

### III. Goals and Recommendations

1. Improve data collection in every area of the law that this report covers: ensure collection and distribution of accurate, specific data, disaggregated by gender, race, ethnicity, and LGBTQ+ status, in the criminal, civil, and juvenile areas of law covered here.
2. Improve access to the courts in every area of the law that this report covers: expand remote access, adopt more flexible hours, increase access to legal help, reduce communication barriers, and ensure that courts treat all court users in a trauma-responsive manner.
3. Address the impacts of the vast increase in convictions and detentions over the last generation: (a) recognize and remedy the increase in conviction rates and incarceration length for women, especially Black, Indigenous, and other women of color, and (b) recognize and remedy the consequences that the increased incarceration of Black, Indigenous, and other men of color over the last generation has had on women and other family members.
4. Reduce reliance on revenue from court users to fund the courts.
5. Identify the best evidence-based curricula for judicial and legal education on gender and race bias.

#### Goal 1

Improve data collection in every area of the law that this report covers: ensure collection and distribution of accurate, specific data, disaggregated by gender, race, ethnicity, and LGBTQ+ status, in the criminal, civil, and juvenile areas of law covered here.

#### Recommendations

- The Washington State Center for Court Research (WSCCR) should convene a stakeholder workgroup to develop a comprehensive inventory of justice system related data systems, the information collected in each, the gaps and limitations in the data, the entities responsible

for the data, and the opportunities for sharing data across systems. This mapping of justice system data will inform planning next steps to improve justice system related data and data sharing in Washington State. (Overarching recommendation)

- WSCCR should convene stakeholders to develop best practices and standards for collecting demographic data in the justice system (e.g., race, ethnicity, gender identity, gender expression, sexual orientation, educational attainment, income, etc.). This group of stakeholders should coordinate with similar efforts being conducted by the executive branch and local government where appropriate. (Overarching recommendation)
- Low-income care givers often lack access to safe, affordable, quality, childcare, and this limits their ability to access courts. To remove such barriers and improve all court users' ability to conduct court business using remote means: (Chapter 1)
  - Courts should retain and expand the best of the remote access opportunities that the courts adopted during the COVID-19 pandemic (e.g., digital platforms accessible via computer or smart phone) – the ones that maximize communication and language access without penalizing litigants for using remote means. Publish (electronically) accessible directions on how to access court business and documents remotely, and limit fees for accessing court business and documents remotely.
  - Courts should consider more flexible hours of operation or, with increased funding, expanded hours of operation.
  - Stakeholders should explore additional way to improve access opportunities such as funding and distributing devices (laptops, tablets, phones, etc.) that can support remote access in community and childcare centers, women's shelters, schools (as appropriate in individual jurisdiction); expanding on-site childcare centers at courthouses; or supporting other means (such as vouchers) to access childcare to attend court.
- The Washington State Legislature should consider funding “navigators” in courts in all counties to assist those seeking help with family law issues, and should also consider funding them for other areas of law. (Chapter 1)
- In order to determine whether women (including Black, Indigenous, women of color, and women in poverty) and LGBTQ+ people are disproportionately underrepresented in the jury

selection process and why, by the end of 2021, stakeholders, such as the Washington State Supreme Court Minority and Justice Commission and the Washington Pattern Jury Instructions Committee, should convene a jury diversity workgroup to build on prior data collected by the Minority and Justice Commission by studying the following: (Chapter 3)

- By the end of 2022, the workgroup, with assistance from AOC, should determine how best to mandate and fund collection of demographic data at every stage of the jury selection process in every Washington jurisdiction.
- By the end of 2023, the workgroup, with assistance from WSCCR, should collect and study court data to determine whether Black, Indigenous, and women of color or LGBTQ+ people are disproportionately excused from jury service for hardship, for cause, or based on peremptory challenges, and whether different subpopulations are affected differently.
- Recent data shows that significant numbers of potential jurors in Washington lack the resources to participate in jury service. The Washington State Legislature should consider funding research to identify the level of juror compensation that would most effectively increase participation by low-income people. (Chapter 3)
- To measure progress, the judicial branch and its leaders should work with researchers to evaluate their efforts to create a more diverse, inclusive, and respectful environment. Conducting regular surveys will help to track whether planned processes have been implemented and whether an anti-harassment policy is producing the desired effects. The survey methodology, when fully implemented, will enable the judicial leadership to monitor the sustainability and effectiveness of the anti-harassment efforts. The methodology should allow the branch to disaggregate the data by race, ethnicity, sexual orientation, and gender identity or expression to reveal different experiences across populations. The results of surveys should be shared publicly to demonstrate that the branch takes the issue seriously. (Chapter 4)
- Stakeholders should convene a workgroup – in consultation with AOC data management professionals – to outline ways to collect the court data that is needed to identify trends in

harassment and discrimination case filings and resolutions by race, ethnicity, gender, and other demographic factors. (Chapter 5)

- Stakeholders should convene a workgroup to identify resources needed to ensure that the Washington State Human Rights Commission has capacity to: 1) investigate all claims in a complete and timely manner, 2) analyze barriers to reporting and any disproportionate impact barriers have on marginalized groups, and 3) regularly analyze and report on the demographics of workplace harassment and discrimination. (Chapter 5)
- Justice system partners should consider analyzing the number and demographics of employees and employers who are not covered by the Washington Law Against Discrimination (WLAD) because of its employer-size exemption (*see* RCW 49.60.040(11)). The analysis should address: 1) whether this exemption has a disparate impact on the groups whom the law intends to protect (*see* RCW 49.60.010), and 2) the demographics of WLAD-exempt business owners to better understand how these exemptions impact women and minority owned businesses. (Chapter 5)
- In order to eliminate discrimination based on gender, race, and ethnicity in the calculation of tort damages, stakeholders should study whether Washington courts should discontinue use of race- and gender-based life expectancy, work life expectancy, loss of household services, and historical earnings tables for the calculation of economic damages. If the conclusion of such further study is that the race- and gender-based tables should no longer be used, stakeholders should then determine whether to promote other means of calculating economic damages, instead. (Chapter 6)
- In the 2022 legislative session, the Washington State Legislature should consider repealing requirements related to the filing of “residential time summary reports” in dissolution cases involving children (RCW 26.09.231, RCW 26.18.230). In its place, the Legislature should consider adopting a requirement that an appropriate entity conduct an annual record review based on a sample of cases to collect the data currently required by RCW 26.18.230, and to publish an annual report based on the data collected. (Chapter 7)
- In 2022, the AOC, in consultation with the Gender and Justice Commission and other relevant stakeholders, should develop and implement a plan to regularly collect data from

Washington's Superior Courts to determine how often parents who owe child support are: (1) named in a bench warrant for failure to appear at a hearing for alleged failure to pay child support; (2) arrested and incarcerated, even temporarily, on that bench warrant; and (3) arrested and incarcerated for failure to pay child support. This data should include information about the gender, race, and ethnicity of the parent and whether the parent was represented by counsel before the bench warrant issued. (Chapter 7)

- To monitor the efficacy of laws and regulations that combat gender-based violence and to identify gaps in protection, statewide data on the following topics should be collected: the barriers to enforcement of firearms surrender orders; the efficacy of domestic violence perpetrator treatment (in light of our pilot project report on the value of DV-MRT treatment); the prevalence and consequences of sexual assault in prison – especially for understudied populations; the prevalence and consequences of coercion for sex and sexual assault in the workplace – especially for female workers in the farm labor, service, and related low-paying industries; and data on the investigation and processing of sexual violence cases, including time from the alleged assault to filing, to resolution via the court process, and the reasons for any delays. This work will require legislative funding. (Chapter 8 and Chapter 5)
  - One component of this data collection could be development of a statewide online dashboard where law enforcement reports its data, as it already does pursuant to the Safety and Access for Immigrant Victims Act (2018) and pursuant to SHB 1501 (2017) to track denied firearm transactions.
  - Requirements for the data could include the following: (1) data collected should include disaggregated demographic information, including gender information that goes beyond the male-female binary, and (2) that non-confidential data and information about the process should be transparent and available to the public to promote system accountability.
- The Legislature should fund Washington-specific primary research to evaluate the current requirement for mandatory arrest in domestic violence cases, including research regarding the impact on women; Black, Indigenous, and other people of color; immigrants; those living in poverty; and LGBTQ+ people. (Chapter 8)

- WSCCR and juvenile justice stakeholders should develop standards to collect and report demographic data by entities operating in all phases of the juvenile justice system (initial referral, diversion/prosecution, detention, adjudication, disposition, use of manifest injustice/decline, and outcome). Data should include self-identified sexual orientation, gender identity, gender expression, race, and ethnicity; age; developmental challenges; and status as a parent. (Chapter 9)
- WSCCR should maintain and publish uniform data on the rate of youth arrests in each Washington county by subpopulations, including gender, race, ethnicity, age, and referral charge. (Chapter 9)
- WSCCR should expand the annual juvenile detention report to examine county detention admissions by gender, race, ethnicity, age, admission reason, and length of stay. (Chapter 9)
- WSCCR and juvenile justice stakeholders should develop uniform standards to collect and report demographic data for school-based referrals. Data should include self-identified sexual orientation, gender identity, gender expression, race, and ethnicity; age; developmental challenges; and status as a parent. Use this data to (1) identify student populations and geographic locations with the greatest need, (2) develop restorative programs tailored to specific needs at the local level, and (3) reduce criminal referrals. (Chapter 9)
- 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. (Chapter 10)
- 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: (Chapter 10)
  - 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. (Chapter 10)
- Government data collection should follow the best practices recommended by the 2020 *Incarceration of Women in Washington State* pilot study commissioned by the Gender and Justice Commission. The pilot study sets forth comprehensive recommendations for improvements in data collection as well as additional analyses and research to be implemented by the Caseload Forecast Council, the Washington State Legislature, and the Department of Corrections (see pages 31-32 of the *Incarceration of Women in Washington State* pilot study). (Chapter 11)
- When sufficient bail data can be obtained from the counties, WSCCR should study the impact of pretrial reform (including bail reform and more widespread pretrial services, such as those enacted by Yakima County) on wellbeing, recidivism, incarceration, community safety, and failure to appear rates. (Chapter 11)
- WSCCR and/or other stakeholders should undertake a study of (1) the impacts of incarcerating women for violating conditions of release, and (2) whether other sanctions could be equally or more effective. (Chapter 11)

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- In the short term (next two years), criminal justice stakeholders, including the Department of Corrections and Juvenile Rehabilitation Administration, should study the effect that the increasing detention of girls - especially Indigenous, Latinx, and Black girls - has on this state's large incarcerated-adult female population. We also recommend finding a way to measure disparities impacting other populations not currently represented in the data, such as Native Hawaiian and other Pacific Islander populations. (Chapter 11)
- Research from other states has shown that outcomes of gender-responsive programming depend heavily on the manner in which the programs are administered, which often varies widely. Conduct research, monitoring, and evaluation in Washington to assess the effectiveness of DOC's gender-responsive programming generally, and for subpopulations such as Black, Indigenous, and women of color, in particular. (Chapter 12)
- To better understand and address disparities in charging, pretrial detention, bail, plea bargaining, and diversion or deferral decisions, the Washington State Legislature should work with the appropriate statewide and county prosecutorial agencies to fund the creation of a statewide system for data collection and publication. This group should also determine the best way to ensure that individual jurisdictions collect and submit data from charging, bail, pretrial detention, plea bargain, and diversion or deferral decisions, and that this data is disaggregated by gender, race, ethnicity, sexual orientation, and disability. Data should be made available to the public in a timely and accessible manner. (Chapter 13 and Chapter 11)
- To decrease disparities in sentencing, study what evidence-based programs work to educate the judiciary, the bar, and court partners on how to identify and avoid gender and race bias. Based on the results, the education programs, bench cards, and other resources that have proven to be effective should be continued, expanded, and made mandatory. (Chapter 14)
- To facilitate a single place to access statewide Legal Financial Obligation (LFO) data, by December 2021, stakeholders should be convened<sup>1</sup> to: (1) assess what LFO data is currently available from each level of court; (2) assess what LFO data is not available; (3) assess how

<sup>1</sup> Such a convening is already being planned for September 2021, coordinated by AOC and co-chaired by Representative (and Gender Justice Study Advisory Committee member) Tarra Simmons and Judge David Keenan (author of this chapter).

stakeholders (e.g., researchers) currently access available data; and (4) recommend ways to (i) fill in the missing data, and (ii) create a single portal for accessing statewide data. Any analysis should first consider the reliability of the underlying data, e.g., the sources of that data and how it was collected in the first instance. The data should include impact of LFO's by gender, race, and ethnicity as overlapping categories; it should also strive to include who is making the payments (i.e., the sentenced defendant or another family member). (Chapter 15)

- The Washington State Legislature recently named WSIPP as the justice system partner responsible “to study legal financial obligations,” and provided WSIPP with funding to do so. The scope of the LFO study includes some of the data gathering recommended above, though there is no provision for collecting or analyzing data specific to gender. WSIPP should consult with stakeholders, including the Gender and Justice Commission, immediately about conducting this study. The Gender and Justice Commission should (1) recommend to WSIPP that their data collection and analysis include gender and intersectionality with other demographics, and (2) offer the Gender and Justice Commission’s assistance with the study. (Chapter 15)
- The Washington State Legislature should, consistent with RCW 72.09.495, RCW 74.04.800, RCW 43.216.060, and RCW 43.63A.068, receive data from DOC, the DCYF, Department of Early Learning, Office of Superintendent of Public Instruction, and Department of Commerce on how many children in Washington are impacted by parental or primary caregiver's incarceration, as well as data on available programs and resources to support the specific needs of the children of incarcerated parents, so that Washington has a comprehensive understanding of the needs, available support, and identified gaps in data collection and services. (Chapter 16)
- Stakeholders should study the causes of, and offer solutions for, the lengthy delays in establishing consistent phone calls and visits between dependency-involved parents serving DOC sentences and their children, so these families can maintain continuous, uninterrupted contact, even if parents are transferred to different facilities. (Chapter 16)

- Stakeholders should study ways to make it less expensive for incarcerated individuals to maintain contact with their families and support systems. Specifically, consider ways to: reduce or eliminate the cost of emails; reduce or eliminate the cost of video conferences; and, reduce or eliminate the cost of phone calls. (Chapter 16)
- The Caseload Forecast Council (CFC) should write a report outlining: (1) the current limitations of data from Felony Judgement and Sentencing (FJ&S) forms, and (2) possible solutions. For FJ&S data, it would be beneficial for the CFC to immediately begin coding “Hispanic/Latinx” as a separate ethnicity variable rather than as a race, so that CFC’s data is comparable to Office of Financial Management population estimates and would allow for accurate disproportionality analyses. CFC should also issue corrections to past reports which have included inaccurate disproportionality analyses for the Latinx population. We recommend considering legislative changes, changes to and standardization of the FJ&S forms, education and outreach to courts to support more standardized and complete data collection, changes to coding methodologies and internal documentation of coding methodologies, and needed updates to CFC databases.
- The CFC should immediately develop a codebook clearly outlining how data from the various FJ&S forms used by counties across the state are coded. This should be a living document that is updated any time a form comes in with data response options that are not currently addressed in the codebook. This codebook should always accompany the dataset when FJ&S data is shared with outside researchers.
- The CFC should immediately ensure that all CFC reports analyzing FJ&S data clearly outline the limitations of the race and ethnicity data including, but not limited to, the frequency with which the race and ethnicity fields are left blank on the forms, the lack of representation of Native Hawaiian and Other Pacific Islander and multiracial individuals in the dataset, the lack of consistency and standardization in how counties provide the data and which FJ&S forms are used, a lack of consistency related to who identifies an individual’s race and ethnicity, and a lack of granular race categories which may mask disparities for some populations.
- The CFC, beginning with the 2021 Adult General Disproportionality Report, should include racial disproportionality analysis for the male incarcerated population and the female

incarcerated population in addition the analyses currently conducted for the combined population.

## Goal 2

Improve access to the courts in every area of the law that this report covers: expand remote access, adopt more flexible hours, increase access to legal help, reduce communication barriers, and ensure that courts treat all court users in a trauma-responsive manner.

## Recommendations

- To improve access to interpreter services for people with limited English Proficiency (LEP) and d/Deaf, Hard of Hearing, and DeafBlind individuals in legal proceedings and court services and programs, stakeholders should convene to do the following: (Chapter 2)
  - Review accessibility – at all levels of court – by limited English language users statewide, including people with hearing loss, to court interpreting services, and develop an action plan to address identified barriers.
  - Suggest procedures to monitor and enforce the requirement that each court develop and annually maintain a language access plan pursuant to RCW 2.43.090; address whether the Washington Administrative Office of the Courts (AOC) needs to increase staffing within the Interpreter Services Program to assist courts in creating and implementing their language access plans and in making their language access plans accessible electronically.
  - Address the establishment of interpreter training programs in Washington, partnering with other state agencies and community colleges, to create dedicated language interpretation programs and to provide resources to develop new interpreters in the wide variety of languages we need to meet the language interpretation needs of government programs.
  - AOC should partner in the development of a certification program for American Sign Language (ASL) court interpreter certification.

- To improve access to the courts for those with limited English proficiency, the Washington Pattern Forms Committee should help translate key court information and forms into our state’s top 37 languages (per the Office of Financial Management). To that end, the Committee should: (1) create a list of vital documents (including civil protection order requests and other court forms, information about language services, directions on how to access court in-person and remotely, etc.), and (2) determine how to make them most accessible to the people who need them. With regard to translating forms that trigger court action after filing (such as requests for protection orders), we suggest a pilot project in selected counties to test the feasibility of different approaches to gaining court action based on such translated documents. (Chapter 2)
- AOC should create guidance for and offer assistance to Washington courts in creating and maintaining accessible websites, including translations and disability accommodations. (Chapter 2)
- AOC should determine how best to acquire language data on LEP parties, witnesses, etc. from Superior, District, and Municipal courts, to enable AOC to identify and address gaps in language services delivery. (Chapter 2)
- In order to enhance jury participation by Black, Indigenous, women of color, women in poverty, and LGBTQ+ people, by the end of 2023, the jury diversity workgroup should encourage courts to consider creative alternatives that accommodate jurors with caregiving responsibilities. Courts should consider whether they can accommodate parenting schedules for jurors who need to pick up children after school or childcare. The workgroup and Supreme Court Commissions should seek funding with court partners to develop creative pilot projects and measure their success. The workgroup should develop best practices for judges to account for the effects on jury diversity when evaluating juror hardship, and train judges on these best practices. (Chapter 3)
  - Apply the remote practices recommendation described in “Chapter 1: Gender and Financial Barriers to Accessing the Courts” for voir dire (jury selection).
  - Apply the childcare access recommendation described in “Chapter 1: Gender and Financial Barriers to Accessing the Courts” to jurors.

- Apply the flexible hours recommendation described in “Chapter 1: Gender and Financial Barriers to Accessing the Courts” to jurors.
- By the end of 2022, the jury diversity workgroup should develop best practices for courts to account for the barriers to service for LGBTQ+ jurors, including adding nonbinary gender choices to all forms and referring to jurors by their correct pronouns and chosen names. Train judges and court staff on these best practices.
- Recent data shows that significant numbers of potential jurors in Washington cannot afford to participate in jury service. (Chapter 3)
  - In order to reduce or eliminate financial barriers to jury service, the workgroup should, by the end of 2023, explore how best to require or incentivize employers to provide paid time off for jury service, following models in other states.
  - The legislature should consider adopting a statewide juror compensation increase sufficient to meaningfully increase juror attendance.
- To develop a more inclusive and respectful work environment, the judicial branch and its leaders should take explicit steps to promote equity, diversity, and inclusion, and to foster a culture that values individual differences in age, gender, sexual orientation, gender identity or expression, disability, race, and ethnicity. (Chapter 4)
- To improve transparency and accountability, the judicial branch and its leaders should be as transparent as possible (while respecting the rights of the accused person) about how they are handling reports of workplace harassment. Decisions regarding disciplinary actions, if required, should be made in a fair and timely way. This accountability can ensure that the court workforce feels supported by their organizations, because perceived organizational support is significantly associated with lower rates of workplace harassment. (Chapter 4)
- The Gender and Justice Commission should continue to develop programs to increase the number of women, including women and other persons of color, in both the bench and bar.(Chapter 4)
- The Gender and Justice Commission should partner with the associations representing Washington courts and clerks' offices to educate and advocate for the adoption of the Model Anti-Harassment policy by courts across Washington.

AOC should track the progress on adopting the policy and should develop a method for evaluating outcomes of the policy. (Chapter 4)

- Every Washington court should publicize its procedure for filing complaints of sexual and other types of discrimination and harassment, and include this procedure on its website. (Chapter 4)
- The Washington State Bar Association should identify (or convene stakeholders to identify) ways to minimize barriers within the profession related to: pay disparity, promotion opportunities, career complications, and workplace environment. The group should focus on barriers related to age, gender, sexual orientation, gender identity or expression, disability, race, ethnicity, family and care responsibilities, and the impact of the COVID-19 pandemic. (Chapter 4)
- Stakeholders should convene to consider proposing to the Washington State Legislature that it increase funding for civil legal aid in the 2022 legislative session to provide greater access to legal representation for both parties in family law cases, particularly cases involving minor children. (Chapter 7)
- Stakeholders should convene to propose to the Washington State Legislature during the 2022 legislative session that it fund a pilot project, in selected counties, that would provide appointed counsel at public expense to indigent parents in family law cases in which one or both parents are seeking restrictions on the other parent's residential time with a child. The pilot project should be tailored to the needs of the chosen county(ies), should provide metrics to evaluate the fiscal and justice impact by gender, race, ethnicity, and LGBTQ+ status, and should include a public report on the findings. (Chapter 7)
- In order to make Washington law's recognition of committed intimate relationships more accessible and understandable to people who cannot afford a lawyer, the AOC should develop forms to be used to file petitions brought under that doctrine. (Chapter 7)
- In order to improve access to the courts for litigants in cases involving gender-based violence, the Washington State Legislature should allocate increased funding to the Office of Civil Legal Aid for more civil legal aid attorneys who can assist victims of domestic and sexual violence with their legal issues. Although Washington State has enacted laws that provide protections

to victims of domestic and sexual violence, legal assistance is needed to enforce them. (Chapter 8)

- Stakeholders, including the District and Municipal Court Judges Association (DMCJA) and Superior Court Judges Association (SCJA), in coordination with AOC, should review the HB 1320 work group's future recommendations<sup>2</sup> and develop a model guidance memo to implement them. (Chapter 8)
- Given that the evaluation of Domestic Violence Moral Reconciliation Therapy (DV-MRT) showed it to be a promising practice in reducing domestic violence recidivism, and that litigants bear significantly lower costs to participate in the program, more courts in Washington State should consider implementing court-based DV-MRT programs. (Chapter 8)
- The Gender and Justice Commission should support the Tribal State Court Consortium's efforts regarding a judicial branch response to the pervasive problem of Missing and Murdered Indigenous Women and People and enforcement of Tribal Court protection orders. (Chapter 8)
- 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. (Chapter 10)
- 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. (Chapter 10)
- All courts and courtrooms should be trauma-informed and trauma-responsive. (Chapter 10)
- To provide incarcerated parents with meaningful court access, stakeholders should determine: (1) whether to increase the response deadline beyond 20 days for incarcerated

<sup>2</sup> This work group will be convened by the Washington State Supreme Court Gender and Justice Commission, with its report due to the courts by July 1, 2022.



parents in family law matters, and (2) how to ensure that these parents can access mandatory family law forms and legal information. (Chapter 16)

- The Washington State Legislature, donors, and other funders should consider allocating funding to indigent incarcerated parents for access to legal services, including representation in their family law matters involving minor children. (Chapter 16)
- Incarcerated parents who are ordered into treatment by dependency and family law courts should have access to such treatment while incarcerated. DOC should update its eligibility requirements for such treatment services to prioritize participation by these parents within a timeline that allows them to comply with such civil court orders relating to their children. DOC should also tell the court when a parent's failure to participate in ordered treatment is due to lack of DOC resources, rather than the parent's unwillingness to comply. (Chapter 16)

### Goal 3

Address the impacts of the vast increase in convictions and detentions over the last generation: (a) recognize and remedy the increase in conviction rates and incarceration length for women, especially Black, Indigenous, and other women of color, and (b) recognize and remedy the consequences that the increased incarceration of Black, Indigenous, and other men of color over the last generation has had on women and other family members.

### Recommendations

- To reduce disparities in arrest, detention, and resolution of juvenile cases, and to reduce the number of girls detained for status and misdemeanor offenses, stakeholders should: (Chapter 9)
  - Identify and develop, throughout the state, community-based resources that address the needs of youth involved in the juvenile justice system for status offenses so they may be safely served in the community.
  - Identify and develop, throughout the state, culturally-competent community mentoring programs upon which schools, law enforcement, prosecutors, and courts can draw instead of referring low-risk criminal behavior for prosecution.

- To assess and develop gender-responsive and culturally-competent resources for status and juvenile offenders that respond to individualized needs derived from individualized assessment, stakeholders should: (Chapter 9 and Chapter 10)
  - Follow the status of the Kitsap County girls' court, including WSCCR's current evaluation, and consider new recommendations based on this data.
  - Maintain an inventory of gender- and LGBTQ+-specific programming and services offered at Echo Glen Children's Center and Ridgeview Group Home and track their progress. Based on tracking of these programs (and any others), identify gaps in gender-responsive programming and build programs to address the gaps.
  - Maintain an inventory of the gender- and LGBTQ+-specific programming and services offered through Washington's juvenile courts. Track program effectiveness, identify program gaps and deficiencies, develop solutions to deficiencies, and fund effective program development.
- Washington State should institute demand-reduction efforts specific to the exploitation of children, including: (Chapter 10)
  - 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.
  - 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). (Chapter 10)

- 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. (Chapter 10)
- 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. (Chapter 10)
- 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). (Chapter 10)
- 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. (Chapter 10)
- The Washington State Legislature recently enacted SB 5476 (2021), which codifies simple drug possession as a misdemeanor; requires law enforcement to divert certain suspects to assessment, treatment, or other services and encourages prosecutors to do the same; and invests in programs and oversight. The Gender and Justice Commission should partner with stakeholders to evaluate that new law's impact on women and girls, including Black, Indigenous, and other women and girls of color, in terms of incarceration rates, legal financial

obligations (both of their own and of their family members and partners), treatment impact, and public safety. (Chapter 11)

- During the 2022 legislative session, the Washington State Legislature should again consider legislation to retroactively account for trauma-based criminalization and incarceration, similar to the way that the Survivors Justice Act, HB 1293 (proposed during the 2021 Regular Session) and N.Y. Penal Law § 60.12 address this problem in the area of domestic violence trauma. The Legislature should consider whether other sources of trauma, such as adverse childhood experiences, surviving through war, etc., should be included in any such legislation. (Chapter 11 and Chapter 14)
- In the short term (next two years), criminal justice stakeholders should convene to consider whether to amend CrR 2.2, CrRLJ 2.2, CrR 3.2, and/or CrRLJ 3.2 to limit trial court power to issue bench warrants for failures to appear and to consider alternative methods of addressing non-appearances. (Chapter 11)
- To provide effective gender-responsive and trauma-informed programs, policies, and procedures to all justice-involved women and non-binary, transgender, and other gender nonconforming individuals, the Washington State Department of Corrections (DOC) should consider: (Chapter 12)
  - Expanding access to more types of programs with guidance from the incarcerated individuals who would be using the programs.
  - Expanding locations of program administration. DOC facilities appear to be the only location at which gender-responsive programming is available. County jail populations might be too transitory to benefit from these programs, but people subject to out of custody supervision might benefit from this valuable tool.
  - Providing training for staff who work with individuals on Community Supervision to increase their understanding of gender-responsive and trauma-informed principles.
  - Ensuring that DOC Policy 610.650-Outpatient Services and the “Washington DOC Health Plan” include complete women’s health care services for women incarcerated in DOC facilities, and that these policies are implemented as written.

- Making all DOC policies, practices, and programs gender-sensitive, responsive, and trauma-informed.
- Reducing trauma and enhancing safety through the preservation of human dignity by developing trauma-informed alternatives to strip search.
- To systematize and incentivize more equitable pretrial, charging, and plea bargaining practices, prosecutors in every jurisdiction in Washington State should conduct an internal analysis of their use of prior arrest, charge, and conviction data in decisions regarding pretrial detention and bail, charging, and plea bargaining, to assess the public safety impact and the gender, race, ethnicity, and LGBTQ+ impacts of using those prior records. Prosecutors should also revisit policies that limited consideration of prior records as part of office charging and plea-bargaining guidelines, to determine more accurate means of protecting public safety while reducing disproportionate impacts. (Chapter 13 and Chapter 11)
- To increase the use and effectiveness of pre-arrest and pre-file diversion and deferral programs, the Washington State Legislature should direct the Washington State Institute for Public Policy (WSIPP) to partner with relevant state, local, and tribal experts to create and maintain an inventory of criminal justice diversion programs that have proven to be effective for different populations and different needs, with a particular emphasis on cultural competence, trauma-informed care, and gender-responsiveness. (Chapter 13)
  - Courts should not order defendants into any program or treatment that has not proven to be effective enough to make that list.
- For policy-makers: Consider legislation amending RCW 9.94A.535(1) to recognize that primary caregiving constitutes a mitigating sentencing factor. It is a mitigating factor because family structures can provide support to rehabilitating offenders; courts should therefore be able to consider the role of the offender within their family when determining sentences. Failing to recognize ‘primary caregiving’ as a mitigating factor also adversely impacts those who generally carry the burden of caregiving, that is, predominately women and families without resources. This should be done in the next two years or as soon as possible. (Chapter 14)

- For policy-makers: To reduce the disproportionate effect of mass incarceration and lengthy sentencing regimes, consider enacting legislation, such as HB 1282 which was considered in the 2021 regular session, to make all inmates eligible for earned early release time at the rate of 33% or higher for all sentences and enhancements. (Chapter 14)
- To ensure that LFOs do not pose a barrier to completing a sentence, exiting the criminal legal system, and successfully reentering the community, the legislature should consider enacting the following Washington State Criminal Sentencing Task Force LFO recommendations: (Chapter 15)
  - Address interest on restitution:
    - Change current law to give judges the discretion to waive or suspend interest on restitution, rather than it being mandatory, based on a finding of current or likely future ability to pay.
    - If restitution is imposed, allow accrual of interest to begin following release from the term of total confinement.
    - Lower the current 12% interest rate on restitution.
  - Waive existing non-restitution interest.
  - Victim Penalty Assessment (VPA):
    - Provide trial court judges with the discretion to reduce or waive the VPA upon a finding by the court that the defendant lacks the present and future ability to pay.
    - Provide trial court judges with the discretion to eliminate stacking of multiple VPAs (*multiple VPAs imposed at same time*) based on a finding that the defendant lacks the present and future ability to pay.
- Convene stakeholders to collaborate on legislation requiring, at a minimum, that superior courts means-test LFOs which are currently mandatory, including, for example, the victim penalty assessment. (Chapter 15)
- Convene stakeholders to study means-testing imposition of all LFOs in courts of limited jurisdiction, requiring a report and recommendations by November 2022. (Chapter 15)
- Convene stakeholders to propose draft revisions to CrR 3.4(d) and CrRLJ 3.4(d) concerning the necessity of an individual's presence at a hearing ordered solely to address LFO collection,

and the advisability of issuing warrants when an individual fails to appear at such a hearing. Stakeholders should consider whether warrants should still be permitted where, for example, there is proof by a particular standard (e.g., preponderance) that the failure to pay is willful. (Chapter 15)

- Ask AOC to revise Appendix H of the Felony Judgment & Sentence Form (re Community Custody) to include a space for waiving supervision fees. While a sentencing judge in superior court can waive DOC supervision fees at sentencing, the standard form community custody Appendix H used by superior courts throughout Washington includes language requiring payment of supervision fees, without advising the court or the defendant of the court's ability to waive the fee. (Chapter 15)
- Convene stakeholders to make recommendations concerning the use of collection agencies to collect LFO debt. Stakeholders should examine, at a minimum: (1) whether LFOs should be exempt from referral to collection agencies; (2) whether to increase the minimum collection referral period (currently 30 days under RCW 19.16.500(2)); and (3) whether to reduce collection agency fees (currently up to 50% of the first \$100,000 under RCW 19.16.500(1)(b)). (Chapter 15)
- The Washington State Legislature may want to consider ways to equitably increase access to and eligibility for Parenting Sentencing Alternatives to prison confinement, so more parents can serve more of their sentences in the community with their children. Specific consideration should be given to any racial, ethnic, or gender disparities within the existing Family and Offender Sentencing Alternative (FOSA) and the Community Parenting Alternative (CPA) programs. (Chapter 16)
- Stakeholders, in consultation with experts on child psychology and on parent-child visitation in incarceration settings, should convene county jail leadership across Washington State to develop guidance on meaningful in-person visitation for parents and children in those settings. (Chapter 16)

## Goal 4

Reduce reliance on revenue from court users to fund the courts.

### Recommendations

- Stakeholders should propose an amendment to GR 34 to allow fee waivers based solely on the litigant's attestation of financial status, without additional proof. Allowing presentation of such waivers to the Clerk or other designated non-judicial officer should also be considered to help streamline the procedure. Information about fee waivers should be prominently displayed (in multiple languages) at the courthouse and online. (Chapter 1)
- Stakeholders should convene a workgroup to analyze the application of GR 34 fee waivers to name change recording fees. The workgroup should consider ways to reduce barriers to name change recording for indigent individuals. (Chapter 1)
- GR 34 is not always interpreted to extend fee waivers to fees associated with parenting classes, family law facilitators, and other family law costs and fees. GR 34 should be amended to explicitly extend waivers to all such fees. (Chapter 1)
- Courts should be required to accept electronic (as well as hard copy) filings and submissions of all documents. (Chapter 1)
- To ensure that LFOs do not pose barriers to completing a sentence, exiting the criminal legal system, and successfully reentering the community, and to stop dependence on LFO revenue to fund the courts and victim services, by mid-2022, convene stakeholders to: (1) assess what portion of court funding and victim services funding is supported by LFOs; (2) assess the impact of means-testing LFOs currently supporting court funding and victim services funding; (3) assess the economic and social impact of eliminating referral of debts to collection agencies; and (4) recommend alternative sources of funding for courts and victim services. (Chapter 15)



## Goal 5

Identify the best evidence-based curricula for judicial and legal education on gender and race bias.

### Recommendations

- The judicial branch should deliver regular workplace harassment prevention trainings that drive real changes. (Chapter 4)
- The judicial branch and its leaders should follow best practices to design and deliver prevention trainings for all types of workplace harassment, including harassment based on gender, race, ethnicity, or LGBTQ+ status. (Chapter 4)
- These trainings should focus on changing behavior, not on changing beliefs. Anti-harassment programs should encourage the support of certain populations that are more likely to experience workplace harassment than others (including, but not limited to sexual and gender minorities; women; Black, Indigenous, and employees of color). These training programs should be evaluated to determine whether they are effective and what aspects of the training(s) are most important to changing culture. (Chapter 4)
- By not later than 2022, the Court Education Committee of the Board for Judicial Administration (BJA) should partner with the Gender and Justice Commission to develop a training for judges on how to model and, if necessary, control their courtrooms in ways that immediately address inappropriate gender-biased conduct on the part of attorneys and court personnel. (Chapter 4)
- To improve the effectiveness of measures, such as anti-bias training, to reduce bias towards litigants in court, the Gender and Justice Commission should authorize the creation of a list of trainings for judges, court staff, and potential jurors, which have proven to be effective at reducing bias in the judiciary and among jurors. (Chapter 5)
- In 2022, the Gender and Justice Commission should convene stakeholders to evaluate what evidence-based programs are most effective in educating judicial officers, attorneys, and third-party professionals in family law cases about domestic violence and racial or gender

bias, including training on bias based on gender, sexual orientation, gender identity, and intersecting implicit biases. (Chapter 7)

- Based on the results of this evaluation, AOC should update and continue to publicize its training curricula for Title 26 Guardian ad Litem (GALs) and Courthouse Facilitators to include or expand training on domestic violence and on bias based on race, ethnicity, gender, sexual orientation, gender identity, and intersecting implicit biases. Training curricula should also be updated as needed to reflect changes in Washington law that have increased legal recognition and protections for gay and lesbian couples and parents. (Chapter 7)
- In light of the findings about the disparate impact of gender-based violence on women, Black, Indigenous, and people of color, immigrants, those living in poverty, and LGBTQ+ people and the continuing barriers to their access to justice, the Gender and Justice Commission should partner with stakeholders and experts to suggest modifications to judicial branch education on gender-based violence for judges, law enforcement, attorneys, and others working on such cases. (Chapter 8)
- 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. (Chapter 10)
- 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. (Chapter 10)
- Judicial officers should be trained on the social and emotional needs of children of incarcerated parents. This would equip judicial officers hearing dependency and family law cases to craft visitation orders consistent with best practices for facilitating the resilience of children of incarcerated parents. (Chapter 16)