

# Campus Sexual Violence Prevention Task Force Final Report

## Executive Summary

In [Senate Bill \(SB\) 5719](#) the 2015 Washington State Legislature affirmed the importance of sexual violence prevention efforts through creation of a 14-member Task Force broadly representing higher education, law enforcement, and other key constituencies.

The statutory duties of the Task Force are to:

- Develop a set of best practices that institutions of higher education may employ to promote the awareness of campus sexual violence;
- Reduce the occurrence of campus sexual violence, and enhance student safety;
- Develop recommendations for improving institutional campus sexual violence policies and procedures;
- Develop recommendations for improving collaboration amongst institutions and law enforcement;
- Report to the Legislature and the institutions of higher education on its goals and recommendations annually.

Staff from the Council of Presidents (COP) agreed to staff the Task Force throughout the duration of its work. The Task Force held 12 public meetings across the state over an 18-month period to hear from national and state experts, research and highlight best practices, and discuss how to make Washington state a national leader in addressing the issue of campus sexual violence. This is the second of two reports required in SB 5719; the [first](#) details early efforts by the Task Force and highlights efforts around sexual violence prevention and response at all of Washington's public baccalaureate, community and technical, and ten nonprofit colleges and universities that comprise the Independent Colleges of Washington.

Also in 2015, policymakers enacted two other, related pieces of legislation. [Senate Bill 5518](#) related to campus sexual violence response. As that legislation contained other reporting requirements for colleges and universities and to ensure the most efficient use of limited resources, the Campus Sexual Violence Task Force chose to comprehensively address issues related to both campus sexual violence prevention and response. Consequently, the Task Force divided into seven subcommittees in order to complete its work:

- *Campus Climate Assessment*
- *Prevention*
- *Criminal Justice System*
- *Advocate Confidentiality*
- *Student Conduct*
- *Underserved Populations*
- *Memoranda of Understanding*

The result of the work of the Memoranda of Understanding Subcommittee resulted in the July [2016 joint report](#) from the Council of Presidents, State Board for Community and Technical Colleges, and the Independent Colleges of Washington on efforts to develop memoranda of understanding between colleges and universities and local law enforcement.

[House Bill 1068](#) established an 18-member Task Force to review best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested sexual assault forensic examination (SAFE) kits in Washington. The SAFE Task Force produced a [preliminary report](#) in 2015 and will its final report in December 2016.

Below are the 17 recommendations of the Campus Sexual Violence Prevention Task Force:

- **Funding for campus prevention education must be adequate.**
- **Prevention education efforts on campuses must be evaluated for effectiveness.**
- **Pursue opportunities to increase prevention and education opportunities in K-12 schools that involve input from higher education and other stakeholders (such as a K-20 task force).**
- **Establish and fund ongoing opportunities for program and professional development (training twice per year on best practices; teams of prevention leaders).**
- **Encourage further institutional efforts to research and comprehensively address prevention and response efforts for specific populations such as students with disabilities, students under age 18, and GLBTQ students.**
- **Continue assessment (e.g. – surveys, focus groups, and other measures) efforts and jointly report to policymakers every three years with a campus climate update.**
- **Detail estimates of past and future assessment costs (including surveys).**
- **Build holistic assessments that comprehensively address the needs of special populations and are tailored to an individual’s affiliation with the institution. This includes but is not limited to specific populations such as students with disabilities, students under age 18, and GLBTQ students.**
- **Add a new chapter to state statute (RCW 28B) regarding communication between sexual violence survivors and victim advocates.**
- **Make relevant training more available for police, prosecutors, and judicial officers.**
- **Promote regional communication through the expanded and robust use of Sexual Assault Regional Teams (SARTs).**
- **Explore expansion of the innovative “You Have Options” Program.**
- **Promote Offender-Focused and Victim-Centered Prosecution.**
- **Educate juries through the use of local expertise.**
- **Institutions of higher education are encouraged to adopt policies regarding the disclosure of disciplinary actions to other institutions in instances where a transferring student has been expelled or suspended for misconduct that poses a significant risk to the campus community.**

- **Exempt student conduct proceedings in institutions of higher education from the Administrative Procedures Act in state statute (RCW 34.05).**
- **Adopt due process standards specifically applicable to college student conduct proceedings.**

Sexual violence profoundly impacts the lives of all survivors and the health and safety of entire communities. While Washington’s public and private colleges and universities have long worked to address all aspects of this issue, recent initiatives at the state level are spurring a level of collaboration and consistency in effort and accountability that will continue to affect positive change on college and university campuses and between campus, community, and law enforcement leaders. The members of the Campus Sexual Violence Prevention Task Force would like to express their gratitude to state policymakers for their bi-partisan efforts in this critical area.

Complete information on the work of the Sexual Violence Prevention Task Force – including this and earlier reports, meeting agendas and minutes, and relevant handouts and news articles – can be found at the Council of Presidents [website](#).

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## Introduction

According to the [Centers for Disease Control and Prevention](#), “sexual violence is defined as a sexual act committed against someone without that person’s freely given consent. Sexual violence is divided into the following types:”

- Completed or attempted forced penetration of a victim
- Completed or attempted alcohol/drug-facilitated penetration of a victim
- Completed or attempted forced acts in which a victim is made to penetrate a perpetrator or someone else
- Completed or attempted alcohol/drug-facilitated acts in which a victim is made to penetrate a perpetrator or someone else
- Non-physically forced penetration which occurs after a person is pressured verbally or through intimidation or misuse of authority to consent or acquiesce
- Unwanted sexual contact
- Non-contact unwanted sexual experiences

As detailed in the Task Force’s [2015 report](#), a significant number of college students nationally – particularly but not exclusively female undergraduates – report having been victims of sexual assault and misconduct, including domestic violence, dating violence and stalking. Research further indicates that sexual violence on college campuses is underreported and that many students are unaware of the programs and services available to them. While students are the heart of a college or university campus, prevention and response efforts must also successfully serve faculty, staff, and visitors as well. On any given day Washington’s colleges and universities – whether public or private – welcome students, faculty and staff, and visitors (alumni and other guests, sports fans, hospital patients, and others) from all over the world.

Washington’s public and private colleges and universities have long endeavored to prevent incidents of sexual violence on their campuses. A complete summary of those efforts is detailed in our 2015 report. Below are selected highlights:

**Central Washington University** has multiple positions to support this process. The University currently has one Title IX Coordinator, six Deputy Title IX Coordinators, and a Violence Prevention and Response Coordinator who meets with all students who present issues related to sexual assault, sexual harassment, dating violence, and stalking. CWU also has two mental health providers that serve as case managers to help students understand resources, navigate processes on the campus, and to advocate for students. Counseling and medical staff on campus also provide services.

In Fall 2014 **The Evergreen State College** launched the Green Dot Strategy for Olympia for undergraduate students. Green Dot seeks to engage all students as potential bystanders to establish intolerance for violence and intervene in high-risk situations without compromising

their safety. The scientific basis for Green Dot draws on four areas of research: social diffusion theory, bystander literature, perpetrator data, and marketing and rebranding research.

**Eastern Washington University's** prevention efforts begin before a student starts their first academic year at EWU. Beginning with 2014-15 academic year the online training program, Think About It, is required for all new undergraduate students, sorority and fraternity members, and student-athletes.

The **University of Washington's** Title IX compliance program has the support and commitment of University leadership. In April 2013, then-President Michael Young created a Task Force on Sexual Assault Prevention and Response comprised of faculty, staff, and students and charged them with reviewing University policies, exploring best practices, recommending and developing new practices and proposing a plan for implementation. In December 2013, the Task Force presented a final report outlining eight broad goals and eighteen recommendations for creating and delivering a strong prevention and response program for the University. The University has made significant progress in implementing and responding to the Task Force recommendations, including hiring a Title IX Investigator for student conduct cases, a Training and Education Coordinator to develop and facilitate comprehensive educational programs for students, and fully funding two victim advocate positions. It also created a Title IX Committee to assist in implementing the Task Force's recommendations across a large institution with a varied and diverse constituency.

**Washington State University** mandates training for its employees on discrimination, sexual harassment, and sexual misconduct prevention, which includes information on reporting responsibilities and best practices. In addition, the Office for Equal Opportunity regularly provides additional training about sex and gender-based violence and trauma-informed response information for law enforcement, members of the conduct board, and other staff who work with students.

In 2011, **Western Washington University** formed a Title IX Task Force chaired by the Vice Provost for Equal Opportunity and Employment Diversity/Title IX Coordinator. In 2015, the Task Force was converted to a Work Group on Sexual Violence Prevention and Response. The Work Group, which meets regularly, is chaired by the Title IX Coordinator and includes the directors of campus departments with key responsibilities related to sexual violence prevention and response, as well as faculty and student representatives. The current focus of this group is on developing and administering a climate survey on sexual violence for students and employees as well as further developing an ongoing prevention and awareness campaign. A new web site has been developed that links all relevant offices and information on this subject and which is accessible from WWU's home page.

All Washington **community and technical colleges** are in the process of implementing Campus Clarity, a Title IX training program for employees and students. The District Compliance Officer

for Spokane Colleges has a role in making sure the efforts of the Colleges and the District are in accord with federal and state regulations as well as with board policy and college procedures. The Vice Presidents and the Compliance Officer conduct training in Title IX, VAWA, and Campus SaVE as part of fall convocation, and will offer it at least twice yearly. Renton Technical College (RTC) piloted a lesson/training within their College Success course on Title IX, with a focus on consent and resources. During this lesson/training, students view the Cup of Tea Consent video available on YouTube. For staff and faculty, RTC launched a training on the Canvas platform in October 2015; completion of the training was mandatory for employees. Lower Columbia College launched an awareness campaign which includes a webpage, posters, digital signage, brochures and cards with information about resources and reporting. At Tacoma Community College, the Campus Safety office offers workshops on self-defense and the Counseling Department offers workshops on sexual assault and harassment.

Prevention and education programs related to campus sexual violence occur in many different forms on all **Independent College of Washington** member college campuses. Some originate in the student development office while others are found in housing and residence life programs, student clubs, campus security offices, and, of course, formal Title IX programs. Typically, all new employees, including faculty, are required shortly after employment to complete some form of a training regarding discrimination and harassment. In addition, newly hired faculty and staff employees receive training on discrimination, harassment and sexual misconduct during orientation programs and in many cases, certain employees are required to complete annual training regarding Title IX awareness, mandatory reporting requirements and trauma-informed investigations and reviews tailored to staff members who may be called upon to serve as investigators and grievance officers in sexual misconduct complaint proceedings. Faculty conferences often include sessions on Title IX updates, mandatory reporting, and educational responses. All new undergraduate and graduate students are typically required to take training courses related to campus sexual violence. Examples include online programs guided through self-reflection designed to examine sexual misconduct, healthy relationships, and substance abuse through a variety of interactive, realistic scenarios, (“Think About It”) and bystander intervention training sessions. In many cases athletes are also required to attend bystander skills training sessions at the beginning of each academic year.

### **Federal Efforts and Compliance**

For Washington’s institutions of higher education, there are currently two federal statutes that govern sexual violence prevention and response on college and university campuses: Title IX of the United States Education Act Amendments of 1972 (Title IX); and amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (the Clery Act), as most recently amended by the Campus Sexual Violence Act (SaVE Act) provisions of the Violence of Women Act Reauthorization of 2013. Over the past decade and a half, the United States Department of Education’s Office of Civil Rights (OCR) has issued increasingly prescriptive guidance in the form of Dear Colleague Letters (DCLs) identifying specific policies

and procedures that an institution should adopt and follow to satisfy obligations under Title IX. OCR's guidance on these issues culminated in its issuance of the April 4, 2011 Dear Colleague Letter (the DCL), which, at the time, was the agency's most definitive guidance to date regarding Title IX and student-on student sexual violence.

Since the 2011 DCL and the following OCR guidance as well as passage of the VAWA and new state regulations, colleges and universities have found themselves at a resource deficit in terms of the number of staff necessary to comply with these directives. It is estimated that, because of increasing federal and state regulation, higher education institutions will individually need one to two additional full time equivalent staff directed toward this effort. However, colleges have received no new funding specifically for this purpose from either the federal or state government since 2011.

### **Statewide Sexual Assault Conference**

In early 2014 the six presidents who comprise the Council of Presidents decided to organize Washington's first ever statewide conference on campus sexual violence. They directed COP staff to work with relevant public and private, four and two-year college campus leaders and experts to plan the 2014 Washington State Higher Education Conference on Sexual Assault Prevention and Response at the University of Washington in Seattle. The event assembled more than 500 administrators and faculty from 50 public and private colleges and universities across Washington to enhance their awareness of key issues, discuss data and reporting challenges, identify opportunities for improvement, learn about successful approaches, and increase prevention efforts to reduce sexual violence on campus. Sixteen different breakout sessions were offered, including sessions on understanding federal regulations, learning from the military, rape myths and rape culture, engaging men, student panel and cultural perspectives. All conference related materials are available on COP's [website](#).

### **State Action**

In Senate Bill (SB) 5719 the 2015 Washington State Legislature affirmed the importance of sexual violence prevention efforts through creation of a 14-member Task Force broadly representing higher education, law enforcement, and other key constituencies.

The statutory duties of the Task Force are to:

- Develop a set of best practices that institutions of higher education may employ to promote the awareness of campus sexual violence;
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- Develop recommendations for improving collaboration amongst institutions and law enforcement;

- Report to the Legislature and the institutions of higher education on its goals and recommendations annually.

The Task Force held 12 public meetings across the state over an 18-month period to hear from national and state experts, research and highlight best practices, and discuss how to make Washington state a national leader in addressing the issue of campus sexual violence. This is the second of two reports required in SB 5719; the [first](#) details early efforts by the Task Force and highlights efforts around sexual violence prevention and response at all of Washington's public baccalaureate, community and technical, and ten nonprofit colleges and universities that comprise the Independent Colleges of Washington.

Also in 2015, policymakers enacted two other, related pieces of legislation. Senate Bill 5518 related to campus sexual violence response. The provisions of SB 5518 include:

Disciplinary Process. All institutions of higher education must refrain from establishing a different disciplinary process on the same campus for a matter of sexual violence. The disciplinary process cannot change based on the status of the student, including membership on an athletic team, fraternity or sorority, academic year, or any other characteristic.

Confidentiality and Reporting Protocols. Institutions of higher education must make information available on an annual basis to all current and prospective students, employees, and parents of students, regarding the institution's compliance with campus sexual violence confidentiality and reporting requirements. Resources must also be made available to all campus sexual assault survivors on a confidential basis, regardless of whether the survivor chooses to proceed with a formal report.

Uniform Campus Climate Survey. The four-year institutions must conduct a campus climate assessment to gauge the prevalence of sexual assault on their campuses. The State Board for Community and Technical Colleges (SBCTC) must conduct a uniform campus climate assessment survey of community and technical colleges. The surveys should assess:

1. Student and employee knowledge of:
  - a. their institution's Title IX coordinator's role;
  - b. campus policies and procedures addressing sexual assault and violence;
  - c. options for reporting sexual violence as a survivor or witness;
  - d. the availability of resources on and off campus, such as counseling, health, and academic assistance;
2. Student and employee bystander attitudes and behavior;
3. Whether survivors reported to the institution or law enforcement and why they did or did not report; or
4. Student and employee attitudes and awareness of campus sexual violence, including any recommendations for better addressing and preventing sexual violence.



Institutions and the SBCTC must report their findings to the Governor and the higher education committees of the Legislature by December 31, 2016. The report must include a plan or proposal to undertake a statewide public awareness campaign on campus sexual violence. An assessment conducted to comply with new federal requirements pertaining to campus climate assessments fulfills this requirement.

Memoranda of Understanding. The SBCTC, COP, and ICW must submit reports to the Governor and the Legislature's higher education committees by July 1, 2016, on steps taken by their institutions to enter into memoranda of understanding with local law enforcement that set forth each party's roles and responsibilities related to the prevention and response to sexual assault.

Distribution of Policies. Institutions must develop and distribute sexual violence policies and procedures that include, but are not limited to, information about their Title IX compliance officer or other individual responsible for handling sexual violence violations. Institutions must annually distribute these policies and procedures.

As that legislation contained other reporting requirements for colleges and universities and to ensure the most efficient use of limited resources, the Campus Sexual Violence Task Force chose to comprehensively address issues related to both campus sexual violence prevention and response. Consequently, the Task Force divided into seven subcommittees in order to complete its work:

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- *Memoranda of Understanding*

The result of the work of the Memoranda of Understanding Subcommittee resulted in the July [2016 joint report](#) from the COP, SBCTC, and ICW on efforts to develop memoranda of understanding between colleges and universities and local law enforcement.

One of the foundational principles of its work was that all meetings and efforts related to Campus Sexual Violence Prevention Task Force would be conducted in a transparent and open manner. Thus key stakeholders, including leaders from the Office of Superintendent of Public Instruction (OSPI), the Washington Student Association (WSA), and Washington Coalition of Sexual Assault Programs (WCSAP) were invited to attend meetings and lend their expertise to the conversation. All three organizations attended multiple Task Force meetings and participated in subcommittee meetings, with WCSAP staff serving as co-chair of the “Special Populations” Subcommittee.

The Task Force would like to particularly reaffirm the importance of the student voice in addressing campus sexual violence. COP staff presented an update on the Task Force's work to the WSA Board of Directors in Seattle in September 2016. The student voice must be thoroughly represented in campus-based sexual violence prevention and response efforts for them to be relevant and effective.

### **Prevention Efforts in K-12 Education**

**(To be included)**

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## **Final Recommendations**

Below are the 17 recommendations of the Campus Sexual Violence Prevention Task Force. Detailed information on each of the recommendations is provided through individual reports provided later in this report from each subcommittee.

- 1. Funding for campus prevention education must be adequate.**
  - **Action Required:**
  - **Responsibility:**
  - **Timeline:**
  
- 2. Prevention education efforts on campuses must be evaluated for effectiveness.**
  - **Action Required:**
  - **Responsibility:**
  - **Timeline:**
  
- 3. Pursue opportunities to increase prevention and education opportunities in K-12 schools that involve input from higher education and other stakeholders (such as a K-20 task force).**
  - **Action Required:**
  - **Responsibility:**
  - **Timeline:**
  
- 4. Establish and fund ongoing opportunities for program and professional development (training twice per year on best practices; teams of prevention leaders).**
  - **Action Required:**
  - **Responsibility:**
  - **Timeline:**
  
- 5. Encourage further institutional efforts to research and comprehensively address prevention and response efforts for specific populations such as students with disabilities, students under age 18, and GLBTQ students.**
  - **Action Required:**
  - **Responsibility:**
  - **Timeline:**
  
- 6. Continue assessment (e.g. – surveys, focus groups, and other measures) efforts and jointly report to policymakers every three years with a campus climate update.**
  - **Action Required:**

- **Responsibility:**
  - **Timeline:**
- 7. Detail estimates of past and future assessment costs (including surveys).**
- **Action Required:**
  - **Responsibility:**
  - **Timeline:**
- 8. Build holistic assessments that comprehensively address the needs of special populations and are tailored to an individual’s affiliation with the institution. This includes but is not limited to specific populations such as students with disabilities, students under age 18, and GLBTQ students.**
- **Action Required:**
  - **Responsibility:**
  - **Timeline:**
- 9. Add a new chapter to state statute (RCW 28B) regarding communication between sexual violence survivors and victim advocates.**
- **Action Required:**
  - **Responsibility:**
  - **Timeline:**
- 10. Make relevant training more available for police, prosecutors, and judicial officers.**
- **Action Required:**
  - **Responsibility:**
  - **Timeline:**
- 11. Promote regional communication through the expanded and robust use of Sexual Assault Regional Teams (SARTs).**
- **Action Required:**
  - **Responsibility:**
  - **Timeline:**
- 12. Explore expansion of the innovative “You Have Options” Program.**
- **Action Required:**
  - **Responsibility:**
  - **Timeline:**
- 13. Promote Offender-Focused and Victim-Centered Prosecution.**
- **Action Required:**

- **Responsibility:**
- **Timeline:**

**14. Educate juries through the use of local expertise.**

- **Action Required:**
- **Responsibility:**
- **Timeline:**

**15. Institutions of higher education are encouraged to adopt policies regarding the disclosure of disciplinary actions to other institutions in instances where a transferring student has been expelled or suspended for misconduct that poses a significant risk to the campus community.**

- **Action Required:**
- **Responsibility:**
- **Timeline:**

**16. Exempt student conduct proceedings in institutions of higher education from the Administrative Procedures Act in state statute (RCW 34.05).**

- **Action Required:**
- **Responsibility:**
- **Timeline:**

**17. Adopt due process standards specifically applicable to college student conduct proceedings.**

- **Action Required:**
- **Responsibility:**
- **Timeline:**

## Subcommittee Summaries

### Campus Climate Assessment Subcommittee

Chaired by Joe Holiday, State Board for Community and Technical Colleges

#### Introduction

Substitute Senate Bill 5518 (2015) required the public four-year institutions and the State Board for Community and Technical Colleges to conduct sexual assault campus climate assessments to gauge prevalence, student and employee knowledge, bystander attitudes and behavior, and reporting behavior. To meet that requirement, the Campus Sexual Violence Prevention Task Force formed concurrently by SSB 5719 (2015) created a Campus Climate Assessment Subcommittee to coordinate university and college efforts. Sub-Committee members are listed separately in this report.

The Sub-Committee met approximately monthly during the 2015-16 academic year via conference call. SSB 5518 required that the State Board conduct a uniform assessment at all of its 34 community and technical colleges, while the six four-year institutions developed or selected their own assessment instruments. Much of the early work of this group was focused on identifying best practices in campus climate assessment and possible survey instruments to use. Among the resources consulted were those of the White House “Not Alone” Task Force and the ARC3 consortium of sexual assault researchers and student affairs professionals formed in response to the White House Task Force’s call to action. In the end, each of us developed our own survey instrument or decided to use an existing one, relying heavily upon these resources. These instruments are available upon request but are not included in this report.

Other issues the Sub-Committee worked through included how to adequately assess both students and employees, whether to ask employees the sexual violence prevalence questions, developing protocols to guard against re-traumatizing survivors of sexual violence, and how to avoid gender stereotyping and victim-blaming in survey question design. Because the State Board needed to conduct a uniform assessment at all 34 of its colleges, it faced some unique challenges, including how to incorporate information about local resources (considered a best practice) and how to coordinate with human resources, student services, Title IX, public information and research staff at all of the institutions.

Due to the variety of assessment instruments used and the generally low response rates overall, it is difficult to reach conclusions – especially about the prevalence of sexual assault – or to make recommendations going forward other than these general ones:

- Institutions of higher education should continue assessment (e.g. – surveys, focus groups, and other measures) efforts and jointly report to policymakers every three years with a campus climate update.

- It would be useful to develop detailed cost estimates of past and future assessment costs (including surveys).
- Assessments should be holistic (not limited to surveys) and should comprehensively address the needs of special populations including but not limited to specific populations such as students with disabilities, students under age 18, and LGBTQIA students
- Assessments should be tailored to an individual's affiliation with the institution, providing relevant information for students and informing each institution's sexual violence prevention and response efforts (including Title IX activities)

### State Board for Community and Technical Colleges

The state board for community and technical colleges (SBCTC) began organizing the work to comply with SSB5518 in the spring of 2015. It was evident that nature of the required assessment would necessitate a federally assured Institutional Review Board (IRB) approval. SBCTC does not have a federally assured IRB within its purview that covers all 34 institutions; therefore, the initial idea was to hire a third party to conduct the assessment on behalf of SBCTC. Since estimates of doing so (more than \$80,000) were prohibitive given that SBCTC received no funding to implement the bill, we decided to conduct the assessment ourselves. We were able to re-allocate \$20,000 internally to hire LawRoom/Campus Clarity to administer our survey on-line, but SBCTC bore responsibility for developing the instrument, assuring IRB approval, promoting and disseminating the survey, and analyzing the results, all at a significant cost in professional staff time at the State Board and among senior human resources, student services, and research administrators at all 34 institutions.

In fall of 2015 a committee made up of members from our colleges and SBCTC staff was established to develop the instrument. These members included representatives from human resources, student services, and research. The subcommittee evaluated existing instruments that had been used at other institutions (e.g., the White House Not Alone resource and a WSU Campus Climate Assessment) and drew survey questions from these examples to develop the instrument that would best meet the bill's requirements. SBCTC asked the Washington State IRB (within the Department of Social and Health Services) to review our survey instrument and protocol.

The final instrument, cover letter, and consent form were finalized in January of 2016. SBCTC staff shared a copy of the IRB request including survey materials with our system stakeholder groups (presidents and senior officers for human resources, student services and research) to begin the communication process. Some of the groups expressed concerns about the survey itself and the graphic language contained within the questions about the prevalence of sexual assault.

SBCTC revised the prevalence questions to respond to stakeholder concerns but still follow best practices for assessing sexual assault. The changes to the survey were finalized and an addendum to the IRB application was submitted on March 9, 2016. Following the revision and addendum,

SBCTC's executive director sent a memo to college presidents on March 10<sup>th</sup> reiterating the reason for the survey and the importance of their support throughout the process. This memo included all of the survey materials to include the cover letter, which described how respondents had the right to opt out of the survey or could bypass questions they did not feel comfortable answering. A communications plan was sent out to college Public Information Officers on March 22<sup>nd</sup>. IRB approval for the survey and protocol was received on March 29<sup>th</sup>.

On April 1<sup>st</sup>, 2016, we began the process of working with the Directors of Institutional Research at each of the 30 college districts to compile the email distribution lists that would be required for both the employee survey and the student survey, for a total of 60 separate assessments. All employees would be sent the same version of the survey and all students the same version of their survey; however, each list had to be uploaded into the survey tool individually by college because of the requirement for access to localized campus resources as part of the assurances provided within our IRB approval.

The survey launched on May 2<sup>nd</sup> and was open for two weeks. Within the first week, we received approximately 130 emails to our survey email account with a combination of feedback, complaints, and accolades on the process. During the administration phase, we encountered several issues related to the massive number of emails that were being sent from Campus Clarity's server. Some of the college's junk mail filters blocked the survey, necessitating re-delivery. When the survey process ended, we finished with an approximate 2% response rate from students (with significantly fewer responses on the prevalence questions) and a 14% employee response rate.

The requirement to "gauge the prevalence of sexual assault" required SBCTC to ask personal questions of a graphic sexual nature, triggering the IRB approval process. We warned people of the sensitive nature of the questions, and per the IRB requirements, had to provide an example of the most graphic one. In addition, we were required to disclose any potential discomforts and the risk of a harmful reaction to those participating in the assessment. Most questions (97%) were attitudinal, but the nature of the four questions that asked about personal sexual activity required us to elevate the level of potential risk to participants for the entire assessment significantly. The response rate to the four prevalence questions was especially low.

The administration of this survey for 30 college districts coordinated by the SBCTC was a substantial burden for a significant number of people across the system. The Director of Policy Research and Director of Student Services for SBCTC spent a several hours a week from October 2015 through May of 2016 working on the coordination of this survey. Once the instrument was developed, the college PIO's had to spend time on the communications plan for each individual college, working in coordination with the college president and SBCTC. The email distribution list requirement required multiple staff at each of the 30 college district campuses to work in coordination with the SBCTC Policy Research Director. It was evident that many college staff felt a lack of control and oversight for a project that was happening with their



own college staff and students. Given the challenges with system-level coordination, if this type of assessment is needed again in the future, funding would need to be provided to hire out a coordinating entity for survey design, administration, and analysis or to bring on additional staff.

#### Summary of Survey Results: Students

*It is important to reiterate from the previous section that the convenience sampling approach and the extremely low response rate for students make it impossible to reach generalized conclusions, especially in regard to the prevalence questions. With that important caveat, findings are summarized below, presented according to the categories of assessment mandated by SSB5518.*

#### *Prevalence of Sexual Assault, Domestic and Dating Violence, and Stalking On and Off Campus*

- Of the respondents who answered the prevalence of sexual assault questions (~2,600), on average 95% reported no incidences of rape, other sexual assault, or attempted sexual assault
- 2% of respondents reported multiple incidents of rape or attempted rape
- 4% of respondents reported multiple incidents of sexual assault or attempted sexual assault
- 88% of respondents reported no incidents of stalking; of those reporting at least one incident, 36% reported the incident happened on campus, while 33% reported it happened on and off campus
- 98% of respondents (~1,321) reported no incidence of sexual violence in their dating/romantic relationships
- 96% reported no incidence of physical violence in their dating romantic relationships
- 89% reported no emotional abuse in their relationships, but 8% reported multiple instances

#### *Knowledge of Title IX, Policies and Procedures, Options for Reporting, and Availability of Resources*

- A majority of the 3,482 respondents in this section were either somewhat or very aware of campus resources such as public safety, counseling services, and student services; however, close to 70% of respondents were unaware of campus behavioral intervention teams
- Most of the 3,304 respondents on questions about knowledge of policies and procedures were unaware of formal procedures; i.e., what happens when a student reports (this is likely because those respondents had never utilized processes)
- A majority of respondents indicated “neutral” or “agree” on statements indicating awareness of other campus resources available either on or off campus, e.g. health resources; however, 40% would not know where to go to make a report or where to get help at the institution
- Only 22% of 3,000 respondents were aware the institution had a Title IX coordinator

#### *Bystander Attitudes and Actions*

- Respondents reported most likely to take action if they witnessed assault, saw potential harm to an unconscious person, and to talk to a friend who might be in an abusive relationship

- Respondents were more likely to report they would take action if the victim was female than if the victim was male
- Respondents were least likely to indicate likeliness to and actual intervening/reporting a couple having a verbal fight
- Most common reasons for not intervening in any circumstance were: they didn't feel it was their business, they were concerned for their personal safety, or social anxiety/shyness

#### *Reporting by Survivors*

- More than half of respondents reporting some form of sexual assault (n = 303) told someone about it: close friend, boyfriend/girlfriend, parent or guardian, and counselor
- 5% (n=11) told law enforcement, 4% (n=8) told campus security, 4% (n=8) told a sexual assault advocate, and 2% (n=5) told a crisis line operator
- Respondents who reported the incident did so because it was against the law, were angry about being victimized, and wanted to protect others
- Respondents who did not report had other priorities to deal with, were concerned no one would believe them, and some did not know how to report

#### *Attitudes and Awareness of Sexual Violence Issues and Recommendations*

- 85% have not discussed or rarely discuss with peers; less than 10% have recently attended any programs about sexual violence. 35% report taking steps to learn more
- A majority of respondents report feeling safe from sexual violence on (79%) and off campus (64%) (agree and strongly agree)
- Approximately the same number of respondents either don't know or agree that sexual violence is a problem on most college campuses
- A majority of students are unaware if stalking or sexual violence is an issue at the institution
- Of those who responded other than "do not know," 65% disagree or strongly disagree that sexual violence is an issue
- Nearly 80% of respondents disagree or are neutral that there is nothing they can do to prevent sexual assault
- In regard to rape myths, 85% of respondents strongly disagree and disagree victims are responsible, while 67% agree or strongly agree men should be taught sexual assault is wrong and 80% agree or strongly agree women should be taught how to defend themselves

#### *Student Recommendations for Addressing and Preventing Sexual Violence*

##### *On-campus:*

- More education for victims on how to report
- More education for staff on how best to handle
- More education on what sexual assault is, focused on all genders
- Workshops, orientations, brochures, signs, handouts, etc.
- Better lighting, cameras, and security

- Self-defense classes, ability to carry protection

*Off-campus:*

- More information about off campus resources; bring speakers and representatives to campus
- More information about process of reporting an incident off campus
- Make sure students know on campus resources are available to them (counseling) even if an incident takes place off campus
- Be an advocate in the community

Summary of Survey Results: Employees

*As in the previous section, it is important to reiterate that the convenience sampling approach and the low response rate make it impossible to reach generalized conclusions.*

*Prevalence of Sexual Assault, Domestic and Dating Violence, and Stalking On and Off Campus*

- Of the respondents who answered the prevalence of sexual assault questions (~3,000), on average 98% reported no incidence of rape, other sexual assault, or attempted sexual assault on/off campus
- Less than 1% of respondents to this question reported multiple incidents of rape/attempted rape
- 1% of respondents who answered this question reported multiple incidents of sexual assault and attempted sexual assault
- 93% of respondents reported no incidents of stalking. Of those reporting at least one incident (223), 66% reported the incident happened on campus and 21% reported it happened on and off campus
- 99% (~1,321) reported no incidence of sexual violence in dating/romantic relationships
- 97% reported no incidence of physical violence in their dating romantic relationships
- 93% reported no emotional abuse in their relationships, but 5% reported multiple instances

*Knowledge of Title IX, Policies and Procedures, Options for Reporting, and Availability of Resources*

- The majority of employees are aware of each of the campus resources, the modal response being “very aware”; similar to students, employees are least aware of behavioral intervention teams
- Most employees (between 50 and 70%) understand procedures and policies; employees are least aware what happens after a student reports a claim of sexual violence
- Except for academic resources, most employees agreed other resources are available to students
- 86% of 3,389 respondents were aware the institution had a Title IX coordinator

### *Bystander Attitudes and Actions*

- Respondents reported most likely to take action if they witnessed assault, saw potential harm to an unconscious person, and to talk to a friend who might be in an abusive relationship
- Respondents were more likely to report they would take action if the victim was female than if male
- Respondents were least likely to intervene with a couple having a verbal fight
- Most common reasons for not intervening in any circumstance were: concern for personal safety, didn't feel it was their business, or felt the situation was not criminal or had escalated

### *Reporting by Survivors*

- More than half of respondents reporting some form of sexual assault (n = 46) told someone about it: faculty/staff at institution and close friend
- 2% (n=2) told law enforcement, 5% (n=5) told campus security, 5% (n=5) told human resources
- Respondents who reported the incident did so because it was against the law, were angry about being victimized, and wanted to protect others
- Only two people responded to questions of about not reporting

### *Attitudes and Awareness of Sexual Violence Issues and Recommendations*

- 70% have not discussed or rarely discuss with peers, compared to 85% of students; 37% recently attended a program about sexual violence compared to less than 10% for students. 51% report taking steps to learn more versus 35% of students
- A majority of employees report feeling safe from sexual violence on (72%) and off campus (81%) (agree and strongly agree), where students are more likely not report not feeling safe off campus
- A majority (54%) agree/strongly agree sexual violence is a problem on most college campuses
- A majority of employees unaware if stalking or sexual violence is an issue at the institution
- Of those who responded other than "do not know," 52% disagree or strongly disagree that sexual violence is an issue as compared to 65% of students
- 93% of employees strongly disagree and disagree victims are responsible, compared to 85% of students
- 70% employees agree or strongly agree more education for men is needed, compared to 67% of students
- 78% employees agree or strongly agree women should be taught how to defend themselves, compared to 76% of students

### *Employee Recommendations for Addressing and Preventing Sexual Violence*

#### On-campus:

- More mandatory education and training for employees to bring awareness to the issues

- More education for staff on how best to recognize sexual violence and handle incidents
- More awareness about the role of the Title IX coordinator
- Support victims by following through on claims
- Add health resources to campus
- More education on what sexual assault is, focused on all genders and students from different cultural backgrounds. Workshops, orientations, brochures, signs, handouts, etc.
- Better lighting, cameras, and security
- Self-defense classes, ability to carry protection

Off-campus:

- Similar themes around campaigns, raising awareness, and education
- Advertise on campus the resources available off campus
- Have community resources come to campus for workshops or presentations
- Better partnerships with off campus resources and experts (law enforcement, hospitals, counselors, social services, etc.)
- Educate students about dangers and risk factors of things that happen off campus
- Safety tips
- Support students and provide resources even if incident takes place off campus
- Be an advocate in the community

**Central Washington University (To be included)**

**Eastern Washington University (To be included)**

**The Evergreen State College (To be included)**

**Washington State University (To be included)**

**Western Washington University (To be included)**

**University of Washington (To be included)**

**Proposal for a Statewide Public Awareness Campaign on Sexual Violence (To be included)**

## **Advocate Confidentiality Subcommittee**

### **Background**

By enacting Chapter 28B.112 RCW, the legislature has recognized the need for Washington's institutions of higher education to provide protections, resources, and services to students, staff and faculty survivors of sexual assault, domestic violence, dating violence, and stalking. *See* RCW 28B.112.005. Additionally, the legislature has required Washington's two-year and four-year colleges and universities to make information and support services available to all campus sexual assault survivors on a confidential basis, regardless of whether the survivor chooses to file a formal report of sexual assault. RCW 28B.112.020(2). Institutions must also comply with federal law and guidance pertaining to sexual violence prevention, awareness and disciplinary processes. In particular, there are new federal requirements included in the Campus Sexual Violence Elimination Act, as well as guidance from the Department of Education's Office for Civil Rights which require institutions of higher education to address the confidentiality of a survivor's information, including personally identifiable information within records maintained by the institution.

To address the question of whether Washington's institutions of higher education are well-positioned to comply with state and federal law and provide confidential resources and services to students, staff and faculty, the task force created the Advocate Confidentiality Subcommittee. The subcommittee undertook the task of reviewing Washington law to identify any issues or areas of concern relating to providing confidential information and services to survivors of sexual assault, domestic violence, dating violence, and stalking. In reviewing Washington's confidentiality provisions for victim advocates in RCW 5.60.060, as well as exemptions for crime victims in the Public Records Act, RCW 42.56.240, it is clear that the legislature has taken a strong position in favor of protecting communications between survivors and victim advocates. However, it is not clear from existing state law that these confidentiality provisions extend to students, staff and faculty who receive services from victim advocates employed by institutions of higher education. Instead, it appears that there may be a conflict between the legislature's requirement that public colleges and universities provide confidential information and services to survivors and a public institution's ability to protect that information under current law.

As a result and in an effort to allow Washington's institutions of higher education to comply with legislative intent and federal requirements, the subcommittee makes the following recommendation:

### **Recommendation**

The task force recommends that the legislature enact a provision within Chapter 28B.112 RCW providing for confidentiality of a survivor's communications with, and records maintained by, victim advocates serving colleges and universities and provide that such records are subject to disclosure by victim advocates only upon the consent of the survivor; clear, imminent risk of serious physical injury or death of the survivor or another person; mandatory reporting requirements; or court order following an *in camera* review.

## **Rationale**

In reviewing Washington law, it is evident that current law does not clearly address confidentiality for survivors receiving services from victim advocates employed by institutions of higher education. For example, RCW 5.60.060 prohibits community-based domestic violence and sexual assault advocates from disclosing confidential communications or being examined in court without the consent of the survivor, unless there is a clear, imminent risk of serious physical injury or death of the survivor or another person. But it is not clear whether these protections apply to campus-based victim advocates or victim advocates operating under an agreement with institutions of higher education, or to victim advocates employed by campus law enforcement agencies. However, it is imperative that survivors be provided with the same opportunity to receive resources and protections that survivors using community-based advocates receive, for the same reasons, in addition to the requirements of RCW 28B.112.020(2). Further, federal policies and guidance from the Department of Education require that institutions of higher education specify how survivor records, including personally identifiable information, will be maintained by their school. Survivors in college who seek assistance from a campus-based advocate should have the same assurances of confidentiality for highly sensitive and private information as survivors who seek assistance from community-based advocates.

Similarly, it is not clear under current law whether survivors of sexual violence on college and university campuses have any protection from disclosure of records created by campus-based victim advocates under the Public Records Act, RCW 42.56.240. For example, under Federal privacy laws, students are entitled to review copies of their own student records which are broadly defined as records “[d]irectly related to a student” that are “maintained” by an educational institution. 34 C.F.R. §99.3. The breadth of this definition could be interpreted to include the release of communications between a survivor and a campus-based advocate that are related to another student. In order to protect survivors from the unnecessary disclosure of personally identifiable information that may be invasive and may allow their perpetrators to locate them or learn of confidential discussions with victim advocates, institutions of higher education must be able to protect such information from disclosure under the Public Records Act. Discussions between survivors and victim advocates are not pertinent to the work of government officials, nor the type of information that should be subject to public disclosure. Yet, it is imperative and part of the legislature’s intent in enacting Chapter 28B.112 RCW that students, staff and faculty be provided with resources and services to help address incidents of sexual and interpersonal violence.

Institutions of higher education should have clear guidance and be able to assure survivors seeking resources and services from campus-based victim advocates that their confidential communications and personally identifiable information will not be disclosed to others, in the same way that survivors receiving services from community-based victim advocates are protected against such disclosures.

**Student Conduct Process Subcommittee**  
**Chaired by Amanda Paye, University of Washington**

## I. Issue Overview: Student Conduct Processes

The Student Conduct Processes Subcommittee was tasked with (1) reviewing student conduct procedures used to adjudicate sexual violence allegations at Washington’s public institutions of higher education, (2) developing best practices and recommendations for improvements in these adjudicative processes, and (3) identifying statutory and institutional barriers to implementing these best practices and recommendations. This work was intended to address the Task Force’s charge to “develop recommendations for improving institutional campus sexual violence policies and procedures.”<sup>1</sup>

In its December 2015 report, the subcommittee identified common challenges among colleges and universities for adjudicating student conduct matters and identified areas for improvement, including:

- Reducing the amount of time it takes to fully adjudicate a student conduct charge;
- Creating an accessible and understandable process for students and other participants; and
- Ensuring the process maintains fidelity with our institutions’ educational missions.

Since that report, the subcommittee has continued with its analysis and review, including:

- Reviewing and analyzing current student conduct practices;
- Assessing best practices;
- Reviewing and analyzing alternative student conduct practices at other higher education institutions outside of Washington State that have been subject to review or investigation by the Office for Civil Rights related to their compliance with Title IX; and
- Evaluating the intersection of these practices with the Washington State Administrative Procedures Act (APA), Chapter 34.05 RCW.

It has become apparent to the subcommittee that the APA imposes an overly restrictive and legalistic structure on to student conduct proceedings and lacks critical provisions necessary to ensure colleges and universities can bring their adjudicative processes into compliance with federal law and guidance regarding responding to sexual violence. The subcommittee has concluded that clarifications relating to administrative procedures under Washington State law are necessary to ensure that public institutions of higher education can, not only, achieve compliance with federal laws and guidance regarding responding to allegations of sexual violence, but also ensure that student conduct matters are adjudicated in a timely, fair, and equitable manner that aligns with the institution’s educational goals and purposes. Given that conclusion, this final report of the subcommittee describes and analyzes the necessary clarifications and provides options for implementing those clarifications.

## II. The Intersection of the APA and Federal Law and Guidance

The following is a brief summary of the provisions of federal law and guidance and state law relating to the adjudicative process for student conduct matters involving sexual violence.

### A. VAWA and OCR Guidance

VAWA and OCR guidance require that schools create disciplinary processes that are fair, prompt, and equitable for respondents and complainants in order to effectively respond to allegations of sexual assault, sexual harassment, domestic violence, dating violence, and stalking (collectively, “sexual violence”). Best practices are also emerging, which includes alternative models to the more traditional “hearing” model (sometimes tracking the adversarial,



evidence-gathering criminal justice model). Preliminary reports from the field suggest that these innovative alternative models, in which college “judicial boards” play a more limited role, encourage reporting and bolster trust in the process, while at the same time safeguarding the respondent’s right to notice and to be heard.<sup>2</sup>

### **B. Washington State Administrative Procedures Act (APA)**

In Washington, student conduct proceedings at public institutions of higher education are governed by the Administrative Procedure Act (APA), Chapter 34.05 RCW. In 1988, the State of Washington engaged in a wholesale legislative effort relating to adjudicative proceedings by state agencies. Many separate laws and regulations were repealed in favor of creating one overarching Administrative Procedures Act. The legislative intent was “to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making.” RCW 34.05.001. At that time, the APA borrowed heavily from civil court proceedings, including adopting a more traditional “hearing” model.

## **III. ANALYSIS OF NECESSARY CLARIFICATIONS AND IMPROVEMENTS**

Since 1988 when the APA was passed, the proliferation of laws, regulations, and federal guidance specifically related to the adjudication of student conduct matters, has created a high-level of complexity. In the past several years, Washington colleges and universities have engaged in work to revise their student conduct codes to comply with the rapidly developing federal law, while attempting to interpret how to fit these processes into the APA framework. Developing effective and compliant adjudicative proceedings for these complex matters, in addition to reconciling the nearly 30-year-old provisions of the APA, is an increasingly difficult challenge. Given these complexities and without clarity from the legislature, colleges and universities are at risk of inconsistent applications of the APA and, if subjected to judicial review, are at risk of inconsistent outcomes by Washington courts. The following sections provide an overview of these challenges and describe areas of possible improvement based on federal laws and guidance and identified best practices.

### **A. Equitable Rights for Complainants in the Adjudicative Process**

VAWA and OCR guidance require that institutions of higher education provide victims of sexual violence an equal opportunity to access and participate in adjudicative proceedings. OCR also states, however, that “because a school has a Title IX obligation to investigate possible sexual violence, if a hearing is part of the school’s Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.”<sup>3</sup> Additionally, victims must also have the right to seek an appeal of a disciplinary determination, if such an appeal is available to respondents.

Although equity for the victim and the respondent in student conduct proceedings is required by federal law, the APA, as currently drafted does not clearly delineate such an arrangement. Those who are a “party” to the matter also have certain rights to participate in the process; however, it is currently unclear what impact on the process should result, if any, if a complainant appears as a party but chooses not to fully participate in the hearing process. Finally, under the APA, a respondent is also entitled to seek judicial review of the outcome of the agency’s action, yet it is

unclear how or whether a victim would have standing as a party to seek judicial review of an adverse outcome.

### **RECOMMENDATION 1:**

*The subcommittee recommends that the Legislature adopt laws that ensure victims of sexual violence have standing to participate as parties in student conduct proceedings as they choose, including the right to seek judicial review of a final order by the agency.*

#### **B. Role of Attorneys**

The educational purpose underlying student conduct proceedings makes them unique and sets them apart from administrative proceedings conducted by other state agencies. Unfortunately, some interpret the APA as inviting parties to import court room techniques and procedures that run counter to these requirements, including the filing of pleadings, motions, and discovery. This tendency is exacerbated if attorneys are permitted to appear on behalf of parties. Such a result undermines the educational goal of the proceeding, delays proceedings, and can place students who cannot afford legal representation at a distinct disadvantage.

OCR and VAWA recognize students' rights to be accompanied by an advisor of choice, including an attorney. Students subject to conduct proceedings, particularly those who may also be facing related criminal charges, should be able to be advised by counsel, if they choose. As an advisor, the attorney can help the student prepare for each step of the proceeding and assist with drafting written statements or questions for witnesses. The advisor and the student also may take breaks to consult as needed. Student conduct professionals also recognize this dilemma for students and support that students have legal representation, but caution that schools “[f]acilitate a process that is just and equitable; do not permit attorneys, parents, or anyone to create power differentials that adversely affect the process, or re-victimize anyone.”<sup>4</sup>

The APA does not specifically address the extent to which an attorney may actively participate in a student conduct matter, which leaves it subject to varied interpretations. At some institutions, student conduct proceedings have already begun to resemble mini-courtrooms with pre-hearing motions and discovery orders. Members of the subcommittee anticipate that this trend will grow unless there is clarification regarding the appropriate role an attorney can play in these types of proceedings.

#### **C. Cross Examination**

Although OCR and VAWA do not require that student conduct matters be adjudicated through a “hearing”, if a school chooses to provide a hearing, they warn against turning adjudications into miniature court proceedings. To this end, educators and federal regulators encourage panels to employ questioning techniques that are respectful to the students and do not risk re-traumatizing victims of sexual violence. For this reason, if colleges and universities utilize do provide a hearing to adjudicate student conduct matters, OCR strongly discourages schools from allowing the parties to personally question or cross-examine each other, as it may be traumatic and/or perpetuate the hostile environment.<sup>5</sup> If a school utilizes a hearing in its process, a best practice has evolved where hearing panels conduct the questioning between the parties and the parties have the opportunity to offers questions for the panel to ask. That provides the

opportunity for the panel to review and rephrase questions as necessary to maintain the educational tone.

## **RECOMMENDATION 2**

*The subcommittee recommends that students participating in a student conduct proceeding be required to speak for themselves, if they choose to participate at all. If the student has the resources to retain an attorney, the subcommittee further recommends that the attorney's role be to advise the student during the process, but not act in lieu of the student (i.e., actively presenting argument or directly questioning the parties or witnesses). Regardless of the presence or role of counsel, the parties' questions should be asked through the conduct chair or equivalent, not through direct cross examination.*

### **D. The Appeal Process and Timelines**

OCR has issued guidance recommending that adjudications of most allegations of sexual violence be completed within sixty (60) calendar days, barring unusual circumstances. In order to meet this guideline, institutions must provide notice, conduct a fact-finding investigation, hold a hearing or engage in another decision-making process to determine an outcome and, if the student is found to be responsible, impose an appropriate sanction within that 60-day period. Neither VAWA nor OCR require that schools provide an appeal process, but OCR has warned that an unreasonably lengthy appeal process may also call into question whether an institution's sexual violence procedures are sufficiently prompt.

Currently, the APA permits lengthy adjudication timelines and the respondent also has a right to "appeal" the institution's initial decision. For example, under the APA, a student has twenty (20) days to file an appeal from the student conduct officer's initial notice of discipline. Once this appeal is filed and a review completed, the process may extend over several more months. Under the APA, the respondent may also seek judicial review of the agency's final order. Although the school may act on its final order even if a judicial review is sought, these additional layers of review add to the uncertainty for the respondent, the complainant, and the school.

A lengthy review process that spans multiple quarters or academic years is also likely to have a negative impact on student participants, both emotionally and academically. Multiple layers of review may force students to re-tell their stories and be subject to questioning by multiple individuals, which may be re-traumatizing for victims. In reviewing others colleges and universities' processes, a practice is emerging of providing a level of internal review, but for limited reasons, such as to review for procedural error, consider newly discovered evidence not reasonably available during the Investigation, and/or to avoid disproportionate sanctioning.

## **RECOMMENDATION 3**

*The subcommittee recommends that timelines and processes be designed to achieve the goal of finality within a 60-day time period and permits colleges and universities to determine their own model (whether utilizing panels, hearings, etc.). Although the subcommittee supports providing for an internal review process, it recommends avoiding a multi-layered review process that creates uncertainty and redundancies for our students.*

#### **E. Standard of Review**

OCR guidance states that schools must use a preponderance-of-the-evidence (i.e., more likely than not) standard of review in any Title IX proceedings, including any fact-finding and hearings.<sup>6</sup> In at least one case, OCR has found a school out of compliance because it adopted a different standard.<sup>7</sup>

While the APA is silent on the standard of review, it is well settled under Washington case law that a preponderance of the evidence standard applies. All Washington public colleges and universities have adopted the preponderance of the evidence standard; however challenges have been raised to using that standard. This creates uncertainty for our colleges and universities and the risk of inconsistent decisions upon judicial review.

#### **RECOMMENDATION 4**

*All Washington colleges and universities have clearly stated through rulemaking that they are applying the preponderance of the evidence standard of review. The legislature should consider, however, whether legislating this standard of review could avoid unnecessary challenges and the risk of inconsistent decisions upon judicial review.*

#### **F. Jurisdiction**

OCR guidance states that schools must hold students accountable for off-campus conduct that is sufficiently serious to limit or deny another's ability to participate in or benefit from the school's educational program, i.e. creates a hostile environment.<sup>8</sup>

The APA is a mechanism for individuals to challenge state agencies' decisions, but is not designed to hold individuals accountable under a student code of conduct, particularly when that conduct causes injury to another. This illustrates the unique nature of student conduct processes and why the APA does not provide an effective process for them. Although each school has adopted regulations relating to their authority to exercise jurisdiction over off campus conduct, there have been challenges to colleges and universities exercising that scope of authority. This, again, creates uncertainty for our schools and a risk of inconsistent decisions upon judicial review.

#### **RECOMMENDATION 5**

*Washington colleges and universities should and have adopted provisions governing jurisdiction in their student conduct code that are sufficiently broad to include off-campus misconduct as provided for by OCR. The legislature should consider, however, whether legislating the scope of a school's authority consistent with that stated by OCR could avoid unnecessary challenges and the risk of inconsistent decisions upon judicial review.*

### **IV. OPTIONS FOR IMPLEMENTING RECOMMENDATIONS**

#### **Legislative Proposal 1: Exempt Student Conduct Proceedings from the APA**

The intent underlying adoption of the APA was to create a single set of procedures for reviewing agency action. This "one-size fits all" approach, however, does not recognize the unique educational mission of public institutions of education. Nor does it provide institutions with the flexibility and creativity to implement procedures that are responsive to both the needs of the student parties and the campus community, as well as in alignment with the rapidly developing

federal law and guidance surrounding such issues. Because of these concerns and the specific issues identified above, the subcommittee recommends that the legislature exempt student conduct matters from the APA and allow colleges and universities to create their own processes based on these recommendations and best practices.

Many actions and decisions by higher education institutions are excluded from the APA, allowing each institution to develop its own standards and procedures. RCW 34.05.010(16). These include academic standards such as admission, academic advancement, academic credit, graduation and the granting of degrees. In regard to academics, each school is able to develop its own process for evaluating academic advancement, yet colleges and universities are not able to develop their own processes for evaluating student conduct, including academic misconduct.

If this option is adopted, it could have the benefit of allowing colleges and universities to develop processes most effective for their students. Under the federal constitution, respondents in student conduct proceedings are entitled to notice and an opportunity to be heard. Consequently, colleges and universities will still be held accountable to ensure that respondents are provided with due process while allowing each school to determine how to equitably provide rights to the complainant, as set forth in federal law and guidance.

### **Legislative Proposal 2: Adopt Due Process Standards Specifically Applicable to College Student Conduct Proceedings.**

If the legislature chooses to exempt public institutions of higher education from the APA, the subcommittee would further recommend that it adopt legislation that would reconcile state and federal law governing student conduct proceedings and the equitable rights of students in matters relating to sexual violence. This statutory scheme could include provisions specifying the minimum due process standards applicable to all student conduct proceedings, while, at the same time, providing the schools the flexibility to create procedures that are tailored to each school's culture, traditions of student-governance, shared governance with faculty, and available resources. At the same time, the subcommittee urges that the legislature not attempt to create a "uniform" or "model code." As described in our previous report, because of the significant differences between schools, particularly between four and two year colleges and universities, attempting a one-size-fits all solution would not be feasible or effective.

In SB 5518, the legislature already signaled its concern and willingness to instruct colleges about standards for the responding to sexual assault on college campuses, while recognizing challenges and improvements. The bill would set minimum standards for colleges and universities, but also permit colleges and universities to create policies and processes that will be most effective given each school's unique needs.<sup>9</sup>

### **Legislative Alternative: Selectively Amend the APA**

In the event that wholly exempting institutions of higher education from the APA is not achievable, the subcommittee, at a minimum, urges the legislature to selectively amend the APA to address the recommendations, above. These amendments would clarify that victims of sexual violence have the right to participate as parties in student conduct proceedings and any resulting appeals, give public institutions of higher education explicit authority to conduct student conduct proceedings in a manner that is consistent with federal law and that advances the institution's educational mission, and provide institutions with the flexibility to shorten deadlines and the

appeal process.

## V. CONCLUSION

The subcommittee recommends Legislative Proposals 1 and 2. The affected colleges and universities would also invite the opportunity to develop proposed legislation and collaborate with the legislature.

The subcommittee recommends this solution primarily colleges and universities have already engaged in extensive work to translate federal law and guidance into the APA framework. From this experience, the subcommittee is concerned that attempting to work within the APA would not provide sufficient flexibility or allow for sufficient creativity to continue to apply this framework to these complex matters.

Beginning with a clean slate will allow for thorough evaluation of the unique issues relating to adjudications of student conduct matters and the individual needs and culture of each college and university. At the same time, consideration can be given to creating a model that is in alignment with federal laws and guidance regarding adjudications of sexual violence matters.

<sources, footnotes>

### **Recommendation: Adoption of Policies Authorizing the Disclosure of Disciplinary Information to Transfer Institutions for Students Found Responsible for Misconduct that Poses a Threat to the Health, Safety, and/or Welfare of the Campus Community.**

#### **Background:**

Many educators have raised concerns that students who have been found responsible for sexual violence offenses are able to transfer to another educational institution without disclosing their disciplinary history.<sup>1</sup> Without this information, transfer institutions cannot make informed decisions regarding admission of these students and/or are unable to take steps to mitigate risks a student with a history of sexual violence may pose to members of the campus community should they be admitted.

#### **Recommendations:**

The Student Conduct Subcommittee recommends that institutions of higher education in the State of Washington adopt policies that allow for and encourage the exchange of student disciplinary information to transfer institutions. The Subcommittee is sensitive to the fact that institutions will want to devise policies that reflect their individual missions and circumstances, and, therefore, is not prepared to make a “one size fits all” recommendation regarding what information should be shared or how this information should be communicated. Any such policy, however, should take into consideration the nature of the violation giving rise to the sanction (i.e. did it involve physical violence, sexual violence, or cause significant harm to others) and the extent to which the student might pose a threat to the health, safety, and welfare of the transfer institution’s campus community. The subcommittee also recommends institutions consider both establishing time limits on the disclosure of disciplinary information, and adopting measures to ensure disciplinary information is only shared with other institutions of higher education, and not future employers.

## **Rationales:**

### *Student Confidentiality Concerns*

Personally identifiable student records are subject to confidentiality protections under the Family Educational Rights and Privacy Act (FERPA). FERPA, however, contains an exception that authorizes institutions of higher education to share education records of students who are applying to transfer to the transfer institution without securing the student's written consent.<sup>2</sup> Before doing so, however, FERPA requires that the institution provide advance notice to the student either by including the transfer disclosure policy in the institution's published FERPA policies, or by providing the student with individualized notice of the policy prior to disclosing the records.<sup>3</sup> Institutions can also adopt application procedures that ask transfer students whether they have a disciplinary history and, if so, require them to provide a written release authorizing disclosure of disciplinary records as part of the application process.

### *Types of Misconduct*

While this recommendation initially arose from concerns related to sexual violence on campus, it became apparent to the Subcommittee that it may also be appropriate to share disciplinary information linked to misconduct that poses a threat to health, safety, and/or welfare of the campus community (e.g. conduct that that involved physical violence or caused significant harm to others). Adoption of disclosure policies could ensure that transfer institutions receive timely notice of the student's disciplinary history and an opportunity to appropriately mitigate health and safety risks posed by the student's presence in the campus community.

### *Notice Requirements*

The Subcommittee has concluded that decisions regarding how to share disciplinary information with transfer institutions should be left to individual institutions. Some institutions note serious disciplinary action on a student's transcript. Others communicate this information through a letter to the transfer institution. What is critical is that institutions have a policy in place that makes clear that disciplinary information meeting the institution's stated criteria for disclosure is available to the transfer institution as a matter of course.

## **Prevention Subcommittee**

**Chaired by Kelly Schrader, The Evergreen State College**

At the institutional, state, and federal level much of the attention paid to sexual violence on campus focuses on responding to reported incidents. In order to reduce the number of students affected by sexual violence, institutions of higher education, K-12 schools, and communities must engage in robust prevention activities. All institutions of higher education participating the Higher Education Act's Title IV student financial assistance programs are subject to the Clery Act which requires prevention education and programming. Programs to prevent sexual assault, dating and domestic violence, and stalking must include primary prevention activities and ongoing awareness campaigns. Programs must promote positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change norms in healthy and safe directions. The prevention subcommittee offers the following recommendations on prevention education and programming at institutions of higher education and in Washington state.

### **I. Provide funding for sexual violence prevention education and program evaluation.**

#### **Background**

Of the innovative programs featured in the National Sexual Violence Resource Center's Prevention Assessment: Innovations in Prevention report, programs reported "prevention budgets ranged from \$80,000 to \$1.5 million with a median of \$182,000." Further, programs reported "the number of full-time employees (FTEs) dedicated to prevention work ranged from 1-7 with the average being 2.8 FTEs." The programs featured in the report served communities of varying sizes, including a program that served a university community. Distinct funding for prevention programs and staff reduces the unresolvable tension between using resources to prevent victimization and helping those who are victimized.

Providing funding for evaluation of prevention programs allows institutions to regularly assess prevention programs for potential improvement and consistently evaluate compliance with new laws and federal guidance. Conducting assessments regularly also provides information to internal and external stakeholders. Evaluation also allows redirection of funds away from unsuccessful programs. Evaluating prevention programs coupled with assessing overall campus climate and prevalence rate may allow institutions to see connections between prevention activities and reductions in prevalence rates or increase in bystander behaviors.

#### **RECOMMENDATION 1**

We recommend that the legislature provide funding for prevention education and program evaluation distinct from funding for response services or compliance activities.



## **RECOMMENDATION 2**

We recommend institutions consider the following criteria when evaluating prevention programs:

- Utilization of [programs rated effective or promising](#) by the CDC.
- Program consistency with the CDC's [Principles of Effective Prevention](#).
- The levels of the [Socio-Ecological Model](#) included in prevention and education programming.
- Inclusion of populations typically underrepresented in prevention education and programming and specific efforts to outreach to these populations.
- Long term reductions in prevalence rates on campus.

## **II. Develop comprehensive, developmentally appropriate prevention education for Washington students.**

### Background

According to the [Rape, Abuse, and Incest National Network \(RAINN\)](#), there are, on average, 288,820 victims age 12 and older of rape and sexual assault each year in the United States. The majority of victims are under age 34—15% are age 12-17 and 54% are age 18-34. When perpetration and victimization occurs at an early age, prevention education, including bystander interventions, must begin even earlier to ensure that the population has the knowledge and skills needed. Primary prevention education and programming aims to prevent first-time occurrence of sexual violence. With young people facing this highest risk for victimization, we recommend a collaborative effort to provide primary prevention education and programming throughout a student's attendance in Washington's schools to reduce the number of students affected by sexual violence. Collaborators from outside the education sector may allow Washington to address sexual violence with a public health approach.

## **RECOMMENDATION 3**

We recommend that a future work group that includes all relevant stakeholders make recommendations about holistic, state wide prevention education for Washington's students.

## **RECOMMENDATION 4**

We recommend that colleges engage in systemic sexual violence prevention program development funded by the legislature.

### Program Development Proposal:

Ten to fifteen colleges are selected for intense cohort model training over an extended time period (2-4 years recommended to make lasting and systemic changes to their infrastructure, policies/procedures, and personnel). The cycle is repeated until all Washington colleges and universities have an opportunity to participate.

- Colleges select teams of at least 5 including:
  - Executive level administrator with decision making and budget authority (e.g. Vice President of Student Services)
  - Counseling administrator
  - Faculty member(s) in position of influence (e.g. union leadership, participation in faculty senate, etc.)
  - Campus safety/University police
  - Any staff with jobs focused on the content area (survivor advocates, Title IX Coordinators, conduct officers, BIT/CARE team leaders, etc.)
- Full day trainings provided 2x per year in Fall and Spring:
  - Trainings are created for participants in that they build upon each other to help colleges build effective programs to address sexual assault on college campuses.
  - First half of the day focuses on best/promising practices in sexual assault prevention (including presentations from national and regional experts).
  - Second half of the day focuses on team planning/implementation of the specific issue covered in the AM (facilitated by coaches who can assist in project plans, identifying barriers, and brainstorming solutions).
  - This method allows teams to start with inspirations and great ideas and then work as a group to plan out actionable details of what needs to happen on individual campus – since decision makers are members of the group positive change is likely to happen in reasonable timeframes.
- Pre- and post-assessment of campus attitudes around sexual assault and prevalence of sexual assault will provide data on the effectiveness of the intervention.

## **Criminal Justice Subcommittee**

### **Chaired by Natalie Dolci, Coalition Ending Gender-Based Violence**

Task Force members have given a great deal of consideration to the component of SB 5719 which requires that the Task Force “Develop recommendations for improving collaboration on campus sexual violence issues among institutions of higher education and between institutions of higher education and law enforcement.”

The Criminal Justice Subcommittee (the “Subcommittee”) is comprised of a multidisciplinary team, including community and university victim advocates, community and university legal services, university law enforcement and the state prosecutor’s association.

The Issue: Sexual assault and sexual violence among college students is rarely reported to law enforcement and when it is reported, few offenders are held accountable by the criminal justice system. According to the Campus Sexual Assault Study in 2007, while 1 in 5 college women report being sexually assaulted, as few as 12% report the assault to law enforcement.<sup>1</sup> To compound the low reporting rate, studies have shown that few reports lead to arrest and even fewer are actually prosecuted.<sup>2</sup> While many factors contribute to the low reporting, arrest and prosecution rates, it is clear that many victims have lost faith in the criminal justice system as a resource for holding offenders accountable.

The Subcommittee recognizes that campus adjudications are an essential component to increasing awareness and prevention of sexual assault at colleges and universities, but it is equally important that the state’s criminal justice system serve as a resource for community safety and offender accountability. An improved response from the criminal justice system will likely result in increased reporting and successful prosecution of sexual violence cases in Washington. Through this lens, the Subcommittee seeks to identify and recommend best practices for a victim-centered and offender-focused response to reports of sexual violence.

The Subcommittee is seeking the Legislature’s endorsement for several key recommendations that would elevate Washington’s response to campus sexual violence, including:

- 1. Make relevant training more available for police, prosecutors, and judicial officers**
- 2. Promote regional communication through the expanded and robust use of Sexual Assault Regional Teams (SARTs)**
- 3. Explore expansion of the innovative You Have Options Program**
- 4. Promote Offender-Focused and Victim-Centered Prosecution**
- 5. Educate juries through the use of local expertise**

#### **1. Training for Criminal Justice System Professionals**

Training is a critical component of providing a victim-centered response to allegations of sexual violence. Sexual assault investigations and prosecutions require the participation of objective, trained, trauma-informed and experienced personnel who can respond in a thorough and effective manner in order to increase the likelihood of reporting and reduce victim attrition in the process.

## **Law Enforcement Specialized Training**

In order to effectively respond to these sensitive cases, ongoing training is necessary for law enforcement. Since the Department of Education Office for Civil Rights' Dear Colleague Letter of 2011, there have been substantial efforts to expose campus personnel and investigators to the dynamics of sexual violence and trauma for their internal investigations. The Dear Colleague Letter put schools on notice that they needed to have "reliable and impartial" investigations of sexual assaults and that they needed to advise students of their rights to report to law enforcement.<sup>3</sup> Subsequent guidance and legislation such as the Violence Against Women Act Reauthorization of 2013's Campus SaVE Act<sup>4</sup> and the White House Task Force to Protect Students from Sexual Assault<sup>5</sup> continued to emphasize the importance of having trained investigators. This training cannot exclusively be offered to on-campus investigators conducting Title IX Investigations. There must be efforts to support law enforcement investigations so that they can effectively support victims and put the best possible case forward for prosecution. It is imperative that law enforcement also benefit from the training standards being set for on-campus personnel. Increased training will be made available to law enforcement on best practices for investigating adult victim, non-stranger sexual assault cases. This training will increase the capacity of both patrol officers and detectives who respond to sexual assault cases. Training should include subjects relevant to campus sexual assault cases:

- Alcohol-Facilitated Sexual Assault
- Trauma Responses to sexual assault such as the Neurobiology of Trauma<sup>6</sup>
- Trauma-Informed Interview Techniques such as Forensic Experiential Trauma Interview (aka FETI)<sup>7</sup>
- Offender-Focused Investigative Strategies
- Effective Report Writing: Using the Language of Non-Consensual Sex<sup>8</sup>

Training opportunities should be made available across the state in a variety of modalities that should be ongoing. We recommend that the Legislature allocate funding to regional training efforts. Suggested platforms include:

- Criminal Justice Training Commission
- Hosting training events with a campus focus such as the National Center for Campus Public Safety's Trauma-Informed Investigation and Adjudication Training Institute<sup>9</sup>
- Washington State Coalition of Sexual Assault Programs Regional Trainings
- Washington Association of Prosecuting Attorneys Conference

Training opportunities should encourage team attendance. Patrol officers, detectives, advocates and prosecutors should all be encouraged to pursue cross-training in order to encourage a multi-disciplinary approach.

Though in-person training opportunities are preferable, the Task Force wishes to highlight free, distance-learning training modalities that can be made available to officers such as End Violence Against Women International's Online Training Institute. End Violence Against Women is a non-profit organization devoted to improving the criminal justice system's

response to sexual assault, stalking and domestic violence. They offer a free Online Training Institute which contains modules on a variety of topics germane to sexual assault investigations. Each module is approved by the Office on Violence Against Women.<sup>10</sup>

### **Judicial Officer Training**

Training is vital for all participants in the Criminal Justice System. The Subcommittee would like to draw attention to existing resources in the region such as the Sexual Offense Bench Guide.<sup>11</sup> In addition to these valuable tools, the Subcommittee recommends that in-person training be provided to Judicial Officers. Judges and Commissioners who oversee trials, sentencing hearings, and Sexual Assault Protection Order hearings. They must have training in:

- How to oversee Trauma-Informed courts
- The dynamics of non-stranger, adult victim sexual assault cases
- The dynamics of alcohol facilitated sexual assault
- The context of State and Federal laws and guidance that influence the Higher Education system's response to these crimes

The Subcommittee recommends that funding be made available and that training be offered through an organization such as Legal Momentum's National Judicial Education Program.<sup>12</sup>

## **2. Regional Communication - Establish or participate in a SART and include campus personnel**

### **Invite Campus Representatives**

A Sexual Assault Response Team (SART) is a multi-disciplinary team of professionals with core members representing the various disciplines -medical, victim advocacy, legal services, law enforcement, and prosecution – that respond to sexual assault cases. Additional members may include, but are not limited to, representatives from elderly and adult services, mental health agencies, sex offender treatment programs, probation and parole and the forensic laboratory.<sup>13</sup> For the purposes of improving response to campus sexual violence, the Task Force proposes that relevant local College and University staff be invited to participate in local SART efforts. It is critical to create a forum to examine the unique dynamics of adult victim sexual assault cases. University delegates may include:

- Campus-based Advocates
- Campus Law Enforcement or Public Safety Officers
- Title IX Coordinators
- Title IX Investigators

SARTs improve the quality of investigations through increased training opportunities, development of investigative skills, improved evidence collection and increased understanding of victim trauma which may lead to improved victim interviews, resulting in more effective prosecutions.

### **Use this as a Forum to Evaluate Memoranda of Understanding**

The Memoranda of Understanding (MOUs) developed per State Bill 5518 will be unique to local law enforcement agencies. We propose that departments have training and assessment

plans for their MOUs. Police departments and prosecutors should be evaluating the benefit of these MOUs and treat them as dynamic and evolving documents that merit regular amendment. The SART team will serve as a space to monitor and enhance the use and efficacy of the MOUs.

### **Promote Cross-System Coordination**

Participation in a SART has been associated with significant cross-system coordination.<sup>14</sup> This is an opportunity to increase communication and promote integrating victim advocacy throughout the criminal justice system's response. Victim advocates play an integral role in survivor participation in the criminal justice system. When survivors of sexual assault have access to advocacy services, they can receive support, referrals and information throughout their experience with the criminal justice system. Being treated with respect has been linked to survivor confidence in their decision to participate in the investigative process.<sup>15</sup> Creating regular opportunities for law enforcement and advocacy to coordinate can strengthen this much needed collaboration.

### **Respect Confidentiality**

SART participants must respect the professional ethics of their colleagues from other disciplines. Advocates, therapists, and some campus staff are bound by confidentiality and may not be able to share specific information about clients/students in this forum without a confidentiality waiver. However, their knowledge of trends, general victim experiences, and climate is of essential value to such a group.

Confidentiality considerations should always be a priority. Some communities may decide to have these meetings serve as a forum to discuss trends and areas for process improvement. Other communities may decide to discuss specific cases. If specific cases are discussed, it should always be an intentional and thoughtful decision how much identifying information is shared about a specific survivor.

By meeting regularly, SART members learn about the different roles and responsibilities of the participating disciplines and determine what the values, commitments and goals will be in their specific community.

### **All Members Can Set the Agenda**

No one office should "own" the SART. Representatives from different disciplines should feel free to contribute agenda items and to bring concerns to this forum. A key element of a SART is the case review. The Criminal Justice system should always be adapting to improve its response to these cases. This forum could serve to aid members through consultation as a case progresses from investigation to prosecution and it can also look at areas for improvement after the final disposition of a case. All members of a SART will have valuable contributions to this process.

### **3. Rethinking the Model - Expand the “You Have Options Program” in Washington**

You Have Options Program (YHOP) is an innovative program for law enforcement response to sexual assault cases. It places an emphasis on victim-centered investigations, increasing reporting and the importance of identifying serial offenders. Locations that have implemented YHOP have increased prosecutions and reporting rates in their sexual assault cases. Ashland, Oregon’s Police Department is located in a jurisdiction of approximately 20,000 permanent residents and 7,000 college students. In the first four years of adopting their You Have Options Program, they saw an increase in reporting of 106%.<sup>16</sup> The You Have Options Program is a standardized program with 20 elements.

If a police department wishes to adopt this program, they will send a delegate to attend a Train the Trainers curriculum and then that delegate will come back and facilitate implementation. They will have the benefit of the standardized materials, policy templates, and databases furnished by the You Have Options Program. Victims have a right to report online, anonymously, through an advocate or via more traditional means. They can provide “information only” reports or they can request a partial or full investigation. Victims are given full information about the criminal justice process before they share their story. Officers use trauma-informed interviewing techniques such as the aforementioned FETI interview.

Garfield County Sheriff’s Department in Eastern Washington has adopted a You Have Options Program. Since implementation, they have reported an increase in reporting, prosecution, and collaboration with local advocacy services. The Subcommittee recommends that the legislature support expansion by funding police department delegates to receive this Train the Trainers curriculum.

### **4. Offender-Focused Investigation and Prosecution**

Far too often, survivors of sexual assault feel that their actions are scrutinized while the offender’s actions are excused. There is substantial research to support that adult sex offenders are often serial offenders<sup>17</sup>. The Subcommittee proposes that investigations and prosecutions take a deliberate look at the offender. Violence Prevention and Threat Assessment fields see this as a fundamental best practice.<sup>18</sup> This means consulting collateral sources of information such as:

- Previous police reports including cases that were not prosecuted
- Protection order petitions
- Military disciplinary records
- Title IX or Workplace Sexual Harassment/Assault complaints

Robust investigations into an offender’s prior bad acts can help establish the severity of the pattern of behavior and focuses the investigation on the appropriate target, the suspect. This can help alleviate the concern many victims express, that they were put on trial.

## **Improving Prosecution**

Though we acknowledge that there are already many regional protocols in place, we recommend that prosecutorial protocols incorporate best practices whenever possible. Such practices include:

### **ADOPT A VICTIM-CENTERED APPROACH**

Prosecutors should adopt a victim-centered approach to adult sexual assault. This approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner.

### **VERTICAL PROSECUTION**

Vertical prosecution is recommended in all sexual assault cases. Vertical prosecution means the same prosecutor, who has specialized training and/or experience in sexual assault cases, is assigned to the case from beginning to end. With vertical prosecution, victims are able to work with the same prosecutor and investigator from the time potential charges are first reviewed through the sentencing of the offender. In addition, vertical prosecution fosters a feeling case ownership for the prosecutor, and likely produces better results.

### **MEETING THE VICTIM**

It is recommended that prosecutors meet with the victim prior to making a determination about whether or not to charge the defendant. Meeting with the victim gives prosecutors increased insight not available through written reports. Meeting with the victim is also part of being victim centered, demonstrating to the victim that the prosecution is taking the case seriously and provides an opportunity to build trust between the victim and the prosecutor. The prosecutor should

- make sure the victim knows they have a right to have an advocate present
- answer the victim's questions as fully and accurately as possible.
- adopt a non-judgmental and "seeking to understand" perspective in speaking with the victim
- explain the legal process and the prosecutor's discovery obligations, including the accumulation of relevant materials and the disclosure and admissibility of sensitive and potentially privileged information concerning the victim. (example medical records)
- review the victim's rights and explaining the victim's role throughout the prosecution process
- inquire about any threats defendants have made toward victims, and respecting and supporting the victim's efforts to maintain their safety

### **VICTIMS WHO CHOOSE NOT TO PARTICIPATE IN PROSECUTION**

A victim-centered approach also means that prosecutors should support victims who choose not to cooperate in moving the case forward. Prosecutors may tell victims the consequences associated with not participating in prosecution, but it should be the rare case that prosecutors should seek to go forward when the victim chooses not to participate.

### **COLLABORATION WITH LAW ENFORCEMENT**

Prosecutors should review the investigative file early in the process to identify incomplete information or gaps in the evidence, and follow through with law enforcement on informing



them of what evidence is still needed. Working closely with law enforcement ensures the collection of important, timely evidence. Prosecutors should consult with law enforcement when making difficult decisions involving the case. At minimum, prosecutors should inform law enforcement when plea bargaining, and sentencing. When reviewing the case with a victim, a joint interview with the investigating detective also ensures better collaboration and clearer communication about missing or unclear information in the case.

## **CHARGING DECISIONS**

A victim-centered response to sexual assault takes into account the potentially lifelong impact that charging decisions have on victims. It is the responsibility of the prosecutor's office to notify a victim of sexual assault that a decision has been made not to charge the case. The notification should occur promptly and if possible, before the defendant is notified. Best practice is to make notification in person or by phone whenever possible. In addition, as a courtesy to the investigating agency, the agency should be consulted and informed of the prosecutor's decision not to file. Notification of the victim should include an honest explanation of the reasons for the decision not to charge. Prosecutors should make available to all victims information about community resources, legal and victim advocacy services to assist with safety and protection options related to declining to filing charges.

## **PRIVACY**

Law enforcement and prosecutors taking a victim-centered approach in sexual assault cases should recognize the criminal process can be invasive by further violating a victim's privacy rights and retraumatizing them. Though certain private and privileged pieces of information may not be admissible at the trial level, the unnecessary disclosure during the investigation and pretrial process can be embarrassing and humiliating for most victims. To ensure a victim's privacy rights are protected to the extent possible in the criminal process, some practices to implement can be that:

- victims must be informed of their rights related to rape shield, medical, mental health and other privilege on an ongoing basis
- releases and waivers of confidentiality should be drafted to be very limited in their scope and make sure the victim understands signing any release is voluntary
- instead of only requesting records directly from providers, the victim should be given the option of requesting and providing the records themselves, to confirm there is redaction of non-relevant information
- victims should be made aware of their right to seek protective orders on requests or subpoenas for privileged records
- being clear on expectations and rights that may be asserted by a victim in their defense interview or deposition

Where law enforcement or prosecution sees a conflict in assisting a victim protect their privacy interest, a victim should be informed of victim rights or legal services and victim advocacy programs that provide assistance in advocating for these protections on behalf of the victim.

## **MEMOS TO THE FILE**

The prosecutor should write a memo explaining the reason for not filing a charge. The memo should contain enough facts to help a prosecutor recall the decision to explain later if necessary. The prosecutor should be mindful that such memos are subject to public records requests and

should be careful not to engage in victim-blaming, instead should provide a balancing of the strengths and weaknesses that led to the determination. If the information would not be shared with the victim in person, a prosecutor should not include it in their decline memo. Prosecutors working on campus sexual assault cases should also respect that there may be concurrent Title IX Investigations on campus. They should make it clear in documentation that the decision not to file is based on a criminal standard and should have no negative influence the victim's right to access other remedies such as Sexual Assault Protection Orders, Civil Suits or Title IX Investigations.

### **PREPARING THE VICTIM AND FAMILY**

The victim-centered approach recognizes that the victim is the center of the investigation. The victim is the person most affected by the crime and in the majority of sexual assaults, the only witness to the assault. Providing information, education and respect to victims and their families promotes cooperation and helps to build the strongest case possible. When a decision is made to charge the offender, prosecutors must prepare victims and family members for the next steps in the justice process. Prosecutors can do this by:

- Understanding the victim's trauma
- Refer the victim to community and campus resources that can help address the effects of trauma, including sexual assault advocates
- Educating victims about the steps in the process of the investigation and prosecution
- Educating victims about attendance at court proceedings
- Educating victims on the estimated timeline of the case
- Preparing victims for testimony and estimating the amount of time they will be spending on the stand
- Preparing victims and family members for disclosure of traumatic information in the trial (e.g. 911 tapes, photos, etc.)
- Informing victims about media coverage, including the presence of media in the courtroom
- Cautioning victims about potential consequences of discussing the case with others outside the criminal justice system including individuals and entities who hold privilege or discussing the case in public settings
- Preparing victims, family members or other loved ones on how to respond to inquiries from defense attorneys, investigators and the media.

### **PROTECTING VICTIM SAFETY**

Ensuring the physical and emotional safety of victims during the prosecution phase is critical. In some cases, victims may be subject to intense pressure and harassment from others. To promote victim safety, prosecutors should:

- Advocate for bail conditions that consider the safety of the victim and the community
- Ensure that "no contact orders" are entered, if desired by the victim
- Consider the victim's specific needs in requesting restrictions in "no contact orders" Provide the victim a copy of the criminal "no contact order", clarifying pre- or post-conviction and expiration dates
- Inform victims about the terms of bail conditions for the offender
- Assist victims to develop a safety plan in the event of retaliation or harassment

- Be mindful of the need to separate victims and defendants during any proceedings at the courthouse

### **INITIAL COURT APPEARANCES OR PRE-TRIAL HEARINGS**

A victim's attendance at court may be a difficult experience. In some cases, it may be the first time the victim and defendant meet face to face after the assault. Because of this, it is not uncommon for defendants to attempt to intimidate the victim. A victim-centered response recognizes that court appearances are a critical emotional juncture for the victim. When working with victims, the prosecutor and/or advocate should:

- Discuss the advantages and disadvantages of victim attendance at court proceedings
- Plan where the victim will be waiting prior to and during all court proceedings to limit the victim's exposure to the defendant, his family or his supporters
- Attempt to ensure the victim and the defendant do not enter the courtroom at the same time

### ***PLEA NEGOTIATIONS***

A victim's input should always be sought before plea discussions. Explain the rationale for offering a negotiated plea and ask victims for their feedback. Minimally, the prosecutor should:

- Never present a plea without first attempting to contact the victim
- Educate the victim about the process of plea negotiations and sentencing options
- Make sure the victim is informed of the disposition being offered to the defendant

### ***TRIAL PREPARATION***

A victim-centered approach recognizes the need to fully prepare victims for the realities of the trial process. Involving victims in preparing the prosecution's case will empower them and improve their testimony. To prepare victims for trial, the prosecutor/advocate should:

- Provide a courtroom tour
- Prepare the victim for all testimony and anticipated cross examination
- Remind the victim that what she shares with family and friends is not privileged information and is subject to subpoena. Explain the right of privilege held by crisis center advocates and encourage the victim to use advocates for emotional support
- Caution the victim about speaking about the case with others in a public place such as a courthouse restroom or any other place where potential jury members or others may be present before, during and after the trial
- Discuss with the victim the benefits and challenges of attending certain phases of the trial
- Prepare the victim for the various possible outcomes of the trial

### **SENTENCING**

Sentencing can be an empowering and/or traumatic experience for victims and their family members. To prepare victims for the sentencing phase of a trial, prosecutors should:

- Inform the victim regarding their rights at sentencing
- Prepare the victim about how to address the court
- Prepare the victim for sentencing arguments by the prosecution and defense
- Advise that family members and friends may be present to support the victim

- Insist that a “no contact order” is included in sentencing, if desired by the victim

### **5. Expert Witnesses - Make use of local experts to create and maintain a list, support the expanded use of such expertise**

Research has identified that prosecutions can be inhibited by juror misconceptions about sexual assault and victim behavior.<sup>19</sup> In some cases jurors could benefit from expert testimony in the unique dynamics of these cases. Expert witnesses may assist jurors in understanding elements of non-stranger sexual assault such as the neurobiology of trauma<sup>20</sup>, the use of alcohol to facilitate sexual assault, delayed reporting and other trauma responses. Universities in Washington benefit from numerous researchers who are content experts in these matters. The Criminal Justice Subcommittee proposes that a collaboration in which researchers could serve as experts for the prosecution in criminal justice cases. We have attached a preliminary list of local experts who are willing to participate in these cases. We request that this list be maintained and updated, that prosecutors share information about their experiences using experts, and that training on the use of experts be made available to prosecutors. This could be in the form of a CLE webinar or a breakout at a regional conference such as WAPA.

<Sources>

**Underserved Populations Subcommittee**  
**Chaired by Kelly Schrader, The Evergreen State College**

Background Information

In 2011, the Office for Victims of Crime, a component of the Office of Justice Programs, U.S. Department of Justice published resources for sexual assault response teams. The toolkit called on response teams to consider culture and diversity stating, “sexual violence knows no boundaries. It does not distinguish between racial, ethnic, or cultural backgrounds. Victims vary by social class, spiritual beliefs, physical and mental abilities, sexual orientation, gender, age, literacy, and previous victimizations.”<sup>1</sup> Prevention education and programming must also take culture and diversity into account in order to address the unique needs of a community or identity group.

The current task force primarily focused on what the Centers for Disease Control and Prevention (CDC) call universal interventions—“approaches that are aimed at groups or the general population regardless of individual risk for sexual violence perpetration or victimization.”<sup>2</sup> Further work is needed to create interventions for the diverse population of students attending Washington’s colleges and universities.

RECOMMENDATION 1

The subcommittee recommends that a future and representative work group specifically to examine best practices and make recommendations regarding populations that are traditionally underserved by campus sexual violence prevention and response efforts. We recommend the future work group include students in a variety of ways including, but not limited to, focus groups, feedback from student organizations, and connection with the Washington Student Association. The scope of the work is outside what the current task force could accomplish. The future work group or task force would consider:

- Community/Needs Assessment,
- Advocacy Services,
- Policies and Campus Adjudication Procedures,
- Prevention Education and Programming.

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<sup>1</sup> <https://ovc.ncjrs.gov/sartkit/focus/culture-print.html>

<sup>2</sup> <http://www.cdc.gov/ViolencePrevention/pdf/SVPrevention-a.pdf>

**Memoranda of Understanding (MOU) Subcommittee**  
**Chaired by John Vinson, Washington Association of Sheriffs and Police Chiefs**

Federal and State lawmakers have recognized that Memorandums of Understanding (MOU) between institutions of higher education and local law enforcement agencies are an important means of ensuring that sexual violence and other serious criminal activity are fully addressed in an appropriate manner on college and university campuses. MOUs can help institutions of higher education and local law enforcement agencies coordinate their investigations of and responses to sexual violence incidents and ensure that the parties understand their respective roles and responsibilities, particularly when an incident gives rise to both student conduct and criminal proceedings.

In June 2016, the Task Force issued two MOU templates in conjunction with the Washington Associations of Sheriffs and Police Chiefs (WASPC) and the University Policing Committee (UPC) that encouraged institutions of higher education to use these templates as a departure point for discussions and negotiations with local law enforcement agencies. One template was developed for institutions of higher education with commissioned police officers on their campuses. The other template was developed for institutions with non-commissioned security personnel. Now that the templates have been in circulation for several months, the Task Force has received the following feedback and recommendations from its members.

- Although several institutions report having successfully negotiated MOUs with local law enforcement, many other institutions are reporting that law enforcement agencies are reluctant to engage in MOU negotiations citing lack of resources and/or concerns about assuming additional liability. To move this process forward, the Task Force recommends that the legislature adopt legislation funding joint training for local law enforcement and institutions of higher education that will educate both parties about each others' respective roles and obligations when responding to campus sexual violence incidents and provide guidance regarding the issues and concerns that should be addressed in an effective and meaningful MOU.
- The Task Force also recommends the legislature adopt legislation that limit liability exposure to local law enforcement agencies as they attempt to negotiate and adopt MOUs.
- When approaching local law enforcement agencies about entering into a MOU, institutions should be prepared to engage in active negotiations. If the institution is using one of the templates, it should fully understand the template provisions, and take time to tailor the template to fit the institution's capabilities and resources
- MOU negotiations will necessarily touch upon a complex matrix of policy, resource, and community issues. Therefore, the Task Force recommends that institutions with noncommissioned security forces have a cabinet level administrator at the table during the negotiations with law enforcement.

- Criminal investigations by law enforcement agencies are governed by criminal law and procedures. Law enforcement agencies are also subject to Washington’s Public Records Act. Law enforcement agencies are not subject to student confidentiality laws or guidance found in the Family Education Record Privacy Act (FERPA), Title IX guidance, or the Campus SaVE Act. Consequently, law enforcement agencies may be unable or unwilling to enter MOUs requiring that they protect student or survivor confidentiality.
- Institutions that receive services from the same law enforcement agency should consider collaborating on a single MOU. Having a single MOU applicable to all institutions within a police agency’s service area will reduce the administrative burden on the law enforcement agency and provide a uniform set of expectations and responsibilities for all parties.
- During MOU negotiations, the parties should consult with a sexual assault advocate to ensure that the survivor’s interests are being adequately addressed.

In closing, the Task Force members would like to express their appreciation of the skill, professionalism, and collaboration that local law enforcement agencies already provide to colleges and universities throughout Washington State. The Task Force anticipates that development and adoption of MOUs will make these strong relationships even more effective and fruitful in the future.

## **Appendix A: Campus Sexual Violence Prevention Task Force Work Group Members**

John Vinson (Chair),  
Washington State Association of Sheriffs and Police Chiefs

Kim Anderson  
Washington State University

Richard DeShields  
Central Washington University

Natalie Dolci  
Coalition Ending Gender-based Violence

Paul Francis  
Council of Presidents

Sue Guenter-Schlesinger  
Western Washington University

Joe Holliday  
State Board for Community and Technical Colleges

Chelsea Lamberson/Laurie Connelly  
Eastern Washington University

Bruce Marvin  
Office of the Attorney General

Amanda Paye  
University of Washington

Eric Richey  
Whatcom County Prosecuting Attorney's Office

Rhoretta Rhodes  
Whitworth University

Kelly Schrader  
The Evergreen State College



Maddy Thompson  
Washington Student Achievement Council

**Staff:**

Paul Francis  
Executive Director, Council of Presidents

Darshan Robertson  
Executive Assistant, Council of Presidents

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## **Appendix B: List of Task Force Presenters and Guest Speakers**

Dr. Kelly Cue Davis

Research Associate Professor, University of Washington

Member, Seattle Public Schools Task Force for Prevention of and Response to Sexual Harassment and Sexual Assault

Dr. Mollie Monahan-Kreishman

Independent Consultant, Addressing Sexual Violence in Higher Education

Marta Palmquist Cady

Assistant Dean of Students and Director of Student Activities at University of Puget Sound

Instructor, National Center for Campus Public Safety

Dr. Sharyn Potter

Director, Prevention Innovations Research Center, University of New Hampshire

Angela Sherburne

Prevention Education Specialist, Whatcom County Domestic Violence and Sexual Assault Services

Officer Jim Nelson and Roger Pedersen

Garfield County Sheriff's Department

Katherine Troutman

Victim Advocate, Quality Behavioral Health Services, Clarkston, WA

**Appendix C: Copy of Authorizing Legislation (SB 5719)**

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**Appendix D: Summary of 2015 Sexual Violence Legislation**

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## **Appendix E: Subcommittee Membership**

### **Advocate Confidentiality**

Tricia Boerger and Natalie Dolci

### **Campus Climate Assessment**

Joe Holliday, Richard DeShields, Sue Guenter-Schlesinger, Kelly Schrader, Luca Lewis, Chelsea Lamberson, Kim Anderson, and Amanda Paye

### **Criminal Justice**

Natalie Dolci, Steve Rittreiser, Eric Richey, Tricia Boerger, and Riddhi Mukhopadhyay

### **Memoranda of Understanding**

John Vinson and Steve Rittreiser

### **Prevention**

Kelly Schrader, Ruby Hayden, Natalie Dolci, Laurie Connelly, and Sue Guenter-Schlesinger

### **Underserved Populations**

Kelly Schrader, Jen Friedlander, Ruby Hayden, Tricia Boerger, Natalie Dolci, John Vinson, and Kim Anderson

### **Student Conduct Processes**

Amanda Paye, Natalie Dolci, Bruce Marvin, Tricia Boerger, and Kim Anderson  
Sue Guenter-Schlesinger and Kelly Schrader

**Appendix F: Summary of Statewide Sexual Assault Services (WCSAP to provide)**

DRAFT

## Appendix G: Additional Resources

Northwest Association of Title IX Administrators

<http://www.nwatixa.org/>

Washington Coalition of Sexual Assault Programs

<http://www.wcsap.org/>

Washington Sexual Violence Prevention College Coalition

<http://www.wasexualviolencepreventioncoalition.org/>

You Have Options Program

<http://www.reportingoptions.org/>

Start By Believing Campaign

<http://www.startbybelieving.org/>

Final Report of Seattle Public Schools Task Force for Prevention of and Response to Sexual Harassment and Sexual Assault

[https://www.seattleschools.org/UserFiles/Servers/Server\\_543/File/District/Departments/title\\_ix/Final\\_Report\\_of\\_Task\\_Force\\_submitted\\_December\\_9\\_2015.pdf](https://www.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/title_ix/Final_Report_of_Task_Force_submitted_December_9_2015.pdf)

*Beyond Compliance: Addressing Sexual Violence in Higher Education*, a publication of the American College Personnel Association

[http://councilofpresidents.org/docs/CampusSA/meeting9\\_5\\_19\\_16/BeyondCompliance.pdf](http://councilofpresidents.org/docs/CampusSA/meeting9_5_19_16/BeyondCompliance.pdf)

The National Center for Campus Public Safety

<http://www.nccpsafety.org/>

End Violence Against Women International

<http://www.evawintl.org/>

The First Report of the White House Task Force to Protect Students From Sexual Assault

<https://www.justice.gov/ovw/page/file/905942/download>

The Washington State Office of Superintendent of Public Instruction's Health and Physical Education K–12 Learning Standards

<http://www.k12.wa.us/HealthFitness/Standards.aspx>

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Tricia Boerger  
Washington State Attorney General's Office

Dr. Luca Lewis  
Whatcom Community College

Tom Fitzsimmons  
Independent Colleges of Washington

Elissa Goss  
Washington Student Association

Major Steve Rittereiser  
University of Washington Police Department

Riddhi Mukhopadhyay  
YWCA Sexual Violence Law Services

Washington Coalition of Sexual Assault Programs Staff



## Task Force Meeting Dates and Locations

July 2015

University of Washington, Seattle, WA

September 2015

University of Washington, Seattle, WA

October 2015

Washington State University-Spokane, Spokane, WA

November 2015

Bellevue College North Campus, Bellevue, WA

December 2015

Western Washington University, Bellingham, WA

February 2016

Council of Presidents Office, Olympia, WA

March 2016

Council of Presidents Office, Olympia, WA

April 2016

South Seattle Community College Georgetown Campus, Seattle, WA

May 2016

Green River Community College Kent Campus, Kent, WA

June 2016

University of Washington Police Department, Seattle, WA

September 2016

Green River Community College Kent Campus, Kent, WA

October 2016

The Evergreen State College, Olympia, WA