially Sexually Exploited Children (CSEC) (Apr. 7, 2017 & June 18, 2021).

2020 data from the King County Prosecuting Attorney's Office shows an increase in boy victims identified through law enforcement investigations. Even then, the number is three which is very low, yet a 300% increase compared to prior years.⁸⁶

In an effort to improve data collection and better identify CSEC male victims, the National Center for Missing and Exploited Children studied 565 missing incident reports of males who were recovered endangered runaways and likely CSEC victims between 2013-2017.⁸⁷ Half (50%) of those recovered males were white, 24% were Black, and 14% were biracial.⁸⁸ Of these 11-17 year old endangered runaways, 37% ran away on at least two prior occasions between 2013-2017 and the majority (86%) ran away while in the care of Social Services.⁸⁹ Already high risk and in unsafe situations, almost all (98%) CSEC males suffered from drug and/or alcohol use, behavioral health diagnoses, and suicidal and self-harm tendencies.⁹⁰ Of the missing incident reports involving male child sex trafficking victims, NCMEC found that 21% identified as transgender girls.⁹¹

There is broad agreement that the number of male CSE victims is under-reported.⁹² There are a myriad of reasons why this may be so. Many victims are never reported missing or are exploited at home, school, or other places that are part of their daily lives.⁹³ In 2013 ECPAT USA examined available research about CSE Boys (CSEB) and services available to them, and found the scope of CSEB is vastly under reported. Most researchers who have studied boys conclude that CSEB are not identified, screened, or served due to shame and stigma about being gay or perceived as gay, and are thus not likely to self-report. Boys are often unidentified because of a lack of awareness of male CSEC victimization by law enforcement and social services. There is limited outreach by social services to areas known for male sex work, and the belief that boys are not generally

⁸⁶ BENJAMIN GAUEN, KING COUNTY. PROSECUTING ATT'YS OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2020 UPDATE (2021), available at KING COUNTY. CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

⁸⁷ MISSINGKIDS.ORG, MISSING MALE VICTIMS OF CHILD SEX TRAFFICKING 1 (2018), https://www.missingkids.org/content/dam/missingkids/pdfs/ncmec-analysis/Missing%20Male%20Victims%20of%20Child%20Sex%20Trafficking_EXTERNAL.PDF.

⁸⁸ *Id.* at 2.

⁸⁹ *Id.* at 2-3.

⁹⁰ *Id.* at 3.

⁹¹ *Id.* at 4.

⁹² *Id.* at 6.

⁹³ *Id.* at 6.

exploited by third parties obscures the need for outreach and supportive services.⁹⁴ In an Office of Juvenile Justice and Delinquency Prevention literature review, the authors indicate:

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.⁹⁵

The trauma sexually exploited boys and young men experience is magnified by shame and social stigma. Like exploited girls, impacts on boys include 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 between boys and girls.⁹⁶ This is a meaningful area for future study as it could inform gender-responsive trauma treatment. There are few services for male survivors, but there is a national nonprofit committed to the prevention and treatment of sexual victimization of boys and men. The network connects males with therapists and support groups, among other things.⁹⁷ 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.

⁹⁴ See generally 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), <https://d1qkyo3pi1c9bx.cloudfront.net/00028B1B-B0DB-4FCD-A991-219527535DAB/1b1293ef-1524-4f2c-b148-91db11379d11.pdf>.

⁹⁵ OFF. OF JUV. JUST. & DELINQUENCY PREVENTION, *supra* note 71, at 3 (internal citations omitted).

⁹⁶ See generally Sprang & Cole, *supra* note 38.

⁹⁷ MALESURVIVOR (2020), <https://malesurvivor.org>.

LGBTQ+ people are overrepresented in the sex industry and among those sexually exploited. LGBTQ+ youth experience high rates of homelessness, which leaves them at higher risk for engaging in survival sex.⁹⁸ Children and youth who have run away or are experiencing homelessness are targeted for commercial sexual exploitation due to their vulnerability. Within this group, Black, Indigenous, and youth of color and especially LGBTQ+ youth of color are significantly overrepresented.⁹⁹ A disproportionate number of LGBTQ+ youth, and particularly LGBTQ+ youth of color, are forced to exchange sex for shelter and necessities due to parental rejection, foster care discrimination and abuse, and lack of acceptance in their communities.¹⁰⁰ “In studies in New York City and Chicago of youth and young adults who engaged in survival sex . . . many LGBTQ youth, particularly transgender youth, reported resorting to survival sex after being kicked out of their homes for their sexual orientation or gender identity and/or leaving other unsafe environments.”¹⁰¹ One study found that LGBTQ+ youth in New York City were seven to eight times more likely to trade sex than their cisgender, heterosexual peers.¹⁰²

People experiencing discrimination, poverty and exclusion from formal economies often rely on informal economies such as the sex industry to survive. A study about HIV prevention and risk in transgender women sex workers said data from six countries showed restricted economic opportunities and lower access to the formal labor market for transgender sex workers due to stigma, discrimination, and exclusion from social and economic opportunities “were common and served as the impetus for many transgender women to sell sex.”¹⁰³ The 2015 U.S.

⁹⁸ Bernadette Brown, *The Commercial Sexual Exploitation of LGBTQ Youth*, EVIDENT CHANGE (Nov. 26, 2012), <https://www.nccdglobal.org/newsroom/nccd-blog/commercial-sexual-exploitation-lgbtq-youth>.

⁹⁹ BOYER, *supra* note 11 (citing Michelle Page, *Forgotten Youth: Homeless LGBT Youth of Color and the Runaway and Homeless Youth Act*, 12 NW J. L. & SOC. POL’Y 17 (2017)).

¹⁰⁰ Jordan Dashow, *New Report on Youth Homeless Affirms that LGBTQ Youth Disproportionately Experience Homelessness*, HUM. RTS. CAMPAIGN (Nov. 15, 2017), <https://www.hrc.org/news/new-report-on-youth-homeless-affirms-that-lgbtq-youth-disproportionately-ex>; DANK ET AL., *supra* note 45.

¹⁰¹ DANK ET AL., *supra* note 45. JAZEERA IMAN ET AL., YOUNG WOMEN’S EMPOWERMENT PROJECT, *GIRLS DO WHAT THEY HAVE TO DO TO SURVIVE: ILLUMINATING METHODS USED BY GIRLS IN THE SEX TRADE AND STREET ECONOMY TO FIGHT BACK AND HEAL* (2009), <https://ywepchicago.files.wordpress.com/2011/06/girls-do-what-they-have-to-do-to-survive-a-study-of-resilience-and-resistance.pdf>.

¹⁰² DANK ET AL., *supra* note 45.

¹⁰³ Tonia Poteat et al., *HIV Risk and Preventive Interventions in Transgender Women Sex Workers*, 385 LANCET 274 (2015).

Transgender Survey found that transgender people who had lost a job due to anti-transgender discrimination were three times more likely to engage in sex work. The same survey found that 40% of Black transgender people self-report having engaged in the sex industry.¹⁰⁴

2. Disproportionate victimization of Black, Indigenous, and communities of color

“The U.S. Department of Health and Human Services (HHS) Administration for Native Americans (ANA) and the Office of Trafficking in Persons (OTIP) note that American Indian, Alaska Native, Native Hawaiian, and Pacific Islander women and girls are at higher risk for experiencing sex trafficking.”¹⁰⁵ It is well documented nationally and locally that sexual exploitation has disproportionate impacts on Indigenous communities, both on tribal land and in rural and urban areas not on tribal lands. “Intergenerational trauma, lack of resources, lack of employment opportunities, prior abuse, substance use, and jurisdictional challenges” put Indigenous people at particularly high risk for trafficking.¹⁰⁶ “Chapter 8, Consequences of Gender-Based Violence: Domestic Violence and Sexual Assault,” provides in-depth study of the violence inflicted on Indigenous communities and highlights the issue of missing and murdered Indigenous women and people (MMIW) as an issue of colonized and racialized gender-based violence.

A study of 105 prostituted native women in Minnesota found that 79% of the women had been sexually abused as children by an average of four perpetrators; 92% had been raped; 47% had been used by more than 200 sex buyers during their lifetimes, 16% by at least 900 buyers; 72% suffered traumatic brain injuries in sex work; 98% were currently or previously homeless; and

¹⁰⁴ ERIN FITZGERALD ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, MEANINGFUL WORK: TRANSGENDER EXPERIENCES IN THE SEX TRADE,” THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY (2015), https://transequality.org/sites/default/files/Meaningful%20Work-Full%20Report_FINAL_3.pdf.

¹⁰⁵ DEP’T OF HEALTH & HUM. SERVS., ADMIN. FOR CHILDREN & FAMILIES, COMBATING HUMAN TRAFFICKING IN NATIVE COMMUNITIES - FY 2019 (2020), https://www.acf.hhs.gov/sites/default/files/documents/otip/otip_one_pager_native_communities_fy19.pdf.

¹⁰⁶ Jeri Moomaw, founder and executive director of Innovations Human Trafficking Collaborative in Olympia, WA, is a nationally recognized Tribal human trafficking and anti-violence expert and a trainer and advocate with the National Human Trafficking Training and Technical Assistance Center. <https://www.acf.hhs.gov/otip/training/nhttac>. See also *Native Empowerment Dialogue on Human Trafficking: There Is Hope*, THE ADMIN. FOR CHILDREN & FAMILIES, <https://www.acf.hhs.gov/otip/success-story/native-empowerment-dialogue-human-trafficking-there-hope>.

92% wanted to escape the sex industry.¹⁰⁷ A 2016 news article, said that, according to the South Dakota District U.S. Attorney's Office, in South Dakota, Native American women and girls represented 40% of sex trafficking victims,¹⁰⁸ despite comprising only about 8% of the population in that year.¹⁰⁹

As the Minnesota study noted:

Prostitution is a sexually exploitive, often violent economic option most often entered into by those with a lengthy history of sexual, racial and economic victimization. Prostitution is only now beginning to be understood as violence against women and children. It has rarely been included in discussions of sexual violence against Native women. It is crucial to understand the sexual exploitation of Native women in prostitution today in its historical context of colonial violence against nations. In order for a woman to have the real choice to exit prostitution, a range of services must be offered yet there are currently few or no available services especially designed for Native women in prostitution.¹¹⁰

As in communities of color, Native Women historically have been devalued and hypersexualized. Deep historical roots inform the exploitation of Indigenous communities. Of 105 Native women in the sex industry in Minnesota, 62% saw “the connection between colonization and prostitution of Native women.” “The devaluation of women in prostitution was seen as identical to devaluation of colonized Native people.” Two thirds had family members who had attended boarding schools, which were designed to “Americanize” Native Americans, eradicating their

¹⁰⁷ MELISSA FARLEY ET AL., GARDEN OF TRUTH: THE PROSTITUTION AND TRAFFICKING OF NATIVE WOMEN IN MINNESOTA 3 (2011), <https://www.niwrc.org/sites/default/files/images/resource/Garden-of-Truth.pdf>.

¹⁰⁸ Danielle Ferguson, *Law Enforcement, Native Communities Focus on Sex Trafficking Prevention Training*, ARGUSLEADER (Aug. 27, 2016), <https://www.argusleader.com/story/news/crime/2016/08/27/law-enforcement-native-communities-focus-sex-trafficking-prevention-training/89273822/>.

¹⁰⁹ CENSUS DATA CTR., SOUTH DAKOTA STATE UNIVERSITY, 2012-2016 AMERICAN COMMUNITY SURVEY 5-YEAR ESTIMATES, COMPARATIVE DEMOGRAPHIC ESTIMATES: SOUTH DAKOTA 2 (2017), https://openprairie.sdstate.edu/cgi/viewcontent.cgi?article=1011&context=census_data_newsreleases.

¹¹⁰ FARLEY ET AL., *supra* note 107, at 4.

culture, and felt they owed their survival to their cultural identity and Native spiritual practices.¹¹¹ In 2018 Congressional testimony, Judge Michelle Demmert, Chief Judge of the Tulalip Tribal Court, noted:

Trafficking, in multiple forms, has been utilized as a tool of genocide and colonization of American Indians and Alaska Natives (AI/AN) within the United States since first contact with Europeans. Leading sex trafficking researcher and Native scholar, Dr. Sandi Pierce notes that it is no secret that “the selling of North America’s Indigenous women and children for sexual purposes has been an ongoing practice since the colonial era. There is evidence that early British surveyors and settlers viewed Native women’s sexual and reproductive freedom as proof of their ‘innate’ impurity, and that many assumed the right to kidnap, rape, and prostitute Native women and girls without consequence.”¹¹²

Experts have found that traffickers are targeting Native Americans nationally.¹¹³ Washington is no different. The targeting of and impact on rural and urban dwelling American Indians/Alaska Natives who are living away from tribal lands is staggering, though ignored in mainstream sources. For example, in a 2018 report, the Urban Indian Health Institute (UIHI) found that while 71% of

¹¹¹ *Id.* at 32-35, “The relatives who attended boarding schools were grandmothers (42%), mothers (35%), grandfathers (26%), sisters (17%), fathers (17%), cousins (17%), brothers (14%), great grandmothers (7%), great grandfathers (6%), aunts or uncles (6%), and a daughter (1%). Another 7% were unsure whether or not family members attended boarding schools. Boarding schools were located in South Dakota (Flandreau Industrial School, Marty Mission, St. Francis, Stephan), Minnesota (Mission School, Red Lake School, Shattuck), Oklahoma (Riverside, Oaks Mission School, Chilocco Indian School, River), North Dakota (Wahpeton), California (Sherman), Kansas (Haskell Indian Junior College), Arizona (GMA), Idaho, Wisconsin, and Canada.”

¹¹² *Hidden in Plain Sight: Understanding Federal Efforts to Stop Human Trafficking: Hearing Before the H. Subcomm. on Border and Maritime Sec. of the Comm. on Homeland Sec. H.R., 115th Cong. (2018)* (statement of the Honorable Michelle Demmert).

¹¹³ Cecily Hilleary, *Sex Traffickers Targeting Native American Women*, VOA (Nov. 18, 2015), <https://www.voanews.com/usa/sex-traffickers-targeting-native-american-women>; see also Cecily Hilleary, *Sex Traffickers Target Native American Children in South Dakota*, VOA (March 20, 2021), <https://www.voanews.com/usa/sex-traffickers-target-native-american-children-south-dakota>; Alexandra Sandi Pierce, *American Indian Adolescent Girls: Vulnerability to Sex Trafficking, Intervention Strategies*, 19 AM. INDIAN ALASKA NATIVE MENTAL HEALTH RSCH. 37 (2012).

Indigenous women live in urban areas, only 506 cases of MMIWG (Missing and Murdered Indigenous Women and Girls) were identified in 71 cities from 1900-2018.¹¹⁴

Nearly every Native American woman in a Seattle survey (94%) said she was raped or coerced into sex. The survey was done in 2010, and has been updated.¹¹⁵ The Seattle Times reported that it remained hidden in a drawer until discovered by a new director of the UIHI, six years later.¹¹⁶ This was one of the first surveys to study Indigenous people 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% 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 18.¹¹⁷ 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.¹¹⁸ This reaction embodies 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.¹¹⁹ During the COVID-19 pandemic, there has been an increase in murdered and

¹¹⁴ URBAN INDIAN HEALTH INST., MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS: A SNAPSHOT OF DATA FROM 71 URBAN CITIES IN THE UNITED STATES 3, 6 (2018), <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-IndigenousWomen-and-Girls-Report.pdf>.

¹¹⁵ URB. INDIAN HEALTH INST., OUR BODIES, OUR STORIES: SEXUAL VIOLENCE AMONG NATIVE WOMEN IN SEATTLE, WASHINGTON 6 (2018), <https://www.uihi.org/download/our-bodies-our-stories/?wpdmdl=12904&refresh=60b1370d169571622226701>.

¹¹⁶ Vianna Davila, *Nearly Every Native American Woman in Seattle Survey Said She Was Raped or Coerced Into Sex*, SEATTLE TIMES (June 10, 2019), <https://www.seattletimes.com/seattle-news/homeless/survey-reveals-high-rates-of-sexual-assault-among-native-american-women-many-of-them-homeless>; see also URB. INDIAN HEALTH INST., *supra* note 115.

¹¹⁷ URB. INDIAN HEALTH INST., *supra* note 115, at 4.

¹¹⁸ Davila, *supra* note 116.

¹¹⁹ ABIGAIL ECHO-HAWK ET AL., URB. INDIAN HEALTH INST., MMIW: WE DEMAND MORE: A CORRECTED RESEARCH STUDY OF MISSING AND MURDERED INDIGENOUS WOMEN & GIRLS IN WASHINGTON STATE 18 (2019), <https://www.doj.state.wi.us/sites/default/files/ocvs/UIHI-MMIWG-We-Demand-More.pdf>.

missing Indigenous women and people (MMIWP).¹²⁰ The 2019 UIHI report emphasizes the “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.”¹²¹ Efforts to shed light on these issues and to prioritize and improve data collection and research in Washington are described in “Chapter 8: Consequences of Gender-Based Violence: Domestic Violence and Sexual Assault.” These efforts benefit from Washington’s strong, outspoken, nationally involved Native American survivor community with survivor led, trauma- and culturally-responsive organizations.

Communities of color are also disproportionately represented in the sex industry and targeted for exploitation. They are disproportionately impoverished due to discriminatory laws, histories of state violence, family separation, redlining, labor exclusion, and community divestment. The combination of poverty and exclusion from formal labor markets force many into the sex industry to survive. Misogyny, racism and xenophobia cause traffickers and sex buyers to target individuals in the Black, Latinx and Asian, Native Hawaiian, and other Pacific Islander communities for sexual exploitation, to perpetuate disproportionality in the sex industry, and to feed social and legal narratives that see them as criminals.¹²² During the COVID-19 pandemic, Black and African American CSEC youth have been experiencing more intense anti-black racism.¹²³ Young Black girls are particularly subject to “adultification” and hypersexualization, and therefore are more likely to be sexually exploited.¹²⁴ This also makes them less likely to be believed by police.

The history of sexual violence against Black women is well documented, going back centuries in this country beginning with the transatlantic voyages that brought slaves here. Commercial sexual exploitation in the 1800s included using enslaved Black women “to produce a perpetual

¹²⁰ CTR. FOR CHILDREN & YOUTH JUST., THE IMPACT OF COVID-19 ON COMMERCIALLY SEXUALLY EXPLOITED CHILDREN IN WASHINGTON (2021).

¹²¹ ECHO-HAWK ET AL., *supra* note 119, at 18.

¹²² Boyer, *supra* note 61, at 3.

¹²³ CTR. FOR CHILDREN & YOUTH JUST., THE IMPACT OF COVID-19 ON COMMERCIALLY SEXUALLY EXPLOITED CHILDREN IN WASHINGTON (2021).

¹²⁴ *Id.*

labor force.”¹²⁵ The resulting historical, intergenerational trauma, together with risk factors that apply to other targeted populations, increases the risk of sexual exploitation of Black women. Child sexual abuse (CSA), which includes incest, rape, or sexual coercion before age 18, is a strong predictor of adult rape, and CSA survivors are at increased risk of being sexually victimized as adolescents or adults. Prevalence of sexual violence among various Black populations “translate[s] to an estimated 3.1 million Black rape victims and 5.9 million Black survivors of other forms of sexual violence.”¹²⁶

In a sample of Black rape survivors, 12% reported commercial sexual exploitation as a child. As with other targeted populations, the connection between poverty and sexual violence is complex. “Survivors often experience multiple, overlapping risk factors. . . Poverty and sexual revictimization can be viewed as both risk factors and consequences of sexual violence.”¹²⁷ A prospective study of Black women who were first interviewed as child sexual assault victims, then reinterviewed as adults, compared those who were revictimized and those who were not. Black women who were revictimized were “3 times more likely than their nonrevictimized counterparts to report a history of prostitution.”¹²⁸ Given previously cited documentation of the link between child sexual abuse and later commercial sexual exploitation, Dr. West’s research indicates that the risk for revictimized women may be even higher.

Seattle based API Chaya, formerly the Asian Pacific Islander Women and Family Safety Center, serves diverse women who come from other countries or are American-born victims of domestic violence, sexual assault, or trafficking. The women they serve are often Asian American or Pacific Islander, frequently limited English speaking, physically or psychologically abused, with children,

¹²⁵ CAROLYN M. WEST, *SEXUAL VIOLENCE IN THE LIVES OF AFRICAN AMERICAN WOMEN, RISK, RESPONSE, AND RESILIENCE* 1 (2006), https://www.researchgate.net/profile/Carolyn-West-2/publication/228674995_Sexual_violence_in_the_lives_of_African_American_women_Risk_response_and_resilience/links/53ec00710cf24f241f1558f1/Sexual-violence-in-the-lives-of-African-American-women-Risk-response-and-resilience.pdf.

¹²⁶ CAROLYN M. WEST & KAMILAH JOHNSON, *SEXUAL VIOLENCE IN THE LIVES OF AFRICAN AMERICAN WOMEN* 3 (2013), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SVAAWomenRevised.pdf.

¹²⁷ *Id.* at 4.

¹²⁸ Carolyn M. West, Linda M. Williams & Jane A. Seigel, *Adult Sexual Revictimization Among Black Women Sexually Abused in Childhood: A Prospective Examination of Serious Consequences of Abuse*, 5 *CHILD MALTREATMENT* 49, 55 (2000).

and vulnerable to threats of deportation and/or increased loss of freedom and power. API Chaya was established in 1995 in response to the murders of several foreign-born women who were brought to the United States as “mail order brides.” Identifying the abuse and murders of foreign brides as an instance of human trafficking led to the passage of HB 1175 and to Washington becoming the first U.S. state to criminalize human trafficking.¹²⁹

Asian women have been hypersexualized, exoticized, fetishized, and stigmatized in American society, just as they often are in the sex industry.¹³⁰ The March 2021 mass shooting in three massage parlors in the Atlanta area, which left eight people dead, six of them Asian women, is a horrific reminder of the interplay of misogyny, racism, colonialism, and xenophobia that feed the bias and harm inflicted on women and individuals in Asian, Native Hawaiian, and other Pacific Islander and migrant communities. In condemning the Atlanta mass shooting, API Chaya highlighted and honored the many immigrants and migrant Asian women who work at the intersections of care services and the sex industry, and whose work is devalued and stigmatized in our societies.¹³¹ Emi Koyama, the Director of the Coalition for Rights and Safety for People in the Sex Trade, spoke at a vigil for the Atlanta victims, and said: “I want to make it clear that not all migrant Asian women working at massage parlor do sex work, so massage workers should not be equated with sex workers. But the way the society vilifies, criminalizes,

¹²⁹ Suzanna Remerata Blackwell, the fetus she carried, and her two friends, were murdered by Suzanna's estranged American husband at the King County courthouse. The murder of Suzanna, who was brought to the United States as a “mail-order bride” from the Philippines, and the murders four years later of two other “mail order brides,” Helen Clemente from the Philippines and Anastasia King from Kyrgyzstan, catalyzed a coalition in Washington State, led by Velma Veloria, the only Filipina American Legislator in the state, Dr. Sutapa Basu, Director of the University of Washington Women's Center, and Emma Catague, Field Manager of the Asian Pacific Islander Women and Family Safety Center. They saw the abuse and murders of foreign brides as more than domestic violence: it was human trafficking. Their efforts resulted in HB 1175. See Velma Veloria, Washington State Representative 1993-2004, *The Road To H.B. 1175: Making Human Trafficking a Crime in the State of Washington, My Story*, 9 SEATTLE J. SOC. JUST. 549, 549 (2001).

¹³⁰ *A Sociologist's View On The Hyper-Sexualization Of Asian Women In American Society*, ALL THINGS CONSIDERED: NPR (Mar. 19, 2021), <https://www.npr.org/2021/03/19/979340013/a-sociologists-view-on-the-hyper-sexualization-of-asian-women-in-american-societ>.

¹³¹ *Love to All Massage Parlor Workers & Those Harmed by White Supremacist Violence*, API CHAYA, <https://www.apichaya.org/love-to-all-massage-parlor-workers-and-those-harmed-by-white-supremacist-violence>. API Chaya has been providing survivor-assistance and advocacy support to survivors of sexual abuse/assault and human trafficking in Seattle and Washington for the last 25 years. API Chaya, <https://www.apichaya.org/>.

and targets sex workers for violence, as well as those that target women, Asians, immigrants, and poor people, affect all Asian massage workers regardless of whether or not they personally perform any sex work, as the recent violence in Georgia has shown, so we support and advocate for them all the same.”¹³²

Asian, Native Hawaiian, and other Pacific Islander individuals are among the largest groups trafficked into the United States.¹³³ Many migrant Asian, Native Hawaiian, and other Pacific Islander survivors of sexual exploitation in the United States were brought into the country under false pretenses of employment and are subject to severe exploitation in illicit massage parlors or high-end brothels. A broad anti-trafficking investigation in King County led, in 2016, to the shutdown of two prostitution websites, the shuttering of 12 brothels in Bellevue and the arrest and charging of over 30 people with promoting prostitution.¹³⁴ The prostitution enterprise was organized by a group of sex buyers who, in collaboration with the websites, promoted the prostitution of South Korean women with the goal of increasing the number of prostituted women in the market. “TheReviewboard.net, with an estimated 23,000 members, allowed men to post graphic descriptions of their sexual encounters with prostituted women and share tips to avoid police attention and suspicion from wives and girlfriends, according to charging papers.”¹³⁵ The women were brought to the U.S. and trafficked between major cities. The investigation produced evidence that some of the victims became involved in sex work to “pay off debt.”¹³⁶ A similar coordinated Seattle police raid in 2019 on 11 storefront spas and massage parlors in the Chinatown-International District led to the recovery of 26 Chinese women whom law enforcement suspected were

¹³² COALITION FOR RIGHTS AND SAFETY, <http://rightsandsafety.org>.

¹³³ See *generally Trafficking*, ASIAN PAC. INST. ON GENDER-BASED VIOLENCE, <https://www.api-gbv.org/about-gbv/types-of-gbv/trafficking/>; *Awareness on Asian American Human Trafficking*, ASIAN AM. HUM. TRAFFICKING (Oct. 2014), <https://asianamericanhumantrafficking.wordpress.com/2014/10/>.

¹³⁴ Source: Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney’s Office. See also Sara Jean Green, *Large Prostitution Ring, Bellevue Brothels Shut Down*, SEATTLE TIMES (Jan. 9, 2016), <https://www.seattletimes.com/seattle-news/crime/online-site-where-men-rated-prostitutes-is-shut-down-charges-to-be-filed/>

¹³⁵ Green, *supra* note 134.

¹³⁶ Source: Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney’s Office. See also Green, *supra* note 134.

being forced to provide sexual services. Many of the women were newly arrived from China (through trafficking hubs in New York and California) and spoke little or no English.¹³⁷

The 2019 raid, and similar police raids on massage parlors where owners and workers are primarily Asian immigrant women, have come under scrutiny from some. Local grassroots groups who have built deep relationships with Asian migrant women working in massage parlors in Seattle's Chinatown-International District, such as the Massage Parlor Outreach Project (MPOP) and Chinatown-International District (CID) Coalition, have called for an end to such large scale raids.¹³⁸ They argue that while there are certainly cases of human trafficking within massage parlors, it is inaccurate to suggest that most or many of the women are "trafficked," and the raids can cause further harm. API Chaya, which has participated in past raids on massage parlors, refused to participate in the 2019 raids or others since because, in their experience, individuals recovered in large scale raids (as opposed to interventions in specific cases) often end up worse off due to the lack of income, and fail to qualify for trafficking-specific victim services or for visa relief. In the 2019 raid, law enforcement collaborated closely with national resources, with some service providers, and with members of Seattle's Chinese community in order to prioritize the needs of the women, make them feel comfortable and safe, and be as trauma-responsive as possible.¹³⁹ The women were offered visa services, connections to housing, and case management. Local advocates report that, nevertheless, the women were simply displaced and re-traumatized.¹⁴⁰ When the massage parlors re-opened within weeks "under new

¹³⁷ Sara Jean Green, *Major Prostitution Bust: Seattle Police Raid 11 Massage Parlors, Freeing 26 Women*, SEATTLE TIMES (Mar. 8, 2019), <https://www.seattletimes.com/seattle-news/crime/a-crazy-amount-of-money-seattle-police-raid-prostitution-network-in-massage-parlors/>.

¹³⁸ *Rescue Hurts: Real-Life consequences of SPD's Raids on Massage Parlors & How to Actually Support Migrant Women Workers*, COALITION FOR RIGHTS AND SAFETY (July 23, 2019), <http://rightsandsafety.org/rescue-hurts-real-life-consequences-of-spd-s-raids-on-massage-parlors-how-to-actually-support-migrant-women-workers>. See also <http://rightsandsafety.org/solidarity-with-massage-parlor-workers-means-ending-police-raids-and-patrols-in-the-cid>.

¹³⁹ *Id.*

¹⁴⁰ Some advocates argue that such large-scale raids often lead to displacement, trauma, and abandonment, as well as loss of means of living, shelter, and personal belongings (including identity documents and meager savings) — meager and/or exploitive as they may have been.

management," some of the women simply got on WeChat and found another parlor to work, further impoverished and in a more difficult environment.¹⁴¹ Those in law enforcement say this is complex and nuanced, because in order to get a T Visa or U Visa a person has to disclose the abuse, which requires time and relationship building. Some of the women in the 2019 raid took advantage of housing and services offered and others did not. While clearly not all massage parlor workers are sex trafficked, many are sex and/or labor trafficked. According to law enforcement and prosecutors, many massage parlors are part of large organized groups of exploiters taking advantage of the economic, cultural, and immigration status of these women.

Washington data on the demographics of adult survivors of trafficking and CSE is hard to come by, but data in CSEC cases is demonstrative. King County has kept records of the demographics of victims and defendants in charged cases concerning CSEC. Between 2011 and 2020, of 126 cases, CSEC victims were 43% Black, six percent Hispanic, five percent Asian, one percent Native, and seven percent unknown. King County's general population is 6.2% Black (Figures 2 and 3).¹⁴² It is important to note that Native Americans are often undercounted in datasets,¹⁴³ as are Hispanic/Latinx individuals.¹⁴⁴ In addition, disparities within populations are often masked when diverse populations are grouped together within a larger category such as "Asian."¹⁴⁵ This dataset does not include any information on Native Hawaiian and Other Pacific Islander populations. Moreover, as sources with the King County Prosecuting Attorney's Office noted, their data relies on data provided by law enforcement, which typically does not indicate more than one racial or ethnic identity. If a person is Latinx and Black, and there is only one box to

¹⁴¹ *Rescue Hurts: Real-Life Consequences of SPD's Raids On Massage Parlors & How to Actually Support Migrant Women Workers*, Coalition for Rights and Safety, <http://rightsandsafety.org/rescue-hurts-real-life-consequences-of-spd-raids-on-massage-parlors-how-to-actually-support-migrant-women-workers>.

¹⁴² BENJAMIN GAUEN, KING COUNTY. PROSECUTING ATT'YS OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2020 UPDATE (2021), data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney's Office and available at KING COUNTY. CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

¹⁴³ ECHO-HAWK ET AL., *supra* note 119, at 18.

¹⁴⁴ TATIANA MASTERS ET AL., INCARCERATION OF WOMEN IN WASHINGTON STATE: MULTI-YEAR ANALYSIS OF FELONY DATA (2020).

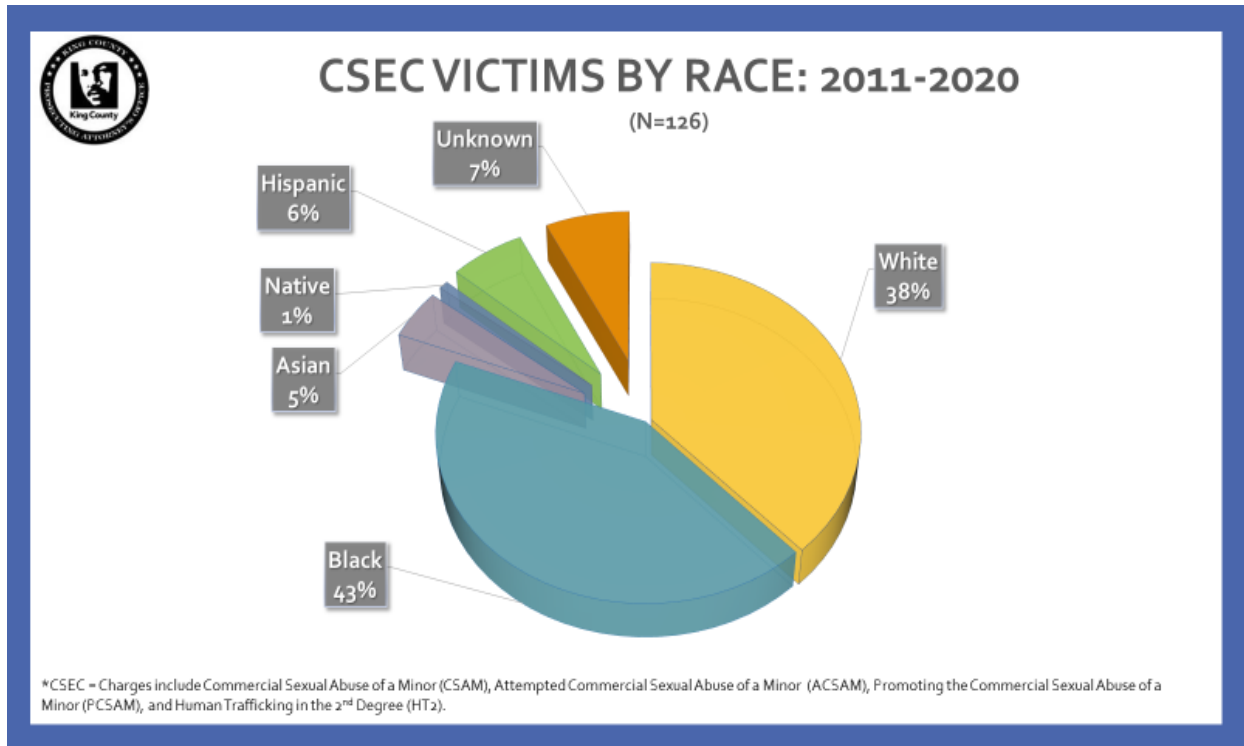
¹⁴⁵ *AAPI Data Disaggregation*, WASH. STATE COMM'N ON ASIAN PAC. AM. AFFS. (2019), <https://capaa.wa.gov/resources/>.

check, how does the data reflect it? Many of those coded by the King County Prosecuting Attorney's Office as "unknowns" are victims of color but the office doesn't know how to account for that without passing its own judgment.¹⁴⁶ This is problematic and speaks to the need for coordinated, mandated, and consistent data entry.¹⁴⁷

¹⁴⁶ Source: Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney's Office

¹⁴⁷ *Id.*

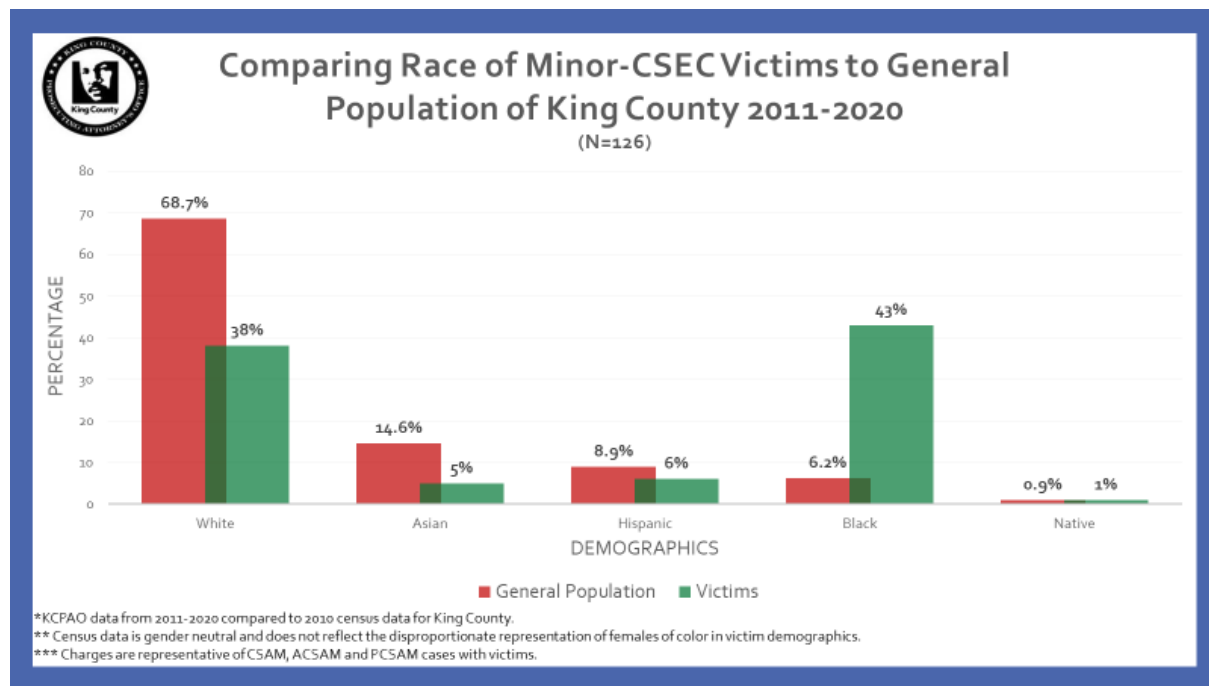
Figure 2. CSEC Victims in King County by Race and Ethnicity, 2011-2020



Footnotes for Figure 2.

Source: Benjamin Gau. King County Sexual Exploitation Cases: The Data Behind the Charges. King County Prosecuting Attorney's Office. (2020) Available at <https://www.kingcountycsec.org/data>.

Figure 3. Comparing Race and Ethnicity of Minor-CSEC Victims to General Population of King County, 2011-2020



Footnotes for Figure 3.

Source: Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges. King County Prosecuting Attorney’s Office. (2020) Available at <https://www.kingcountycsec.org/data>.

Dr. Boyer’s Seattle area study, discussed above, also found that CSEC victims in King County were disproportionately Black, Indigenous, or youth of color.¹⁴⁸ While 7.7% of King County’s general youth population (ages 0-24 years) was Black in 2018,¹⁴⁹ Black youth comprise 31% of CSEC in the study sample (Table 4).¹⁵⁰

¹⁴⁸ BOYER, *supra* note 11.

¹⁴⁹ 2018 Population Estimates, WASH. STATE OFF. OF FIN. MGMT. (Feb. 2, 2021), <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/estimates-april-1-population-age-sex-race-and-hispanic-origin>.

¹⁵⁰ BOYER, *supra* note 11.

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

Race/Ethnicity	Study Population percent (N=154)	King County Non-Hispanic Youth Population Age 0-24 Years, 2018
Asian	< 1% (2)	17.8%
Black/African American	31% (47)	7.7%
Native Hawaiian/Pacific Islander	0% (0)*	1.2%
Caucasian/White	40% (61)	48.5%
American Indian/Alaskan Native	10% (15)	0.6%
Hispanic/Latinx	8% (13)	--
Other- Reported Two Or More Ethnicities	10% (16)	--

Footnotes for Table 4.

*Two youth reported as Native Hawaiian/Pacific Islander and African American.

Note: Dr. Boyer’s study presented data on race and ethnicity together as one variable, suggesting that youth who were counted in any one racial group were identified as Non-Hispanic, youth counted as Hispanic/Latinx, were not identified as any other racial/ethnic group, and that youth identified as Hispanic and any racial group or more than one race were counted as “Two or more Ethnicities.” This method for data collection is not directly comparable to Office of Financial Management population estimates for Hispanic/Latinx youth or youth who reported more than one race or ethnicity, so this table does not include population estimates for those two groups.

Source: Adapted from information available from Boyer, *Commercially Sexually Exploited Children in Seattle/King County 2019 Update* (2020) available at <https://www.kingcountycsec.org/data>; Washington State Office of Financial Management 2018 Population Estimates; available from <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/estimates-april-1-population-age-sex-race-and-hispanic-origin>, accessed April 21, 2021.

Gender, racial, and ethnic disproportionality among exploited children is evident statewide as well. The Center for Children & Youth Justice (CCYJ) collects data from juvenile courts and youth-serving agencies in several counties in Washington State. Similar to the King County data, CCYJ's statewide data demonstrates that victims are disproportionately Black, Indigenous, and youth of color compared to their percentage in the general population. For 2019, the data shows that 55% of referrals were for Caucasian/white, 16% unknown race/ethnicity, 11% Hispanic/Latinx, nine percent African American/Black/African, seven percent multiracial, one percent Asian, one percent Native Hawaiian/Pacific Islander.¹⁵¹ In 2020, 42% Caucasian/white, 18% Unknown, 14% Hispanic/Latinx, 13% multiracial, ten percent African American/Black/African, one percent Native American/Alaska Native, one percent Asian, one percent Native Hawaiian/Pacific Islander.¹⁵² Dr. Pullmann's analysis of child welfare and juvenile justice records in Northwest 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.¹⁵³ It is important to note that when diverse populations are combined into one category such as "Asian/Native Hawaiian/Other Pacific Islander," disparities are often masked.

3. Age

The data confirms that a high number of those trafficked and exploited in the commercial sex industry in Washington, and across the United States, are children and young adults (up to age 24). Of the more than 23,500 endangered youth reported as runaways in 2019 to the National Center for Missing and Exploited Children, one in six were likely victims of child sex trafficking.¹⁵⁴ As noted earlier, it was estimated in 2018 that the CSEC prevalence alone in

¹⁵¹ CTR. FOR CHILDREN & YOUTH JUST., 2019 CSEC REFERRAL DATA REPORT (2020).

¹⁵² CTR. FOR CHILDREN & YOUTH JUST., 2020 CSEC REFERRAL DATA REPORT (2021).

¹⁵³ Pullmann et al., *supra* note 83.

¹⁵⁴ *By the Numbers*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://www.missingkids.org/theissues/trafficking#bythenumbers>.

Washington State ranges from 2,000 to 3,000 children and youth.¹⁵⁵ In Seattle/King County, there were 473 identified CSE youth in 2018 versus 238 (18 and under) in 2008. Of the 473 in 2018, 231 were 18 years old and under, and 242 were 19-24 years of age.¹⁵⁶

The Seattle area study by Dr. Boyer discussed above found that the ages of the study population ranged from 12 to 24 years, of whom 73% were ages 12-17 years and 27% were ages 18-24 years. The mean age at first CSE was 14.4 years.¹⁵⁷ Of the 136 individual young people included in the 2020 CSEC referral data from service providers in Skagit, Pierce, and Benton/Franklin Counties, seven were ages 11 or younger, 87 were ages 12-17 (45 of whom were ages 14-15), and 40 were ages 18-24.¹⁵⁸

4. Sex buyers

Trafficking and commercial sexual exploitation are a supply response to very high market demand. While there are adults who voluntarily and consensually engage in sex work, many more targeted and vulnerable minors and adults do not. Those who pay for sexual services cannot necessarily tell, and often do not care, whether they are dealing “at arm’s length” with a consenting adult sex worker or receiving sexual services from an individual who is exploited or trafficked. To better understand disparities in the sex industry, to develop justice system responses to minimize these disparities, and to reduce the scope of trafficking and CSE, we need to understand who buys sex in the United States. In 2018, Tim Swarens wrote a series of ten articles in the *Indy Star* and *USA Today* following a year-long fellowship funded by the Society of Professional Journalists. The first, “Who buys a trafficked child for sex?,” answered the question this way: “Many otherwise

¹⁵⁵ BOYER, *supra* note 11.

¹⁵⁶ 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, StolenYouth 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.

¹⁵⁷ 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). BOYER, *supra* note 11.

¹⁵⁸ CTR. FOR CHILDREN & YOUTH JUST., 2020 CSEC REFERRAL DATA REPORT (2021). Two were categorized as age unknown.

ordinary men. They could be your co-worker, doctor, pastor or spouse.” Swarens did the math to determine a conservative estimate of the scope of the problem: using the lower number of victims in a range identified in a 2016 study by the Center for Court Innovation, multiplied by a rate of daily exploitation per child of 5.4, assuming only one “work” day per week. The result: adults purchase children for sex at least 2.5 million times a year in the United States. Other articles in the series examined the issue in other countries, in devastating detail.¹⁵⁹

Sex buyers are almost exclusively men.¹⁶⁰ In an effort to better understand the demand side of the illegal U.S. sex industry, Demand Abolition commissioned a survey that was completed by 8,201 adult males across the U.S. between December 2016 and January 2017.¹⁶¹ While only 6.2% of respondents had bought sex within the past 12 months, “high-frequency” buyers purchased so often (weekly or monthly) that their activity accounted for nearly 75% of market transactions.¹⁶² The survey indicated that buyers’ race and sexual orientation have almost no profiling power, nor does income, with one important exception: “currently active high-frequency buyers are much more likely than other men to make \$100,000 or more annually.”¹⁶³ Sex buyer chat room members, surveyed in a different 2014 study, were older, more highly educated, and had higher incomes than men arrested for buying sex.¹⁶⁴

Responses from buyers in the Demand Abolition survey confirm that those exploited in the sex industry in the U.S. are overwhelmingly young, disproportionately Black females. High-frequency buyers are more likely to have paid for sex with a Black person. While most paid sex transactions

¹⁵⁹ Tim Swarens, *Who Buys a Trafficked Child for Sex? Otherwise Ordinary Men*, USA TODAY (Jan. 30, 2018), <https://www.usatoday.com/story/opinion/nation-now/2018/01/30/sex-trafficking-column/1073459001/>.

¹⁶⁰ DEMAND ABOLITION, *supra* note 68. King County data is in accord.

¹⁶¹ *Id.*

¹⁶² *Id.* at 4, 9, 16.

¹⁶³ *Id.* at 4, 19.

¹⁶⁴ WORLD WITHOUT EXPLOITATION, GET THE FACTS: WHAT WE KNOW ABOUT SEX TRAFFICKING, SEXUAL EXPLOITATION AND PROSTITUTION IN THE UNITED STATES 21 (2020), https://global-uploads.webflow.com/5b7ed53e01bf9702b9df675b/5e1cd98f61c439d812b34ed3_Get_the_Facts_January_2020.pdf.

involve females, about one in five high-frequency buyers most recently purchased sex from a male.¹⁶⁵

The survey results are striking. While buyers “care most about their own wellbeing” (personal safety, sexual health, and freedom from arrest), they were “much more concerned about the risk of arrest than finding a legal place to purchase sex.” They “are clearly untroubled by breaking the law,” but preoccupied by the need to avoid getting caught. While some also believe the prostituted person “should not be forced or trafficked,” that could be due to the criminal justice implications of trafficking for the buyer.¹⁶⁶ In fact, active buyers often believe that prostitution is a mostly victimless crime where no one is harmed; that prostituted people enjoy the act of prostitution; and that they chose the “profession.”¹⁶⁷ An Illinois survey of buyers in online chat rooms unveiled highly troubling, but not surprising, attitudes: buyers admitted to being violent or aggressive to women in prostitution; recognized the harm they and pimps/traffickers do to women but continue to buy sex despite the harm; they also recognized the extreme youth of some prostituted women but were not deterred from buying (raping) children.¹⁶⁸

The Demand Abolition survey found that only about six percent of men who purchase sex illegally have ever been arrested for it. Active high-frequency buyers, however, were six times as likely to have been arrested for sex buying, with two-thirds of them reporting multiple arrests for the same offense. The survey did not provide insight into whether a subsequent arrest led to heightened penalties or was even recognized as a repeat offense by the law enforcement agency.¹⁶⁹

Consequently, the Demand Abolition report recommended shifting law enforcement from arresting and adjudicating prostituted persons towards arresting and adjudicating buyers; creating increasingly severe penalty structures for repeat buyers; and using mandatory minimum

¹⁶⁵ DEMAND ABOLITION *supra* note 68, at 15.

¹⁶⁶ *Id.* at 26.

¹⁶⁷ *Id.*

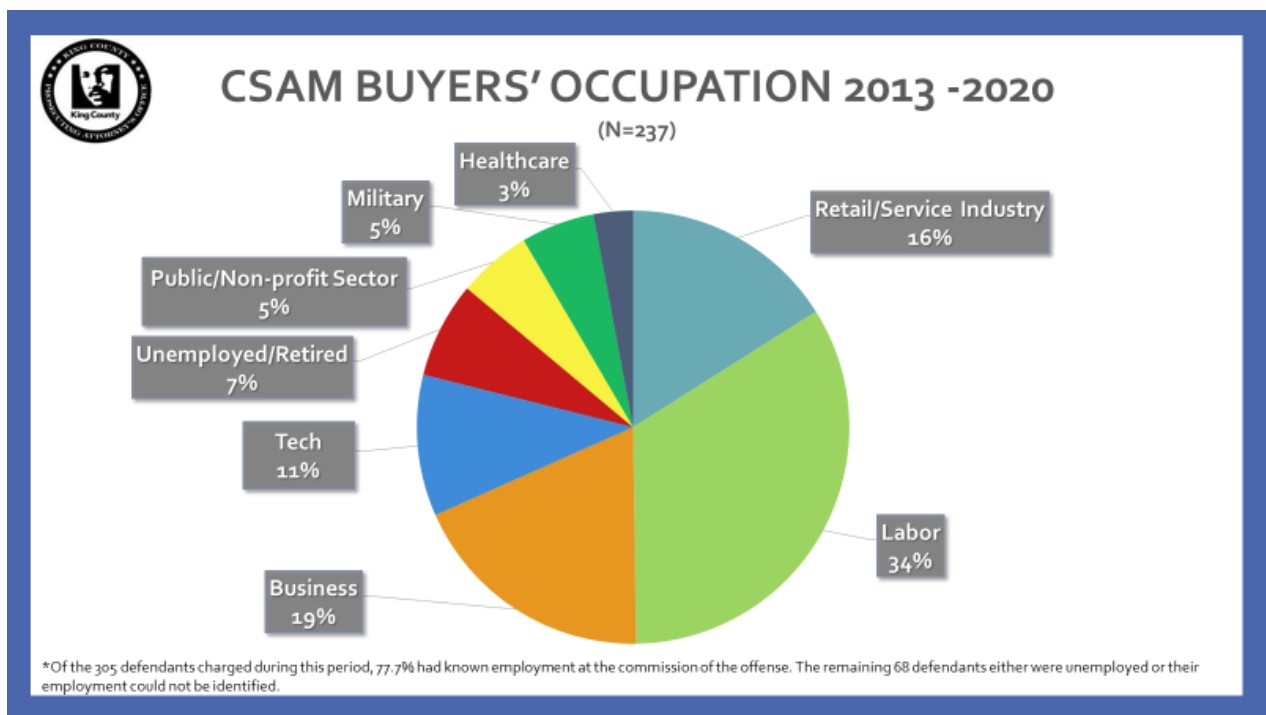
¹⁶⁸ WORLD WITHOUT EXPLOITATION, *supra* note 164, at 23-24.

¹⁶⁹ DEMAND ABOLITION, *supra* note 68, at 26-27.

fines from convicted buyers to support survivor exit services and law enforcement operations to stop demand.¹⁷⁰

Disparities in the legal system’s treatment of sex “sellers” and “buyers,” and the shift in arrest and prosecution policies in some parts of Washington law, are explored in Part III.C. As part of that shift, law enforcement agencies in Washington have been engaging in proactive policing investigations, sometimes referred to as “net nanny” operations, to prevent commercial sexual abuse of minors. While not generalizable, data from the King County Prosecuting Attorney’s Office provides some insights into the demographics of buyers charged with CSAM (Figures 4-6).¹⁷¹

Figure 4. Commercial Sexual Abuse of Minors, Buyers’ Occupations, King County, 2013-2020



¹⁷⁰ *Id.* at 5, 32-34.

¹⁷¹ GAUEN, *supra* note 142. The charged cases include both cases involving real victims and charges from “net nanny” operations.

Footnotes for Figure 4.

Notes:

Labor includes industries: General Labor (defined as work that is manual labor which requires no specific education), Manufacturing, Agriculture/fishing, Mechanic, and Construction.

Retail/Service includes industries: Entertainment, Food service, Retail, Tourism, and Transportation (i.e., cab or truck drivers).

Business includes industries: Business owner/self-employed, Business, Professional services.

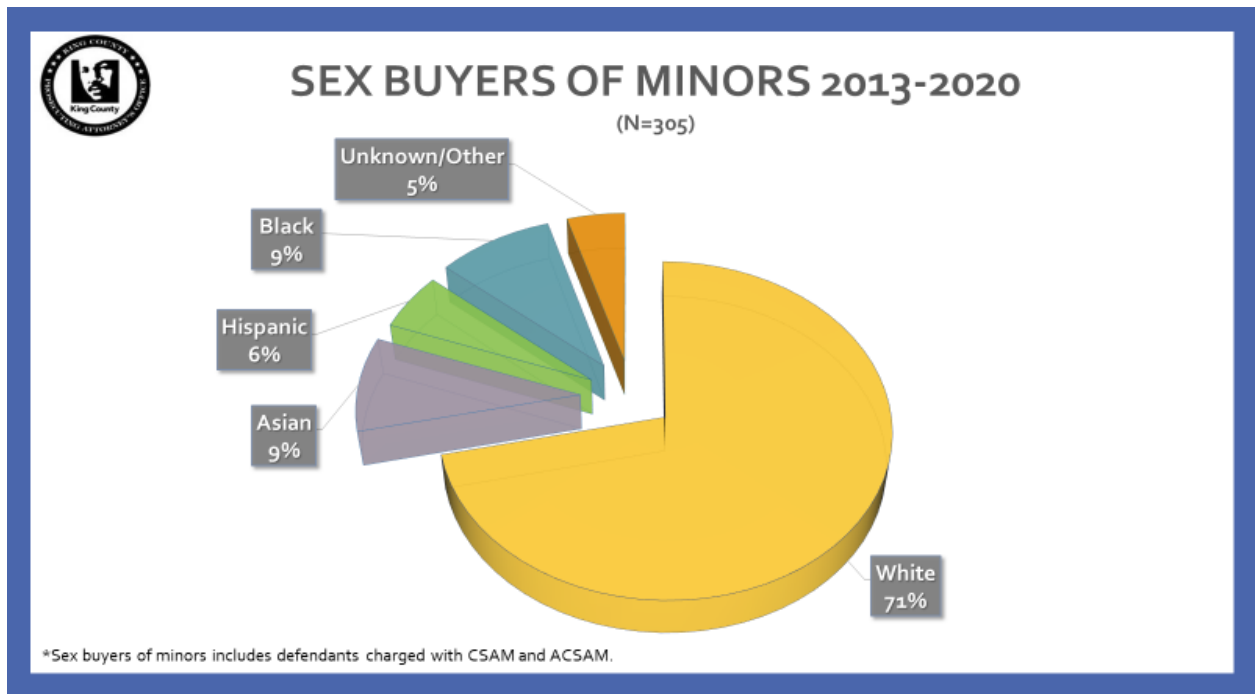
People in these industries include those working in a professional firm managing products, departments and/or people. This includes accountants, architects, people managers, product managers, etc.

Public Employee is defined as a person who works for a government organization, including teachers.

A Tech employee is classified as a person working in a technology-focused capacity, either building or facilitating use of, for a firm. This includes a Help-Desk manager, software engineer, IT administrator, etc.

Source: Benjamin Gauen. King County Sexual Exploitation Cases: The Data Behind the Charges, 2020 Update. (2021). Available at <https://www.kingcountycsec.org/data>.

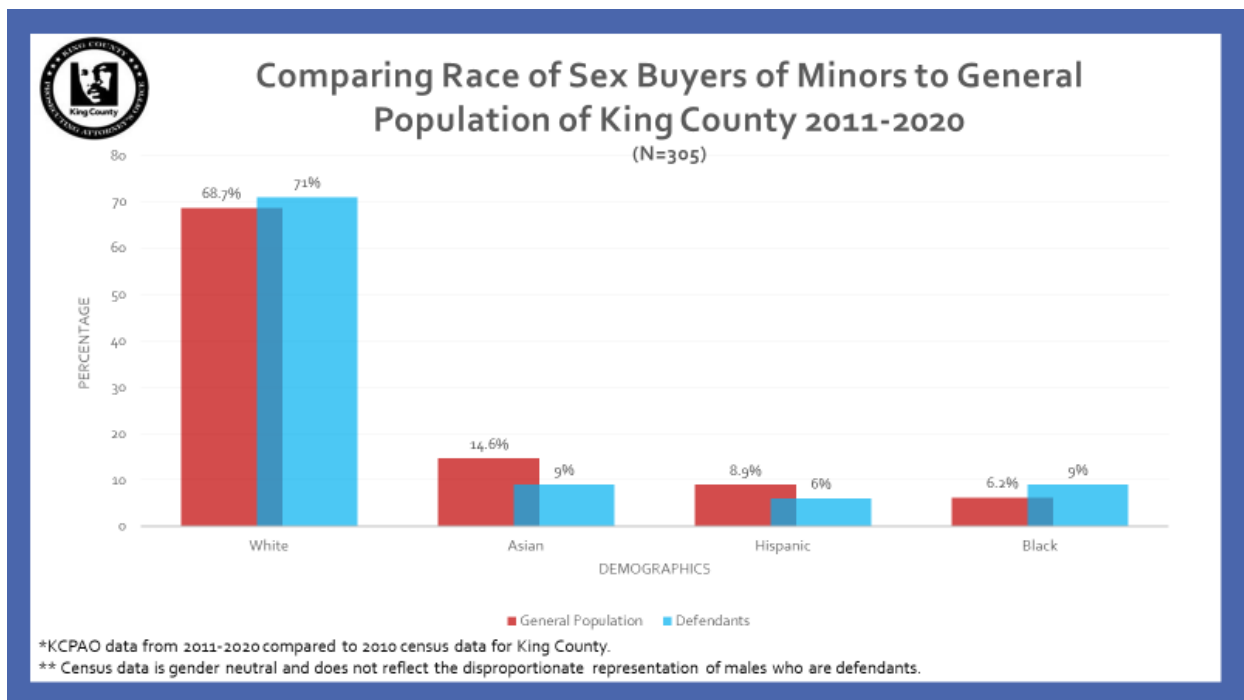
Figure 5. Sex Buyers of Minors in King County by Race and Ethnicity, 2013-2017



Footnotes for Figure 5.

Source: Benjamin Gauén. King County Sexual Exploitation Cases: The Data Behind the Charges, 2020 Update. King County Prosecuting Attorney’s Office. (2021). Available at <https://www.kingcountycsec.org/data>.

Figure 6. Comparing Race and Ethnicity of Sex Buyers of Minors to General Population of King County, 2011-2020



Footnotes for Figure 6.

Source: Benjamin Gau. King County Sexual Exploitation Cases: The Data Behind the Charges, 2020 Update. King County Prosecuting Attorney’s Office. (2021). Available at <https://www.kingcountycsec.org/data>.

III. Bias in Washington Justice System Response

Inequities in the justice system amplify the disparities discussed so far, both for survivors of exploitation and for individuals in the sex industry generally. Broadly speaking, the criminal justice system addresses commercial sex through overlapping frameworks: sex trade offenses such as prostitution and patronizing; commercial sexual exploitation; and human trafficking. Those frameworks are often in tension with each other, as discussed below.

On the one hand, 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 those responsible for sex trafficking and commercial sexual exploitation of both

minors and adults. Many of those involved in commercial sex are victims of commercial sexual exploitation and may experience trafficking, coercion, force, fraud, 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.¹⁷²

On the other hand, they are also most likely to have been criminalized historically for commercial sex offenses, and to be left unprotected by the legal system: Sex workers are often undocumented, Black, Indigenous, and women of color, and/or young LGBTQ+ people who have little to no access to justice.

The most targeted and marginalized populations are doubly harmed by their exploitation and by institutional bias 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?’”¹⁷³

Washington State data reflects these historical disparities in the legal system response – disparities that have heightened the impact on populations already marginalized due to gender, race, and age. Recent data illustrates progress made in Washington State towards alleviating disparities. This report explores efforts in Washington to correct course and recommends steps to reduce bias within the legal system.

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

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA).¹⁷⁴ 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

¹⁷² See *supra* Part II.

¹⁷³ THE LIFE STORY, <https://www.thelifestory.org/>.

¹⁷⁴ Trafficking Victims Protection Act of 2000, Division A of Pub. L. No. 106-386, 114 Stat. 464 (reauthorized regularly since) (mostly codified in 22 U.S.C. §§ 7101-7112).

coercion with regards to adults,¹⁷⁵ or where the person is under 18.¹⁷⁶ 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 harm or harm that includes “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.”¹⁷⁷ 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,¹⁷⁸ and prohibits travel with intent to engage in illicit sexual conduct with a minor.¹⁷⁹ In 2003, Washington was the first state to pass a law criminalizing human trafficking, using similar definitions and criteria.¹⁸⁰ 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.¹⁸¹

In 2007, the Washington State Legislature created four new crimes relating to child sexual exploitation in order to prevent any benefit or profit from engaging minors in sexual conduct (defined broadly): Commercial Sexual Abuse of a Minor (CSAM) (replacing the crime of patronizing a juvenile prostitute),¹⁸² Promoting Commercial Sexual Abuse of a Minor,¹⁸³ Promoting Travel for Commercial Sexual Abuse of a Minor,¹⁸⁴ and Permitting Commercial Sexual Abuse of a Minor.¹⁸⁵ A person is guilty of CSAM if they: provide anything of value to a minor or a

¹⁷⁵ 22 U.S.C. § 7102.

¹⁷⁶ 18 U.S.C. § 1591(a).

¹⁷⁷ 18 U.S.C. § 1591(e).

¹⁷⁸ 18 U.S.C. § 2422.

¹⁷⁹ 18 U.S.C. § 2424.

¹⁸⁰ RCW 9A.40.100.

¹⁸¹ RCW 9A.82.010.

¹⁸² RCW 9.68A.100.

¹⁸³ RCW 9.68A.101.

¹⁸⁴ RCW 9.68A.102.

¹⁸⁵ RCW 9.68A.103.

third person as compensation for a minor having engaged in sexual conduct (defined broadly) with them; 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 them; or solicit, offer, or request to engage in sexual conduct with a minor in return for anything of value.¹⁸⁶ A person is guilty of promoting CSAM if they knowingly advance commercial sexual abuse or a sexually explicit act of a minor or profit from a minor engaged in sexual conduct or a sexually explicit act.¹⁸⁷ A person (not the minor or the buyer) “profits from commercial sexual abuse of a minor” if they accept or receive money or anything of value pursuant to an agreement or understanding with any person whereby they participate or will participate in the proceeds of CSAM.¹⁸⁸ Consent of the minor is not a defense to any CSAM offense,¹⁸⁹ and neither is not knowing the victim’s age.¹⁹⁰ In 2010, the Washington State Legislature increased the seriousness level of CSAM offenses for sentencing purposes.¹⁹¹

Prostitution, the exchange of sex for money or other items of value, has long been outlawed in Washington 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.¹⁹² It is also a crime in Washington to

¹⁸⁶ RCW 9.68A.100.

¹⁸⁷ 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 they cause or aid a person to commit or engage in CSAM, procure or solicit customers for CSAM, provide persons or premises for the purposes of CSAM, operate or assist in the operation of a house or enterprise for the purposes of engaging in CSAM, or engage 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).

¹⁸⁸ RCW 9.68A.101(b).

¹⁸⁹ RCW 9.68A.100-.103.

¹⁹⁰ RCW 9.68A.110.

¹⁹¹ ESSB 6467 (2010). 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 a class B to a class A felony.

In 2013 the CSEC Statewide Coordinating Committee was established, and in 2015 the Washington State Legislature tasked the Committee with reviewing implementation and barriers to implementation of ESSB 6467. The CSEC Committee reported that insufficient dedicated law enforcement resources exist to properly investigate these complex crimes, particularly outside of large urban areas. *Commercially Sexually Exploited Children Statewide Coordinating Committee*, WASH. STATE OFF. OF THE ATT’Y GEN., <https://www.atg.wa.gov/commercially-sexually-exploited-children-statewide-coordinating-committee>.

¹⁹² RCW 9A.88.030, .110.

promote prostitution,¹⁹³ to provide or sell travel services knowing they will be used to patronize prostitutes,¹⁹⁴ and to permit prostitution in a building that you rent, own, or reside in.¹⁹⁵

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.¹⁹⁶ That recognition, in part, led to the recent Washington legislation decriminalizing prostitution for those under 18. The decriminalization part of the law will go into effect on January 1, 2024. The delayed implementation was intended to allow the state to establish the services needed for these youth as required by the legislation.¹⁹⁷

In contrast, the treatment of young adults ages 18-24 who have experienced sexual exploitation (when not formally amounting to trafficking) still generates controversy and mixed legal system responses. Current research and data on sexually exploited young adults and many adults in commercial sex indicates that “prostitution” is part of the spectrum of gendered violence and sexual exploitation of both minors and adults. However, the legal system, for the most part, has not responded with adequate training and information or made necessary changes to policies in recognition of sexual exploitation being on the spectrum of gender-based violence.

¹⁹³ 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 (causes or aids) 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.

¹⁹⁴ 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.

¹⁹⁵ RCW 9A.88.090. It is a misdemeanor to permit prostitution in a building that you possess or control (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.

¹⁹⁶ RCW 13.40.219. For further discussion see subsection III.E below. This law references the federal definition under the TVPA, which defines sex trafficking of any person younger than 18 as a severe form of trafficking.

¹⁹⁷ ENGROSSED THIRD SUBSTITUTE H.B. 1775, 66th Leg., Reg. Sess. (Wash. 2020) (amending RCW 9A.88.030).

As the following data shows, for too long the legal system viewed both minors and adults who engage in commercial sex as criminals. Those who are exploited were not recognized as victims due to criminalization and stigma, which keeps them trapped in the sex industry. Criminal convictions for prostitution are often used against survivors and those involved in the sex industry in family law hearings including custody, divorce, and dependency cases. Criminal convictions prevent survivors and sex workers from obtaining employment and housing to meet their basic needs.¹⁹⁸ “In the United States, people with criminal convictions are barred from jobs ranging from cutting hair to caring for toddlers...[v]irtually any potential employer can access this information, so prostitution convictions routinely lock us out of decent jobs let alone professional careers.”¹⁹⁹

The Washington Association of Sheriffs and Police Chiefs issues annual crime reports which include statewide data on human trafficking and prostitution offenses.²⁰⁰ Relevant data for the last fifteen years (2004-2019, not all data was similarly collected every year) generally demonstrates the following:

¹⁹⁸ See “Chapter 16: Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families” for an analysis of the collateral consequences of a criminal record.

¹⁹⁹ Marian Hatcher et al., *Exited Prostitution Survivor Policy Platform*, 3 DIGNITY 1, 2 (2018). See also “Chapter 16: Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families.”

²⁰⁰ *CJIS Statistics and Reports*, WASH. ASS’N OF SHERIFFS AND POLICE CHIEFS, <https://waspc.memberclicks.net/crime-statistics-reports> (last visited May 28, 2021).

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.

(1) Historically, law enforcement viewed only a small number of sexual exploitation cases as trafficking cases, compared to the high number of cases that they categorized as “prostitution” offenses. For example, reported sex trafficking offenses ranged from three in 2013 to 53 in 2019. Prostitution offenses went down from 555 in 2013 to 335 in 2019; Assisting/Promoting prostitution offenses hovered around 100 each year; and reported purchasing offenses increased from 20 to 192.²⁰¹

(2) A closer look at prostitution offense arrests shows an overall decline of 75-80% in the total arrests between 2004 and 2019.²⁰² However, arrest data is not broken down by gender or 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 who were selling sex as opposed to their customers or third-party exploiters.

(3) Over time, the number of prostitution offenses and arrests primarily of those targeted for exploitation has decreased. There has been a 90% decrease between 2004 and 2019 in the arrests of women for prostitution, and only five arrests of juveniles by 2019.²⁰³ Law enforcement officers have begun to recognize that prostitution may mask exploitation and they are better equipped to identify those who are victims of sexual exploitation. The decrease in the number of prostitution offense arrests of women and of juveniles illustrates this shift in paradigm. Challenges remain, however, and racial disparities are significant.²⁰⁴

The data is problematic in several key respects and limits our ability to draw inferences about gender, race, and age disparities and systemic biases discussed further in this report. While the dataset provides insights into the number of arrests and 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 does not differentiate between those who are selling sex, including

²⁰¹ *Crime in Washington Annual Reports 2012-2019*, WASH. ASS’N OF SHERIFFS & POLICE CHIEFS, <https://waspc.memberclicks.net/crime-statistics-reports> (adapted from information available at WASPC.net).

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ See Part III.B.

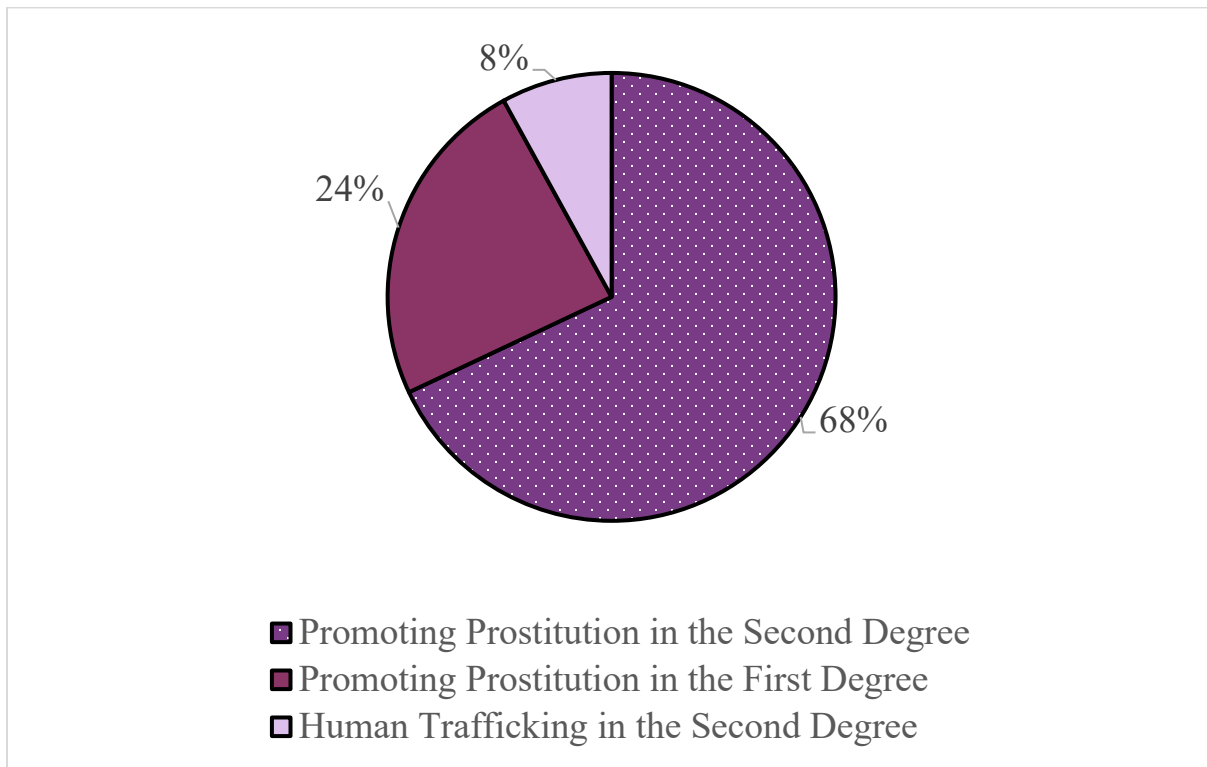
those who are exploited, and those purchasing, promoting as a third party, or forced into promoting prostitution. It is important to note that many third-party exploiters will force, coerce, and defraud people they are exploiting into promoting prostitution as a means to avoid prosecution themselves. Bias 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. The reports also categorize gender as a binary male/female. No data is provided for transgender individuals, or for the LGBTQ+ community in general. These gaps and limitations in the manner in which law enforcement collects data on CSE in Washington should be addressed moving forward.

Statewide data on resulting charges and prosecutions is similarly limited.²⁰⁵ 2019 and 2020 data provided by the King County Prosecuting Attorney's Office show both the number of charges for commercial sexual exploitation of adults (data regarding CSEC follows later) and breakdown along gender, race, and age.²⁰⁶ In 2019, there were a total of 37 charges for adult commercial sexual exploitation, the majority of which were for promoting prostitution in the second degree (see Figure 7). All victims were identified as female, with 75% of the defendants identified as male and 25% as female. The race breakdown of the 25 adult CSE victims is presented in Figure 8. Lastly, of those 25 victims, 32% were between the ages of 18-25, 52% between 26-35, 12% between 36-50, and four percent with unknown age.

²⁰⁵ Note that trafficking cases may be charged and prosecuted in federal courts under TVPA as well as in Washington State courts under state law.

²⁰⁶ GAUEN, *supra* note 142.

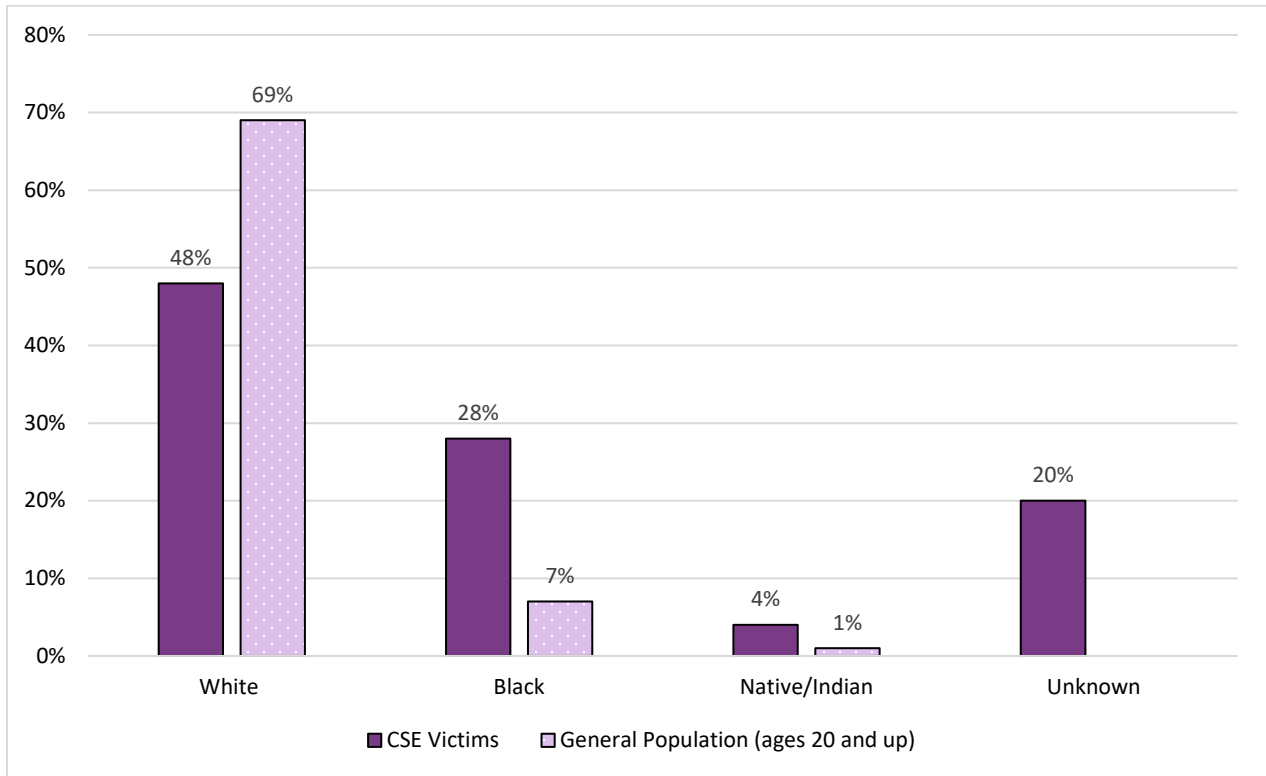
Figure 7. King County Prosecuting Attorney’s Office Charging Data for Commercial Sexual Exploitation of Adults, 2019 (n=37)



Footnotes for Figure 7.

Source: Adapted from information available from 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 8. King County Prosecuting Attorney’s Office Charging Data, CSE Adult Victims by Race compared to King County General Population by Race, 2019 (n=25)



Footnotes for Figure 8.

Note: These data should be interpreted with caution due to the small number of CSE cases (n=25).

Source: Adapted from information available from 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>; Office of Financial Management 2019 Population Estimates; available from <https://ofm.wa.gov/washington-data-research/population-demographics/population-estimates/estimates-april-1-population-age-sex-race-and-hispanic-origin>, accessed June 18, 2021.

In 2020, there were a total of 11 charges for adult commercial sexual exploitation in King County, the majority of which were for promoting prostitution in the second degree (77%). All victims

were identified as female, and all of the defendants identified as male. In 2020 for the first time no prostitution charges were filed anywhere in King County.²⁰⁷

The arrest and charging data provide 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 moving forward.

Moreover, despite progress and efforts to shift how law enforcement and the justice system perceive sex workers and the sex industry, concerns remain. The criminalization of the sex industry means increased contact with law enforcement. In the past, police primarily enforced prostitution laws against street level sex workers, often Black, Indigenous, and women of color, transgender people, immigrants, and people in difficult socioeconomic circumstances.²⁰⁸ Some have described such over policing at this level as stop-and-frisk policing for women and transgender and gender-nonconforming communities in areas that have laws prohibiting loitering for prostitution.²⁰⁹ Neither Washington State nor Seattle still have loitering laws. There is evidence not only of regular police contact, but also the extent to which those interactions may be abusive, violent, and lead to imprisonments. A study of street-based sex workers in Baltimore, Maryland found that 70% of sex workers in the sample had been incarcerated, with an average of 15 instances of imprisonment within their lives.²¹⁰ The Center for Court Innovation found that, of 316 adults in New York who traded sex for money, housing, food, drugs, or other things, “Thirty percent of participants reported that they were threatened with violence by a police officer, and 27% reported that they were harassed by an officer because of their gender presentation. Often, this

²⁰⁷ BENJAMIN GAUEN, KING COUNTY PROSECUTING ATTY’S OFF., KING COUNTY SEXUAL EXPLOITATION CASES: 2020 UPDATE (2021), available at KING COUNTY. CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

²⁰⁸ See Natlia Benitez et al., *Prostitution and Sexwork*, 19 GEO. J. GENDER & L. 331 (2018); see also Shelly A. Wiechelt & Corey S. Shdaimah, *Trauma and Substance Abuse Among Women in Prostitution: Implications for a Specialized Diversion Program*, 1 J. FORENSIC SOC. WORK 159 (2011).

²⁰⁹ Emma Whitford, *Surge in Prostitution Related Loitering Charges Affects Undocumented Immigrants*, DOCUMENTED NY, <https://documentedny.com/2018/12/19/surge-in-loitering-charges-may-affect-undocumented-immigrants>; Ricardo Cortes, *An Arresting Gaze: How One New York Law Turns Women Into Suspects*, VANITY FAIR (Aug. 2017), <https://www.vanityfair.com/culture/2017/08/nypd-prostitution-laws>.

²¹⁰ Anne E Fehrehbacher et al., *Exposure to Police and Client Violence Among Incarcerated Female Sex Workers in Baltimore City, Maryland*, 51 AM. J. PUB. HEALTH 110 (2020).

violence involved sexual contact during stops. Additionally, 15% of participants reported that an officer did not arrest them in exchange for sex.”²¹¹ The Coalition for Rights & Safety for People in the Sex Trade reported that sex workers in Seattle/King County have been stopped, questioned, or intimidated by the police while engaging in sex work.

In areas where loitering laws exist, stops can result in other charges such as drug possession or trespass. As noted above, criminal records from these charges prevent people from accessing housing and employment, preventing economic advancement.

As further explored in Part IV.B., many court systems now have diversion programs for victims of CSE. Diversion programs provide resource referrals for assistance with substance abuse, domestic violence, sexual assaults, housing, welfare, and vocational rehabilitation.

Although diversions can provide access to resources and essential services, they are tied to involvement with the criminal justice system and they require adherence to release conditions with potential criminal conviction(s) and suspended jail sentences. Some survivors and advocates report that diversion requirements can be inaccessible financially to people in the sex industry. Getting an assessment and going to treatment require health insurance. A survivor with a DUI, for example, may get fired from a job because of the DUI, and then has no health insurance with which to pay for treatment. Attending treatment, court, probation, and other required meetings may prevent survivors from getting or keeping jobs. If one defaults on payments or fails to comply with probation, they may end up in and out of jail, over and over again. A legal reform platform proposed by a coalition of prostitution survivors notes that although a court can facilitate access to services like substance abuse and mental health treatment as part of resolving charges, the mere fact of those services recognizes the inherent vulnerability in sexual exploitation. In addition, successful completion of those programs may simply reduce or prevent jail time or probation, leaving the person with a conviction nonetheless.²¹²

²¹¹ Elise White et al., *Navigating Force and Choice: Experiences in the New York City Sex Trade and the Criminal Justice System's Response*, CTR. FOR COURT INNOVATION (2017).

²¹² Hatcher et al., *supra* note 199, at 2.

The criminal justice system frames sex work and commercial sexual exploitation in ways that misunderstand the pathways leading into the sex industry and the barriers to exit.²¹³ A national study in 2010 examined whether the police conceptualize juveniles involved in the sex industry as victims of CSEC or as delinquents. Studying case files of 126 youth allegedly involved in prostitution provided by police agencies in six 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 may have considered local youth more often as victims.²¹⁴ This study found that race was not a significant predictor of law enforcement perception of youth as victims; but all Black, Indigenous, and youth of color were combined into one race category so disparities within these populations would have been masked. Hispanic ethnicity was a significant predictor that youth would be viewed as victims rather than offenders. However, when other factors (such as cooperation with police, prior record, and age) were added to the model, Hispanic ethnicity was no longer a significant predictor. Youth with missing ethnicity were coded as non-Hispanic which could reduce the model's ability to identify significant relationships between ethnicity and police perception. Additionally the author notes that the sample size was small so additional research is needed before conclusions can be drawn about the impact of race and ethnicity on police perception.²¹⁵ The study used a predictive model to correctly predict 91% of a youth's culpability status.²¹⁶ It also appeared that the police at the time of the survey used criminal charges as a paternalistic protective response to detain some of the youth treated as offenders, even though they considered them victims.²¹⁷

Social and economic factors such as lack of access to employment beyond menial jobs with poverty wages, lack of access to education, and unstable housing funnel youth into survival sex, including

²¹³ See *supra* II.B – vulnerabilities to exploitation and harm caused.

²¹⁴ Stephanie Halter, *Factors That Influence Police Conceptualizations of Girls Involved in Prostitution in Six U.S. Cities: Child Sexual Exploitation Victims or Delinquents?* 15 CHILD MALTREATMENT 152, 152-60 (2010).

²¹⁵ *Id.* at 156.

²¹⁶ *Id.*

²¹⁷ *Id.* This study was published in early 2010. Much has changed in terms of perception and training since then.

a disproportionate number of Black, Indigenous, and youth of color and LGBTQ+ youth.²¹⁸ 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 as minors, experience multiple traumas, and face significant barriers to exiting the sex industry.²¹⁹ Although 87.2% of youth wanted to leave sex work, the barriers to exiting were similar to the social and environmental factors that caused them to become sexually exploited.²²⁰ The barriers of criminal charges, lack of employment history, lack of education, financial challenges, and psychological impacts may increase as these youth age into adulthood.

The criminal justice system framework does not account for complex narratives, especially when dealing with young adults ages 18-24 and adults over age 24 involved in the sex industry. Consequently, law enforcement, prosecutors, and legal systems historically saw people as “criminals” and prosecuted them, instead of seeing them as victims of circumstances and trauma. A Seattle-based person who identified as a sex worker said:

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.²²¹

²¹⁸ See generally Phillips, *supra* note 45; Conner, *supra* note 45.

²¹⁹ See section II.B above. See also *About Ending Exploitation Collaborative*, ENDING EXPLOITATION COLLABORATIVE, <https://www.endingexploitation.com/about-ending-exploitation-collaborative.html>. The *Ending Exploitation Collaborative* is a partnership including the Washington Attorney General's Office, King County Prosecuting Attorney's Office, the Seattle City Attorney's Office, the survivors-led Organization for Prostitution Survivors (OPS), Businesses Ending Slavery & Trafficking (BEST), and Seattle Against Slavery.

²²⁰ Phillips, *supra* note 45, at 1665.

²²¹ *Original Work: A Full Contact Sex Worker Tells a Story*, SEX WORKERS OUTREACH PROJECT USA (Jan. 20, 2020), <https://seattle.swopusa.org/2020/01/20/original-work-a-full-contact-sex-worker-tells-a-story/> (previously but no longer available).

In Part IV, this report will address Washington State’s legal response to recognize the intersection of sex work, commercial sexual exploitation, and trafficking. Despite decriminalization for minors and safe harbor protections for young and adult trafficking victims, challenges remain. The state must develop better multi-system ways to address the exploitation and vulnerabilities of sexually exploited people.

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

The data provided in Part II suggests significant disparities in the commercial sex industry and commercial sexual exploitation nationally and at least in northwest Washington State.²²² The criminal justice system further perpetuates disparities in CSE and the commercial sex industry in Washington.

Disparities in the justice system in Washington are consistent with national data, much of which focuses on children and youth, and to a lesser extent on adults. In Washington and nationally, women and girls have been disproportionately criminalized. Washington data does not provide any information about the criminalization of LGBTQ+ populations who are involved in the sex industry, though national data suggests they are also disproportionately criminalized. The disparate impact on Black, Indigenous, and communities of color in Washington is significant.

Nationwide, CSE girls have historically been prosecuted at higher rates than those who exploit them,²²³ particularly when their behaviors fell outside of prescribed narratives of what victimhood looks like.²²⁴ Exploited youth frequently do not see themselves as victims, so do not identify themselves as victims to law enforcement and prosecutors. 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 with suspended jail sentences used as a tool for compliance. This is due to a lack of knowledge about trauma, lack of shelters or

²²² We don’t have good statewide data on disparities based on demographics. While CCYJ data is statewide, it is limited in its focus on CSEC/CSE youth. The remaining data is limited to King County and a few other regions.

²²³ See Megan Annitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL’Y REV. 1 (2011).

²²⁴ For example, CSEC individuals may not quickly cooperate with law enforcement or case workers.

placements capable of serving the needs of CSE victims, and to paternalistic views of judges. Some judges still believe that “jail is the safest of many bad options.”²²⁵

This sometimes-well-intended instinct is not only counter-productive but it can be harmful. As a Washington service provider observed:

I am noticing the criminal legal system does not know how to meet the needs of CSEC survivors. CSEC survivors are getting locked up in Juvenile Detention for CSEC related behavior (i.e. running away, violating probation because trafficker is making demands). The Juvenile Justice system has good intentions but doesn't seem to understand that it is not okay to lock up victims because you are fearful that something bad will happen to them. We lack the type of wrap around services that CSEC survivors need. They end up in a revolving door with juvie and/or foster care. We have resources for homeless youth who are 18-24 but not good resources for CSEC victims who are under the age of 17.²²⁶

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.²²⁷ Like girls, they may be charged with other offenses related to their victimization. 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

²²⁵ 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, 1636 (2015).

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 Washington lags on judicial trauma training. The National Council of Juvenile and Family Court Judges (NCJFCJ) has weeklong trainings on Child Abuse and Neglect and a National Judicial Institute on Domestic Child Sex Trafficking, usually twice a year. In addition, NCJFCJ does trauma audits for courts (King County had one many years ago), works with the National Traumatic Stress Network (NCTSN), and co-branded a bench card on child trauma: NCTSN Bench Cards for the Trauma-Informed Judge | The National Child Traumatic Stress Network.

²²⁶ CTR. FOR CHILDREN & YOUTH JUST., *THE IMPACT OF COVID-19 ON COMMERCIALLY SEXUALLY EXPLOITED CHILDREN IN WASHINGTON* (2021).

²²⁷ TIMOTHY A. BASTEDO, *LOVE 146, THE COMMERCIAL SEXUAL EXPLOITATION OF MALE MINORS IN THE UNITED STATES: A SNAPSHOT WITH STRATEGIC IMPLICATIONS FOR PREVENTION EDUCATION 31* (2013), <https://love146.org/wp-content/uploads/2013/06/CSEMMFinalReport-1.pdf>.

less likely than female minors to be referred to services by law enforcement agencies.²²⁸ 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.²²⁹ As noted earlier, many are less likely to disclose for fear that they will be perceived as gay when they are not.

LGBTQ+ youth are highly represented in populations detained by the police. A 2010 study found that lesbian, bisexual, and questioning girls were twice as likely as their heterosexual peers to be held for prostitution—11% compared with five percent.²³⁰ The statistics are starker for gay, bisexual, and questioning boys: one percent of heterosexual boys are detained for prostitution compared with ten percent of their gay, bisexual, and questioning peers.²³¹ Six percent of gender non-conforming girls were detained for prostitution compared with seven percent of their gender conforming peers. Seven percent of gender non-conforming boys were detained for prostitution compared with one percent of their gender conforming peers.²³²

Because buyers are almost always men, homeless heterosexual boys are often forced by circumstances into exploitation with members of the same sex; this is survival behavior. In the criminal justice system, LGBTQ+ youth may not be perceived as victims of violence or trafficking, and Safe Harbor resources may be unsafe custodial or detention placements due to hostility, ignorance of a youth's sexual orientation, and placements that do not meet the needs of a survivor's gender identity (transgender youth being placed with their assigned at birth gender population).²³³

In fact, research suggests that LGBTQ+ people, particularly transgender women, are profiled by police for engaging in prostitution even when they are not. In a 2015 U.S. survey of transgender people, approximately three in ten Black transgender women and multiracial transgender

²²⁸ *Id.*

²²⁹ See Annitto, *supra* note 223.

²³⁰ Angela Irvine, *We've Had Three of Them: Addressing the Invisibility of Lesbian, Gay, Bisexual, and Gender Nonconforming Youths in the Juvenile Justice System*, 19 COLUM. J. GENDER & L. 675, 694 (2010).

²³¹ *Id.*

²³² *Id.*

²³³ See generally Conner, *supra* note 45.

women reported that a police officer had assumed they were sex workers.²³⁴ Transgender respondents in a survey of 305 LGBTQ+ people in the Jackson Heights neighborhood of New York City similarly reported being profiled as sex workers though none were working as sex workers at the time.²³⁵

The criminalization of the sex industry disproportionately impacts Black, Latinx, Native American, immigrant communities, and other communities of color. People of color are disproportionately represented among police arrests, profiling, and incarceration, including in offenses related to sex work. Disproportionate criminalization reflects the disproportionate exploitation of marginalized people and groups. Black and Latinx individuals accounted for 91% of arrests for “loitering for the purposes of prostitution” in New York in 2018, while Asian immigrant women made up the majority of sex work-related massage parlor arrests.²³⁶ In 2013 Black women were arrested for prostitution at a rate 14 times their percentage in the population in California.²³⁷ A study examining data from three cities in North Carolina from 1993-2010 suggested that “in these cities, law enforcement’s focus on outdoor prostitution appears to result in [B]lack females being arrested for prostitution at higher rates than their white counterparts and at rates disproportionate to their presence in online advertisements for indoor prostitution.”²³⁸

Of sexually exploited youth, Black children are more likely to come into contact with the criminal justice system, are more likely to be prosecuted, and are more likely to be charged as adults.²³⁹ Black youth make up approximately 62% of minors arrested for prostitution-related offenses in the U.S., even though they comprise only 13% of the population.²⁴⁰ In a study of New York City youth and young adults engaging in survival sex, multiracial, Latinx, and Black young adults

²³⁴ SANDY E. JAMES ET AL., NAT’L CTR. FOR TRANSGENDER EQUALITY, THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY 158 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

²³⁵ MAKE THE ROAD NEW YORK, TRANSGRESSIVE POLICING: POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS (2012), https://maketheroadny.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf.

²³⁶ New York State Division of Criminal Justice Services.

²³⁷ AMIRA HASENBUSH ET AL., THE WILLIAMS INST. AT UCLA SCH. OF L., HIV CRIMINALIZATION AND SEX WORK IN CALIFORNIA (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-Sex-WorkOct-2017.pdf>.

²³⁸ JUDGE SHANA & MARIAH WOOD, ASS’N FOR PUB. POL’Y ANALYSIS & MGMT., PANEL PAPER: RACIAL DISPARITIES IN THE ENFORCEMENT OF PROSTITUTION LAWS (2014).

²³⁹ Ocen, *supra* note 225, at 1592.

²⁴⁰ Phillips, *supra* note 45, at 1645.

reported the highest experiences of trouble with police and their clients.²⁴¹ “Chapter 9, Juvenile Justice and Gendered and Racialized Disparities,” details how gender and racial 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.²⁴²

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.²⁴³

Even when Indigenous/Native American women and girls are identified as victims of sexual exploitation, complicated tribal and state jurisdictional issues on tribal land leave them with fewer protections afforded by anti-trafficking laws.²⁴⁴ These jurisdictional issues have generally prevented tribes from arresting and prosecuting non-native exploiters and traffickers in tribal court.²⁴⁵ Most sex traffickers of Indigenous women and girls are non-Native and 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 women and girls

²⁴¹ DANK ET AL., *supra* note 45.

²⁴² See generally *supra* note 225, at 1636; Phillips, *supra* note 45, at 1646.

²⁴³ Pierce, *supra* note 113, at 38.

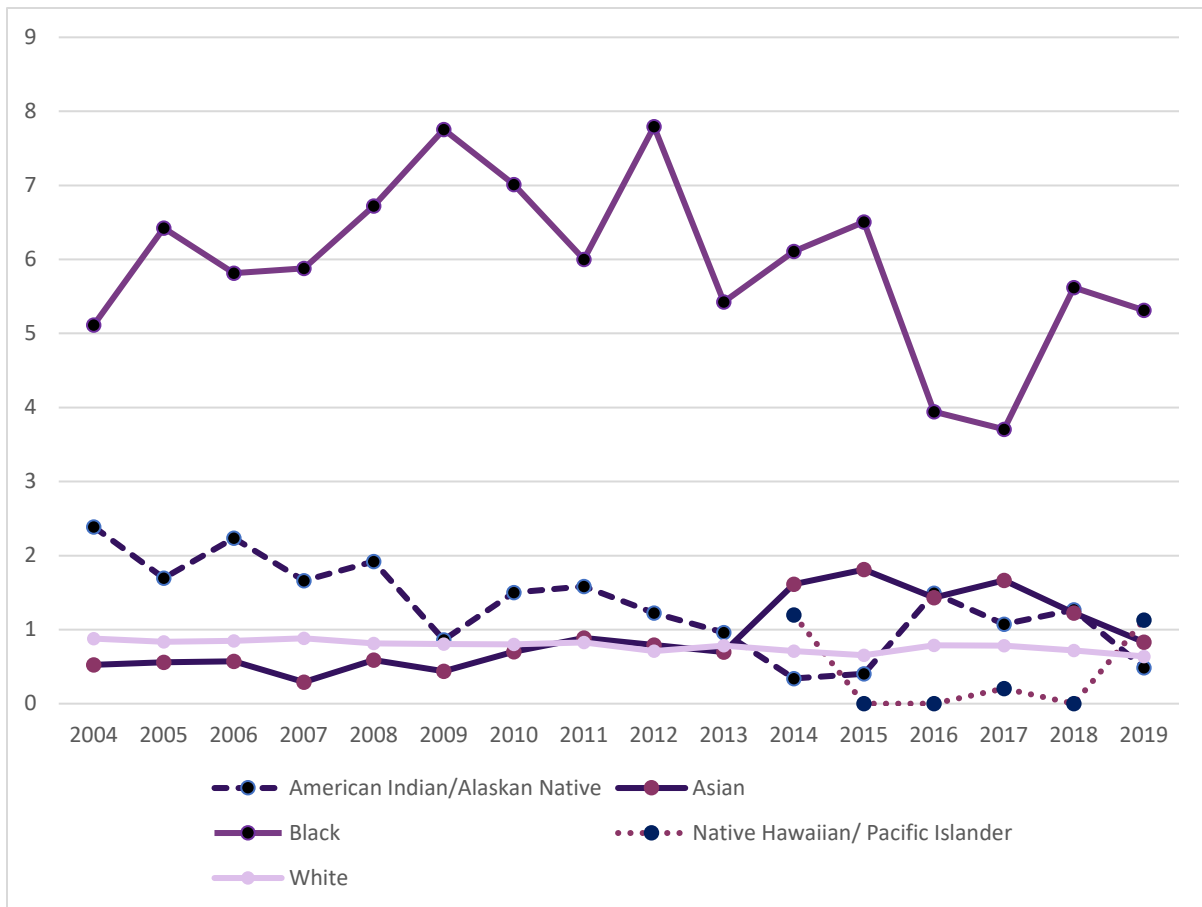
²⁴⁴ See Andrea Johnson, *A Perfect Storm: The U.S. Anti-Trafficking Regime’s Failure to Stop the Sex Trafficking of American Indian Women and Girls*, 43 COLUM. HUM. RTS. L. REV. 617 (2012); Gabrielle Mandeville, *Sex Trafficking on Indian Reservations*, 51 TULSA L. REV. 181 (2015).

²⁴⁵ *But see*, United States v. Cooley, 141 S. Ct. 1638, 1641 (2021) (“The question presented is whether an Indian tribe’s police officer has authority to detain temporarily and to search a non-Indian on a public right-of-way that runs through an Indian reservation. The search and detention, we assume, took place based on a potential violation of state or federal law prior to the suspect’s transport to the proper nontribal authorities for prosecution. We have previously noted that a tribe retains inherent sovereign authority to address ‘conduct [that] threatens or has some direct effect on ... the health or welfare of the tribe.’ *Montana v. United States*, 450 U.S. 544, 566, 101 S.Ct. 1245, 67 L. Ed. 2d 493 (1981); see also *Strate v. A-1 Contractors*, 520 U.S. 438, 456, n. 11, 117 S.Ct. 1404, 137 L. Ed. 2d 661 (1997). We believe this statement of law governs here. And we hold the tribal officer possesses the authority at issue.”)

targets for commercial sexual exploitation, but also often prevents them from seeking justice and restitution during prosecution.²⁴⁶

Similar to the national data, Black, Indigenous, and people of color in the sex industry in Washington State have been disproportionately criminalized (Figure 9).

Figure 9. Washington Association of Sheriffs and Police Chiefs Data, Prostitution Offense Arrestees by Race Compared to Washington Population Data, Juveniles and Adults, Washington State, 2004-2019



²⁴⁶ See Johnson, *supra* note 244; Mandeville, *supra* note 244.

Footnotes for Figure 9.

Notes:

Data not reported for Native Hawaiian and Other Pacific Islanders after 2013. In any given year, some police departments did not provide data. The population data is statewide, so may not be 100% comparable to the arrest data populations given the missing arrest data from various parts of the state. These calculations are based on small numbers and should be interpreted with caution. A ratio below one means that the population is underrepresented in the prostitution offense arrest data as compared to their representation in the general statewide population. A ratio above one means that the population is overrepresented in the prostitution offense arrest data as compared to their representation in the general statewide population.

Sources: *CJIS Statistics and Reports*, WASH. ASS'N OF SHERIFFS AND POLICE CHIEFS, <https://waspc.memberclicks.net/crime-statistics-reports> (last visited May 28, 2021).

Adapted from information available from Washington Association of Sheriffs & Police Chiefs, *Crime in Washington Annual Reports 2012-2019*, available at <https://waspc.memberclicks.net/crime-statistics-reports>.

What this figure tells us:

Between 2004 and 2019, the percentage of white individuals arrested for prostitution offenses was considerably lower than their representation in the general Washington State population. This population saw little change in their disproportionality index over time. On the other hand, Black individuals have been disproportionately overrepresented consistently in this time period, a trend that has fluctuated but shown no real progress. The Asian population has seen a trend of moving from being underrepresented in these arrest data to being overrepresented, though data in recent years indicates that this trend may be reversing with Asian individuals being underrepresented again according to the 2019 data. American Indian/Alaskan Native individuals were also overrepresented in 2004, with a slow trend toward more proportional representation over time. It is important to note that this data does not include arrests on Tribal land which could artificially deflate the impacts of prostitution offense arrests on Indigenous communities. All of the data should be interpreted with caution due to the small numbers (cell sizes range from $n=0$ to $n=1,145$). The cell sizes for Native Hawaiian and Other Pacific Islanders are very small and make it difficult to make inferences—particularly given that this population was only included in

Washington Association of Sheriffs and Police Chiefs Data Reports in recent years. This data does not have a Latinx category, which means Latinx people may be categorized as a racial group (e.g., Black or white). Since the dataset excludes Latinx individuals, it probably skews the data concerning white, Black, Indigenous, Asian, and Native Hawaiian and Other Pacific Islander representation. Lastly, it is always important to note that when datasets aggregate very diverse populations into high-level categories like the five included here, disparities are often masked. Overall, these data suggest that there are racial disparities in prostitution arrest rates in Washington and that over time, while changes to policies or practice may have reduced those disparities for some populations, it has not been true for all racial groups. Black people remain extremely overrepresented in the arrest data.

Commercial sexual exploitation is violence by men against women, LGBTQ+ people, and children of all genders. Exploited people suffer significant trauma that is often hidden and compounded by stigma and widely shared views that people who are sexually exploited chose freely to engage in the sex industry.²⁴⁷ Often exploited adults are not identified as victims until they are already in the court process.²⁴⁸ Even if identified as victims or survivors of CSE, criminal justice system involvement, from the initial arrest to court proceedings including diversion when available, can perpetuate the harm to survivors. “Diversion and exit services mean little to nothing when you are branded a felon.”²⁴⁹

The impact of the criminalization of women within the sex trade reduces us to an object in pejorative “humor”; we are the whores, hookers, and sluts at the butt of jokes; and, the scapegoat for men’s bad behavior. Not coincidentally, we are also subjected to oppression, hardship, and mistreatment beyond measure. We are exploited by sex buyers and pimps, harassed by the public, abused by insensitive

²⁴⁷ *About Us*, OPS, <http://seattleops.org/about-us>.

²⁴⁸ See Serita, *supra* note 70.

²⁴⁹ Hatcher et al., *supra* note 199, at 3; see “Chapter 9: Juvenile Justice and Gender and Race Disparities” and “Chapter 13: Prosecutorial Discretion and Gendered Impacts” for more information on the impacts of policy contact and “Chapter 16: Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families” for more information on the impacts of involvement in the criminal legal system.

police and uninformed judges. The situation we find ourselves in is unjust, and we are condemned to suffer because we are seen as perpetrators instead of survivors. Our suffering is not negligible or diminutive in nature; we bear the consequences of policymakers' negligence in acknowledging our status as victims. The burdens we carry due to criminalization include poverty, homelessness, economic inequity, racial inequity, and myriad additional forms of trauma and oppression. Systemic violence and institutionalized oppression in our social, legal, and economic institutions have pushed us to the margins and seared our exploitation into our souls, branding us just as surely as many of us were branded—through coerced tattoos declaring ownership—by our exploiters.²⁵⁰

C. Disparities in response to exploitation when framed as prostitution offenses: biased treatment of “sellers” and “buyers”

Historically, people in the sex industry, including victims of exploitation, have been criminalized and sanctioned disproportionately to their third-party exploiters (promoters and traffickers) and buyers. While statewide prostitution offense arrest data 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.²⁵¹

King County data illustrates prior biases and shows the dramatic changes resulting from the recognition and identification of many sellers as victims of exploitation. 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 buyers and third-party exploiters. This trend is corroborated by 2008-2020 King County prostitution versus patronizing charging data (see Figures 10 through 13).²⁵²

²⁵⁰ *Id.*

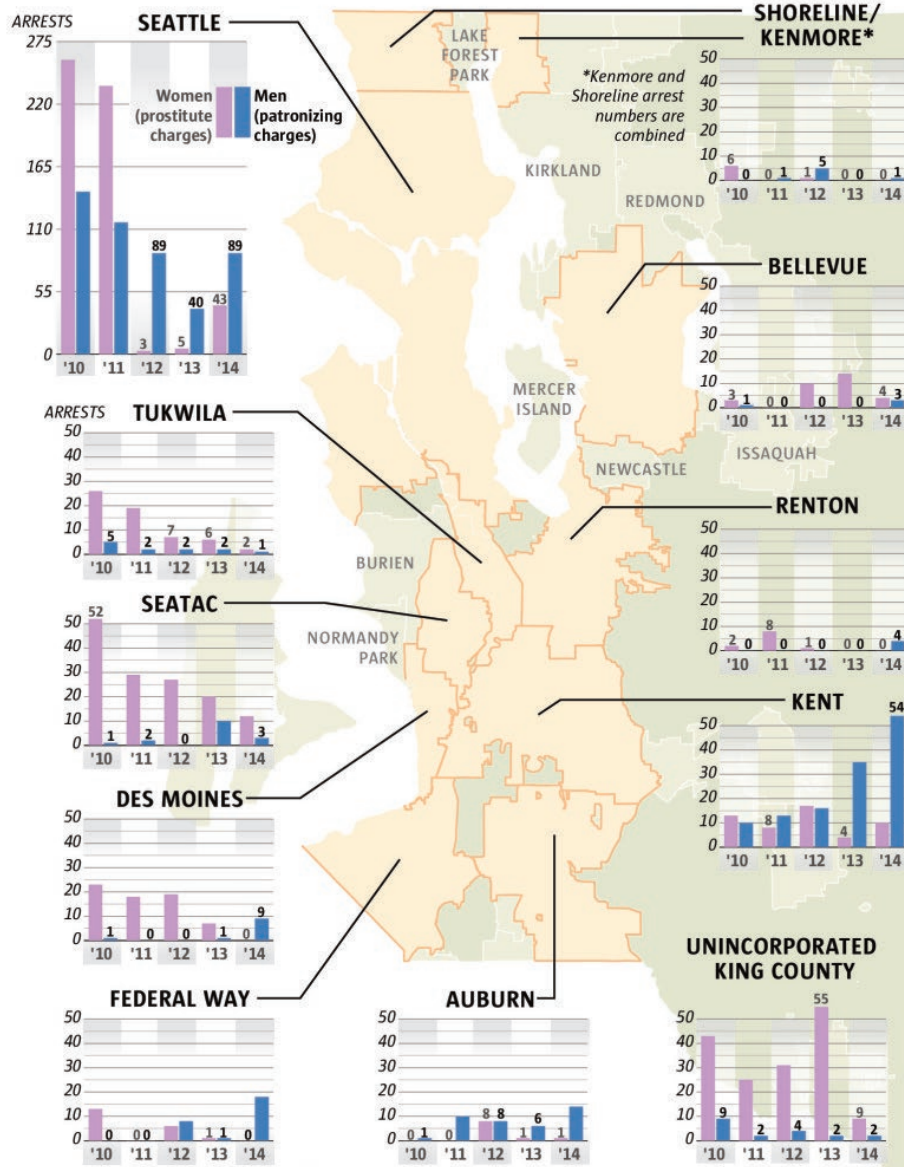
²⁵¹ *Crime in Washington Annual Reports 2012-2019*, WASH. ASS'N OF SHERIFFS & POLICE CHIEFS, <https://waspc.memberclicks.net/crime-statistics-reports> (adapted from information available at WASPC.net).

²⁵² BENJAMIN GAUEN, KING COUNTY PROSECUTING ATTY'S OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2020 UPDATE (2021), data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney at

Figure 10. Risk of Arrest Increasing for Sex Buyers, King County 2010-2014

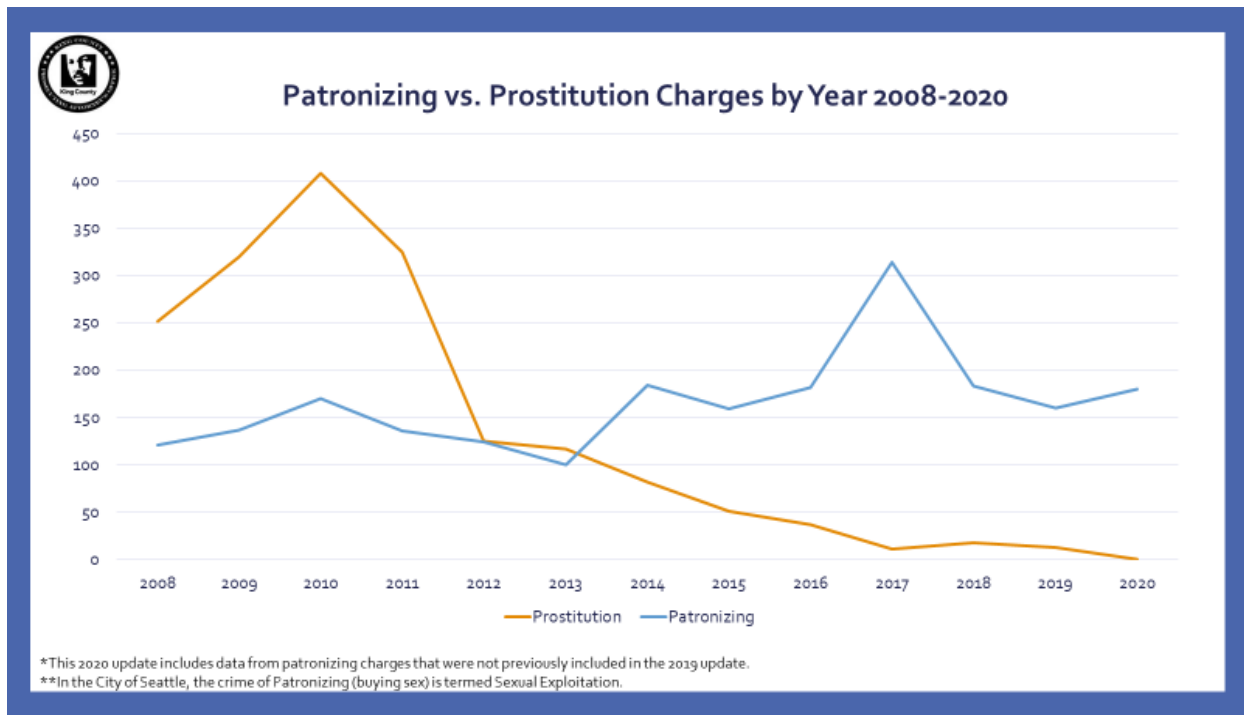
Risk of arrest increasing for sex buyers

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.



King County Prosecuting Attorney's Office and available at KING COUNTY CSEC TASK FORCE, <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 WASH. STATE DEP'T OF COMM., CRIMINAL PENALTY FEES RELATED TO SEXUAL EXPLOITATION CRIMES: RCW 43.280.100 (2019).

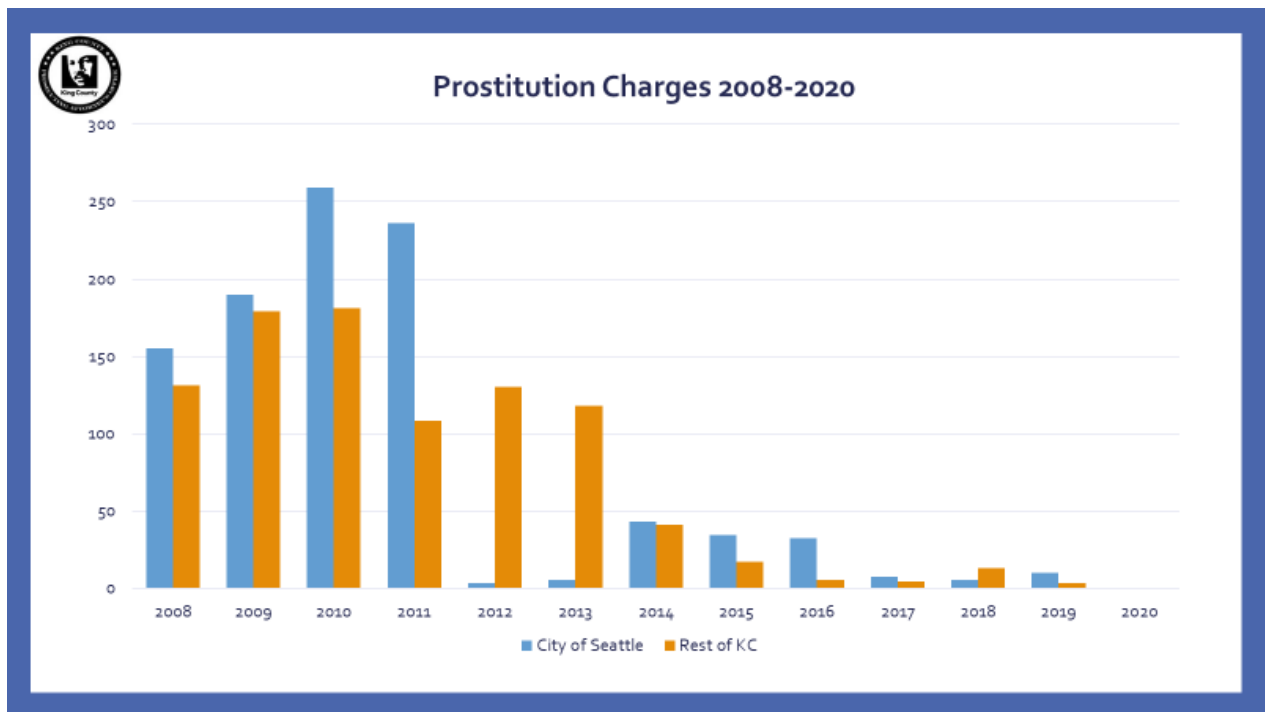
Figure 11. Patronizing vs. Prostitution Charges by Year, King County, 2008-2020



Footnotes for Figure 11.

Source: BENJAMIN GAUEN, KING COUNTY PROSECUTING ATTY'S OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2020 UPDATE (2021), data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney's Office and available at KING COUNTY CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

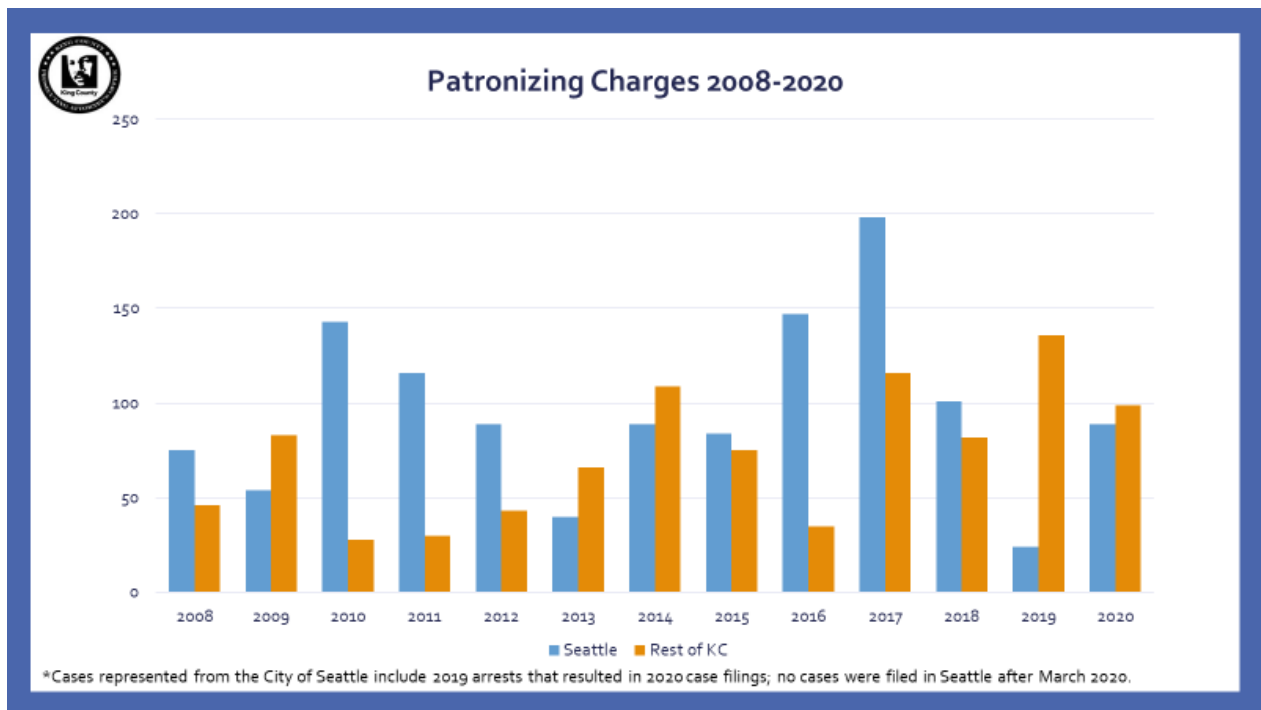
Figure 12. Prostitution Charges, King County, 2008-2020



Footnotes for Figure 12.

Source: BENJAMIN GAUEN, KING COUNTY PROSECUTING ATTY'S OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2020 UPDATE (2021), data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney's Office and available at KING COUNTY CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

Figure 13. Patronizing Charges, King County, 2008-2020



Footnotes for Figure 13.

Source: BENJAMIN GAUEN, KING COUNTY PROSECUTING ATTY’S OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2020 UPDATE (2021), data and slides provided by Benjamin Gauen, Senior Deputy Prosecuting Attorney at King County Prosecuting Attorney’s Office and available at KING COUNTY CSEC TASK FORCE, <https://www.kingcountycsec.org/data>.

Some law enforcement jurisdictions have shifted from arresting and charging those selling sex to arresting and charging sex buyers. That shift has worked in tandem with prosecutorial policies in Seattle and King County 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.²⁵³ Addressing demand is also on the forefront of national anti-exploitation organizations and the federal government, as well as international organizations.²⁵⁴ On the other hand, other advocates and sex workers, including members of the Seattle/King County based Coalition for Rights & Safety for People in the Sex Trade, Legal Voice, and the ACLU, question the demand abolition model and advocate for full decriminalization of commercial sexual exchanges between consenting adults when no force, fraud, coercion, violence, or intimidation are present. Both approaches are briefly described below.

Demand focused approaches view the demand for commercial sex as the driver of sex trafficking and exploitation. Trafficking and CSE are a supply response to high demand. Consequently, efforts by the Ending Exploitation Collaborative, the National Center on Sexual Exploitation, and many exited survivors, advance a comprehensive strategy to end commercial sexual exploitation by reducing demand for commercial sex, ending the cycle of prostitution-related crime, and facilitating exit from the sex industry by providing survivor services.²⁵⁵ 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

²⁵³ ENDING EXPLOITATION COLLABORATIVE, <https://www.endingexploitation.com>.

²⁵⁴ See e.g., DEMAND ABOLITION, *supra* note 68; NAT'L CTR. ON SEXUAL EXPLOITATION, <https://endsexualexploitation.org>; *Discouraging the Demand That Fosters Trafficking for the Purpose of Sexual Exploitation*, OSCE (June 10, 2021), <https://www.osce.org/cthb/489388>; MY LIFE MY CHOICE, mylifemychoice.org. There is also a federal Interagency Working Group on Demand Reduction.

²⁵⁵ ENDING EXPLOITATION COLLABORATIVE, *supra* note 253; NAT'L CTR. ON SEXUAL EXPLOITATION, *supra* note 254; Marian Hatcher et al., *Exited Prostitution Survivor Policy Platform*, 3 DIGNITY: J. ON SEXUAL EXPLOITATION & VIOLENCE 1, 4 (2018); OSCE, *supra* note 254.

violence in the life, and the subculture of the life are significant barriers to exiting and building more stable lives.²⁵⁶

The approach is also based on an international understanding of human rights. Prostitution in all its forms is an abuse of power and is defined as such in the Palermo Protocol under Article 3.²⁵⁷ The Palermo Protocol is one of three protocols supplementing the UN Convention against Transnational Organized Crime. It was adopted by the General Assembly. Under Article 3, as Dempsey says, “adults who are prostituted by means of an “abuse of power” or “abuse of a position of vulnerability” are victims of sex trafficking, but continue to be treated as criminals throughout the United States, even though their experience constitutes sex trafficking under international law. The approach being implemented in Seattle/King County tries to balance increased accountability for buyers, and increased services rather than prosecution for those engaged in the sex industry.

The Organization for Security and Cooperation in Europe (OSCE), with 57 member nations including the United States, recently released a report “DISCOURAGING THE DEMAND that fosters trafficking for the purpose of sexual exploitation.” The 96-page paper cites King County’s EEC as “one of the few holistic, multi-sectoral approaches in the OSCE region. . .” It notes that “the activities of the EEC are coordinated through a multi-sector working group that includes survivors, prosecutors, law enforcement, direct service providers, academics, and non-profit organizations and other anti-trafficking stakeholders. . . . Actions within sectors focus on policy development, capacity building and concrete initiatives.” Those initiatives include education in

²⁵⁶ *Barriers to Service*, ENDING EXPLOITATION COLLABORATIVE, <https://www.endingexploitation.com/barriers-to-services.html>.

²⁵⁷ Michelle Madden Dempsey, *Decriminalizing Victims of Sex Trafficking*, 52 AM. CRIM. L. REV. 207, 214 (2015) (“Despite its ratification of the Palermo Protocol, the United States continues to domestically define trafficking according to the narrower criteria requiring proof of ‘force, fraud, or coercion.’ Likewise, law enforcement training in the United States regarding the identification of sex trafficking victims continues to rely on the narrower criteria of ‘force, fraud, or coercion.’ As such, adults who are prostituted by means of an ‘abuse of power’ or ‘abuse of a position of vulnerability’ continue to be treated as criminals throughout the United States, despite the fact that their experience constitutes sex trafficking under international law.”) (internal citations omitted).

schools and for buyers, education of employers and employees, partnerships to develop technology-based interventions to demand, holding sex buyers accountable.²⁵⁸

The EEC moves toward the Nordic Model (often called the Equality Model in the U.S.), which criminalizes and holds accountable sex buyers and third-party profiteers, decriminalizes and offers services to people in the sex industry, and provides for prevention education and awareness.

The Equality/Nordic Model is a systemic approach to reducing disparities by shrinking the demand for commercial sex and providing viable off ramps for those who want to leave the sex industry. The approach was developed in Sweden in 1999 and has been adopted by eight countries.²⁵⁹ While many U.S. states, including Washington, have moved to decriminalize minors, prostitution is still a crime for adults in all states except for ten counties in Nevada.²⁶⁰ Many survivors who have exited the sex industry, including Seattle based Organization for Prostitution Survivors, support the Equality/Nordic model as a pillar of criminal justice and policy reform to address inequities and support recovery from exploitation and trauma:

The Nordic Model offers the social justice framework we need to lift women out of their position of inequality, poverty, and social disparities, through non-

²⁵⁸ Technology-based prevention interventions include Seattle Against Slavery’s Freedom Signal Program, “Freedom Signal is an online app for service providers and advocates that specialize in reaching victims of online sex trafficking or sexual exploitation. When a potential victim replies to a direct outreach message, it enables advocates to develop relationships and build trust with vulnerable populations in acute crisis.” FREEDOM SIGNAL, <https://freedomsignal.org>; *Online Deterrence*, ENDING EXPLOITATION COLLABORATIVE, <http://www.endingexploitation.com/online-deterrence.html> (online deterrence through digital disruption, providing messages on the consequences, harm, and alternatives to sex buying).

²⁵⁹ Boyer, *supra* note 61, at 7. See also SHARING SWEDEN, PROSTITUTION POLICY IN SWEDEN – TARGETING DEMAND (2019), https://sharingsweden.se/app/uploads/2019/02/si_prostitution-in-sweden_a5_final_digi_.pdf; *Does Legalized Prostitution Increase Human Trafficking?*, HARV. L. & INT’L DEV. SOC’Y (June 12, 2014), <https://orgs.law.harvard.edu/lids/2014/06/12/does-legalized-prostitution-increase-human-trafficking/>; *Human Trafficking Persists Despite Legality of Prostitution in Germany*, DER SPIEGEL (May 30, 2013), <https://www.spiegel.de/international/germany/human-trafficking-persists-despite-legality-of-prostitution-in-germany-a-902533.html>; Wim Huisman & E.R. Kleemans, *The Challenges of Fighting Sex Trafficking in the Legalized Prostitution Market of the Netherlands*, 61 CRIME L. & SOC. CHANGE 215 (2014); Geneva Abdul, *It’s Legal to Sell Sex in Amsterdam, But Don’t Expect the Same Rights As Other Workers*, FOREIGN POL’Y (Feb. 19, 2019), <https://foreignpolicy.com/2019/02/19/its-legal-to-sell-sex-in-amsterdam-but-dont-expect-the-same-rights-as-other-self-employed-workers-netherlands-legal-prostitution-sex-workers>.

²⁶⁰ Boyer, *supra* note 61, at 7.

criminalization and services. As these arguments are made, it is important to underscore that none of this works unless basic needs, including income, are met.²⁶¹

Common sense dictates that removing the threat of arrest and conviction should make sex workers feel more confident and safer reporting violent crime to the police. That should apply under both the Equality/Nordic model and decriminalization.

Seattle has informally followed the Equality/Nordic model 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 the sex industry may have been victimized by the pimps/traffickers and buyers, and then re-victimized by the police arresting them and the prosecutors punishing them. SCAO may charge the individuals engaged in the sex industry under some circumstances with the goal of providing services towards exit in every case.²⁶² A charged adult will be in community court with an order for continuance of disposition. Prosecutors say their goal is not to convict but rather to 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. SCAO also tries to connect individuals with LEAD, the Organization of Prostitution Survivors, and other agencies tailored to their specific needs²⁶³

²⁶¹ *Id.* (Building on the Exited Prostitution Survivor Policy Platform put forth by Marian Hatcher and her colleagues). See generally *supra* note 199.

²⁶² The process of recovery and overcoming complex trauma is long and difficult. The Stages of Change model used in treating those with substance abuse disorder also applies to survivors of sexual exploitation. "This model has been used extensively for understanding behavior change and for guiding the recovery from various types of addictions and the exit and recovery process for sexually exploited youth and individuals in the sex trades. Stages of Change can be applied to different domains of a person's life (for example: a youth may be pre-contemplative about leaving a trafficking situation, in preparation stage for returning to school and in maintenance stage regarding sobriety." LESLIE BRINER, RESPONDING TO THE SEXUAL EXPLOITATION AND TRAFFICKING OF YOUTH TOOLKIT (2017), [Toolkit+2.pdf \(squarespace.com\)](#), available at www.kingcountycsec.org (internal citation omitted). As with recovery from addiction, this process has steps forward and back, and relapse is often part of the recovery process.

²⁶³ Interview by Jennifer Ritchie and Dana Raigrodski Meeting 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 City Attorney's Office (Mar. 27, 2017 and updated July 26, 2021) (notes on file with author).

Police are generally not arresting individuals engaged in the sex industry, but on rare occasions they may do so due to complaints from businesses and residents in a particular area.²⁶⁴ SCAO declines to charge them, but the arrests themselves perpetuate criminalization and continue to inflict disproportionate harm. Sex workers, including some in Washington, have identified regular encounters with law enforcement, even those not leading to arrest and charge, as a source of harm.

In keeping with the shift, and to reduce the disparate impact of prostitution loitering statutes on women, and especially transgender women of color, Seattle recently repealed its prostitution loitering ordinance.²⁶⁵ The repeal may unintentionally impact the ability of law enforcement to reach CSE minors and transport them to an appropriate place, such as receiving centers as required under the Safe Harbor Act.

The focus on arrest and conviction of sex buyers is part of a broad effort to decrease the demand for exploitive commercial sex, minimize harm and violence towards those in the sex industry, and reduce disparate impacts on targeted vulnerable populations. Perpetrator fees and fines and post-conviction education requirements are also designed to reduce demand and serve a broader goal of restorative justice in providing services for survivors and sex workers.

Some efforts to minimize the harm and violence towards those in the sex industry and the demand for exploitive commercial sex focus on implementing intervention programs to foster behavioral change for buyers and exploiters. Beginning in 2012, the King County Prosecuting Attorney's Office and the Organization for Prostitution Survivors offered a sex buyer's intervention program for all convicted sex buyers. The Stopping Sexual Exploitation (SSE) Program for Men, now operated by Seattle Against Slavery, is a ten-week data-driven men's

For further discussion of the LEAD Program, see notes 332-336 and accompanying text.

²⁶⁴ *Id.* 2019 saw a troubling, though brief reemergence of Seattle police arresting street-based sex workers, a marked departure from Seattle's approach since 2012. This seems to have been an egregious anomaly in one precinct, in response to complaints of local business and neighbors. COVID-19-related return to the streets has apparently not resulted in increased arrests.

²⁶⁵ *Seattle City Council Repeals 'Problematic' Prostitution Loitering Law Affecting Minorities*, KOMO NEWS (June 22, 2020), <https://komonews.com/news/local/seattle-city-council-repeals-problematic-prostitution-loitering-law-affecting-minorities>.

accountability class that changes ideas, behaviors, and beliefs around buying sex, and is currently implemented in ten jurisdictions in King County.

The program is based on principles of social justice and personal transformation and is designed to help men understand their behavior and decisions to buy sex, and to promote men's accountability to stop the harm in the sex industry.²⁶⁶ Throughout 2020, 97% of participants said they would not buy sex again after participating in the SSE program. Further:

- 92% of responding participants acknowledged that women are harmed by prostitution: “Before [participating in the SSE Program], I ignored the damage and impact that buying sex has.” “After [participating in the SSE Program], I better understand the lack of choices and options [people in the sex trade] have. I understand that I may be adding trauma and abuse to their lives.”²⁶⁷
- 89% of responding participants disagreed that men have a right to pay for sex: “People involved in prostitution usually don’t have many options, or feel like they have a choice. As a man, the choice [to participate in prostitution by buying sex] is mine.”²⁶⁸ Another participant similarly noted that “[m]en make up most if not all the reasons why prostitution exists. If men simply stop buying sex, so many of the harms in prostitution will go away.”²⁶⁹
- 90% of responding participants disagreed that women freely choose to be in prostitution: “I’ve come to understand how there are many underlying factors that can lead women into prostitution who may not have otherwise been involved in it.”²⁷⁰
- 96% of responding participants said that their thinking about prostitution has changed after participating in the SSE program.

²⁶⁶ Stopping Sexual Exploitation: 2021 Program Evaluation (on file with authors).

²⁶⁷ *Id.* at 6.

²⁶⁸ *Id.* at 7.

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 6.

At this time, Seattle Municipal Court has not yet extended its contract for sex buyer education programs to the Stopping Sexual Exploitation Program.

The Equality/Nordic model and the focus on accountability and education of buyers of sex seek to reduce disparities and harm to individuals in the sex industry. Some advocates and sex workers question the demand abolition model and argue that the Equality model does not go far enough in reducing harm and may perpetuate it. They advocate for full decriminalization of commercial sexual exchanges between consenting adults. Supporters of decriminalization say there is a growing consensus among civil rights, LGBTQ+ justice, labor, immigrant justice, and women's groups that the decriminalization of sex work best protects people in the sex industry, and that it promotes racial justice, LGBTQ+ justice, gender equity, immigrant rights, public health, and labor rights.²⁷¹

They believe that, short of full decriminalization (as opposed to the Equality/Nordic model which only decriminalizes sellers), buyers will continue to fear arrest and conviction, will refuse safety screens, will be forced to meet at clients' homes rather than in places sex workers designate, giving sex workers less bargaining power and less control over their working conditions.²⁷² Advocates for decriminalization and sex workers argue that full decriminalization might allow all sex workers access to more stable, legal income, and autonomy.

Although people disagree about whether decriminalization of the sex industry will remove the drivers of trafficking and exploitation, or normalize and increase the size of the sex industry, trafficking, and sexual exploitation, there are areas of agreement:

- We must end violence and exploitation in the sex industry and ensure that individuals in the sex industry are protected and treated with respect.
- Minors should never be trafficked or sexually exploited.

²⁷¹ DATA FOR PROGRESS, DECRIMINALIZING SURVIVAL: POLICY PLATFORM AND POLLING ON THE DECRIMINALIZATION OF SEX WORK, <https://www.filesforprogress.org/memos/decriminalizing-sex-work.pdf>.

²⁷² *Id.* at 18. See also ACLU RESEARCH BRIEF, IS SEX WORK DECRIMINALIZATION THE ANSWER? WHAT THE RESEARCH TELLS US (2020), <https://www.aclu.org/report/sex-work-decriminalization-answer-what-research-tells-us>.

- We should reduce over-policing, arrest, and incarceration of individuals in the sex industry and improve their access to help and ability to report violence and exploitation without fear of arrest or incarceration.
- We must address root causes of exploitation by reducing the vulnerabilities of people targeted for or already in the sex industry. People with few economic choices are susceptible to being exploited. Children and youth are especially susceptible to being exploited. To that end we must:
 - Fund shelters that house all exploited youth, and house and affirm LGBTQ+ youth experiencing homelessness.
 - Expand and fund services for people in the sex industry whether or not they are connected to the criminal justice system, including services that meet health care, substance abuse, and mental health needs.
 - Ensure jobs and job training are available that do not discriminate against people who have been involved in the sex industry.
 - Ensure legal support including assistance with vacating prior convictions related to exploitation and immigration.

D. Mandatory statutory fees for sexual exploitation offenders are not being imposed

Under Washington law, courts are required to assess mandatory fees following convictions for trafficking, CSAM, and patronizing a prostitute. The fees are in addition to other criminal penalties, including statutory fines and jail time. They may be reduced but not waived as discussed below, and they are applied to prevention of sexual exploitation, providing victim services, and supporting police investigation of exploitation cases.

If a person is convicted of a trafficking crime, given a deferred prosecution, or enters into a statutory or non-statutory diversion agreement for Trafficking, the court must assess a fee of

\$10,000.²⁷³ 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 the fee by up to two thirds.²⁷⁴ The fees are remitted to the jurisdiction where the offense occurred and are split between law enforcement (for the purpose of 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, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.²⁷⁵

In 2010 the Washington State Legislature added a mandatory fee of \$5,000 to CSAM/CSEC crimes,²⁷⁶ and provided that the arresting officer must impound the suspect’s vehicle if it was used in the commission of these offenses.²⁷⁷ The court may waive up to two thirds of the \$5000 fee if the offender is unable to pay; but the vehicle may be impounded, and a substantial fee paid for its release, without regard to ability to pay. Ninety-eight percent of the fees go back to the jurisdictions,²⁷⁸ and are split between law enforcement (to increase related investigations) and prevention efforts and victim services (similar to those for trafficking fees). The Washington State Legislature also imposed additional fees for those convicted, deferred, or diverted for promoting or patronizing prostitution.²⁷⁹

These mandatory fees recognize the economic aspect of crimes of exploitation; they work on the assumption that if a person has money to pay for commercial sex or has earned money exploiting another person, they should have money to help reduce the harm that their actions have caused

²⁷³ RCW 9A.40.100.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ 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.

²⁷⁷ RCW 9A.88.140(2). Suspects must pay a fine of \$2,500 to redeem the impounded vehicle. RCW 9A.88.140(4)(a).

²⁷⁸ Unlike trafficking offenses, for CSAM offenses, two percent of the fee revenue is remitted to the Department of Commerce for the Prostitution Prevention and Intervention Account (PPIA).

²⁷⁹ RCW 9A.88.120.

to people in their communities. The data, though, shows that this assumption is not necessarily true for every offender.

Proceeds and property may be seized and forfeited for promoting prostitution in the first degree.²⁸⁰ Ninety-eight percent of the fees go back to the jurisdictions²⁸¹ and are split as described above. Law enforcement agencies are also authorized to seize any proceeds or property that facilitate prostitution crimes.²⁸² 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 forfeit proceeds or property that facilitate or are proceeds of the sexual exploitation of children.²⁸³ The disposition of the proceeds of forfeiture varies depending on the statute.

Data on King County charges for commercial sexual exploitation of adults shows that between 2013 and 2018, CSE related fees totaled \$715,692.67, with the average fees ordered per case ranging from \$2,500 to \$4,500.²⁸⁴ A 2016 CSEC Statewide Coordinating Committee Report noted the following issues related to CSAM-specific fees:²⁸⁵ 1) Attorneys and judges must know the fees exist to assess them; 2) Judges must impose at least a portion of the fees and should understand they can only be reduced by up to two-thirds if the court finds the defendant “does not have the ability to pay the fee;” and 3) The current standardized version of the Felony Judgment and

²⁸⁰ RCW 9A.88.150.

²⁸¹ Two percent of the fee revenue is remitted to Department of Commerce for the Prostitution Prevention and Intervention Account (PPIA).

²⁸² RCW 9A.88.150.

²⁸³ RCW 9.68A.120 authorizes civil forfeiture of property or proceeds from child-pornography related crimes. The money laundering act (RCW 9A.83.030), the Criminal Profiteering Act (RCW 9A.82.100), Promoting Prostitution (9A.88.150), and the Felony Forfeiture statute (RCW 10.105.010) apply to forfeiture of CSAM related crimes.

²⁸⁴ BENJAMIN GAUEN, KING CNTY. PROSECUTING ATT’YS OFF., KING COUNTY SEXUAL EXPLOITATION CASES: THE DATA BEHIND THE CHARGES 2019 UPDATE (2019), <https://static1.squarespace.com/static/5b71c32bec4eb7c684a77ff4/t/5f21d3f3ff89035c1cd5ca00/1596052475191/KCPAO+2019.pdf> <https://www.kingcountycsec.org/data>.

²⁸⁵ *Commercially Sexually Exploited Children Statewide Coordinating Committee*, WASH. STATE OFF. OF THE ATT’Y GEN., <https://www.atg.wa.gov/commercially-sexually-exploited-children-statewide-coordinating-committee>.

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 Sentence form by creating a separate section for CSAM, promoting CSAM, and promoting travel for CSAM would make the fee, along with when and if it is required, clear to prosecutors, defendants, and the courts. King County has started the process of implementing these changes.²⁸⁶

Currently many courts in Washington don't impose any portion of these mandatory fees, potentially leaving substantial funds uncollected. In fiscal year 2019, "68 courts in Washington handed down convictions for crimes that bear the additional fee. Of these courts, 23 levied statutorily required fees. Twenty-one courts collected revenue toward payment of the fees."²⁸⁷ (Note that the fees collected in a particular year are not necessarily related to fees imposed during that year.) "If judges ordered persons convicted of crimes to pay the full fee amount for all crimes, potential revenue would total \$474,350. Instead, judges in superior, district, and municipal courts ordered \$257,496. Out of the amount levied, courts collected a total of \$174,891."²⁸⁸ (Again, note that the fees collected in a particular year are not necessarily related to fees imposed during that same year, and some of the difference may be due to partial waivers for those unable to pay the full amount). In fiscal year 2020, "just over half (51%) of courts that handed down convictions for sexual exploitation crimes levied the required fees." Excluding courts in King County, Washington courts imposed only 5% of the total amount of penalty fees that could have been imposed if inability to pay were not considered.²⁸⁹ Fees not collected from those able to pay remain in the pockets of traffickers and exploiters, rather than aiding local efforts to end exploitation.

²⁸⁶ 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: Benjamin Gauen, Senior Deputy Prosecuting Attorney, King County Prosecutor Office.

²⁸⁷ WASH. STATE DEP'T OF COMM., REPORT TO THE LEGISLATURE: CRIMINAL PENALTY FEES RELATED TO SEXUAL EXPLOITATION CRIMES 2 (2020).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

Additional mechanisms to encourage courts to impose these fees might include publishing an annual list of the rate at which such fees have been imposed by local courts in Washington. We could also survey the courts and prosecutors' offices to determine whether courts are not imposing these fees for other reasons.

Other sections in the 2021 Gender Justice Study note that enforcement of certain fines, fees, and other penalties against defendants and potential defendants may be unnecessarily punitive and lead to disproportionate impacts on marginalized communities. The fees discussed here are distinguishable from those other types of fees in important ways. 1) In the context of trafficking, CSAM, and even patronizing, the fees are a form of restorative justice - reparative and equitable accountability. In most cases 50% of the funds go to victim/survivor services and education for buyers, about 50% go to fund investigations of sexual exploitation. Often there is no restitution in these cases, especially where the charge is patronizing. As noted so often in this report, commercial sexual exploitation is a form of economic colonialism. These fees help correct that by providing money for sorely needed services. 2) If sex buyers can afford to pay for sex, they should be able to afford to pay fees. A survey of 8,210 adult men between December 2016 and January 2017 concluded that "In general, sex buying is only weakly related to income, education level, or political ideology."²⁹⁰ Buyers are found across the income distribution. Notably, 29.1% of active high-frequency buyers made \$100,000 or more annually and 21.7% made between \$60,000-99,000 annually. At the same time, 27.9% of active high frequency buyers only made between \$20,000-29,000 annually.²⁹¹ The survey also found that high frequency buyers (those who buy sex monthly or weekly) account for nearly 75% of market transactions. King County's records (see Figures 4 and 5 above) demonstrate that sex buyers of minors (CSAM) are mostly gainfully employed white men. Many, such as those in the tech industries, business, or professional services, represent the most privileged in our community exploiting the most marginalized. Certainly, those who are the highest earners can afford to pay fees which enable survivors to exit a life of exploitation. Recovery from this kind of trauma often takes years of

²⁹⁰ DEMAND ABOLITION, *supra* note 68, at 19.

²⁹¹ *Id.*

substance abuse treatment, behavioral health treatment, and other social services. It is an equitable policy for the perpetrators of the harm to pay for those services if they are able. 3) Although these fees are mandatory, courts have the discretion to reduce them by up to two thirds if they find the defendant unable to pay.

E. Challenges 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 and reduced the involvement of youth in the criminal justice system. Recognizing the need for a victim-centered approach, the Washington State Legislature has enacted legislation that provides for affirmative defenses for minor and adult trafficking victims, pathways to vacate prostitution convictions for minors and adults, decriminalization of prostitution by minors, and receiving centers for exploited youth who would have been detained for prostitution in the past. Challenges remain for sexually exploited youth who are arrested and adjudicated for other charges.²⁹² The criminalization of prostituted adults (including young adults ages 18-24) exists even after the enactment of human trafficking and CSEC/CSAM laws. Where no force or coercion is known to be involved, adults have limited defenses to the charge or pathways to vacate convictions. Despite the progress, vacatur is still inaccessible to many adults who have prostitution-related convictions. Those convictions may have collateral consequences (See “Chapter 16: Gendered Consequences of Incarceration and Criminal Convictions, Particularly for Parents, Their Children, and Families”) that undermine their ability to exit the sex industry. The lack of protective legislation and policies for the 18-24-year age group and others is a systems failure. It fails to recognize that most people who are sexually exploited, are forced or coerced either by third parties, or by poverty, substance abuse, or homelessness to engage in sex work.²⁹³

²⁹² DEBRA BOYER, CITY OF SEATTLE, HUM. SERVS. DEP’T DOMESTIC VIOLENCE & SEXUAL ASSAULT PREVENTION DIV., WHO PAYS THE PRICE? ASSESSMENT OF YOUTH INVOLVEMENT IN PROSTITUTION IN SEATTLE 5 (2008), <http://www.prostitutionresearch.com/Boyer%20Who%20Pays%20the%20Price.pdf>.

²⁹³ See Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRAC. 33 (2008). “89 percent of 785 people in prostitution in 9 countries

Since 2010, the Washington State Legislature has enacted several laws recognizing that minors exploited in the sex industry are victims of a crime. Those laws establish a presumption that such minors are victims of a severe form of trafficking under the TVPA; provide immunity from prosecution for those seeking emergency assistance; and mandate diversion into services from juvenile offender proceedings.²⁹⁴ In addition, in April 2020, the governor signed into law E3SHB 1775: it amended RCW 9A.88.030 by decriminalizing prostitution for anyone under the age of 18 beginning January 1, 2024.²⁹⁵ This new law requires DCYF to fund and establish receiving centers in both Western and Eastern Washington for youth ages 12-17 who are, or have been, at risk of suffering commercial sexual exploitation. 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 certain circumstances.²⁹⁶

Barriers remain even as prostitution arrests and charges of minors have steadily declined. There is an egregious shortage of comprehensive resources for commercially sexually exploited children involved in the juvenile justice and child welfare systems. The new legislation provides for law enforcement to detain a juvenile whom they reasonably believe “may be the victim of sexual exploitation,” and directs law enforcement to transport that juvenile to an evaluation and treatment center.²⁹⁷ At the time of this report, though requests for applications for receiving centers on the east and west sides of the state were published twice, and it appears that the east side will be opening a receiving center, none were submitted for the west side. No organization felt it could do what

wanted to escape from prostitution.” *Id.* at 56. 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. *Id.* at 51.

²⁹⁴ In 2010, ESSB 6467 established partial protections for minors alleged to have committed prostitution. 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. RCW 9A.88.040. In 2019, HB 1382 was passed to provide immunity from prosecution for CSE victims of any age if the victim is seeking emergency assistance.

²⁹⁵ ENGROSSED THIRD SUBSTITUTE H.B. 1775, 66th Leg., Reg. Sess. (Wash. 2020) (amending RCW 9A.88.030).

²⁹⁶ *Id.* See also FINAL B. REP. ON ENGROSSED THIRD SUBSTITUTE H.B. 1775, 66th Leg., Reg. Sess. (Wash. 2020). For a detailed analysis of balancing decriminalization with protective and law enforcement considerations see, for example, BOYER, *supra* note 11.

²⁹⁷RCW 43.185C.260(7).

the law requires with the funding available. Sufficient funding must be provided to implement the new law and provide the necessary services for sexually exploited youth. In addition to funds for receiving centers, the state must also fund residential treatment beds for sexually exploited youth who suffer from co-occurring disorders, including PTSD, substance use disorder, and other mental health issues. Washington is an outlier among states in having so few treatment beds available for these youth. Mental Health America recently released its 2020 statistical survey of state mental health rankings. Washington ranked 43 out of 51 indicating a higher prevalence of mental illness and lower rates of access to care for youth.²⁹⁸ In King County, there are NO detox beds for minors. This is important because most residential treatment programs won't admit a person until they have detoxed.

Adults in the sex industry have even more limited options. Adult victims of trafficking or promoting prostitution in the first degree have an affirmative defense to the charge of prostitution.²⁹⁹ The Washington State Legislature should consider an affirmative defense to any offense committed as a result of exploitation (including Trafficking, any CSAM offense, promoting prostitution, dealing in depictions of a minor engaged in sexually explicit conduct). In addition, 2019 legislation now provides immunity from prosecution for prostitution for those seeking emergency assistance on behalf of themselves or others from violent crimes and assaults including rape.³⁰⁰

CSEC and CSE adults may face multiple charges including drug possession, trespass, burglary, shoplifting and other theft, forgery, etc. related to their exploitation. Survivors paint a grim picture:

Even when we are classified as victims of trafficking we are too often charged with non-violent co-occurring crimes, further aggravating our negative circumstances, increasing the barriers to exit, and increasing the likelihood of re-entering into prostitution. Often it is not until after the exploitation has occurred, and the

²⁹⁸ *Ranking the States: Youth Ranking 2020*, Mental Health Am., Inc. (2021), https://www.mhanational.org/issues/ranking-states#youth_data.

²⁹⁹ RCW 9A.88.040.

³⁰⁰ RCW 9A.88.200.

violence inflicted is finally deemed “bad enough” that law enforcement will bother to classify the exploited person as a victim. This does little to prevent us from being forced back into prostitution, and it does nothing to abate the stigma and associated depression that becomes a very real part of our day-to-day lives.³⁰¹

These individuals often reoffend, come in and out of the justice system, and may or may not be identified as victims or survivors of CSE. Of the group of Seattle/King County CSE minors studied by Dr. Boyer in 2006/2007, many were arrested on multiple offenses multiple times (Table 5).³⁰²

³⁰¹ Hatcher et al., *supra* note 199, at 3.

³⁰² BOYER, *supra* note 292, at 20.

Table 5. Arresting Offenses Among Youth, King County, 2004-2006

Study Group (N=31) Arresting Offense	# of Charges Within Study Group*
Prostitution/ProstitutionLoitering	102
Theft	31
Obstruction / Resisting / Escape / False Statement	27
Assault	23
VUCSA ** Controlled Substance Violation	21
Firearms/Weapon	8
Criminal Trespass	7
Kidnapping/IntimidatingWitness	3
Robbery	2
Domestic Violence Call	2
Motor Vehicle Violations/Possession/Taking a Motor Vehicle / Stolen Property	21

Footnotes for Table 5.

*A filing may have multiple charges.

**VUSCA: Violation of the Uniform Controlled Substances Act

Source: DEBRA BOYER, CITY OF SEATTLE, HUM. SERVS. DEP'T DOMESTIC VIOLENCE & SEXUAL ASSAULT PREVENTION DIV., WHO PAYS THE PRICE? ASSESSMENT OF YOUTH INVOLVEMENT IN PROSTITUTION IN SEATTLE (2008), <http://www.prostitutionresearch.com/Boyer%20Who%20Pays%20the%20Price.pdf>. Also available at <https://www.kingcountycsec.org/data>.

As of 2019, Seattle/King County prosecutors usually offer diversion for minors charged with other kinds of crimes when sex trafficking and CSE are known.³⁰³

Arrests and prosecution of minors have declined statewide, but adults remain subject to arrest, prosecution, and incarceration. The Seattle and King County de facto Equality/Nordic Model is implemented via internal law enforcement and prosecutorial policy directives, so could be subject to change. It is also not uniformly applied throughout the state. People engaged in the sex industry, particularly those from marginalized communities, report that over-policing and targeted discrimination and harassment by law enforcement continues in some places even absent formal arrests.

The Washington State Legislature has expanded options for vacating convictions. House Bill 1041, known as the New Hope Act, went into effect in July 2019 (it was further amended by SB 5180 in 2021).³⁰⁴ It eliminated many former inequities and broadened eligibility requirements, including streamlining the process for vacating a criminal conviction, shortening the wait time, and removing the complete bar on eligibility for vacatur due to subsequent convictions.³⁰⁵ Survivors of trafficking or CSAM, or who were compelled by threat or force to engage in prostitution, are also able to seek vacatur of a prostitution conviction as a result of being a victim by applying to the sentencing court. Effective July 2021, SB 5180 allows survivors of abuse to clear more types of criminal convictions related to their abuse. Survivors would be able to show past sexual abuse and won't necessarily have to prove that prostitution was forced or coerced.³⁰⁶ The vacatur law also allows the prosecutor to petition for vacatur.³⁰⁷ Nonetheless, vacating a criminal conviction remains a difficult process for survivors to do without the aid of an attorney.

³⁰³ BOYER, *supra* note 11.

³⁰⁴ The New Hope Act, SENTENCE AND PUNISHMENT—DISCHARGE—CERTIFICATES AND CERTIFICATION, 2019 Wash. Legis. Serv. Ch. 331 (S.H.B. 1041) (WEST).

³⁰⁵ *Id.*

³⁰⁶ ENGROSSED SUBSTITUTE S.B. 5180, ch. 237, 67th Leg., Reg. Sess. (Wash. 2021) (specific relevant provisions codified in RCW 9.94A.0002).

³⁰⁷ *Id.* RCW 9.94A.0002(1)(b).

IV. Addressing Gender, Race, and Age Disparities: Emerging Approaches and Next Steps

Washington has made significant progress on issues of human trafficking and CSE, with parallel progress on reducing disproportionate gender and racial impact of the justice system response. The state has increased the accountability of traffickers and exploiters, who are primarily men, and has legislated a survivor-centered approach to sexually exploited minors and, to some extent, adults. It has made significant progress in reducing the involvement of all CSE minors, many of whom are at-risk girls, LGBTQ+ individuals, boys, and Black, Indigenous, and youth of color, in the justice system. These actions will continue to alleviate the gender, racial, and socioeconomic inequities that the justice system in Washington has perpetuated. However, many of these protections do not apply to young adults ages 18-24 whose exploitation almost always began when they were minors. Moreover, the criminalization of adults in the sex industry, including those who are survivors of sexual exploitation, remains.

This section examines how Washington can further reduce sexual exploitation and its harms, which include exacerbating gender and racial disparities. Reducing those harms will require multidisciplinary systems-wide responses, “upstream” prevention focused on reducing economic and social marginalization, and a public health approach. These responses call for further reduction of justice system involvement for minors and adults, for data collection, and for comprehensive systems-wide training and education. We begin by discussing the public health approach and the need for upstream interventions. While some of the proposed steps may be outside the technical scope of this study, Washington cannot address CSE and the disparities we identify comprehensively without them. They should inform and shape the justice system response, as discussed in the subsections below.

A. The need for multidisciplinary systems-wide responses: focusing on “upstream” prevention and a public health approach

In September 2020, the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States (NAC) issued best practices and recommendations for states, guided by its vision for a “comprehensive response to human trafficking in which federal, state, tribal, and local efforts converge to identify and care for victims, hold perpetrators accountable, and

eradicate the conditions that perpetuate human trafficking.”³⁰⁸ Such efforts should be victim-survivor centered and informed; trauma-informed; culturally and linguistically appropriate; build on evidence-based practices and evaluation; and use cross jurisdictional and public-private collaboration.³⁰⁹ While NAC’s scope of work focuses on children (up to age 18) and youth/young adults (18-24), its best practices and recommendations should inform our responses to all CSE people.

Both NAC and the CDC consider sex trafficking to be a serious public health problem that negatively affects the well-being of individuals, families, and communities.³¹⁰ The U.S. Department of Health & Human Services (HHS) has emphasized the need to use a public health approach in addressing trafficking,³¹¹ and the National Human Trafficking Training and Technical Assistance Center at HHS also recommends a public health approach.³¹² “The public health approach emphasizes multidisciplinary collaboration and the use of rigorous scientific research to develop an evidence base that drives the development of policies, procedures, and programs.”³¹³ Through ongoing observation of child and youth trafficking, a public health approach can help the state define and monitor the problem, determine vulnerability and resilience factors related to victimization, and develop and implement proven prevention strategies and programs.³¹⁴

As the NAC report notes, “[m]any 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

³⁰⁸ NAT’L ADVISORY COMM. ON THE SEX TRAFFICKING OF CHILDREN & YOUTH IN THE U.S., BEST PRACTICES AND RECOMMENDATIONS FOR STATES 7 (2020), https://www.acf.hhs.gov/sites/default/files/documents/otip/nac_report_2020.pdf [hereinafter NAC BEST PRACTICES REPORT].

³⁰⁹ *Id.* at 9.

³¹⁰ *Id.* at 8; CTRS. FOR DISEASE CONTROL & PREVENTION, VIOLENCE PREVENTION: SEX TRAFFICKING (2021), <https://www.cdc.gov/violenceprevention/sexualviolence/trafficking.html>.

³¹¹ *Public Health Approach*, U.S. DEP’T OF HEALTH AND HUM. SERVS., NAT’L HUM. TRAFFICKING TRAINING & TECHN. ASSISTANCE (Jan. 8, 2021), <https://nhttac.acf.hhs.gov/soar/eguide/guiding-principles/applying-public-health-approach-to-human-trafficking>.

³¹² *Id.*

³¹³ NAC BEST PRACTICES REPORT, *supra* note 308, at 8.

³¹⁴ *Id.*

as victims, not perpetrators.”³¹⁵ Washington should adopt a statewide policy recognizing human trafficking and sexual exploitation in all its forms as a public health issue. In doing so, Washington can look to the *Best Practices and Recommendations for States*, issued by The National Advisory Committee on the Sex Trafficking of Children and Youth in the United States, as a model.³¹⁶

B. Efforts to reduce justice system involvement through problem-solving courts, task forces for CSE survivors, and interventions pre-arrest

Problem solving and therapeutic courts are a public health proactive intervention with a history of success. Washington, like other states, has seen increased use of drug courts, family dependency or family drug courts, mental health courts, DUI, and domestic violence courts.³¹⁷ In most problem-solving courts, such as a drug court or domestic violence court, an interdisciplinary team, led by a judge (or probation authority), works collaboratively to reduce criminal offending through therapeutic and interdisciplinary approaches that address issues underlying criminal behavior such as addiction, mental health, trauma, and repeat offending.³¹⁸

The model often used in drug courts may involve: offender screening and assessment of risks, needs, and responsivity; judicial interaction, monitoring, and supervision; graduated sanctions and incentives; and treatment and rehabilitation services. Cases are usually managed by a multidisciplinary team including judges, prosecutors, defense attorneys, community corrections officers, social workers, treatment service professionals, and sometimes other community

³¹⁵ *Id.*

³¹⁶ THE NAT’L ADVISORY COMM. ON THE SEX TRAFFICKING OF CHILDREN & YOUTH IN THE U.S., BEST PRACTICES AND RECOMMENDATIONS FOR STATES (2020), https://www.acf.hhs.gov/sites/default/files/documents/otip/nac_report_2020.pdf. Given the importance of cross-system understanding and collaboration in addressing these issues, NAC structured its 127 recommendations in the following areas: Multidisciplinary Response; Screening and Identification; Child Welfare; Service Provision; Housing; Law Enforcement and Prosecution; Judiciary; Demand Reduction; Prevention; Legislation and Regulation; Research and Data; and Funding and Sustainability. *See generally National Advisory Committee on the Sex Trafficking of Children and Youth in the United States: Best Practices and Recommendations for States*, OFF. ON TRAFFICKING IN PERSONS: AN OFF. OF THE ADMIN. FOR CHILDREN & FAMILIES (Sept. 15, 2020), <https://www.acf.hhs.gov/otip/report/resource/national-advisory-committee-report-best-practices-recommendations>.

³¹⁷ RCW 2.30.010. We could add a section to this for trafficking survivor courts.

³¹⁸ *Problem-Solving Courts*, NAT’L INST. OF JUSTICE (Feb. 20, 2020), <https://nij.ojp.gov/topics/articles/problem-solving-courts>.

services like housing. Support from stakeholders representing law enforcement, the family, and the community is encouraged.³¹⁹ Peer mentoring by prior court graduates is often a successful tool.

CSE-specific problem-solving courts have not yet been broadly adopted in Washington State. CSE minors are less at risk of criminalization due to the legislative changes described above. But criminal charges remain an issue for minors and adults charged with exploitation-related crimes. CSE survivors are often charged with crimes that are a direct or indirect result of their exploitation, including drug possession, trespass, shoplifting, forgery, burglary, robbery, and others. Criminal history and incarceration are barriers to exiting from CSE. Survivors shared that for many of them, substance use disorders were inextricably linked to their sexual exploitation through coerced use as a form of control or the exchange of sex for drugs. Yet, some noted, those dynamics may have gone underreported and under-addressed in drug courts, especially where multi-disciplinary participants and judges were not well trained to identify and respond to CSE. CSE victimization on related crimes perpetuates gender, race, and poverty-related injustice.

In 2016, the CSEC Statewide Coordinating Committee recommended considering amending state law to exempt victims of CSAM from criminal liability for crimes related to their exploitation.

There are several possible approaches, some of which will generate debate as to which crimes and what age groups. Washington could expand diversion and therapeutic options for minors and adult CSE survivors for co-occurring crimes, as some courts already do. Since 2013 Kitsap County has had a human trafficking pre-adjudication diversion program (THRIVE Court)³²⁰ for adult victims/survivors of human trafficking charged with low level misdemeanors and felonies, which need not be prostitution charges (for example, forgery, possession of methamphetamines).³²¹

³¹⁹ *Id.*

³²⁰ Jennifer Witt, *THRIVE Court in Kitsap County*, WITT L. GRP. (Apr. 2, 2020), <https://wittlegal.com/blog/thrive-court-in-kitsap-county>. <https://wittlegal.com/blog/thrive-court-in-kitsap-county>

³²¹ Interview by Dana Raigrodski Meeting with Coreen Schnepf, Former Senior Deputy Prosecuting Attorney at Kitsap County Prosecutor's Office (Mar. 27, 2017) (notes on file with author).

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 must have contributed to the current offense. Current charges or past convictions for violent or serious violent crimes preclude eligibility; an exception for a violent offense may be made if the crime was committed while the defendant was actively victimized to the extent of Human Trafficking in the second degree.³²² The diversion program is 18 months long, and many participants end up in long term treatment programs for behavioral health and/or substance abuse, and in life skills programs. Most of the participants in the 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.³²³

In June 2019, Kitsap County Superior Court, in partnership with CCYJ, began piloting a Girls' Court—the first gender specific therapeutic court program in Washington for female identifying youth. The three-year pilot program is being evaluated by the Washington State Center for Court Research (WSCCR). A Girls' Court such as this has the potential to better address the needs of girls who are confirmed or at-risk for exploitation.³²⁴ See “Chapter 9: Juvenile Justice and Gender and Race Disparities” for more information on the Kitsap County Girls' Court.

³²² *Human Trafficking Diversion Eligibility Criteria*, KITSAP CNTY., https://www.kitsapgov.com/pros/Pages/Human_Trafficking_Diversion_Eligibility_Criteria.aspx.

³²³ Interview by Dana Raigrodski Meeting with Coreen Schnepf, Former Senior Deputy Prosecuting Attorney at Kitsap County Prosecutor's Office (Mar. 27, 2017) (notes on file with author).

³²⁴ There are several states that have comprehensive trafficking courts for girls. *See, e.g.*, CONN. DEP'T OF CHILDREN & FAMILIES, HUMAN ANTI-TRAFFICKING RESPONSE TEAM (HART) IN CONNECTICUT (2019), https://portal.ct.gov/-/media/DCF/HumanTrafficking/pdf/90CA1828-01-00-DCF_HART_Final-Report-January-2020.pdf?la=en; *Program for Empowerment of Girls*, N.M. CTS., <https://seconddistrictcourt.nmcourts.gov/home/courts/childrens-court/program-for-empowerment-of-girls>; JUD. COUNCIL OF CA., CTR. FOR FAMILIES, CHILDREN & THE CTS., AN OVERVIEW OF CALIFORNIA'S GIRLS' AND CSEC COURTS: PROCESS EVALUATION REPORT (2021), <https://www.courts.ca.gov/documents/Girls-Court-Process-Evaluation-Report-FINAL2.pdf>. New York has Human Trafficking Intervention Courts in 12 locations; In 2015 the 11th District of Florida established the Miami-Dade GRACE (Growth Renewed through Acceptance, Change, and Empowerment) Court, for children who have been identified as victims of CSE and labor trafficking; Nashville, TN has a human trafficking intervention court.

We do not know whether male victims of CSE in Washington have similar access to problem solving and therapeutic courts for crimes related to their exploitation. Considering what we know about the (often unidentified) number of boys and young men in the sex industry, this is a data and resource gap that needs to be addressed.

The state could also consider enacting an affirmative defense for victims of sexual exploitation for other crimes committed as a result of their exploitation (CSAM, promoting CSAM, trafficking in the first or second degree, dealing in depictions of a minor engaged in sexually explicit conduct).

The NAC recommends that “juvenile courts that serve children and youth who have experienced or are at risk of experiencing sex trafficking should establish policies and procedures to meet the complex needs and safety concerns that often lead children and youth to cycles of revictimization and recidivism.”³²⁵ Court proceedings should be trauma-informed.³²⁶ For example, “[w]hen a child or youth engages in criminal activities as a result of their victimization...judges should assess the child’s involvement in criminal activities from a victim-centered and trauma-informed perspective.”³²⁷ In addition, “juvenile detention facilities and community-based programs operated by the juvenile justice system must have policies and procedures in place to adequately care for and respond to this population.”³²⁸

The NAC notes that judges and courts are in a unique position “because of [their] contact with many stakeholders and [their] authority in criminal, civil, tribal, juvenile, and family matters.”³²⁹ Consequently, “[j]udges in state and tribal courts have the ability to convene multidisciplinary collaborations and work across jurisdictions to respond and deliver services to children and youth who have experienced sex trafficking and hold offenders accountable.”³³⁰

This is how King County Superior Court convened the King County CSEC Task Force. It established a mission “. . . to ensure the safety and support of commercially sexually exploited children (CSEC)

³²⁵ NAC BEST PRACTICES REPORT, *supra* note 308, at 55.

³²⁶ *Id.* at 58.

³²⁷ *Id.*

³²⁸ *Id.* at 55.

³²⁹ *Id.* at 53.

³³⁰ *Id.*

and to prevent further exploitation,” and intentionally developed a collaboration that included anyone who might come into contact with exploited children. Those initially included the court, probation, law enforcement, defense attorneys, prosecutors, school systems, Washington Office of Superintendent of Public Instruction, service providers, tribes, Public Health – Seattle & King County, child welfare, survivors and survivor organizations, business organizations and others. More than 120 governmental and nongovernmental organizations have attended Task Force meetings since 2013. It is funded by King County Superior Court and has had support from the County Council and County Executive over the years. The Task Force immediately began training on identifying and responding to CSEC.³³¹ The Task Force applied for and got a five-year federal grant to examine CSEC and at-risk-for-CSEC youth in the child welfare system. Those outcomes have been published. The Task Force relies on community advocates who are case managers specializing in working with sexually exploited youth and youth adults. They work with multidisciplinary teams to provide services, they reach out to youth and work with their families and support systems, and they work with youth as long as necessary. Advocates do not report to the court. The Task Force partners with DCYF, YouthCare, Accelerator YMCA, and the Organization for Prostitution Survivors on ConnectUp, a pilot program for CSEC-specific foster care.

Interventions prior to arrest and charging also have the potential for broad systemic change. The Seattle/King County Let Everyone Advance with Dignity (LEAD) program,³³² was piloted in 2011 in an attempt to reduce gross racial disparities in police enforcement. Its goal is to reduce frequent engagement with the criminal justice system and its cycles of arrest, prosecution, and incarceration. The program diverts people who would otherwise be arrested for low-level drug and prostitution crimes directly into a harm-reduction case management program that provides support and connection to community resources. Though the LEAD program is often thought of as a “pre-arrest” diversion program, the police can still make arrests as part of LEAD and still send

³³¹ The King County CSEC Task Force offers key trainings on a regular basis. See *infra*, note 343 and accompanying text.

³³² Formerly known as Law Enforcement Assisted Diversion. The program was renamed in an effort to de-center the role of law enforcement in diversion. LEAD NAT’L SUPPORT BUREAU, <https://www.leadbureau.org>.

arrest records to prosecutor offices. Though the presumption is that as long as the individual complies with the intake process or diversion program they will not be charged, prosecutors maintain discretion over whether to file charges. Police do not always make an arrest. They have substantial discretion to make a “social contact” referral when an officer encounters someone they know is engaged in substance abuse or prostitution.³³³

Such diversion programs have great potential to reduce contact with the criminal justice system for women and other individuals targeted for exploitation. From October 2011 to January 2014, for example, 39% of LEAD participants (program participants were primarily diverted for drug offenses) were female, and the majority of participants were Black, Indigenous, and other people of color.³³⁴ An evaluation found that participants are “significantly more likely to obtain housing, employment, and legitimate income in any given month subsequent to their LEAD referral” compared to before participating in the program.³³⁵ An evaluation of the effects of LEAD on recidivism found that “[c]ompared to controls, LEAD participants had 60% lower odds of arrest during the six months subsequent to evaluation entry; and both a 58% lower odds of arrest and 39% lower odds of being charged with a felony over the longer term. These statistically significant differences in arrests and felony charges for LEAD versus control participants indicated positive effects of the LEAD program on recidivism.”³³⁶ For people subject to being charged with prostitution, programs like these have the potential of offering a way out of exploitation and the criminal justice system.

³³³ KATHERINE BECKETT, SEATTLE’S LAW ENFORCEMENT ASSISTED DIVERSION PROGRAM: LESSONS LEARNED FROM THE FIRST TWO YEARS (2014), <https://www.fordfoundation.org/media/2543/2014-lead-process-evaluation.pdf>.

³³⁴ SEEMA L. CLIFASEFI, HEATHER S. LONCZAK & SUSAN E. COLLINS, LEAD PROGRAM EVALUATION: THE IMPACT OF LEAD ON HOUSING, EMPLOYMENT AND INCOME/BENEFITS (2016), https://depts.washington.edu/harrtlab/wordpress/wp-content/uploads/2017/10/housing_employment_evaluation_final.pdf. Participant gender, race, and ethnicity were reported by the referring officer, as follows: “57 percent participants were African American, 26 percent were European American, 6 percent were American Indian/Alaska Native or Pacific Islander, 4 percent were Multiracial, 4 percent were Hispanic/Latino/a, 1 percent were Asian American, and 2 percent were ‘Other.’” *Id.* at 4. Intersectional demographic data were not provided.

³³⁵ *Id.*

³³⁶ SUSAN E. COLLINS, HEATHER S. LONCZAK & SEEMA L. CLIFASEFI, SEATTLE’S LAW ENFORCEMENT ASSISTED DIVERSION (LEAD): PROGRAM EFFECTS ON RECIDIVISM OUTCOMES (2017), https://www.researchgate.net/publication/316863460_Seattle's_Law_Enforcement_Assisted_Diversion_LEAD_Program_Effects_on_Recidivism_Outcomes.

The LEAD program is a unique collaboration among police, prosecutors, civil rights advocates, public defenders, political leaders, mental health and drug treatment providers, housing providers and other service agencies, and business and neighborhood leaders. Like the Task Force Model, it exemplifies the success of multidisciplinary collaboration to help those most vulnerable.

C. 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.³³⁷

In 2015, the Washington State 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.³³⁸ 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."

³³⁷ WASH. STATE DEP'T OF COM., STATEWIDE COORDINATING COMMITTEE ON SEX TRAFFICKING: REPORT ON COMMITTEE ACTIVITIES AND PLAN TO ADDRESS SEX TRAFFICKING 45-50 (2014), <http://www.commerce.wa.gov/wp-content/uploads/2016/03/Commerce-Sex-Trafficking-Final-2014.pdf>.

³³⁸ RCW 43.280.095.

OCVA has issued required biennial reports to the Washington State 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.³³⁹ Court clerks and law enforcement and prosecutor trainee groups demonstrated increased knowledge from pre- to post-test in the trafficking of girls and women, lesbian, gay, bisexual, transgender, queer, questioning, two-spirit (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 Police) 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 specific training for the Tulalip Indian Tribe Police) and 15% were other criminal justice personnel.³⁴⁰ Again, participants, especially those without previous trafficking training, demonstrated significant increases in understanding human trafficking of LGBTQ+ individuals, of men, and of people of color.³⁴¹

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.³⁴²

³³⁹ WASH. STATE DEP'T OF COM., OFF. OF CRIME VICTIMS ADVOC. & PUB. SAFETY, HUMAN TRAFFICKING LAWS AND INVESTIGATIONS (2017), <http://www.commerce.wa.gov/wp-content/uploads/2018/06/Commerce-Human-Trafficking-Training-2017.pdf>.

³⁴⁰ WASH. STATE DEP'T OF COM., OFF. OF CRIME VICTIMS ADVOC. & PUB. SAFETY, HUMAN TRAFFICKING LAWS AND INVESTIGATIONS (2019), <https://www.commerce.wa.gov/wp-content/uploads/2020/04/FINAL-Human-Trafficking-Laws-and-Investigations.pdf>.

³⁴¹ *Id.*

³⁴² *Id.*

Over the last five years, the King County CSEC Task Force has consistently offered multiple free trainings to participants across the community.³⁴³ The trainings represent best practices and are evidence-based, 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 and Responding to Running Away Behavior in CSEC
- CSEC 401: Survivor Centered Programming
- CSEC 402: Walk with Me

The King County CSEC Task Force trainings are available statewide, and more trainers are now available statewide through its train-the-trainer program.³⁴⁴ Nonetheless, training opportunities and emphasis are not consistent across the state.³⁴⁵ In addition, most of the trainings so far have focused on law enforcement, prosecutors, service providers, child welfare, and some court clerks. State training for judges, particularly training focused on intersectional disparities and inequities, remains insufficient and should be significantly improved. In both 2017 and 2019, OCVA recommended more narrowly defining court personnel as judges and court clerks in RCW

³⁴³ 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 BOYER, *supra* note 11. Trainings have been offered to service providers, school personnel, law enforcement (when the Task Force began), health-related facilities (children's hospital), foster families, and many others.

³⁴⁴ Because of the COVID-19 pandemic and remote trainings and programs, people have participated from across the country and the world. According to May 2021 report from the King County CSEC Task Force to the Statewide Coordinating Meeting, there were 57 trainings, for 600 people who attended from across the country and the globe.

³⁴⁵ See OCVA 2019 Report for examples of OCVA proposals to offer training to judges and prosecutors that have been declined.

43.280.095, in order to help identify, develop, and implement trainings specific to the duties and responsibilities of these positions. National trainings on these subjects are also available. The National Council of Juvenile and Family Court Judges (NCJFJC) has twice yearly National Institutes on Domestic Child Sex Trafficking, an intense, interactive 2½ day training designed for adult learning styles. The Court should consider expanding funding for state judges to attend these trainings, or to arrange with the NCJFJC to provide in-state trainings for Washington judicial officers and/or multi-disciplinary teams.

Training for all court personnel, prosecutors, and law enforcement should be expanded and sustained to provide ongoing, current evidence-based information about the dynamics and complexities of human trafficking and its impacts. In a 2018 Kentucky study, many judges said that knowing the underlying reasons why youth act in destructive or high-risk ways was an important aspect of providing them context in decision-making.³⁴⁶ Training should be repeated at regular intervals. Training must include information about fees associated with trafficking/CSAM/prostitution so that they are imposed consistently. Prosecutors and judges should also be trained about the expanded vacatur options.

Judges in the 2018 study expressed a preference for in-person, interactive, experiential trainings that are ongoing and repetitive. Incorporation of case studies, lived experiences of survivors, practical skills training, group work, and demonstrations were noted as effective training methods. In addition, a toolkit of online resources and training materials would provide greater access to training content and useful resources for referencing later and for being kept current on changes in laws, research, and best practices.³⁴⁷

Judicial officers and court staff absorb the trauma they see and hear from survivors and victims of trauma. Secondary or vicarious trauma affects relationships within the courtroom and at home, can cause or exacerbate depression and anxiety, and can affect physical health.

³⁴⁶ JENNIFER COLE & GINNY SPRANG, SEX TRAFFICKING OF MINORS: THE IMPACT OF LEGISLATIVE REFORM AND JUDICIAL DECISION MAKING IN METROPOLITAN AND NON-METROPOLITAN COMMUNITIES, A FINAL SUMMARY OVERVIEW (2018), <https://www.ojp.gov/pdffiles1/nij/grants/254003.pdf>.

³⁴⁷ *Id.*

Judges and court staff need more training about these affects and to be given tools to deal with them.³⁴⁸

D. Data collection

Lastly, 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 are no uniform trauma or CSE screening tools, and because the data is only as good as the information entered. The databases are 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 to 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 moved to another state, had a baby, and then the child was 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 this. Washington should fund and develop a reliable, comprehensive and centralized data collection and information sharing system that protects the rights of survivors.

V. Recommendations

As to Commercially Sexually Exploited Children and Youth

- Washington State should institute demand-reduction efforts specific to the exploitation of children, including:
 - Stakeholder trainings should address the demand for sex from children and identify upstream strategies to prevent Commercial Sexual Exploitation of Children (CSEC).
 - All criminal statutes that address demand for sex from children should be enforced.

³⁴⁸ LAURA VAN DERNOOT LIPSKY & CONNIE BURK, TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS (2009).

- Broader prevention efforts should include public awareness and education about the harms of sex buying and the role of buyers as exploiters of children.
- Technology-based interventions should address the demand for children on a broad scale.
- Continue to develop multidisciplinary systems-wide responses, with a focus on upstream prevention and a public health approach. Judges in state and tribal courts should be encouraged to convene and work with broad multidisciplinary collaborations of those who come in contact with sexually exploited minors and young adults. Those collaborative groups should develop locally appropriate policies and procedures for multidisciplinary responses designed to keep youth out of the system, and to respond in a trauma-responsive manner when system involvement is necessary. To the extent possible, the group should include systems and service providers (e.g., courts, law enforcement, defense attorneys, service providers, survivors, school systems, child welfare, health care providers).
- The Washington State Legislature should adequately fund both the receiving centers authorized under the Safe Harbor Bill HB 1775 and residential treatment beds for sexually exploited youth who suffer from co-occurring disorders, including Post-Traumatic Stress Disorder (PTSD), substance abuse disorder, and other mental health issues.
- Juvenile courts, including those in rural areas, should have designated probation counselors who are trained to identify and respond to sexually exploited children. Where a youth is on probation, their probation counselor should be part of any multidisciplinary team convened to help and to provide services to an exploited minor.
- Follow the recommendation in “Chapter 9: Juvenile Justice and Gender and Race Disparities” to assess and further develop gender-responsive and culturally competent programs and services for justice system involved youth, including Kitsap County girls’ court and other gender- and LGBTQ+-specific programs and services offered through Washington’s juvenile courts.

As to all Impacted Populations, Adults as Well as Children

- Washington State should expand therapeutic courts for victims/survivors of exploitation. Defendants charged with crimes related to exploitation should be admitted into those courts. Those therapeutic courts should place an emphasis on connecting these individuals with robust local services, including housing, substance abuse and mental health treatment, and training/employment opportunities, to facilitate exit from the sex industry.
- Courts and the Washington State Legislature should study and consider expanding education, accountability and therapeutic options for those benefiting from Commercial Sexual Exploitation (CSE), and should determine how to fund those programs.
- Drugs are often used to coerce people as a means of control. The Washington State Legislature should consider amending the definition of coercion in trafficking and CSE 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.
- The Washington State Legislature should consider enacting an affirmative defense for victims of sexual exploitation to other crimes committed as a direct result of their exploitation (exploitation as victims of crimes includes but is not limited to commercial sexual abuse of minors [CSAM], promoting CSAM, trafficking in the first or second degree, dealing in depictions of a minor engaged in sexually explicit conduct).
- Current efforts in Washington State to reduce justice system involvement and its harms for adults in the sex industry vary by jurisdiction and are implemented through discretionary and locally implemented policies. The Governor, Legislature, or Attorney General should create a bipartisan collaborative group to work with appropriate state, county, local, and tribal law enforcement, prosecutors, and stakeholder groups to recommend best practices and guidelines.
- All courts and courtrooms should be trauma-informed and trauma-responsive.
- To better understand the demographics of sexual exploitation, particularly of children and youth, Washington State should establish and fund a cross-sector database and develop

criteria for safely sharing that data while protecting the identity and privacy of survivors.

The following steps could be taken to implement this:

- Develop and implement data sharing agreements to track cases of sex trafficking of children and youth, including information related to victim identification and service provision, across all state agencies. Such agreements should include standardized identifiers and definitions and established protocols to share information, protect the confidentiality of children and youth, and be limited in scope.
- Develop and implement data sharing agreements among all public agencies and publicly funded private agencies that provide services to children and youth who have experienced sex trafficking. Such agreements should include standardized identifiers and definitions and established protocols to share information, protect the confidentiality of children and youth, and be limited in scope.
- Require state agencies and private agencies that receive public funding to collect and report aggregate data about the sex trafficking of children and youth and their agency's response to the Washington State Legislature or the Governor for public dissemination.
- Data that is collected is inconsistent. Washington State should consider funding development, validation, and adoption of a short trauma and sexual exploitation screening tool for all youth who enter detention, child welfare, health care, or any other state system, and make the tool available to others who come in contact with at-risk or trafficked children (e.g., school counselors). That tool should contain demographic information and the data should be entered into the statewide database.
- Washington State should require regular evidence-based education and training for all court personnel (including judges, court staff, prosecutors, defense attorneys, and law enforcement) about the dynamics and complexities of trauma and human trafficking. It should address the impact of systemic racial, cultural, and gender-based bias on those affected by CSE.

- Training for judges and court staff should acknowledge and provide tools to reduce the effects of secondary or vicarious trauma on judges, staff, and the people they serve.