

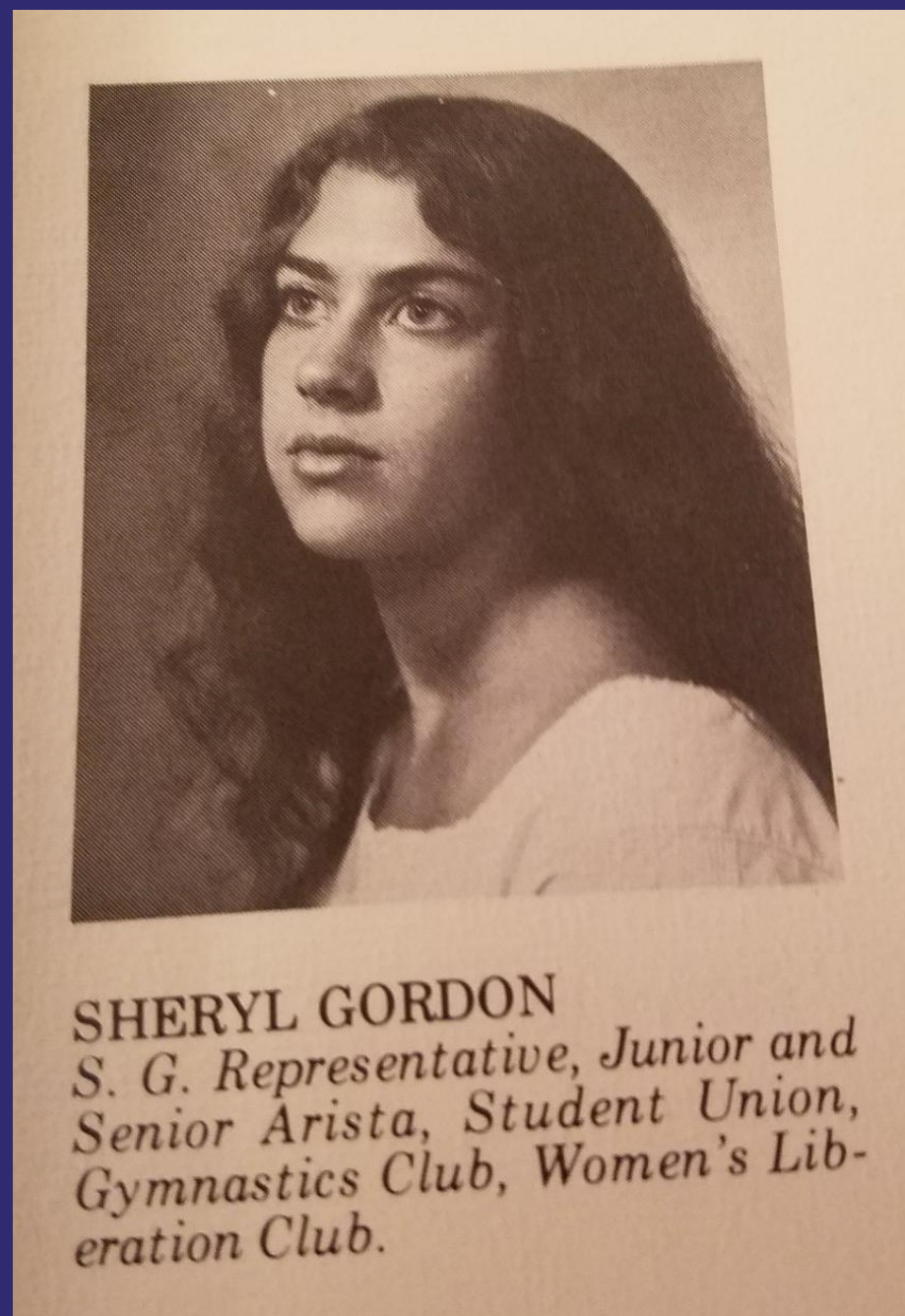
Washington State Supreme Court  
Gender and Justice Commission

*2021: HOW GENDER AND RACE  
AFFECT JUSTICE NOW*

62<sup>nd</sup> Washington Judicial Conference –  
September 14, 2021



# Justice Sheryl Gordon McCloud



# Marla Zink





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**GENDER  
& JUSTICE  
IN THE COURTS**

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# 1989 Report Topic Areas

Consequences of Violence: Domestic Violence and Rape

Consequences of Divorce

Economic Consequences of Other Civil Litigation: Wrongful Death, Loss of Consortium, and Court-Awarded Attorney's Fees

Treatment of Lawyers, Litigants, Judges, and Court Personnel

# Current Gender Justice Study Topic Areas

Financial barriers to court access

Communication barriers to court access

Immigration status barriers to court access

Barriers to jury service that contribute to lack of diversity in juries

Domestic violence and sexual assault (including perpetrator treatment)

Family law

Economic consequences including fee awards and wrongful death

Workplace sexual harassment and discrimination

Increased criminalization and incarceration of women

Increased criminalization and incarceration of men and the impacts on families

Exceptional sentence availability

Commercial sexual exploitation (adults)

Shifts in juvenile law focus such as limiting or increasing judicial discretion

Effects of treatment for juveniles

Commercial sexual exploitation (youth)



# Current Study Topic Areas Continued

Courtroom treatment of litigants, witnesses, victims, legal professionals, jurors, and other court personnel

Credibility of women in the courtroom

Acceptance of women in legal and judicial communities

Court personnel practices and procedures

Representation of women as ADR neutrals

Legal financial obligations

Collateral consequences for incarcerated parents

The burden of mass incarceration on remaining heads of households

The availability of gender responsive programming and use of trauma informed care in DOC and court ordered programs

The consequences of sexual assault in jail or prison

The impact of a criminal background on access to services

Prosecutorial discretion

# Pilot Projects

Evaluation of Domestic Violence Moral Reconciliation Therapy (DV-MRT)

Evaluation of courthouse childcare centers in Washington State

Analysis of Caseload Forecast Council data to better understand mass incarceration of women in Washington State

Washington State workplace harassment survey (courts, judicial branch agencies, and Superior Court Clerk's Offices)

Analysis of jury summons data in select counties (using data previously collected by the Minority and Justice Commission)

## From two-page summary:

- The costs of accessing Washington courts has the greatest impact on single mothers; Black, Indigenous, and women of color; LGBTQ+ people; and those with disabilities.
- Lack of affordable child care limits the ability of low-income women to get to court, underscoring the need for flexible court schedules and online access to court.



## ... continued

- Despite improvements in the law and its enforcement, barriers to justice remain for victims of gender-based violence. The large numbers of missing and murdered Indigenous women and people remain a key concern.
- Employees who identified as American Indian, Alaska Native, First Nations, or other Indigenous Group Member (86%), bisexual (84%), gay or lesbian (73%), and women (62%) reported the highest rates of harassment.

... more continued

- Our pilot project found that Black, Indigenous, and women of color are convicted and sentenced at rates two to eight times higher than white women.

## Five Overall Goals and Recommendations

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

## Recs for CFC

- The Caseload Forecast Council (CFC) should write a report outlining: (1) the current limitations of data from Felony Judgement and Sentencing (FJ&S) forms, and (2) possible solutions. For FJ&S data, it would be beneficial for the CFC to immediately begin coding “Hispanic/Latinx” as a separate ethnicity variable rather than as a race, so that CFC’s data is comparable to Office of Financial Management population estimates and would allow for accurate disproportionality analyses. CFC should also issue corrections to past reports which have included inaccurate disproportionality analyses for the Latinx population. We recommend considering legislative changes, changes to and standardization of the FJ&S forms, education and outreach to courts to support more standardized and complete data collection, changes to coding methodologies and internal documentation of coding methodologies, and needed updates to CFC databases.

## 5 Overall Goals Continued

2. Improve access to the courts in every area of the law that this report covers: expand remote access, adopt more flexible hours, increase access to legal help, reduce communication barriers, and ensure that courts treat all court users in a trauma-responsive manner.
3. Address the impacts of the vast increase in convictions and detentions over the last generation: (a) recognize and remedy the increase in conviction rates and incarceration length for women, especially Black, Indigenous, and other women of color, and (b) recognize and remedy the consequences that the increased incarceration of Black, Indigenous, and other men of color over the last generation has had on women and other family members.

... continued

4. Reduce reliance on revenue from court users to fund the courts.
5. Identify the best evidence-based curricula for judicial and legal education on gender and race bias.





# 2021: HOW GENDER AND RACE AFFECT JUSTICE NOW



## GENDER AND JUSTICE COMMISSION

Promoting Gender Equality  
In the Justice System



## Final Report



[www.courts.wa.gov/genderjustice](http://www.courts.wa.gov/genderjustice)



# ***2021: HOW GENDER AND RACE AFFECT JUSTICE NOW***

**an excerpted focus on:**

**Incarcerated Women in Washington &  
Sentencing Changes and the Direct/Indirect Impact on  
Women**



# Scope of Today's Discussion

- Overview of 2 of the 16 Chapters
  - Incarcerated Women in Washington, and
  - Sentencing Changes and the Direct/Indirect Impact on Women
- Intersecting topics are cross-referenced in the written report



# Limitations

Lacking Washington-specific research **in most areas**

## Data:

- Race and ethnicity
- Gender identity and sex
- Intersection of gender and race
- Socioeconomic status



# Incarceration of Women in Washington



**While the female population of prisoners declined in other states in the 2000s, Washington's numbers continue to increase.**

The total number of incarcerated people and the per capita incarceration rate has decreased for men in Washington over the past 10 years, but has steadily increased for women.

Male and Female Imprisonment Rates (per 100,000) in Washington State, 2006-2016

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	% Change from 2006-2016	% Change from 2010-2016
Male	504	505	504	505	500	480	460	471	467	464	473	-6%	-5%
Female	46	46	43	42	42	40	38	41	40	40	45	-3%	+7%



- ● ● **The Commission engaged researchers to analyze felony data in six Washington counties and found:**

**Women convicted and sentenced in relatively higher proportions than men in Drug, Property, and Fraud categories.**

**Black and Indigenous women disproportionately convicted and sentenced to felonies in Washington.**

**Black women typically convicted and sentenced at 2-3x the rate expected based on proportion in general population. In some years and counties, 8x higher.**

**Indigenous women comprise 2-4x as large a proportion of the convicted and sentenced population as they did of general population.**

## Distribution of Racial Groups Among Convicted and Sentenced Women in CFC Data, Compared to WA Census Data, for Selected Offense Categories, FY 2019

*Cells shaded maroon show disproportionately greater representation in CFC data than in census*

	White		African American		Asian American		Native American	
	Census	CFC	Census	CFC	Census	CFC	Census	CFC
Violent (n = 433)	79%	70%	4%	15%	9%	3%	2%	6%
Drug (n = 1607)	79%	85%	4%	5%	9%	2%	2%	4%
Property (n = 1484)	79%	78%	4%	9%	9%	3%	2%	5%
Fraud (n = 677)	79%	81%	4%	7%	9%	4%	2%	3%
Public Order (n = 498)	79%	76%	4%	11%	9%	4%	2%	5%

Source: Data adapted from information available at TATIANA MASTERS ET AL., INCARCERATION OF WOMEN IN WASHINGTON STATE: MULTI-YEAR ANALYSIS OF FELONY DATA (2020).

# Drivers of Increasing Convictions and Incarceration of Women

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- Trauma
- Legislative Changes
- Policing & Prosecution
- Pretrial Detention
- Socioeconomic Factors
- Sentencing

# Examples of Recommendations

- **Data Collection:** *more data and better techniques* –at every level
- **Evidenced-based education to reduce disparities**
- **Address negative impact of FTA warrants**
- **Legislate to make trauma an explicit factor in sentencing, retroactively**
- **Recognize primary caregiving as a mitigating circumstance**
- **Standardize rate of earned early release time at 33%**

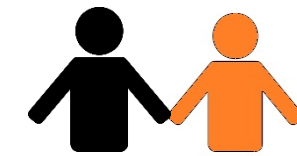
## Implications for Action

- Workplace harassment needs to be addressed as a significant culture and climate issue
- Anti-harassment programs should have the support of all individuals in all forms of workplace harassment
- o reduce rates of sexual harassment.

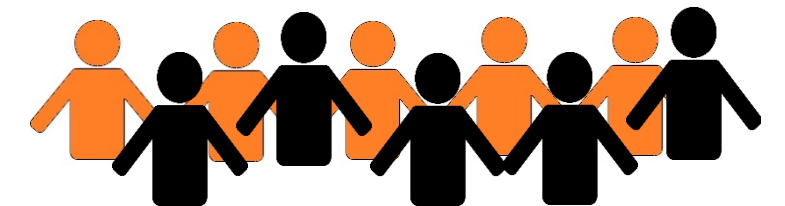
# SURVEY FINDINGS

Overall, 57% of respondents who participated in the survey experienced at least one type of workplace harassment on at least one occasion in the past 18 months.

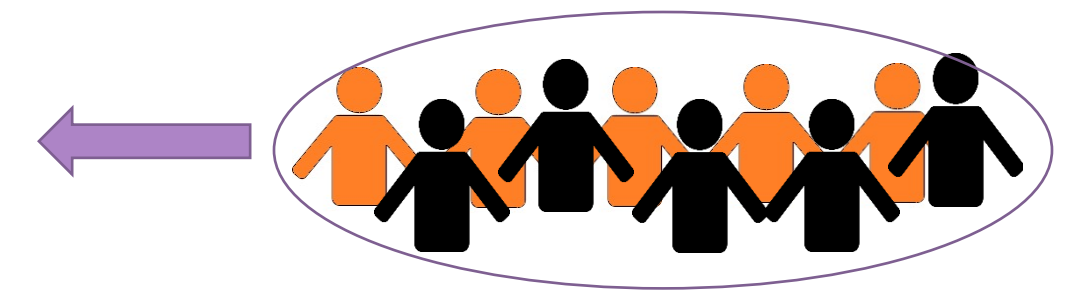
At least **1** in **2** employees experienced workplace harassment



**2,565** in **4,500** court employees experienced workplace harassment



**6,086** harassment problems

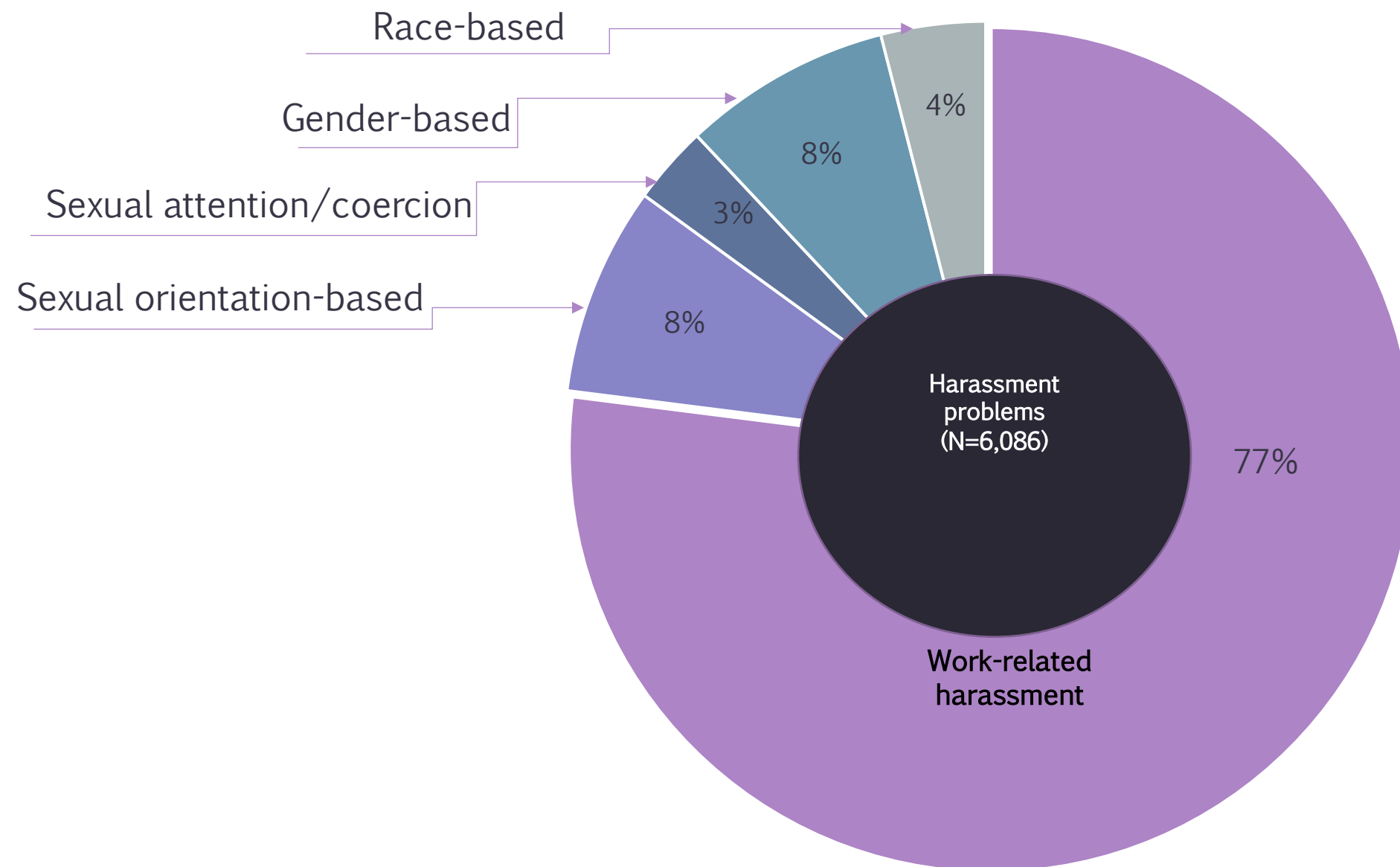


**3.5** problems per person



# SURVEY FINDINGS

**FINDING 2:** Work-related harassment (77%) accounted for the majority of harassment problems reported in the survey.



## Examples of work-related harassment

- Being exposed to demeaning or derogatory remarks
- Being ignored or excluded from work activities where they should have been present
- Being interrupted or talked over
- Being exposed to an unmanageable workload
- Being blocked from promotion or training opportunities
- Being ordered to do work below competence level
- Having key areas of responsibility removed or replaced with more trivial tasks

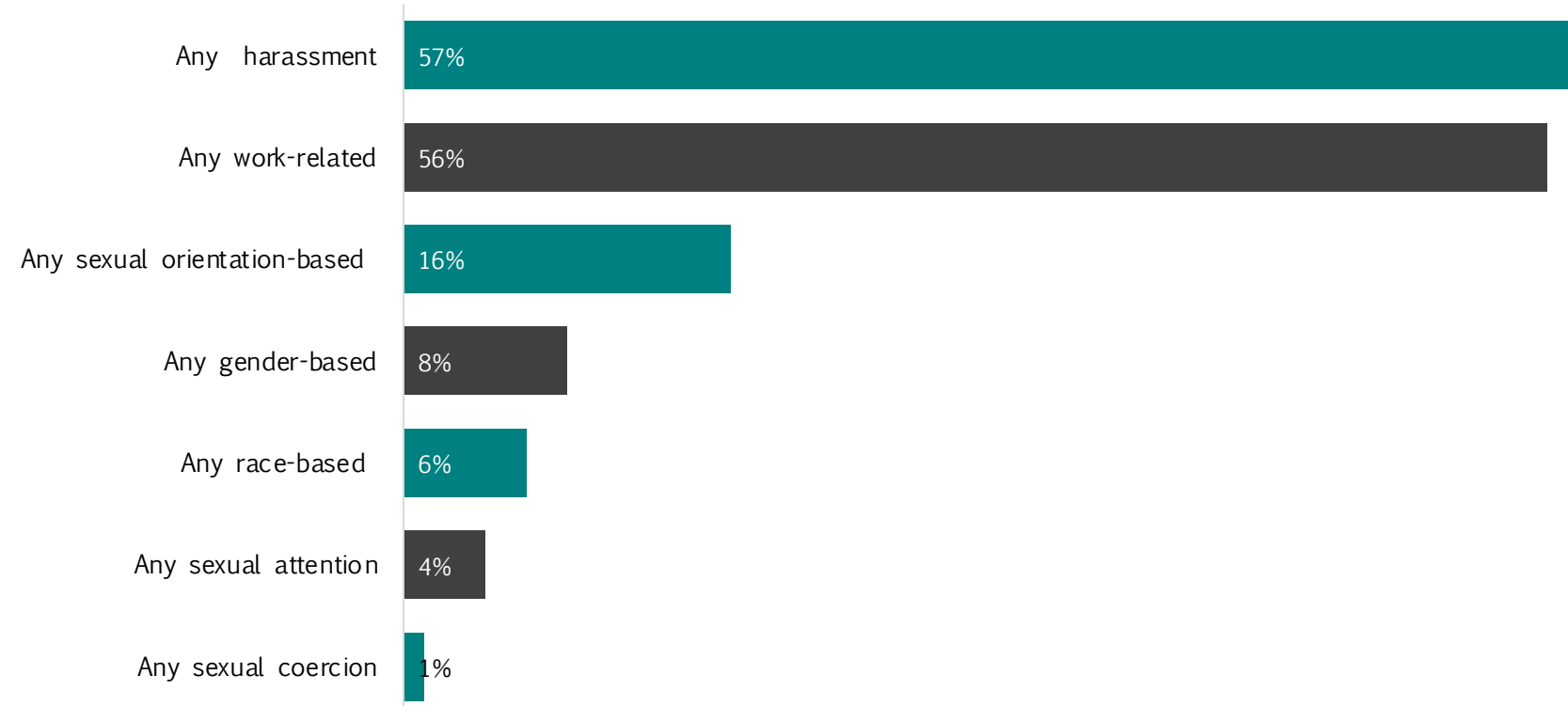


## Implications for Action

- The judicial branch and its leaders should follow best practice in designing and delivering prevention trainings for all types of workplace harassment, including non-sexual harassment.
- These training programs should be evaluated to determine whether they are effective and what aspects of the training(s) are most important to changing culture.

# SURVEY FINDINGS

**FINDING 3: The overwhelming majority of workplace harassment involved some form of non-sexual work-related harassment.**



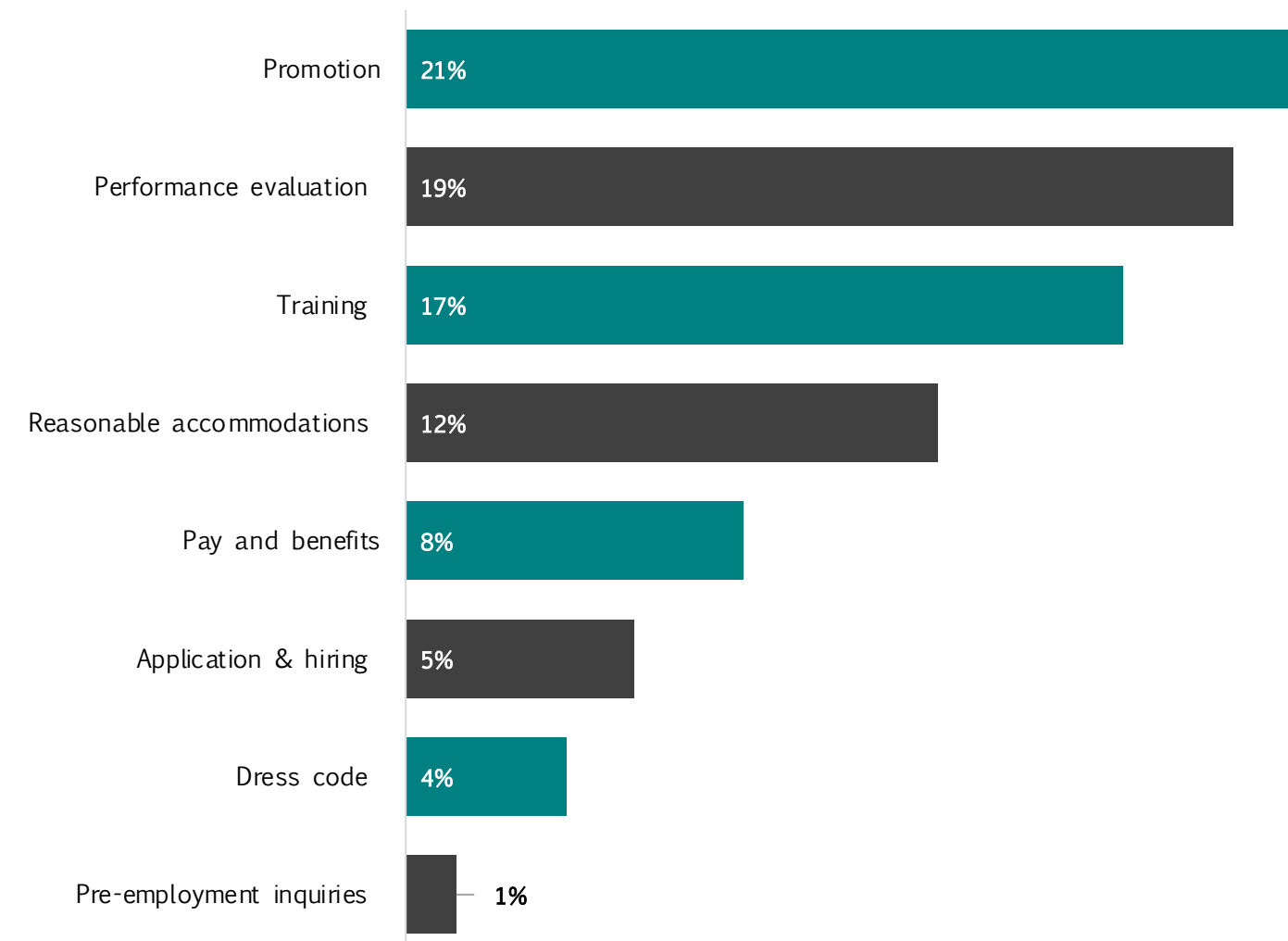
PERCENTAGE OF RESPONDENTS EXPERIENCING HARASSMENT, BY TYPE (N=1,745)

## Implications for Action

- Anti-harassment activities should address the implications of harassment on a person's career trajectories, opportunities, and work satisfaction.

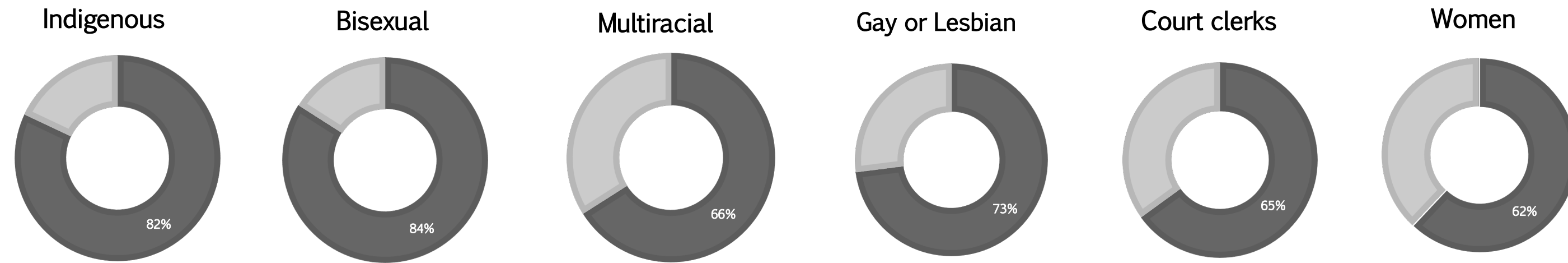
# SURVEY FINDINGS

**FINDING 4: The areas most impacted by harassment were promotion, evaluation, and training.**

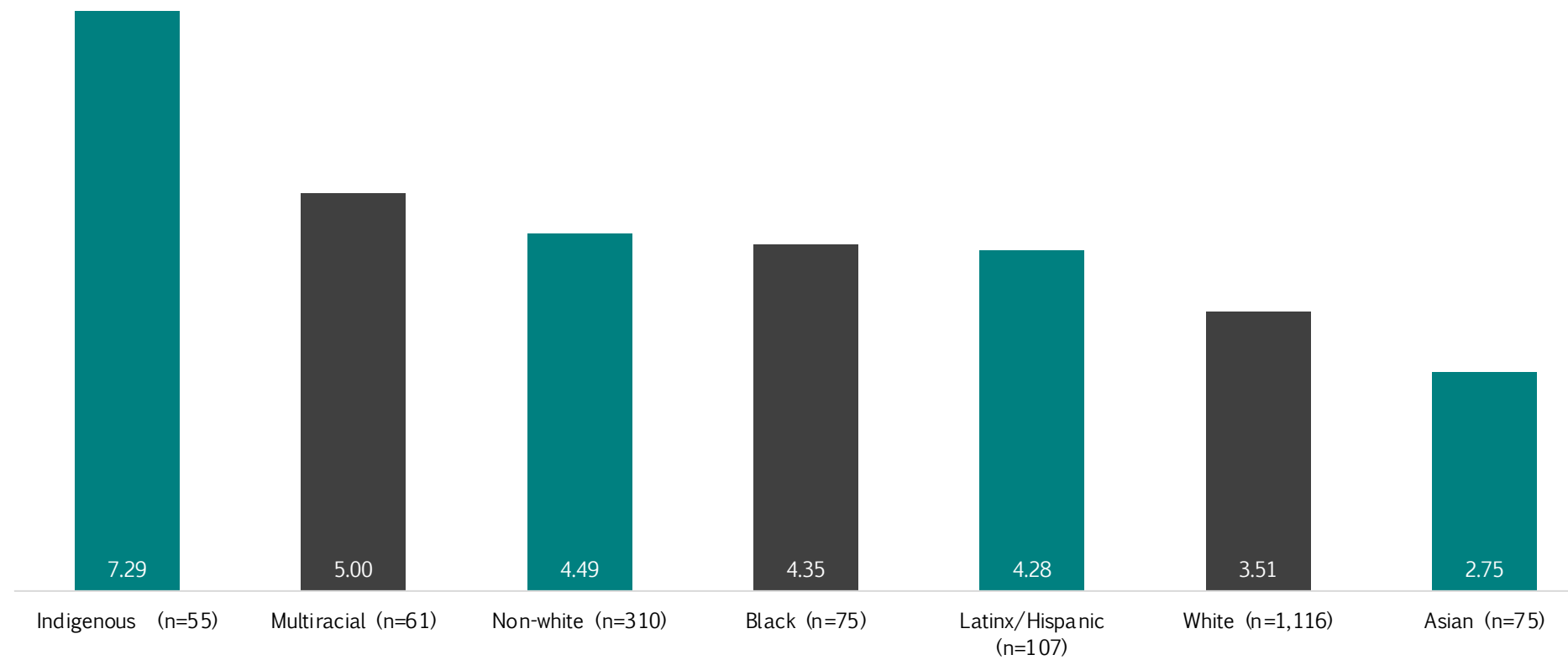


AREAS MOST IMPACTED BY HARASSMENT AMONG RESPONDENTS WHO WERE IDENTIFIED BY SELF-LABELING METHOD B (N=505)

# WHO IS THE MOST TARGETED BY WORKPLACE HARASSMENT?

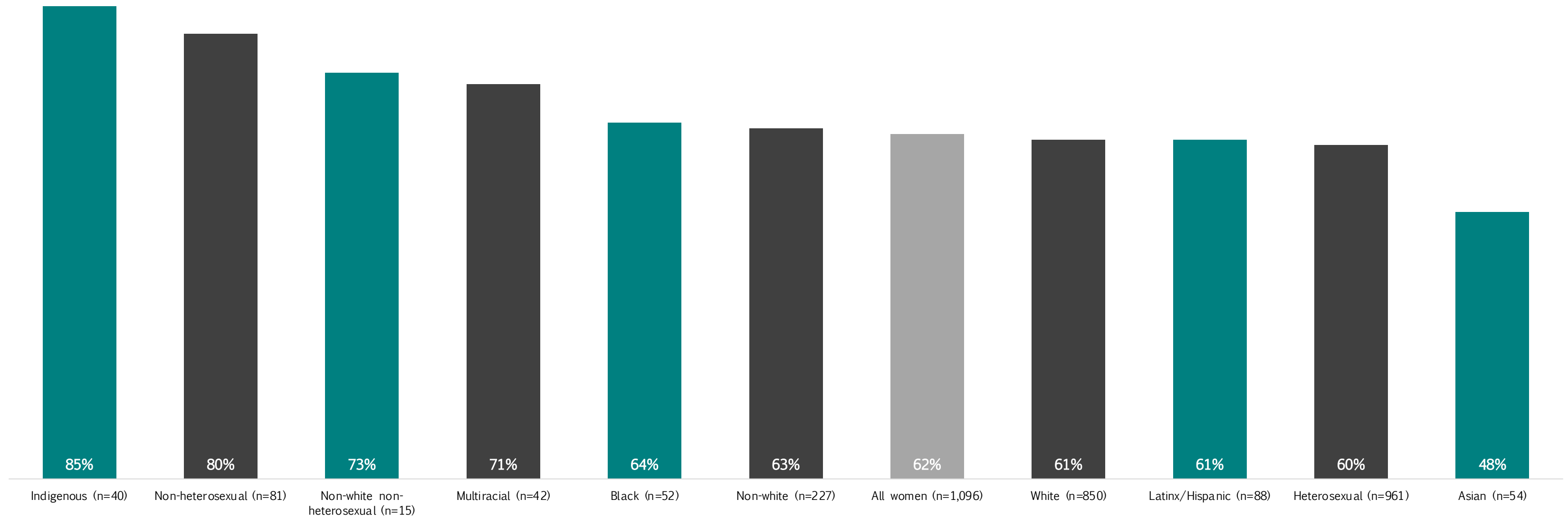


## RACE AND ETHNICITY



AVERAGE NUMBER OF HARASSMENT PROBLEMS PER PERSON, BY RACE AND ETHNICITY

# INTERSECTIONALITY ANALYSIS (WOMEN ONLY)



PREVALENCE OF ANY WORKPLACE HARASSMENT, BY GROUP

## Concluding remarks

Findings from the survey provide crucial insights in the landscape of harassment and organizational climate, from the perspective of 1,745 employees.

The results established a baseline against which planned anti-harassment activities could be evaluated over time.

# Conclusion

- › Create diverse, inclusive, and respectful environments.
- › Deliver regular workplace harassment prevention trainings that drive real changes.
- › Improve transparency and accountability.
- › Measure Progress.

# Resources

- **Gender Justice Study – please read, share, and discuss**
- **forthcoming, [www.courts.wa.gov/genderjustice](http://www.courts.wa.gov/genderjustice)**
- **MJC & GJC 2021 Symposium - Behind Bars: The Increased Incarceration of Women and Girls of Color, program and materials:**
  - **[www.courts.wa.gov/minorityjustice](http://www.courts.wa.gov/minorityjustice) > Symposium**

- (1) Workplace harassment,**
- (2) Court access, and**
- (3) Sentencing**



# Time for Questions

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## Follow up

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