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Race and Washington's Criminal Justice System: 2022 Recommendations to Criminal Justice Stakeholders in Washington

Task Force 2.0: Race and the Criminal Justice System

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Task Force 2.0

Race and Washington's Criminal Justice System

2022 Recommendations to Criminal Justice
Stakeholders in Washington

Submitted by the Recommendations Working Group

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Task Force 2.0: Race and Washington's Criminal Justice System
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I. INTRODUCTION AND DECISION-MAKING PROCESS

This report, submitted by the Recommendations Working Group, is the product of a process initiated and conducted by an ad hoc Task Force on Race and Washington's Criminal Justice System. Called Task Force 2.0, it includes many organizations and individuals who came together to document existing race disproportionalities in the criminal justice system, to identify its causes, and to propose recommendations to reduce and, where possible, eliminate disparities.

Co-chaired by the deans of Washington's three law schools, Task Force 2.0 builds on the work of the 2010-12 Task Force on Race and the Criminal Justice System (Task Force 1.0). The work of Task Force 1.0 and 2.0 builds on decades of work of the Minority and Justice Commission, which carries forward the work of the legislatively-created Minority and Justice Task Force that issued its pathbreaking 1990 Final Report.

The Recommendations Working Group began meeting when Task Force 2.0 convened in the summer of 2020, but the work of the group began in earnest in September 2021, after the publication of Report of the Research Working Group,¹ and continued through June 2022. These recommendations are a continuation, and in many ways, a response to that report. The group's process for adopting final recommendations evolved through the course of the group's work. The process, described below, that the group ultimately implemented has allowed the group to develop comprehensive recommendations in each of the topic areas with input from impacted and interested stakeholders.

As a starting point, the working group identified the topics in which it would seek to develop sets of recommendations. Most topics were those addressed in appendices to the Report of the Research Working Group, while others, such as Alternatives to Policing and Data Justice, were not the subject of a specific appendix but were identified or addressed in some other way through the work of the Research Working Group or Community Engagement Working Group.

After the topics were identified, they were divided among members of the group. Working individually or in small teams, members developed proposed recommendations to address racial disparities and disproportionalities in the respective topic areas. Teams typically started by reviewing the research and any recommendations included in the Report of the Research Working Group, then conducted additional research for other potential recommendations or best practices developed by state or national-level advocates or scholars working in the area. Teams also reached out to impacted communities and/or experts working on these issues at the policy level in

1. See Task Force 2.0 Research Working Group, *Race and Washington's Criminal Justice System: 2021 Report to the Washington Supreme Court* (2021), 57 GONZ. L. REV.1 (2021/22), 45 SEATTLE U. L. REV. (forthcoming 2022); 97 WASH. L. REV. 1 (2022), https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1116&context=korematsu_center [hereinafter *Report of the Research Working Group*].

Washington for input, to understand what is currently happening in Washington in each area, and to further refine the list of recommendations.

The working group generally met weekly to discuss the proposed recommendations, typically taking up one topic at each meeting. Some topics required two meetings to work through. Proposed recommendations for the designated topic for the week were sent out early in the week in a poll format for members to vote on. Members had the option to vote one of three ways on each recommendation: approve, reject, or propose changes. Recommendations that received approval from the majority of group members who voted in the poll were adopted.

A minority of recommendations received unanimous approval, in which case the recommendation was not actively discussed by the group, and was presumed adopted. While all recommendations included in the report passed with a clear majority of the vote, most recommendations had at least some percentage of the vote to propose changes, with a smaller proportion receiving votes to reject. In the case of any votes to reject or propose changes, the recommendation at issue was discussed by the group to determine whether there was consensus to include friendly amendments or to address the reasons for a vote to reject. For a small number of topics, it became clear during group discussions that additional research or substantial revisions to the recommendations were required before the group could reach consensus. When this process resulted in substantive revisions, the updated recommendations were circulated for a vote to ensure majority approval before they were adopted.

Where agreement could not be reached, members discussed the need for a minority report to express opposing views to specific recommendations. Where a minority report was indicated, either based on poll responses or discussion, the participants presenting a different view were invited to provide a statement to include in the report. Minority reports regarding specific recommendations or specific topic areas submitted by members of the working group are included in the respective sections, below.

After the working group finalized the recommendations, they were distributed in draft form to members of the larger Task Force, the justices of the Washington State Supreme Court, as well as interested stakeholder groups and individuals who had expressed an interest in reviewing the recommendations, or who members of the Task Force thought would appreciate the opportunity to review. While the working group's recommendations were final, the Task Force welcomed comments and differing viewpoints from Task Force members or other stakeholders and established a six-week timeframe for submitting comments. No comments were submitted within that timeframe, prior to the publication of this final recommendations report. To the extent stakeholder comments are received in the coming weeks or months, they will be posted to the Task

Force 2.0 webpage.² The recommendations included herein represent only the work of the Recommendations Working Group as conducted using the process described above.

As the Recommendations Working Group drafted recommendations in the various topic areas, there were a number of individual recommendations that related to more than one topic. The group made every effort to avoid duplication of recommendations. While this may result in the appearance of omission of specific recommendations, what may seem to be obviously missing is likely to appear in a different, but related topic. The group drafted the recommendations so that they could be consulted by specific topic area, with the caveat that relevant recommendations may sometimes appear in a different section of the report.³

In developing the following recommendations in each of the specific areas, the group continually confronted the question of adequate funding and resources for implementing the proposed changes. Because this question reaches into each of the topic areas, the Working Group makes the following universal recommendation:

- Criminal Justice stakeholders responsible for carrying out the recommendations in this report should ensure that adequate funding and resources are allocated to ensure successful implementation of these recommendations.

The following recommendations are set out by specific topic and should be read in conjunction with the Report of the Research Working Group. Most recommendations are directed to certain broad categories of criminal justice system stakeholders, though for topic K, Data Justice, several recommendations are directed to “All Washington State criminal justice system stakeholders.” Following the list of recommendations is a table that may assist interested persons to identify and engage with recommendations directed to categories of criminal justice system stakeholders, and in some instances, particular offices.

2. Task Force 2.0 Webpage available here: <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives-and-projects/race-and-criminal-justice-task-force/>.

3. In at least one instance, a recommendation considered by the group appears in the Report and Recommendations of the Juvenile Justice Subcommittee. The Recommendations Working Group considered a recommendation related to practices for charging and sentencing juveniles in adult court. After reviewing the recommendation in the report of the Juvenile Justice Subcommittee on this topic, the Recommendations Working Group determined that this report should rely on the recommendation from that subcommittee, rather than duplicating or creating its own. Task Force 2.0 Juvenile Justice Subcommittee, *Report and Recommendations to Address Race in Washington's Juvenile Legal System: 2021 Report to the Washington Supreme Court* 48 (2021), https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1118&context=korematsu_center.

II. RECOMMENDATIONS

A. POLICING AND TRAFFIC STOPS

1. Police departments should not allow or encourage the use of “compliant” handcuffing, which occurs anytime an individual is placed in handcuffs and the officer only has to verbally request or physically pull an individual's arm(s) into a position where handcuffs can be applied and should require data collection on all handcuffing. While handcuffing should be done with reasonable care to minimize pain and unnecessary discomfort, seeking “compliant” handcuffing causes distrust in community and can lead to an escalation of violence, and creates a risk of harm, particularly to Black and brown community members. *Local law enforcement.*
2. Police departments should phase out the use of canines for arrest and canines should not be used for compliance. Canines are used disproportionately against Black men and dog bites are as harmful as shark bites. They should therefore be banned. *Local law enforcement.*
3. Local police departments should phase out and ban the use of military equipment such as MRAPS (except for search and rescue operations) and camouflage clothing. The use of war time equipment and uniforms change the relationship between police and community members, eroding trust and increasing the likelihood of violence. Police departments that have or participate in SWAT teams should limit their use to active shooter incidents, hostage situations, and barricaded subjects. *Local law enforcement.*
4. Police departments should ban the use of deception, ruse, misleading, untrue, or fraudulent representations in the practice of being an officer including, but not limited to, in interrogations and investigations, except for representations made in the course and for the purposes of an undercover investigation. Police should never commit perjury, file false reports, hide evidence, or fail to report exonerating information. *Local law enforcement.*
5. Police should not engage, antagonize, or otherwise provoke peaceful protestors. Dispersal orders should be limited to situations where there is a danger to physical safety and where that danger cannot be cured. Police departments should prohibit the surveillance of community members engaged in constitutionally protected activities. *Local law enforcement.*
6. Use of force investigations should be transparent, rigorous, thorough, and timely, and produced to defense counsel when a criminal charge arises out of the incident against the officer involved. Administrative investigations of use of force incidents should occur in coordination with the criminal investigating entity, either concurrently or sequentially, to ensure that both the criminal and administrative investigations are rigorous, thorough, and timely. Firewalls between the investigation teams should be implemented where appropriate. Use of Force violations should be submitted to the CJTC in an effort to

systemically collect and analyze the reports. Defense should have access to such violations through the CJTC. *Local law enforcement; Prosecuting attorney offices.*

7. The Legislature should pass laws to ensure that law enforcement collective bargaining agreements are made public and do not operate in ways that harm communities of color or undermine police accountability. To accomplish this, the Legislature should pass a state law that mandates a specific system for complaints, investigations and discipline that applies throughout the state, with each jurisdiction responsible for implementation in its own department. *Washington State Legislature.*
8. Departments should ensure that investigations of complaints against officers are conducted promptly and thoroughly, and that commensurate discipline is imposed. The Legislature should enact protocols for officer discipline, independent criminal prosecutions of law enforcement engaged in deadly force incidents, authorizing the Attorney General's office to engage in pattern or practice investigations of departments, and removing obstacles to holding officers and departments accountable for constitutional violations and violations of state law such as the Keep Washington Working Act. The State should also give municipalities the authority (not to be bargained away) to create discipline matrices that include a general range of discipline for each violation and the flexibility to include mitigating or aggravating circumstances. *Local law enforcement; Washington State Legislature.*
9. Where a civilian law enforcement oversight agency exists (e.g., Seattle, King County, Spokane, etc.), that agency should be responsible for implementation of policies. *Local governments.*
10. Departments should discipline officers for a lack of professionalism that includes making insulting, disparaging, discriminatory, disrespectful, or biased comments towards community members. Discrimination should not be tolerated when officers are on or off duty; it should be made clear that these things, even when done off-duty, affect the department's ability to carry out its mission and affect the officer's ability to do their job. Accordingly, officers should be disciplined for their off-duty discrimination, disrespect, etc. *Local law enforcement.*
11. Officers who use physical force without first engaging in de-escalation, violating RCW 10.120.020, should be disciplined and lose their certification. Use of physical force, not including pat-downs, incidental touching, verbal commands, or compliant handcuffing where there is no physical pain or injury, should only be authorized where the underlying offense involves physical harm to a person. *Local law enforcement.*
12. To the extent not covered by RCW 43.101.095, law enforcement agencies should ensure that police hiring practices prevent officers who have engaged in misconduct that harms members of the public from being re-hired in the same or other jurisdictions. To accomplish

this, lateral police officer hires must be required to disclose all disciplinary records and resolutions thereof, to the extent allowed by law, including administrative, civil, and criminal allegations, even if unfounded, and mandatory disclosure of any Brady violation allegations. The agencies formerly employing the officer must also be authorized and required to share such information with the hiring agency. Offers of employment shall not be made by the hiring agency in the absence of this information. *Local law enforcement.*

13. Law enforcement agencies should maintain policies and records related to both allegations and sustained findings of misconduct involving officer dishonesty and improper use of force, and misconduct that could trigger de-certification. This includes any allegations or sustained findings of a false verbal or written statement; criminal convictions and allegations or sustained findings of biased policing, racial profiling, malicious harassment, or any other misconduct that suggests bias against a class of people. These records should include, but not be limited to complaints and corresponding resolution of complaints, use of force reports, and investigative records related to such complaints. Law enforcement agencies should retain these records indefinitely for purposes of identifying patterns, even if the records can no longer be used to support disciplinary actions. *Local law enforcement.*
14. Law enforcement agencies should adopt record retention schedules of at least 180 days from the time the case is referred to a prosecutor for a charging decision to ensure that body cam footage, including video and audio, is not destroyed before the accused has been appointed or retained counsel. There should be a procedure to flag certain cases for extended records retention, up to two years from the time the case was flagged, such as those involving critical incidents or incidents resulting in serious injury, investigation, or the filing of a complaint. *Local law enforcement.*
15. Develop a jury instruction that if body cam footage is lost, destroyed, or turned off at any point during a stop or arrest, the jury may make an inference that regardless of intent, it may have been favorable to the defense. *Washington State Courts.*
16. Additional research on the effectiveness of body cameras as a deterrent to biased policing should be conducted. This research should also examine whether body cameras are better at revealing misconduct and holding officers accountable, even if they are not an effective deterrent. *Washington State Institute for Public Policy; Washington State Legislature.*
17. The Courts should adopt a rule allowing for the suppression of evidence found during a racially motivated traffic stop.⁴ Whether a traffic stop is racially motivated should be determined by applying the objective observer standard defined in GR 37(e)&(f) and adapted for this context. The Legislature should pass a state law limiting the discretion of

4. The Recommendations Working Group recognizes that this recommendation may be rendered moot by the Washington Supreme Court's recent decision in *State v. Sum*, — Wn.2d —, 511 P.3d 92 (2022). However, the group elected to retain the recommendation as part of this list in the event that the Court's decision does not completely address the scope of this recommendation.

armed commissioned officers to stop drivers for low level vehicle code violations that do not impact traffic safety. *Washington State Courts; Washington State Legislature.*

18. Local jurisdictions should shift the duty of traffic stops for nonmoving violations out of the police department and into a different department with sufficient funds, knowledge, and staffing to provide relief such as repair vouchers or fee waivers, such as a department of transportation. Traffic violations are the primary way that members of the public interact with law enforcement and data on stops show racial bias against Black and brown drivers. When police are engaged in traffic stops for nonmoving violations such as expired tabs or a taillight out, it increases the risk to officers and drivers of color. *Local governments.*
 19. Every law enforcement agency should be required to collect and compile demographic data, including race/ethnicity, and other data of people involved in traffic stops, and to collect data on pedestrian and traffic stops. This data should be compiled and reported to a statewide clearinghouse on a regular basis, with a corresponding public report on an annual basis. Law enforcement agencies should also provide individuals stopped with a contact card or receipt documenting the stop so that individuals who are stopped on a serial basis have a source of proof for the stops. *Local law enforcement; Washington State Legislature.*
 20. The Washington State Patrol should regularly provide data in a compiled form to better monitor stops, searches, seizures, and arrests by race, and make it easily available to the public. *Washington State Patrol.*
 21. Law enforcement agencies should incorporate training on implicit bias into their use of force trainings so that trainees can see and understand how bias impacts the use of force, specifically, and can apply that training to de-escalate interactions with communities of color. Such trainings should also include education related to systemic racism and the history of policing in the United States. *Local law enforcement.*
- **Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office Re: Policing:** *Many of the proposals in this section seek to impact and influence the way law enforcement performs its duties. As such, law enforcement should be represented as the subject matter experts for these operational issues. Similar to HB 1054's directive that the CJTC convene a workgroup which includes community organizations that represent diverse populations, those directly impacted by violent interactions with law enforcement, and law enforcement representatives to develop a model policy for the training and use of canine teams, law enforcement should have a voice in the formulation of these recommendations. The PAO, in general, does not support the operational proposals until law enforcement subject matter experts have a meaningful opportunity to weigh in.*

B. ALTERNATIVES TO POLICING

1. The Legislature should require that local jurisdictions establish a new branch of civilian first responders to respond to lower-risk 911 calls instead of law enforcement, including calls related to mental health, substance use issues, and homelessness. These responders should be community-based and culturally competent. The Legislature should also create state-level, mobile response teams that can offer a similar alternative to calling the police in rural jurisdictions. *Washington State Legislature.*
2. Local jurisdictions should ensure that there are sufficient resources outside of law enforcement dedicated to mental health treatment and alleviating homelessness, including but not limited to, access to temporary housing and intensive case management services. Access to crisis centers should also be increased. *Local governments.*
3. At a minimum, until a separate civilian response network is established, local jurisdictions should incorporate civilian-based response strategies into their current crisis response framework by co-deploying a law enforcement officer with a clinician or routing non-emergency calls to a clinician to resolve issues by providing services over the phone. *Local governments.*
4. In addition to the strategies suggested above, all law enforcement agencies should, at minimum, ensure that existing crisis response strategies are connected to the existing behavioral health system and should adopt and implement mental health crisis response policies that include the principles that officers are taught in crisis intervention training. Law enforcement agencies should ensure that their crisis intervention training is grounded in evidence-based practices. *Local law enforcement.*
5. Funding from existing law enforcement budgets should be diverted to support these alternative response programs. *Local governments.*
 - a. **Minority Report from King County Prosecuting Attorney’s Office and Whatcom County Prosecuting Attorney’s Office:** *Advocacy for the support of alternative response programs does not require this step which may have unintended consequences for victims of violent crime and only exacerbate inequities in public safety. This is especially true while our community is experiencing a surge in gun violence, domestic violence and sexual assaults and delays in emergency response – especially in BIPOC communities.*
6. The Legislature should add a specific “mitigating circumstance” to RCW 9.94A.535(1) for persons experiencing a mental health condition at the time of an offense in order to grant judges the discretion to take a defendant’s mental health into account during sentencing. Application of this mitigating circumstances should be retroactive. *Washington State Legislature.*

- a. **Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *RCW 9.94A.535(1)(e) already provides judges with the discretion to consider a defendant's mental health condition at the time of the offense where it significantly impairs "the defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law." There should be a nexus between the condition and the conduct for a mitigating circumstance to apply.*
7. Using guidance from RCW 82.14.460, all counties should increase the local sales tax by at least 0.1 percent to augment state funding for behavioral health services and therapeutic courts. *Local governments.*
8. The Legislature should create a competitive grant program for mental health courts and other programs to support smaller jurisdictions in expanding pre-trial diversion options for people experiencing a mental health condition to avoid convictions. *Washington State Legislature.*
9. Encourage more supplemental funding for BIPOC seeking therapy that is culturally responsive. *Local governments; Washington State Legislature*
10. Provide more training and resources for BIPOC to enter the behavioral health profession, as increasing the proportion of racial minority providers is considered an important factor for improving health disparities. *Washington State Legislature.*
11. Require by law that relevant organizations and institutions collect intersectional data on gender (including gender identity and sexual orientation if appropriate), race, and ethnicity by mental health diagnosis to inform and tailor prevention and treatment services in the community and criminal legal system. *Washington State Legislature.*

C. PREFILING DECISIONS⁵

1. Increase funding and capacity building for public health approaches, second responder programs, and community responses to prevent crime and reduce the rate and severity at

-
5. The following recommendation was proposed in this area:

- *Fund the creation and maintenance of quality risk and needs assessment instruments that can provide objective evaluation of the risks and needs of defendants.*

However, there was a general lack of consensus among the group about the propriety of this recommendation. Initially, the recommendation received 57.1% approval, a significantly lower rate than almost all other recommendations considered. During discussion, some members of the group raised concerns about racial bias being incorporated into the factors the tools rely on to make an assessment, and some indicated that they chose not to vote until the group had discussed so they could understand the intent of the recommendation. During discussions, the group noted that the Task Force 2.0 report also raised concerns about use of these tools because of the potential for racial bias. *See Report on Race and Washington's Criminal Justice System* at C – 2-5. The group agreed to send the recommendation for a new vote after discussion of the potential for bias. In the second vote, 60% rejected the recommendation. The votes at both stages on this recommendation failed to result in the degree of consensus to which the group arrived on all other recommendations.

which crimes are committed. Commit to guidance from public health on focused prevention strategies. *Local governments; Washington State Legislature.*

2. Invest in pre-charge diversion options in community and public health for eligible cases, including resources for providers to meet behavioral health needs. *Local governments; Prosecuting attorney offices; Superior Courts.*
3. Establish a restoration fund and services to meet the legal and behavioral health needs of victims on pre-filing diversion cases. The fund should not be funded by indigent individuals and should be a state-level or centralized fund to provide annual accounting. *Local governments; Prosecuting attorney offices; Superior Courts.*
4. Prosecutors, community service providers, and victim service providers must collect detailed data on pre-filing diversion programs to evaluate effectiveness and make changes as needed to achieve success. The data collected should be publicly available in an easily accessible manner, such as a website or online dashboard. *Local governments; Prosecuting attorney offices; Superior Courts.*
5. Sufficiently fund the required data technology and require all involved in criminal justice processes to collect detailed data as they are legally able. This data must include self-identified demographic information. This data must also be linked with public health data, and be publicly available, and transparent to provide a holistic understanding of the justice system. *Local governments; Washington State Legislature.*
6. Collecting, sharing, and linking data is not enough. There must be high standards and statistical rigor for data analysis. The legal system must create multi-disciplinary partnerships with public health, economics, and community epidemiologists to understand and analyze data. *Local governments; Prosecuting attorney offices; Washington State Courts; Washington State Legislature.*

D. PROSECUTORIAL DECISION-MAKING

1. To promote consistency and transparency, prosecutors' offices should have written guidelines for charging and dispositions that are publicly available for review. *Prosecuting attorney offices.*
2. Prosecutors' offices should draft guidelines regarding their criteria for consideration of SB 6164 petitions, make those guidelines publicly available, and proactively review cases. *Prosecuting attorney offices.*
3. Implement legislation to create post-filing diversion and alternative treatment based (collaborative) programs, which include the right to counsel. Diversion opportunities should be layered throughout the legal system to provide opportunities to engage treatment,

rehabilitative, and restorative meaningful approaches. *Local governments; Washington State Legislature.*

E. PRETRIAL RELEASE

1. Require all professionals working within the criminal legal system to complete ongoing training around racism, racial disproportionality, implicit bias, and the harms of pretrial detention. *Local governments; Local law enforcement; Office of Public Defense; Prosecuting attorney offices; Public defense providers; Washington State Courts; Washington State Legislature.*
2. Judges should consistently apply the existing court rule that presumes pretrial release and requires consideration of the least restrictive conditions of release. Money bail should only be imposed as a last resort and a meaningful “ability to pay” analysis should be used by courts to significantly limit the use and amount of any bail imposed. Additionally, courts should regularly review conditions of release and bail amounts imposed on those in jail to reconsider prior bail decisions and identify who should be released. *Superior Courts.*
 - a. **Minority Report from King County Prosecuting Attorney’s Office and Whatcom County Prosecuting Attorney’s Office:** *Victims have a statutory right to notice and an opportunity to be heard at any bail hearing. Reconsideration of conditions of release and bail where there has been a change in circumstances is already available. Pro forma successive reviews without such an articulable change in circumstances will increase burdens on victims, clog an already swollen justice system, and may not affect race equity issues.*
3. Judges and prosecutors should examine how they rely on an individual’s past criminal history in making pretrial release decisions and recommendations given how racial bias has influenced past convictions. A reliance on criminal history should be discounted or weighed less in many circumstances to adjust for systemic racial inequities. *Prosecuting attorney offices; Superior Courts.*
 - a. **Minority Report from King County Prosecuting Attorney’s Office and Whatcom County Prosecuting Attorney’s Office:** *Washington State should engage in comprehensive research into what types of criminal history are truly indicative of risk in the pretrial release context. This would provide objective information to Judges and Prosecutors as to what criminal history is valuable to rely on, if at all, and under what circumstances.*
4. Prosecutors should pledge to not seek money bail in all but the most serious cases and to consider the individual circumstances and how pretrial incarceration may uniquely impact the life of the person they are requesting be detained. Prosecutors should also thoughtfully consider the conditions of pre-trial release they request. Finally, each prosecutor's office

should share its bail standards in an easily accessible public manner. *Prosecuting attorney offices.*

- a. Minority Report from King County Prosecuting Attorney’s Office and Whatcom County Prosecuting Attorney’s Office:** *CrR 3.2 already presumes release on PR; however, it sets forth very reasonable exceptions, including likely danger posed by the defendant, likelihood of intimidation of witnesses and interference with justice, and one’s reasonable likelihood of not appearing for future hearings. This requires a very individualized approach, which should be preferred over a “most serious cases” approach.*
5. Provide effective defense counsel at all initial court appearances in municipal, district, and superior courts. Any structural barriers should be removed to ensure defense counsel has sufficient time to interview their client and prepare a release plan to present to the court. *Office of Public Defense; Public defense providers; Washington State Courts.*
6. Expand and invest in community-based alternatives to pre-trial detention that support individuals returning to court. *Local governments; Washington State Courts; Washington State Legislature.*
7. Governments, not the accused, should bear the cost of any pretrial service or community-based alternative to incarceration. *Local governments; Washington State Courts; Washington State Legislature.*
8. Courts and defender offices should implement automatic text reminder systems for court appearances, preferably that allow two-way communication between the recipient and their attorney. The text message communications between the attorney and client must be protected by attorney client privilege and RPC 1.6. *Public defense providers; Washington State Courts.*
9. Provide the accused with cell phone and internet access via a mobile phone for the duration of their case to ensure contact with defense counsel and the receipt of text reminders for court appearances. If a phone is provided, it should not be a basis for searches by the court and/or pretrial probation services. Text message and other communicates between the attorney and client must be protected by attorney client privilege and RPC 1.6. The accused should also be provided transportation support or vouchers for travel to court when needed. *Public defense providers; Washington State Courts.*
10. Expand warrant amnesty programs for municipal, district, and superior courts. Prosecuting attorneys and courts should also review and quash warrants for older offenses, offenses not relating to an imminent threat to community safety, non-payment related concerns, and for people in prison or known to be out-of-state. Prosecuting attorneys should also periodically review warrants related to older offenses to determine if the office is still committed to

prosecution under current filing and disposition standards. *Prosecuting attorney offices; Washington State Courts.*

11. Adopt booking criteria to limit bookings to exclude most misdemeanor offenses and some felony offenses so that only charges presenting an imminent threat to community safety are booked. Jails should adopt booking restrictions in order to reduce jail populations. *Local law enforcement.*

- a. **Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *Any booking criteria should have an exception for prolific repeat offenders who pose an on-going risk to community safety. An individual's imminent threat to the community is not always reflected in the name of the charge at booking.*

12. Require increased statewide data collection regarding pretrial release and detention practices that include, at a minimum, pretrial release and remand decisions, initial bail amounts and subsequent amendments, charges or reason for incarceration, release reason and associated case/cause number, demographic data to mirror that collected for the U.S. Census, length of stay in jail, the ultimate charge of conviction, a universal identifier that all criminal legal system agencies use, and whether a defendant appears with a public defender, private attorney or pro se. The Administrative Office of the Courts and counties should more routinely and uniformly collect and report de-identified data for public access. *Administrative Office of the Courts; Washington State Courts.*

F. PRISONS AND SENTENCING

1. Cap the number of years available for any crime to the evidence-based length of 20-years, with a provision for increasing the amount of time in the rare case where the person continues to pose a serious risk to public safety at the end of the sentence. *Washington State Legislature.*

- a. **Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *A cap for all crimes is too broad as it fails to account for multiple crimes, multiple victims, offender score, and free crimes. It also diminishes the seriousness of our most serious offenses. An alternative would be to have the Legislature amend the sentencing ranges available at the top and bottom end for most serious offenses.*

2. Parole eligibility in Washington should be expanded to allow more people a chance at early release. Parole eligibility should be universal; anyone with a sentence greater than 15 years should be eligible after serving that amount of time, with review every few years if release is not initially granted. Research shows that there is a sharp decline in recidivism rates after 15-years. Release at the parole hearing should be presumptive, meaning that the focus will

be on identifying specific reasons why the individual should not be released, rather than requiring the individual to show why they deserve release. Presumptive release serves to shift the focus away from the facts of the crime toward each person's record of rehabilitation. *Indeterminate Sentence Review Board; Washington State Legislature.*

- a. Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *While presumptive review may be appropriate, a standard of presumptive release is not. Robust supportive services prior to release and upon reentry are necessary to ensure a person does not reoffend. We also need to create evidence-based opportunities in prison with clear measures of success so an individual can demonstrate positive rehabilitative efforts.*
3. As an alternative, or in addition, to expanding parole, Washington should adopt second-look sentencing. Under this system, those sentenced to long-term, determinate sentences would have the opportunity to have their sentences reviewed by a judge or panel of judges after serving a specified term, 10 or 15 years. This system would also include the opportunity to return to court after a designated period if initially denied release at the second-look hearing. *Washington State Legislature.*
4. The early release statute should be amended to its pre-SRA form to allow for 33% earned time on all sentences and all portions of sentences, to apply retroactively. *Washington State Legislature.*
 - a. Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *This percentage fails to account for the facts of an individual case, the offender, the offense, and the victim. It also diminishes the seriousness of our most serious offenses and a retrospective application undermines the interests of finality for victims.*
5. Eliminate enhancements, multipliers, and mandatory sentences. *Washington State Legislature.*
 - a. Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *While establishing some additional parameters around when enhancements, multipliers and mandatory sentences may be appropriate, simply eliminating all of them is ill advised. For example, individuals who use a firearm or other deadly weapon in the commission of their offense and thus increase the harm they could potentially inflict should be subject to more significant penalties than those who do not.*
6. Expand access to compassionate release from DOC. The process should also be changed to prevent prison administrators from overriding the opinion of medical professionals recommending release. *Department of Corrections.*

- a. Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *We would support a review of existing procedures within DOC.*
7. Ensure that the sentencing of young adults (ages 18 - 25) reflects current brain science which recognizes the diminished culpability of youth and the propensity for change amongst this population. *Washington State Courts.*
 - a. Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *We support the continued education of judges who are in the best position to weigh this and other factors in sentencings.*
8. Make all sentencing changes retroactive. *Washington State Legislature; Washington State Courts.*
 - a. Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *See above. Retroactive sentencing changes have had a significant impact on victims who have been forced back into court to relive, among other things, the violent deaths of loved ones, sexual and physical assaults, and other traumas. Operationally, there are extraordinary costs associated with retroactive sentencing changes that are not budgeted for and would further clog a system that will take years to recover from the COVID-19 pandemic.*
9. Limit re-incarceration for violations of community custody or parole to conduct that would constitute a new crime. The overall approach to community custody should also be evaluated and modified to adopt a case management framework with a focus on aiding the reentry process rather than on policing behaviors and enforcing the terms of supervision. *Department of Corrections.*
10. Eliminate the use of solitary confinement. *Department of Corrections; Washington State Legislature.*
11. Focus on rehabilitation and expand programming opportunities in prison. Additionally, ensure that programming and services are culturally relevant to BIPOC individuals. *Department of Corrections.*
12. Examine impact of prison policies and practices, including classification determinations and infraction practices, on BIPOC people who are incarcerated. *Department of Corrections.*

G. JAILS

1. Jails should permanently adopt policies and practices that allowed for reductions in jail populations, such as those adopted in response to the COVID-19 pandemic. *Local law enforcement.*
 - a. **Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office:** *Persons convicted of violent offenses who are not being sentenced to DOC time, are not eligible for alternatives like EHD or CCAP but they are eligible for work education release (WER) if that option is available. WER was closed during COVID with no plans to reopen. That forecloses the option of continued employment, education, and treatment as an alternative to secure detention for those convicted of violent offenses who do not have an ability to pay for out-of-county WER.*
2. Examine impact of jail policies and practices, including classification determinations and infraction practices, with a special analysis exploring whether racial and ethnic disparities exist for BIPOC people relative to white inmates. To the extent disparities are identified, amend policies to eliminate disparate impact on BIPOC people. *Local governments; Local law enforcement.*
3. Eliminate the use of solitary confinement in Washington's jails. *Local governments; Local law enforcement; Washington State Legislature.*
4. Standardize data collection for jail populations across jurisdictions to ensure accurate and consistent tracking of the racial makeup at any given facility, and to allow for an analysis of racial disproportionalities and disparities at the local and statewide levels. In collecting this data, individuals should be asked to self-report their race/ethnicity, and categories for race and ethnicity should mirror those specified in the U.S. Census. *Washington State Legislature.*
5. Jails should increase the provision of behavioral health services, including prescription medication, counseling, trauma-informed care, and support groups in order to meet serious medical needs, promote reentry, and reduce the crisis of jail deaths. *Local governments; Local law enforcement.*
6. The Legislature should adopt mandatory statewide minimum standards, oversight, or other policy changes for jails to ensure safety and welfare, as well as consistency in fairness and treatment across jurisdictions. In developing these standards, the Legislature should, at a minimum, review and address: (a) standards for conditions and operations, inspections, enforcement, and oversight; (b) square footage of living space per individual, jail capacity, average daily population over the previous five years, medical and dental services, mental health services, treatment programming options, accreditation status, use of force incidents over the previous five years, and in-custody deaths and the causes of those deaths; (c)

comparison with other states regarding: safety and physical conditions; health and welfare; access to medical, mental health, dental care, and substance use disorder treatment; food quality and quantity; use of force; use of solitary confinement; and recreational activities and programming; (d) revenue sources and funding mechanisms; (e) inmates' access to jail telecommunication, electronic media, and commissary services, including the rates and fees charged by the jail for these services that are often borne by families of incarcerated individuals; and (f) other issues deemed relevant to the conditions of jails. *Washington State Legislature.*

H. LEGAL FINANCIAL OBLIGATIONS (LFOs)

1. Stop using LFOs as a means to fund the court system. *Washington State Courts.*
2. Waive the 12% interest rates on restitution. *Washington State Courts; Washington State Legislature.*
3. Establish clear processes for judges to waive all non-restitution LFOs when payment of the amounts would result in hardship that would result in a person's inability to meet basic needs or re-enter society. *Washington State Courts; Washington State Legislature.*
4. Ensure that individuals know their rights and have assistance of counsel whenever appearing in court or signing an order to be entered with the court for LFO collections. *Office of Public Defense; Public defense providers; Washington State Courts.*
5. Expand reporting requirements to account for the cost of collecting LFOs. This should include a requirement for county and municipal court clerks to detail and report all ways in which collection costs occur, each type of LFO sentenced and paid, contracts with collection agencies, and how the money collected is allocated to various entities. *Local governments; Washington State Courts; Washington State Legislature.*
6. Ensure that courts are educated on LFO standards and that LFOs can be waived. This can be done, for example, by ensuring that bench cards are kept updated. *Washington State Courts.*
7. Waive or reduce the Victim Penalty Assessment and any other mandatory LFOs, as well as restitution owed to entities other than individuals, if the person lacks the ability to pay. *Washington State Courts; Washington State Legislature.*

I. DRIVING WITH LICENSE SUSPENDED 3 (DWLS 3)

1. The Legislature should decriminalize Third Degree Driving While License Suspended (RCW 46.20.342) from misdemeanor to no punishment. *Washington State Legislature.*

2. The Legislature should amend RCW 46.20.289 to eliminate failure to appear as a basis for license suspension where the failure to appear is for a civil infraction for a moving violation or a failure to respond to a notice of a traffic infraction. *Washington State Legislature.*
3. The Washington State Department of Licensing should create and expand relicensing options to allow individuals to be licensed for childcare, work, and other necessary reasons. *Department of Licensing.*
4. Establish relicensing programs in district and municipal courts throughout the state so fines can be pulled out of collections and managed with one payment. *District and Municipal Courts.*
5. Eliminate the relicensing fee (\$75) for indigent individuals or those who can otherwise demonstrate inability to pay or financial hardship. *Washington State Legislature.*
6. Eliminate the loss of license due to insurance hold, when insurance companies suspend a license due to the driver's failure to pay a judgment subsequent to an accident pursuant to RCW 46.20.342(1)(c)(iii) and RCW 46.29.605, as insurance companies are able to seek civil remedies through the courts. *Washington State Legislature.*
7. Until DWLS 3 is decriminalized, prosecutors should exercise their discretion to never use DWLS3 as a standalone charge. *Prosecuting attorney offices.*
8. Until DWLS 3 is decriminalized, prosecutors and courts should not seek warrants on DWLS3 cases. *Prosecuting attorney offices.*

J. COMMUNITY SUPERVISION AND REENTRY

1. Courts and DOC must identify discretionary decisions related to community supervision and early release and should collect data on racial disparities that may exist in discretionary decisions to move those incarcerated in prison to community supervision, to revoke community supervision, and to grant release early. *Department of Corrections; Washington State Courts.*
2. Given concerns regarding racial disparities resulting from the use of risk assessment tools, the Washington ONE risk assessment tool should be examined for its effectiveness and to determine whether its use results in racial disparities. *Department of Corrections; Washington State Legislature.*

a. Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office: *An examination of the Washington ONE risk assessment tool's effectiveness and impacts is extremely complex work that very few researchers are qualified to do. WSIPP has begun an evaluation of the Washington ONE but more time and data are required to put forth any meaningful conclusions. Additionally, the Washington ONE only meaningfully*

applies to persons convicted of a crime and released on DOC supervision. Its impacts are therefore limited in scope and impact. Currently, prosecutors and judges conduct informal risk assessments every time that pretrial release recommendations and decisions based on their individual professional judgment. A better question would be whether a properly validated, accurate, race neutral pretrial risk assessment could provide additional objective information to decision makers that would reduce subjectiveness and racial disparities. This would and should not replace judicial discretion, it would add an objective guide or consideration. A good example is the general risk and needs assessment tool King County already uses but does not share. The Personal Recognizance Interview Needs Screen (PRINS) is a validated actuarial pretrial risk and needs assessment instrument for our community with much emphasis on it being race neutral.

3. Examine data on disproportionate rates of recidivism to better understand why disproportionalities exist and support culturally competent programs to eliminate those disproportionalities. *Department of Corrections; Washington Institute for Public Policy; Washington State Legislature.*
4. Create statewide tracking of all reentry-related data, which should specifically include data from all administrative agencies in Washington that make access to benefits, services, or other programs contingent on lack of arrest or conviction record, including those which control occupational licensing. *Washington State Legislature.*
5. Reexamine the funding of reentry services, including DOC funding for reentry services, and begin shifting funding to community organizations to do reentry work. Support peer-led reentry organizations. *Department of Corrections; Washington State Legislature.*
6. Pass statewide legislation preventing landlords from: (1) advertising, publicizing, or implementing any policy or practice that automatically or categorically excludes individuals with any arrest or conviction record from rental housing; (2) requiring the disclosure, inquiring about, or taking adverse action against a prospective tenant, tenant, or member of a tenant's household based on any arrest or conviction record; and (3) carrying out any adverse action based on registry information of a prospective tenant, tenant, or member of the tenant's household, unless the landlord has a legitimate business reason for taking such action. *Washington State Legislature.*
7. In conjunction with legal aid organizations, conduct a statewide survey of the areas in which Washington law imposes barriers to reentry based on criminal history, including financial barriers to reentry. *Civil legal aid organizations; Washington State Courts; Washington State Legislature.*
8. Examine the fines and fees charged to incarcerated individuals while housed by the Department of Corrections for basic necessities and services, such as the cost to stay in

work release facilities, cable, basic hygiene products, etc., as well as the cost of communicating by phone and mail with counsel, to determine the potential impact to successful reentry. *Department of Corrections; Washington State Legislature.*

9. Increase access to vacate, seal, and expunge records for juvenile and adult convictions. Provide funding to counties to aid with transition to systems that increase access. *Washington State Courts; Washington State Legislature.*
10. DOC should collaborate with community supervision, prosecutor's offices, defense services, and other community organizations to substantively improve facility-based programs. *Department of Corrections; Prosecuting attorney offices; Public defense providers.*

K. DATA JUSTICE

1. All agencies involved in the criminal justice system should gather sufficient demographic data such that agencies and the broader public can identify and address inequities in the system. The primary purpose for gathering such data should be to identify and address inequities, not for the purpose of predictive policing or increased surveillance. *All Washington State criminal justice system stakeholders.*
2. Agencies should gather demographic data at all critical stages of a criminal case, including during police stops, arrests, booking, prosecutorial charging decisions, bail hearings, sentencings, and incarceration. The juvenile legal system should similarly gather such data, including at the stages of truancy petitions and discretionary declinations of jurisdiction. This data should be linked and accessible to each agency so that information specific to an individual can be tracked across agencies. *All Washington State criminal justice and juvenile justice system stakeholders.*
3. To understand the potential inequities in charging, plea offers, trials, and sentencing, prosecutors should collect and share data, including race and gender information, on all proposed charges, bail amount, all pleas offered, convictions, and sentencing. *Prosecuting attorney offices.*
4. The standard format for data collection should, at a minimum, include the racial and ethnic categories as adopted by the U.S. Census Bureau, as well as gender, disability status, and zip code of crime location and residence of the arrestee. Gender categories should include male, female, and gender non-conforming. In addition to such basic demographic information, agencies should seek to disaggregate large categories where possible. For example, Native Hawaiian/Pacific Islander should be disaggregated from the current Asian/Pacific Islander. *All Washington State criminal justice system stakeholders; Washington State Legislature.*

5. Where possible, all such data should come from self-reporting from the person, including from state issued IDs, to avoid mischaracterizations of race, ethnicity, or gender. To the extent that system actors are relying on information on state issued IDs for demographic information, the Department of Licensing should collect demographic data with sufficient data categories to capture racial and ethnic categories as adopted by the U.S. Census Bureau. *All Washington State criminal justice system stakeholders; Department of Licensing.*
6. All agencies should uniformly and consistently collect data in minimum specified, and disaggregated, demographic categories, and should keep that data digitally. *All Washington State criminal justice system stakeholders.*
7. Each agency should be required to annually report the data it collects to a single statewide clearinghouse, and all such data should be widely accessible and open to the public. *All Washington State criminal justice system stakeholders.*
8. As with fiscal impact statements, Washington should adopt legislation mandating racial impact statements when addressing criminal justice or child welfare, as required by Oregon's Senate Bill 463. Such legislation should also be subject to mandatory review or evaluation after implementation to assess its effectiveness in relation to its stated purpose. *Washington State Legislature.*
9. All counties should conduct a juror demographics study to identify and address inequities in jury service. *Superior, District, and Municipal courts; Local governments.*

L. ASSET FORFEITURE

1. The Legislature should end civil forfeiture by forfeiting a person's property only as part of a criminal proceeding with all due process protections that attach to those proceedings. In the absence of a conviction, all property must be returned. *Washington State Legislature.*
2. All funds or assets obtained in forfeiture proceedings should be deposited into the state's general fund to remove any improper financial incentive for law enforcement agencies to seize assets. Further, the revenue from these proceedings sent to the State's general fund should be earmarked to fund mental health and substance use disorder treatment or related social services. *Local law enforcement; Washington State Legislature.*
3. All Washington law enforcement agencies should cease participation in the federal Equitable Sharing Program to ensure that they are not subject to improper financial incentives to participate in seizures as part of participation in multi-agency task forces, and to ensure that they are not circumventing state law. *Local law enforcement.*
4. The state should provide robust protections for third-party property owners who are innocent to recover wrongfully seized property quickly and easily. The state should have

the burden to show that an owner is personally culpable to be able to forfeit property. To the extent that the property recovery process is through the courts, any forfeiture proceedings involving property valued at \$5000 or more should be tried before a court of competent jurisdiction, and property owners should have the ability to petition for payment of their attorneys' fees after a successful forfeiture challenge. *Washington State Courts; Washington State Legislature.*

5. The Legislature should: (1) require law enforcement agencies to record and report the demographic data, including race/ethnicity, of the owner of every asset subject to forfeiture, as well as the alleged crimes used to justify the forfeiture; and (2) empower the Department of the Treasury with the authority to enforce these reporting requirements for law enforcement agencies. *Washington State Legislature.*
 6. Currently, 15 different statutes with varying protections for property owners govern asset forfeiture in Washington, creating a patchwork of rights and making it difficult for claimants to know how to reclaim seized property. Pending the elimination of the civil forfeiture system, the Legislature should consolidate these laws into one uniform statute that requires: (1) a judicial officer to hear all disputes involving forfeiture of property valued at \$5000 or more; (2) a full and accurate notice from the seizing agency that includes, at a minimum, the time within which to file a claim; methods in which a person can file a claim; that an attorney will not be appointed but an attorney or other legal services can represent the person, if s/he/they so choose; and (3) reasonable attorney fees for the claimant where the claimant substantially prevails either in trial or settlement. *Washington State Legislature.*
- **Minority Report from King County Prosecuting Attorney's Office and Whatcom County Prosecuting Attorney's Office re: Asset Forfeiture:** *Asset forfeiture is used by local law enforcement in King County to target larger scale conspiracy-based criminal investigations by taking away the cash flow necessary to continue the criminal enterprise. Disrupting the criminal conduct is a key component of effective law enforcement. The focus of any reforms should be on improving the legal process and protections surrounding asset forfeiture (burden of proof, availability of attorney advice, improving the statute so that it is more easily understood, etc.) and re-structuring which crimes and scenarios are eligible for asset forfeiture by law enforcement. To proceed with the current recommendations would effectively end asset forfeiture and would allow large scale criminal organizations to profit from their crimes, retain their profits, and further victimize those being harmed by their actions.*

M. PUBLIC DEFENSE

1. Create and fund a coordinated statewide effort to hire and retain public defenders with an emphasis on recruitment of diverse and BIPOC attorneys and staff. *Office of Public Defense; Public defense providers.*

2. Ensure public defenders, including BIPOC defenders, are represented in stakeholders' meetings, especially where judges, prosecutors, and the Department of Corrections are present. *Local governments; Washington State Courts; Washington State Legislature.*
3. Public defenders should be provided with training on structural racism and implicit racial bias and how it operates in the courtroom and in their own practice of representing their clients. *Office of Public Defense; Public defense providers.*
4. The Legislature should expand the Office of Public Defense's (OPD) statutory authority to include monitoring city and county public defense services and to address deficiencies, including the failure of public defense counsel to comply with the standards of indigent defense and the cities and counties to provide such defense. OPD should also be given additional funding to implement that role and support compliance with public defenses services in cities and counties. *Washington State Legislature.*
5. Create a statewide, mandated system to track all cases to list whether a person had a public defender appointed, private attorney, or no attorney. Courts do not currently track which cases have indigent defense appointed. This recommendation would help stakeholders have a clear picture of what is occurring in cases across the state. *Administrative Office of the Courts; Office of Public Defense.*
6. Mandate and fund a statewide clearinghouse to create annual data reports about charging and sentencing practices across the state to allow public defenders to identify patterns across the state and develop strategies for addressing disparities. *Administrative Office of the Courts; Washington State Legislature.*
7. Create and fund an ombuds office for public defense services across the state to provide impacted clients with a resource to review and address deficiencies in the work of their public defender and to allow for identification of systemic patterns of inadequate provision of defense. *Washington State Legislature.*
8. Expand and fund public defense to include a more holistic approach to representation and access to counsel to support clients during the pendency of a case and post-conviction matters including but not limited to vacation of convictions and other collateral consequences that limits a person's reentry to society. *Local governments; Office of Public Defense; Public defense providers.*
9. Ensure public defense is properly funded and staffed to ensure that all areas covered in the WSBA Standards for Public Defense are met by public defenders, including investigation, social work, and expert services, as well as supervisory and support staff ratios. The state should provide grant or pass-through funding for local governments to fund these crucial areas that support effective assistance of counsel. *Office of Public Defense; Public defense providers.*

10. Counties and cities providing public defense services should ensure that public defender offices shall be insulated from legal conflicts of interest, accusations of county, state, and/or local political pressure, and any actual or appearance of influence from law enforcement, the prosecution, or the courts of the public defense function. *Local governments; Public defense providers.*
11. Counties and cities providing public defense services should ensure that all decisions related to litigation must be independent including but not limited to requests and need for expert funding, social workers, investigators, and other investigation costs.⁶ *Local governments; Public defense providers.*
12. Counties and cities providing public defense services should ensure that all decisions related to hiring and retaining the head of the public defender office shall be independent. The leader of any indigent defense agency shall only be removed for just cause. *Local governments; Public defense providers.*
13. The Legislature should establish a committee to update RCW 36.26 and RCW 10.101 to reflect modern standards of indigent defense and the independence of the public defender. Committee shall include members who provide public defense services. *Washington State Legislature.*
14. Recommendations related to public defender independence shall be guided by the American Bar Association’s Ten Principles of a Public Defense Delivery System and Standard #19 of the Washington State Bar Association Standards for Indigent Defense Services.
15. In Washington, delivery and funding of indigent defense representation is left largely to individual counties. As a result, counties across Washington have different models of representation, including county-employee public defense offices, non-profit contracted agencies, contracts with solo attorneys or firms, or appointed counsel. This can result in disparities between the quality of public defense representation provided in different areas of the state. Convene a workgroup to assess existing delivery models and consider alternate models, such as a regional system that could provide consistent and quality training, resources, supervision, and oversight, and include an analysis of the positive and negative benefits of each model. The workgroup should make recommendations with the goals of preserving systems that work well; improving quality of representation in all areas of the state and eliminating “justice by geography”; as well as proposing funding models for recommended systems. *Office of Public Defense; Washington State Legislature.*

6. For recommendations 11 and 12, independence is defined by ABA Ten Principles of a Public Defense Delivery System, Principle 1. American Bar Association, *Ten Principles of a Public Defense Delivery System* 1-2, Feb. 2002, https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

16. Indigent people who are incarcerated should be provided with the opportunity for free appeal/post-conviction public defense. Free public defense should be available to indigent incarcerated people filing PRPs to challenge serious infractions from the Department of Corrections. *Office of Public Defense; Public defense providers; Washington State Courts.*

N. LANGUAGE ACCESS⁷

1. Courts should be required to provide updated Language Access Plans using the template provided in the Language Access Handbook, Appendix A, and to update their plans annually. As discussed in the Language Access Handbook, courts should assess spoken language needs in their local community and consult with local community organizations connected with Limited English Proficiency (LEP) individuals. *Washington State Courts.*
2. Ensure that meaningful spoken language access is provided not only in court proceedings, but also during court-related interactions on an ex parte basis or outside of court, consistent with DOJ Guidance, including at information counters; intake, clerk's or filing offices; cashiers; records rooms; sheriff's offices; probation and parole offices; alternative dispute resolution programs; pro se clinics; criminal diversion programs; anger management classes; detention facilities; and other similar offices, operations, and programs. Interpreter services must also be provided to LEP individuals to aid them in communicating with court-appointed or supervised personnel, such as counsel, child advocates or guardians ad litem, victim advocates, court psychologists, probation officers, doctors, trustees, and others who are employed, paid, or supervised by the courts. *Local governments; Prosecuting attorney offices; Public defense providers; Washington State Courts.*
3. The Legislature should provide both the Administrative Office of the Courts and local courts adequate staffing and resources to ensure that courts are meeting the needs of LEP individuals. The AOC should have the authority to ensure that courts submit and comply with language access programs, be equipped to provide technical assistance to courts, collect necessary data, collaborate with both courts and community to ensure that courts are meeting the needs of LEP individuals, and recruit and test qualified interpreters. This authority should include the ability for AOC to monitor and enforce compliance with language access programs, to include establishing or promoting any existing procedures

7. The recommendations in this area are directed toward access to the criminal legal system for individuals who have Limited English Proficiency (LEP). The Recommendations Working Group acknowledges that the language needs of LEP individuals who have intersecting needs may be different or greater than what is contemplated by this set of recommendations. For example, LEP individuals who are also deaf or hard of hearing may require access to interpreters proficient in a foreign sign language, rather than American Sign Language.

In 2021, the Gender and Justice Commission issued a comprehensive report examining the impact of race and gender in Washington's court system. See Wash. Gender & Justice Comm'n, *2021: How Gender and Race Affect Justice Now: Final Report* (Sept. 16, 2021), https://www.courts.wa.gov/subsite/gjc/documents/2021_Gender_Justice_Study_Report.pdf [hereinafter *2021 Gender & Justice Study*]. As part of this report, the Commission dedicated an entire chapter to the issue of communication and language barriers, their intersections with gender, and the resulting barriers presented in accessing the courts. See *id.* at 65-129.

for filing related complaints. *Administrative Office of the Courts; Washington State Legislature.*

4. Develop, monitor, and enforce statewide standards for when law enforcement should provide qualified interpreters and translated materials for LEP individuals, including, but not limited to instances addressed in the DOJ Title Guidance: receiving and responding to requests for assistance; field enforcement, including traffic and pedestrian stops, and serving warrants and restraining orders; custodial interrogation; intake/detention; and community outreach activities. The qualifications of the interpreter provided should increase commensurate with the seriousness of the encounter. While in some instances interpretation via telephone or other remote service may suffice, at a minimum, the presence of a certified, registered, or qualified interpreter should be required whenever the LEP person interrogated has a right to counsel. *Local law enforcement; Washington State Legislature.*
5. Develop, monitor, and enforce statewide standards for when interpreters should be provided to LEP individuals while in jail or otherwise incarcerated or detained, including, but not limited to instances addressed in the DOJ Title Guidance: at intake/orientation, before disciplinary action, when providing health services, when offering an incarcerated individual access to programs that could affect the length of their sentence; and in offering ESL classes. These standards should also extend to those held in mental health facilities for purposes of competency evaluation, restoration, or treatment, and to communication necessary for probation, community supervision, or other post-release requirements. *Local law enforcement; Washington State Legislature.*
6. As Washington becomes more diverse, there is an urgent need for more spoken language interpreters, in more languages across the state. Commensurate with that need and a commitment to equity, the Legislature and courts should allocate funding and resources to cultivate a new pipeline of spoken language interpreters who are well-prepared to serve the courts and legal system. This should include examining and updating the current system and an investment in training for prospective court interpreters, as well as data collection regarding the languages in need of interpretation in criminal courts to better inform recruitment and hiring efforts. *Washington State Courts; Washington State Legislature.*
7. The Legislature should pass a new law regarding spoken language access for law enforcement, similar to those required for courts under RCW 2.42 and 2.43. Such a law should include a requirement that law enforcement agencies create language access plans, to define what makes an interpreter qualified for different types of law enforcement interactions, and to specify instances in which certified or registered interpreters must be used in interactions between law enforcement and LEP individuals. *Washington State Legislature.*

8. Bilingual officers, including ICE or DHS officers, should be prohibited from acting as interpreter between a law enforcement colleague and an LEP individual, as they are not a neutral party and are unlikely to have had their interpretation skills assessed. This prohibition should not apply to a bilingual officer communicating directly with an LEP individual in that individual's native language. *Local law enforcement.*
9. Courts and other legal system actors should conduct outreach to educate communities on new policies and procedures implemented to improve access for LEP individuals. System actors must work to repair the harm done to community relationships caused by prior failures of law enforcement or courts in not providing language services. *Local law enforcement; Prosecuting attorney offices; Public defense providers; Washington State Courts.*
10. Training regarding language access for LEP individuals should be required for law enforcement personnel and attorneys working in criminal court to ensure language services are appropriately provided. Training should include, at a minimum: the differences between certified and qualified or authorized interpreters; the role of the interpreter, including that the interpreter cannot act as an advocate for an individual, or that law enforcement officers cannot serve in dual capacities as an officer and an unbiased interpreter; and interpreter ethics. *Local law enforcement; Office of Public Defense; Prosecuting attorney offices; Washington State Bar Association.*
11. Courts and law enforcement must ensure accuracy of translated documents and should therefore require that materials be translated by a qualified professional translator and not an electronic, computerized, or automated translation program. *Local law enforcement; Washington State Courts.*
12. Adopt best practice guidelines for spoken language services in the criminal legal system, including best practices for ensuring that interpreters are qualified to do the work they are asked to do; that they receive the documents they need to prepare for an interpreted event; that contracting for interpreter services takes into account that some encounters need the flexibility to have specific interpreters present, e.g., due to sensitivity to gender issues or mental health issues requiring continuity of interpreter services; and other best practices. *Washington State Courts.*
13. Courts should ensure that LEP individuals have access to in-person, rather than remote, interpretation in criminal proceedings, to allow for consultation with attorneys before, after, or during the hearing, to ensure that interpreters have access to relevant documents, and to ensure that the full context of the hearing is conveyed to the LEP individual. Where LEP individuals appear remotely for a hearing, courts should ensure that the individual is able to access the hearing by providing access to an interpreter who can assist the LEP individual navigate the process for joining the remote hearing or translating instructions

for access to the remote hearing into the language of the LEP participants and providing those instructions in advance. *Washington State Courts*.

III. CONCLUSION

The Research Working Group of Task Force 2.0, in its 2021 Report to the Washington Supreme Court, found that race and racial bias continue to matter in ways that are not fair, that do not advance legitimate public safety objectives, that produce disparities in the criminal justice system, and that undermine public confidence in our legal system.

The Recommendations Working Group was tasked with formulating recommendations to address these shortcomings. Issuance of these recommendations concludes the work of the Recommendations Working Group. We urge criminal justice system stakeholders to act upon them.

Table: CJS Stakeholders and Pertinent Recommendations

CJS stakeholder categories and particular offices	Pertinent recommendations by topic
Washington State Courts	A: 15, 17 C: 6 E: 1, 5, 6, 7, 8, 9, 10, 12 F: 7, 8 H: 1, 2, 3, 4, 5, 6, 7 J: 1, 7, 9 L: 4 M: 2, 16 N: 1, 2, 6, 9, 10, 12, 13
Superior Courts	C: 2, 3, 4 E: 2, 3, K: 9
District and Municipal Courts	I: 4 K: 9
Administrative Office of the Courts	E: 12 M: 5, 6 N: 3
Prosecuting attorney offices	A: 6 C: 2, 3, 4, 6 D: 1, 2 E: 1, 3, 4, 10 I: 7, 8 J: 10 K: 3 N: 2, 9, 10
Public defense providers	E: 1, 5, 8, 9 H: 4 J: 10 M: 1, 3, 8, 9, 10, 11, 12, 16 N: 2, 9
Office of Public Defense	E: 1, 5 H: 4 M: 1, 3, 5, 8, 9, 15, 16 N: 10
Washington State Bar Association	N: 10
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