

Washington State Supreme Court Gender and Justice Commission

2021 Gender Justice Study: Select Recommendations

This document only includes a subset of the recommendations from the 2021 Gender Justice Study. The recommendations included here are those: (1) aimed at improving Caseload Forecast Council data and making it a more reliable source to inform policy decisions; and/or (2) which would need policy changes and/or funding from the Legislature. The complete list of recommendations is included in the full report and the executive summary, which is available on the Commission's [website](#).

2021 Gender Justice Study Goals



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.

Recommendations to the Caseload Forecast Council

- 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.

Recommendations that Need a Legislative Change or Funding from the Legislature




Icon Key

	Requires Legislative Change Beyond Budget Bills
	Requires Funding

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 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)
-  • 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)
-  • 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)

- 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)

- 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)

- 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.



- 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)



- 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)
- See the full 2021 Gender Justice Study or the study executive summary for a complete list of recommendations under Goal 1 (available on the Commission's [website](#)).

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



- Recent data shows that significant numbers of potential jurors in Washington cannot afford to participate in jury service. (Chapter 3)
 - The Legislature should consider adopting a statewide juror compensation increase sufficient to meaningfully increase juror attendance.



- 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 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)








- 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)
- See the full 2021 Gender Justice Study or the study executive summary for a complete list of recommendations under Goal 2 (available on the Commission's [website](#)).

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

-  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)
-  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)



- 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, the legislature should consider responding to the Commission’s findings about disparities in prison populations, and trauma to prison pipeline, in a meaningful way – consider increasing good time, such as was proposed by HB 1282 in the 2021 regular session, or other ways of addressing these historical problems. (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)



- 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)
- See the full 2021 Gender Justice Study or the study executive summary for a complete list of recommendations under Goal 3 (available on the Commission's [website](#)).

Goal 4

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

Recommendations

- See the full 2021 Gender Justice Study or the study executive summary for a complete list of recommendations under Goal 4 (available on the Commission's [website](#))

Goal 5

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

Recommendations

- See the full 2021 Gender Justice Study or the study executive summary for a complete list of recommendations under Goal 5 (available on the Commission's [website](#))