



December 18, 2023

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Bob Ferguson
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Pat McCarthy
State Auditor
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RE: Request for Formal Investigations Regarding King County Prosecuting Attorney's Office's Juvenile Division's Mishandling of Sexual Assault Cases

Please accept this letter as formal complaints with the civil rights division of the Office of Attorney General and the civil rights division of the U.S. Attorney's Office for the Western District of Washington, respectively, for violations of law identified in this letter. In addition, this communication is a formal request for the U.S. Attorney's Office to independently investigate the juvenile sexual assault case referenced herein. Finally, this communication constitutes a renewed request for the State Auditor's Office to conduct performance and financial audits of the King County Prosecuting Attorney's Office's Juvenile Division and contracted juvenile diversion programs in order to evaluate their use of public funds and grants and whether they are acting in accordance with all applicable federal, state, and local laws.

Dear Acting U.S. Attorney Gorman, Attorney General Ferguson, and State Auditor McCarthy,

I am writing to all of you regarding a matter of great concern that was brought to my attention earlier this year by the father of a sexual assault survivor who was a minor at the time of

the incident. The victim's father was recently interviewed (although his identity was concealed) as part of an investigative series by *KOMO TV 4* (ABC) that aired on November 16, 17, and 23 of this year. The series contained disturbing allegations about not only how his daughter's case was mismanaged, but also revealed evidence that the King County Prosecuting Attorney's Office's (KCPAO) Juvenile Division ("Division") is violating the civil rights of sexual assault survivors and has been derelict in its constitutional and statutory duties.

According to these reports, the survivor's father submitted numerous public disclosures from which he collected significant evidence of official malfeasance. Specifically, the evidence gathered indicates that King County implemented a strategic policy called "Zero Youth Detention" and publicly announced the pending closure of an only recently constructed juvenile detention center by 2025. Pursuant to this policy, Division Operations Manager Stephanie Trollen and Division Chief Deputy Jimmy Hung, established an apparently informal but illegal agreement with a community activist group to segment more than two dozen felony types codified in the RCWs and automatically divert all such referrals up to activist organizations for counseling and other non-punishments, refuse to charge any felony referral for any reason after diversion or else agree to allow activists to participate in charging decisions, and forego tracking attendance once the offenders were diverted into counseling programs.

Contrary to its statutory obligations under RCW 13.40.070 and 13.04.093, which specifically set out the factors prosecutors must consider in determining whether to prosecute a juvenile, the Division adopted an outside group's guidelines in choosing which cases to prosecute and which to send to a diversion programs. Evidence in support includes communications that accompany this document. In several emails dated from March 10, 2021, and thereafter (attached hereto as **Exhibit A**), Karisa Morikawa, in her role as Director of Advocacy and Systems Innovation at the non-profit Choose 180 ("180") represented several activist non-profits in negotiations with the Division's Chief Deputy Prosecutor Jimmy Hung, and others. Additional emails reflect they collectively agreed to several modifications to the Division's diversionary practices. (All of the relevant correspondence took place while Leesa Manion, now the elected King County Prosecuting Attorney, was KCPAO's chief of staff.) Specifically, among other points, the parties agreed that the Division would not exercise its prosecutorial discretion to charge juvenile arrestees for any of 28 felonies that the RCP had already either (a) excluded from the list of diversion-eligible charges or (b) left it to case-by-case rather than wholesale prosecutorial discretion.

This evidence is reinforced by an email from Division Operations Manager Stephanie Trollen, who called these changes (which involved zero input from victims' rights groups), "the most significant change in practice I have seen in my 24-year career at the [Prosecuting Attorney's Office]." According to Trollen, the agreement meant that "no charges will ever be filed" for any of the specific crimes 180 requested be diverted, regardless of aggravating circumstances. Division statistics reveal the filing rate has been steadily decreasing since 2019 from 37% down to 28% in 2022.

	Total, All Referrals	All Filings	All Trials	Filing Rate
2019	2808	1031	14	37%
2020	1992	733	8	37%
2021	1144	339	7	30%
2022	1665	462	10	28%

The Division agreed to 180’s terms despite the fact that its “Eligibility and PAO Commitments” standards (included within Exhibit A), co-drafted with the RCP, specifically excluded “sex offenses or any offenses alleging sexual motivation” from the diversionary program. This chart was provided by King County After the Division and 180 co-opted the original RCP framework, the former diverted scores of juveniles suspected of sexual offenses who, under normal circumstances, would likely have been charged. Though sex crimes were expressly excluded from the 28 felonies the Division agreed not to charge, the Division provided data through public disclosure that reflects at least 20 felony offenders have actually been diverted.

It thus appears the Division has and continues to systematically ignore state law, its own agreement with the RCP, and the constitutional rights of victims. Other laws the Division may be violating include the federal Violent Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141) and the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d), both of which prohibit the kinds of discrimination the victims of those wrongly diverted may have suffered as a result of the Division’s potential malpractice. The Division may also be in violation of federal Title VII protections as well as the Washington Constitution, which reads in relevant part:

Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

Wash. Const. art. I, §35 (Victims of Crimes – Rights).

The Division’s diversionary practices have an outsized impact on female victims of sexual assault, many of whom belong to minority communities. If true, this likely violates standing U.S. Supreme Court precedent as well. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977) (law enforcement action with adverse discriminatory impact motivated in part by discriminatory purposes violates the Fourteenth Amendment’s Due Process and Equal Protection Clauses); *Whren v. United States*, 517 U.S. 806, 813 (1996) (“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race.”).

The results of a policy *not* to enforce the law are, sadly, quite predictable. Prosecutions for sexual assault in the Division have plummeted in recent years despite King County being the thirteenth largest county in the United States by population. The chart below, gathered directly from KCPAO, focuses solely upon juvenile sexual *assault* filings (omitting other sexual charges, including child molestation, voyeurism, etc.).

	Narrowed Data Referrals, Sexual Assault Only	Narrowed Data Filings, Sexual Assault Only	Filing Rate
2019	253	70	28%
2020	173	58	34%
2021	165	40	24%
2022	236	45	19%

As a former prosecutor who has represented the public in juvenile sexual assault cases, I understand how difficult the burden of proof can be, and that the public depends on some prosecutorial discretion to maximize appropriate case outcomes. That said, prosecutors are not free to fashion their own legal system, especially one based not upon their own judgements, but on those sourced from a third-party organization (here, 180). Instead, Washington state law prescribes the factors relevant to deciding whether to impose charges and prosecutors are bound to follow them. RCW 13.40.070;13.04.093.

Beyond federal law, Washington state law, and constitutional precedent, the Division’s charging practices run afoul of the *National Sexual Assault Investigation and Prosecution: Best Practices Guide* (2021). The *Guide*, published by the National District Attorneys Association’s Women Prosecutors Section, includes the following direction on “charging decisions”:

The filing of criminal charges, or the decision not to file, should be made as quickly as reasonably possible and should be reviewed with supervisory staff when appropriate. Additional investigation may be required prior to making a final charging decision. The assigned prosecutor should keep the victim informed of any charging decisions made and/or whether more time is needed to make a charging decision due to a need for further investigation. Also, if charges are not filed and an offender is released from custody, the prosecutor should notify the victim immediately to ensure the victim has ample opportunity to take any measures

necessary to ensure victim safety (i.e. obtaining protective/restraining orders, changing locks, relocation, etc.).

Id. at 10–11.

Unfortunately, the Division has ignored this guidance. In contracting away their case-by-case discretionary authority, the Division likely has violated both the letter and spirit of several laws designed to protect the broader community and maximize the odds that victims see justice. Moreover, the Division’s potential malpractice is not a one-off. Rather, it is just one instance of several in which local prosecutors across the country have failed in their duties to protect the public’s interest. On this, I have attached for your reference a letter prepared by the U.S. Department of Justice discussing its expansive investigation into the Missoula County Attorney’s Office’s misguided sex crime policies (**Exhibit B**), with which the Division’s malfeasance share several similarities. First, for the period during which the Department of Justice found systemic undercharging in Missoula, its County Attorney’s Office’s sex crime charge rate was a mere 16.4%. Compare that with the Division’s admitted 17% charging rate in 2023 on *KOMO TV*. Second, as in Missoula, Division prosecutors have privately and publicly expressed that sexual assault is not a high priority. The fact that its original agreement with RCP made sexual assault charges ineligible for diversion illustrates the initial gravity with which the Division properly viewed such crimes, and makes its subsequent modification that much more egregious. Third, in both cases, it appears prosecutors did not do their due diligence in investigating allegations of sexual assault, leading to many missed opportunities to pursue plausible charges. (**Exhibit C**).

Separately, please take note of articles from the *Seattle Times* (**Exhibit D**) and *KUOW* (**Exhibit E**), which further discuss the Division’s apparent misconduct. The Citizen Action Defense Fund (CADF) has twice called for the State Auditor to consider the financial improprieties that have been well-documented in multiple media reports. The latest series from *KOMO* raises additional questions about whether the KCPAO is complying with the terms of the federal and state grants it receives to report and prosecute cases.

In light of this **formal complaint**, CADF hopes you all will take the steps necessary in your respective offices to investigate the Division and its practices. In addition, we respectfully request that your offices independently re-open and investigate the specific incident that served as the basis for the *KOMO TV* series. KCPAO should not object to this step since Chief Deputy Hung indicated in his November 16 television interview that he would welcome an independent review of their handling of the diversion cases.

The elected Prosecuting Attorney, Leesa Manion expressed her “...office’s willingness to be transparent in our decision-making...” in an email to all prosecutors on November 9 (in anticipation of the *KOMO TV* series). It is critical that you review the Division’s illegal and immoral diversionary and non-charging tactics.

Please feel free to contact me with any questions or concerns. We look forward to your findings.

Respectfully,

A handwritten signature in blue ink that reads "Jackson Maynard, Jr." The signature is fluid and cursive, with the first name "Jackson" being the most prominent part.

Jackson Maynard
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