

CHAPTER 10

Sexual Violence and the LGBTQ Community

I. Introduction

A. Sexual and Gender Minorities – Definitions

Sexual and gender minorities are groups whose sexual identity, orientation, gender presentation or practices differ from the majority of the surrounding society.¹ References throughout this chapter will refer to “**LGBTQ**” people, but we will divide them into two distinct groups for purposes of describing how their two forms of discrimination manifest. The letters in LGB refer to those who experience discrimination based on their sexual identity: *Lesbian* (meaning female persons primarily attracted to females), *Gay* (meaning male persons primarily attracted to males), *Bisexual* or *bi* (meaning persons attracted more or less equally to both males and females). A majority of these individuals are also cisgendered,² meaning they identify with the gender they were assigned at birth.

The letters in T and Q refer to those who experience discrimination based on their gender identity: *Transgender* or *trans* (meaning persons whose gender assigned at birth is not the gender with which they identify), and *Queer* and *Questioning* (meaning persons who do not identify with or are exploring current sexual orientation or gender identity descriptions). Transgender is an umbrella term and is often used to describe everyone who is not cisgender. However, many gender-variant people use the term *non-binary* to describe their gender identity as outside the traditional binary (male/female) spectrum entirely.

Individuals may have identities that place them in one or both groups, and their experiences will vary significantly. It is impossible to distinguish the root of discrimination or hostility experienced by individuals with numerous marginalized identities. We do our best to describe some of the types of bias judicial officers should be aware of in relation to this diverse group, but this is experienced entirely differently if someone is also black, poor, houseless, or otherwise marginalized. This is referred to as intersectionality of identities in the literature and originated with the legal scholarship of Kimberlé Crenshaw.³

¹ National Institutes of Health, Sexual & Gender Minority Research Office, <https://dpcpsi.nih.gov/sgmro> (last visited Oct. 10, 2023).

² Cisgender is a term used since the early 1990s to describe people who are not transgender – and is derived from the latin pre-fix “cis” which means “on the side of” and is an antonym for pre-fix “trans.” See Paula Blank “Will the terms ‘cisgender’ ever go mainstream?” *The Atlantic*. Published online September 24, 2014. Last accessed 9/15/2023. <https://www.theatlantic.com/entertainment/archive/2014/09/cisgenders-linguistic-uphill-battle/380342/>.

³ See Crenshaw, Kimberlé (1989). "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics."

Practice Tip: Language used to describe LGBTQ communities is always changing and these terms can often become dated quickly as the LGBTQ community becomes more inclusive and societal understanding of gender and sexuality evolve.⁴ It is best to continue to seek out education and be willing to accept feedback from community members and advocates throughout your career. This language will continue to evolve.

B. Overview & Topics Covered

Judges should be concerned about sexual offenses committed against lesbian, gay, bisexual, transgender, and non-binary, queer or questioning (LGBTQ) people in the United States because researchers have repeatedly found rates of lifetime sexual assault victimization⁵ to be higher among LGBTQ individuals than in the overall population. Several studies have found that LGBTQ individuals are overrepresented among sexual assault survivors,⁶ although LGBTQ people make up a relatively small part of the overall population.⁷ Additionally, the LGBTQ population can face prejudice or hostility as a result of

⁴ Other scholars and advocates will use other terms such as QTBIPOC (Queer, Trans, Black, Indigenous, and/or People Of Color) or LGBTQIA+ (Lesbian, Gay, Bisexual, Queer or Questioning, Trans, Intersex, Asexual and more), or simply LGBTQ+, which are variations of the umbrella terms. QTBIPOC centers the identities of people marginalized due to race and gender/sexuality, and LGBTQIA+ is an acronym that can continue to grow. Some advocates find it unwieldy and opt for more concise terms but the intent is the same – to describe a community marginalized due to their sexuality and/or gender identity.

⁵ Throughout this chapter, the terms “victim” and “survivor” will be used interchangeably, depending on context. “Victim” is a legal term, most often used in criminal law, whereas the term “survivor” reflects the person versus the experience.

⁶ Compare Emily Rothman, Deiner Exner & Allyson Baughman, “The Prevalence of Sexual Assault Against People Who Identify as Gay, Lesbian, or Bisexual in the United States: A Systematic Review,” 12 *Trauma, Violence, & Abuse* (2), 55-66 (Sage, 2011) (meta-analysis of all population-based studies estimating rates of sexual assault prevalence between 1989 and 2009 suggests lifetime sexual assault rates of 20-30.4% for gay men and 15.6-55% for lesbians and a rate for all U.S. men of 2-3%) (citation omitted) with Kathryn Moracco, Carol Runyan, J. Michael Bowling & Jo Anne Earp, “Women’s Experiences with Violence: A National Study,” 17 *Women’s Health Issues* (1), 3-12 (2007) (in a random sample of 1,800 adult U.S. women in households with a telephone, self-identified lesbian or bi women were 3.89 times as likely as other women to report sexual assault by a stranger, 4.19 times as likely to report sexual assault by a known person, and 9.12 times as likely to report sexual assault by a known person within the last year); and see Rebecca Stotzer, “Violence Against Transgender People: A Review of United States Data,” 14 *Aggression and Violent Behavior* (3), 170-79 (Elsevier, 2009) (in a meta-analysis of all known self-report surveys on transgender sexual assault, 10-86% of transgender respondents reported sexual assault motivated by transgender identity; in meta-analysis of needs assessment and academic surveys, 14-66% of transgender subjects had been sexually assaulted; the article notes, at 171, that “the most common finding across surveys and needs assessments is that about 50% of transgendered persons report unwanted sexual activity”).

⁷ See Patricia Tjaden, Nancy Thoennes & Christine Allison, “Comparing Violence over the Life Span in Samples of Same-Sex and Opposite-Sex Cohabitants,” 14 *Violence and Victims* (4), 413-25 (Springer, 1999) (review of literature suggests “between 4.1% and 10% of men and 2.6% and 4.1% of women have had at least one same-sex sexual experience in their lifetime;” sample of 8,000 U.S. men and 8,000 U.S. women selected via random-digit dialing of residential telephone numbers revealed .8% of men and 1% of women had cohabited with a same-sex partner “as a couple” at some point in their lifetime); Gary J. Gates and Frank Newport, *Special Report: 3.4% of U.S. Adults Identify as*

unexamined stereotypes — a phenomenon particularly dangerous in the context of legal proceedings relating to sexual offenses. While many questions about sexual orientation or gender identity and sexual offenses remain unanswered, this chapter explains that judges may contribute to a more balanced and sensitive legal process in all sexual offense cases by examining commonly held stereotypes about sexual offenses and LGBTQ communities.

In keeping with Washington law, this chapter focuses on the social context of sexual offenses against sexual and gender minorities, rather than considering whether unique legal doctrines might apply to sexual offense cases involving the LGBTQ population. In Washington, key components of sexual offenses — sexual intercourse and sexual contact — are defined in a gender-neutral manner. Washington’s statutes incorporate an expansive definition of sexual intercourse, including not only vaginal sexual intercourse but also “any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another *whether such persons are of the same or opposite sex*”⁸ (*emphasis added*). Sexual contact is also defined without reference to gender as “any touching of the sexual or other intimate parts of a *person* done for the purpose of gratifying sexual desire of *either party or a third party*”⁹ (*emphasis added*). Although traditional sexual offense statutes can raise nuanced doctrinal questions about how such laws apply to same-sex or transgender victims, such questions are not considered in this chapter due to Washington’s gender-neutral statutes.

Additionally, this chapter will look to the relationship between victims’ sexual orientation or gender identity and the risks associated with sexual offense victimization in order to explore how victim identity is relevant to sexual offenses. LGBTQ sexual offense survivors face unique challenges as they navigate the legal system and seek to avoid or heal from further victimization. LGBTQ survivors can be misunderstood, humiliated, disbelieved, or further traumatized by the authorities as a result of stereotypes when they seek to report sexual offenses. Survivors may also face discriminatory assumptions relating to sexual offenses when their reports are investigated and litigated. Survivors can face prejudicial attitudes of homophobia and transphobia on the part of government and other service-providing organizations, as well as psychological harm or medical discrimination when seeking services or support. The relative social isolation of some LGBTQ individuals, which may raise the risk of sexual assault in the first place, can create additional challenges following victimization.¹⁰ Isolated LGBTQ survivors may not know what resources are available to them or may be averse to contacting public agencies or service providers for assistance. Many members of the LGBTQ community that are isolated are so in part due to

LGBT: Inaugural Gallup findings based on more than 120,000 interviews (Oct. 18, 2012), <http://www.gallup.com/poll/158066/special-report-adults-identify-lgbt.aspx> (citing that 3.4% of the U.S. population identifies as LGBT; women are 0.3% more likely to report as LGBT than men, and 53% of the LGBT population consists of women; younger Americans are more likely to report as LGBT than those older, with 6.4% of the 18-29 year old population identifying, as opposed to 3.2% of the 30-49 year old population, 2.6% of the 50-69 population, and 1.9% of the 65+ population).

⁸ RCW 9A.44.010(1)(c) <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.010>.

⁹ RCW 9A.44.010(2).

¹⁰ See Lisa Waldner-Haugrud & Linda Vaden Gratch, “Sexual Coercion in Gay/Lesbian Relationships: Descriptives and Gender Differences,” 12 *Violence and Victims* (1), 87-98 (Springer, 1997) (citing both gay men and lesbians as examples of “a community limited in visibility and relationship resources”).

their perception that society considers them less worthy of compassion or respect because they are lesbian, gay, bisexual, transgender, genderqueer or questioning.

This chapter seeks to build upon existing sexual offense resources available in Washington by examining problems in the legal response to sexual offenses against LGBTQ people with an eye toward relevant issues identified in scholarly research and commentary on the topic. Judges are uniquely positioned to improve society's response to sexual offenses involving LGBTQ people by familiarizing themselves with common gender and sexuality-related sexual offense myths that may arise in legal proceedings. Judges who address these issues model behavior which may in turn influence attorneys and public servants who handle sexual offense investigations and litigation.

Section II of this chapter reviews research suggesting LGBTQ individuals experience high rates of childhood sexual abuse, adult sexual offenses, and, to some extent, intimate partner sexual offenses relative to the overall population. Section III describes several common gender and sexuality-related myths which may arise in proceedings surrounding sexual offenses against LGBTQ victims. Section IV discusses how, in light of these myths, judges should view their role as working to educate and dispel common gender-based assumptions in working alongside court staff, attorneys, and jurors. Judges should also maintain a critical perspective throughout the court proceedings to improve the investigation and litigation of sexual assault cases involving LGBTQ people. Finally, Section V's conclusion seeks to briefly summarize the contents of this chapter. It is followed by Appendix A, which provides a list of community resources that may be helpful to professionals working with LGBTQ sexual assault survivors, and by Appendix B, which provides a list of reference materials.

II. Contextualizing the Problem: What Does Research Reveal About Sexual Offenses Against LGBTQ People?

Medical and social science research suggests that LGBTQ people experience high rates of sexual offenses relative to the overall population. Studies have repeatedly suggested that, over their lifespan, LGBTQ people are more likely to experience sexual offense victimization than heterosexual people.¹¹ Moreover, researchers have observed evidence of

¹¹ See, e.g., Rothman, Exner & Baughman, "The Prevalence of Sexual Assault Against People..." supra at 59-60, (concluding that "currently available literature suggests that *GLB people are likely at elevated risk for lifetime sexual violence victimization.*") (emphasis added); Sari Gold, Benjamin Dickstein, Brian Marx & Jennifer Lexington, "Psychological Outcomes Among Lesbian Sexual Assault Survivors: An Examination of the Roles of Internalized Homophobia and Experiential Avoidance," 33 *Psychol. of Women Q.* (1), 54-66 (2009) (studies suggest 18% to 22% of lesbians report childhood sexual assault [CSA] and 21% to 40% report adult sexual assault [ASA]; 11% to 32% of heterosexual women self-report CSA, and 12% to 22% report ASA) (citations omitted); Sari Gold, Brian Marx & Jennifer Lexington, "Gay Male Sexual Assault Survivors: The Relations Among Internalized Homophobia, Experiential Avoidance, and Psychological Symptom Severity," 45 *Behaviour Research and Therapy* (3), 549-62 (2007) (noting studies "have suggested that at least 30% of gay men experience childhood, adolescent, and/or adult sexual assault," which rate of prevalence is "somewhat

pronounced rates of sexual offense victimization of LGBTQ people both during childhood and adolescence¹² and during adulthood.¹³ The high number of sexual assaults against LGBTQ youth may be a sign that sexually or gender-nonconforming children and adolescents are targets for violence, including violence perpetrated by family members and close friends, even before recognizing or “coming out” to others about their own LGBTQ status.¹⁴ While previous research suggested a disparity between rates of sexual violence in gay or lesbian relationships and those in heterosexual intimate partner relationships,¹⁵ more

comparable to [that] of heterosexual women, [whose own] rates range from 14% to 59%”) (citations omitted); Elizabeth Saewyc, Carol Skay, Sandra Pettingell, Elizabeth Reis, Linda Bearinger, Michael Resnick, Aileen Murphy & Leigh Combs, “Hazards of Stigma: The Sexual and Physical Abuse of Gay, Lesbian, and Bisexual Adolescents in the United States and Canada,” 85 *Child Welfare* (2), 195-213 (2006) (among studies specifically measuring bisexual survivor prevalence rates, “bisexual adolescents or those with both gender attractions appeared to be at higher risk for victimization ... *than gay and lesbian peers.*”) (emphasis added) (citations omitted); Stotzer, “Violence Against Transgender People...” supra at 178, (“What is beginning to emerge from [existing] sources of data [is] the increased risks of [a] variety of types of violence, ... in particular sexual violence, faced by transgender people. This risk starts early in life and continues throughout the lifetime.”)

¹²Saewyc, Skay, Pettingell, Ries, Bearinger, Resnick, Murphy & Combs, “Hazards of Stigma...” supra at 203, (in surveys asking U.S. and Canadian teenaged subjects to self-report sexual abuse and either a predominantly gay, lesbian, or bisexual orientation, “lesbian or bisexual girls self-reported the highest prevalence of sexual abuse [of all girls], with 1 in 4 to nearly half reporting a history of sexual abuse,” while rates for predominantly heterosexual girls “ranged from just under 10% to just over 25%;” “[f]or most surveys, more than 1 in 4 bisexual boys and 1 in 5 gay boys reported sexual abuse,” while rates for predominantly heterosexual boys were “well under 10%.”); see Shannon Wyss, “‘This was my hell’: the violence experienced by gender non-conforming youth in US high schools,” 17 *International Journal of Qualitative Studies in Education* (5), 709-30 (2004) (in qualitative study including mostly white, transgender subjects recruited through internet in U.S., six of 27 subjects “reported surviving sexual assault or rape in high school”).

¹³Gold, Marx & Lexington, “Gay Male Sexual Assault Survivors...” supra, (studies suggest 21-40% of U.S. lesbians report ASA histories, compared with 12-22% of heterosexual women) (citations omitted); compare Rothman, Exner & Baughman, “The Prevalence of Sexual Assault Against People...” supra at 62, (analysis of all population-based U.S. studies on sexual assault prevalence from 1989 to 2009 suggests 22.2-47.1% of lesbian and bisexual women report ASA) with id. at 55 (11-17% of U.S. women overall experience LSA) (citations omitted); (10.8-15% of gay/bi men report ASA) (2-3% of all U.S. men report LSA) (citations omitted); see Stotzer, “Violence Against Transgender People...” supra at 173 (14-66% of trans people have experienced sexual assault according to needs assessment and academic surveys).

¹⁴See Saewyc, Pettingell, Ries, Bearinger, Resnick, Murphy & Combs, “Hazards of Stigma...” supra at 198-199, “[S]tigma from gender atypicality or some as-yet unmeasured trait of emerging gay or bisexual orientation may decrease family protection and support for LGB teenagers *even before they recognize and self-identify* and, thus, may help explain higher risk for maltreatment during childhood and adolescence.”) (citation omitted) (emphasis added); see also id. at 208 (noting that, while many surveys fail to “disentangle the complexity of timing and determining causality, such as a teen being abused because of her lesbian or bisexual status.... [s]exual and physical abuse ... clearly are not the *cause* of developing a gay, lesbian, or bisexual orientation.... [T]he majority of adolescents who identify as gay, lesbian, or bisexual do not report any abuse, and the overwhelming majority of adolescents who report sexual or physical abuse identify as heterosexual.”)

¹⁵See Waldner-Haugrud & Gratch, “Sexual Coercion in Gay/Lesbian Relationships...” supra at 88, (existing research in 1997 suggested that “gays and lesbians have higher rates of sexual coercion than what is experienced by their heterosexual counterparts.”); Tjaden, Thoennes & Allison, “Comparing Violence over the Life Span...” supra at 421 (study using population-based sample found “same-sex cohabitants reported significantly more intimate partner violence [although at the hands of both same-sex and opposite-sex current or former partners] than did opposite-sex cohabitants; for example, 23.1% of same-sex cohabiting men said they were raped and/or physically assaulted by a spouse or cohabiting partner at some time in their lives, compared with 7.7% of opposite-sex cohabiting men, and 39.2% of same-sex cohabiting women said they experienced

recent studies have shown that incidents of violence are committed as frequently in LGBTQ intimate-partner relationships, with relatively equal rates of self-reported violence in gay and lesbian relationships.¹⁶ Although studies have suggested varying rates of sexual offense prevalence, and the evidence is not yet statistically robust enough to be conclusive regarding the exact rates (particularly those for transgender people),¹⁷ repeated findings of heightened sexual violence at least suggest that sexual orientation and gender identity are highly relevant when considering individuals' risks of sexual assault.¹⁸ As with sexual offenses in general, evidence surrounding sexual offenses against sexual minorities suggests that sexual offenses across the board are primarily committed by men.¹⁹

While quantitative studies serve to provide a sense of the number of LGBTQ people who experience sexual offenses, these studies face common limitations. Studies of sexual offenses against sexual minorities may tempt readers to draw misguided conclusions. This is particularly due to the tendency of such studies to categorize people exclusively by sexual orientation or gender identity rather than provide readers with a more robust understanding of LGBTQ victims and their abusers. Observations of starkly contrasting sexual assault victimization rates in the LGBTQ population as compared with the heterosexual population, or the overall U.S. population, may actually obscure more subtle correlations (for example, between sexual assault victimhood and socioeconomic status). Although some researchers confront this problem by testing for correlations between various aspects of survivors'

such violence, compared with 20.3% of opposite-sex cohabiting women"); id. at 413("The study ... confirms previous reports that intimate partner violence is more prevalent among gay male couples than heterosexual couples."); but see id. at 421(11.4% of women cohabiting with female partners reported sexual and/or physical assault by a female intimate partner at any point in their lives, while 20.3% of opposite-sex cohabiting women reported such violence by a male intimate partner); Waldner-Haugrud & Gratch, "Sexual Coercion in Gay/Lesbian Relationships...", supra at 87 ("[T]he results of this study suggest lesbians are not more likely than gay men to be classified as victims of sexual coercion.")

¹⁶Joanna Bunker Rorhbaugh, "Domestic Violence in Same-Gender Relationships," 44 *Fam. Ct. Rev.* 287, 287-88, 290, 297 (April 2006); see id. at 295 (where characteristics of "severe abusers in same-gender relationships are like the severe abusers in cross-gender relationships in that they often have severe mental illnesses or were themselves abused as children"); but see id. at 293 ("types of abuse in same-gender relationships are the same as for cross-gender relationships, except for...threat of 'outing,' or exposing partner's sexual orientation...[and] extreme isolation due to being 'in the closet,' lack of civil rights protections, and lack of access to the legal system").

¹⁷See Stotzer, "Violence Against Transgender People..." supra at 171, (noting common use of convenience sampling and snowball selection procedures in transgender subject research)

¹⁸See Morocco, Runyan, Bowling & Earp, "Women's Experiences with Violence..." supra at 10, (in national population-based sample of 1,800 female U.S. telephone users, lesbian or bisexual orientation correlated more closely with sexual assault by a known perpetrator than did young age, nonwhite race, residence in a "city," receiving public assistance, or educational attainment of less than high school diploma/GED).

¹⁹Tjaden, Thoennes & Allison, "Comparing Violence over the Life Span..." supra at 419-420, ("The study also found that the vast majority of rape victims—regardless of gender or cohabitation history—were raped by men."); Waldner-Haugrud, & Gratch, "Sexual Coercion in Gay/Lesbian Relationships...", supra at 89, (review of literature suggests "lesbians often are the victims of rape or attempted rape by male dates") (citation omitted); Leslie Moran & Andrew Sharpe, "Policing the Transgender/Violence Relation", 13 *Current Issues in Criminal Justice* (3), 269-85 (2002) (in the U.S. Gender PAC survey, 68% of reported incidents of violence against transgender people in the U.S. were committed by white people and 84.1% were committed by men) (citation omitted).

identities and sexual offense histories,²⁰ lurking variables can at times be overlooked in overbroad conclusions about subjects defined by sexual orientation or gender identity categories.

At its most extreme, hyper-focusing on sexual or gender-minority status as the sole variable of interest can lead to fallacious reasoning that, due to the strong correlation between membership in a sexual or gender minority group and a history of sexual offenses, being LGBTQ “causes” sexual offenses. But the evidence of such a correlation does not explain what causes the higher rates of sexual offenses. Research using familiar sexual identity categories, when combined with stark statistical disparities, may also tempt readers to draw other simplistic conclusions (e.g. “all transgender people must be at a[n equally] high risk of sexual offenses”). Sexuality is likely one among many variables relevant to individuals’ risks of lifetime sexual offense victimization.

Studies suggesting a high rate of sexual offenses among sexual minorities can also face methodological limitations relevant to understanding their conclusions.²¹ Three distinct themes emerge from existing research on sexual minorities and sexual offenses. First, there is a high rate of sexual violence against LGBTQ people. This violence may be considered especially noteworthy because it appears to be yet higher than the level of sexual violence committed in comparison populations (e.g. the U.S. population overall) and because some evidence suggests LGBTQ identity correlates more closely than other possible risk factors with reports of sexual offense history.²²

A second key theme is that the high rate of sexual offense victimization among sexual minorities is not attributable to a single source of abuse. For example, most lesbian and gay survivors’ experiences of sexual offenses do not take place at the hands of same-sex intimate partners.²³ Rather, the high rate of lifetime sexual offenses is a product of a range of forms of sexual offenses, including sexual abuse in childhood and adolescence, sexual offenses as an adult, in intimate partner relationships, and by family members, acquaintances, and strangers.

A third key theme, that LGBTQ sexual offense victims often face responses that treat their victimization as more trivial than that of heterosexual victims, is explored below.

²⁰ See footnote 17, *supra*.

²¹ For example, it is difficult to tell how reliable self-reporting of sexual assault history is as a method for measuring prevalence, as subjects may not draw a connection between their own experiences and the definition of “sexual assault” that researchers have in mind. Additionally, the relevant experience of victimization may take place decades before research begins, which may affect reporting accuracy. Furthermore, researchers often face an uphill battle in recruiting LGBTQ, and especially transgender, subjects for studies. As a result, researchers sometimes resort to convenience samples based upon word-of-mouth recruitment starting from a community center or other obvious gathering place. Due to the nonrandom selection procedure, these methods may provide skewed samples from which to draw any inferences regarding the larger LGBT population. Population-based samples, which can support valid statistical inferences, have been used in a number of sexual assault studies cited in this chapter.

²² See footnote 7 and 17, *supra*.

²³ Tjaden, Thoennes & Allison, “Comparing Violence over the Life Span...” *supra* at 421; see footnote 14, *supra*.

III. Myths and Realities Surrounding Sexual Offenses Against LGBTQ People

A set of commonly encountered myths compounds the problems facing LGBTQ sexual offense survivors. Some of these myths arise from common, gender related stereotypes about male and female roles relating to sexual offenses. Other myths are more closely related to widely held stereotypes that can deprive LGBTQ people of compassion or respect as a result of their sexual orientation or gender identity. Some notable myths relating to sexual offenses against sexual minorities are considered briefly below in the context of observations from relevant research on sexual offenses. These myths are worth exploring because, as the quotations below indicate, victims themselves, law enforcement, and perpetrators — indeed, just about anyone — may have similar thoughts at times without pausing to consider their deeper implications.

A. How Gender-Related Stereotypes Trivialize LGBTQ Sexual Assault Victims

Gender-related stereotypes about the dynamics of sexual offenses are particularly harmful to sexual and gender minority victims, although these assumptions can also have detrimental effects in sexual offense proceedings in general. One set of myths arises from the belief that men are generally in a better position than women to protect themselves from sexual offenses.

Binary transgender male and female experiences raise major questions about this commonly held notion. One study of the relationship between transgender people in Sydney, Australia, and the local police is illuminating. Kirk, a transgender man, served as a focus-group subject in the Sydney study, described his house being vandalized, with words like “fag” spray-painted across its front. When Kirk went to the authorities to address his fear of a physical or sexual assault subsequent to the vandalism, “they said to me, ‘but you’re a bloke. What would you be scared for?’”²⁴ The concern that police are unfamiliar with and unsympathetic to transgender people may discourage survivors from reporting sexual offenses or cooperating in investigations and the legal process. As Steven, a focus group member in the Sydney study, said, “‘there’s no way I would walk into that [police] station and say I’ve been raped as a man, as a transgender man’.” He continued:

Number one, why should I have to walk in there and educate them? I’ve just been raped or bashed or stabbed. Why should I have to as a trannie boy walk in there and ... educate the policeman or ... the police woman that I am transgender when I’m suffering all these ... other pains? [B]eing transgender and walking in there with a beard ... they’d just think I was a freak. I mean, look at

²⁴ Leslie Moran & Andrew Sharpe, “Violence, identity and policing: The case of violence against transgender people,” 4 *Criminology & Criminal Justice* (4), 395-417 (2004).

this guy he's got a vagina you know.... [I]t's none of their ...
business whether I've got a vagina or a penis anyway.²⁵

As the above quotations suggest, trans men's ability to "pass," or present to others as a man, may render their transgender status invisible. Presenting as male may force some survivors to come out as transgender in order to be taken seriously when describing sexual offense experiences or fears. For these transgender survivors, gendered stereotypes and assumptions relating to sexual assault may translate into an offensive fixation on the survivors' anatomy which distracts from the survivor's assault. For other transgender survivors, the fear of negative responses to the survivor's transgender status may deter the survivor from reporting an assault.

Such gendered assumptions relating to sexual offenses cut against transwomen as well, although perhaps in different ways than how such expectations affect transmen. A commonly held, but extremely harmful stereotype, is that trans women are socialized as "males" and therefore benefit from male privilege during their adolescence that informs how they move through the world later. This myth is false for many reasons: trans women, even as young people, are being subject to the same harmful socializations about toxic masculinity as women, and because they are not men, they internalize those social norms differently than cisgender men. It is an oversimplification of their complex, intersectional experience and understanding of gender to conclude they are socialized as males and therefore have heightened sense of security in public spaces. They experience socialization similar to many cis women and grow up feeling that the world is unsafe for them. To conclude that their behavior or false sense of security is part of the reason for their increased victimization rates is dangerous and form of blaming the victim (discussed later).

Transgender women are also much more likely than cisgender women to be subject to harassment by police when going about their normal daily activities based on the stereotype that they are sex workers.²⁶ Research has consistently found that transgender individuals experience higher rates of police harassment and misconduct than their LGB peers.²⁷ This is especially pronounced if they are a woman of color, houseless, or do not "pass" as previously

²⁵ Moran & Sharpe, "Violence, identity and policing..." supra.

²⁶ MAKE THE ROAD NEW YORK, TRANSGRESSIVE POLICING: POLICE ABUSE OF LGBTQ COMMUNITIES OF COLOR IN JACKSON HEIGHTS (2012), http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf; FORGE, Sexual Violence in the Transgender Community Survey; National Coalition of Anti-Violence Programs, 2009, Hate Violence Against Lesbian, Gay, Bisexual, and Transgender People in the United States, New York, NY: National Coalition of Anti-Violence Programs. (Finding fifteen percent of transgender individuals report being sexually assaulted while in police custody or jail, which more than doubles (32 percent) for African-American transgender people. Five to nine percent of transgender survivors were sexually assaulted by police officers.)

²⁷ Christy Mallory, Amira Hasenbush, & Brad Sears, Discrimination and Harassment by Law Enforcement Officers in the LGBT Community. (2015) Los Angeles: The Williams Institute.

discussed. These additional, intersecting identities also make them much more likely to experience sexual assault at higher rates compared to their cisgender peers.²⁸

Another common form of police harassment is the misgendering that frequently occurs when transgender, questioning, or non-binary individuals seek out help. Misgendering (using the wrong pronouns for someone) is especially dehumanizing for transgender women who attempt to report their sexual assault to the police. Being referred to as “he” or “it” is still a regular occurrence. Similarly, using “he and she” pronouns interchangeably is a widely occurring form of secondary trauma transgender people know too well. Of note, we are not referring to the situation in which some nonbinary people use multiple sets of pronouns (i.e. they/them/she/her).²⁹ Intentionally using someone’s incorrect pronouns is a form of violence against transgender people.

Practice Tip: The most affirming thing a judicial officer can do is normalize disclosing one’s pronouns in the courtroom and enforce the use of the correct pronouns for gender-minority individuals. Not only is this best practice, but it signals to the entire courtroom that a transgender individual can expect to be treated with dignity and respect in your courtroom. A simple introduction at the start of your docket can include language such as:

“I’m Judge ____ and my pronouns are she/her. When parties state their name for the record, please share your pronouns so I can ensure we have an accurate record.”

It is important that you clarify with everyone what their pronouns are, even if it seems obvious because this normalizes the practice of cisgender people having to acknowledge their own gender identity and prevents gender minority person's from being singled out. It should be treated as a fact about a party just like their age or name.

In addition, if someone has incongruent documentation or is in what is referred to as “legal transition,” please use the most updated name they use (or last used, if deceased) regardless of what their legal name is, just as you would someone’s nickname.

Transgender people are not, of course, the only ones affected by gendered stereotypes relating to sexual offenses. Gay and lesbian sexual offense survivors may have their experiences trivialized or overlooked by many professionals, who are accustomed to seeing

²⁸ National Sexual Violence Research Center, “Sexual Violence and Transgender/Non-binary Communities” 2019. Last accessed 9/15/2023 at https://www.nsvrc.org/sites/default/files/publications/2019-02/Transgender_infographic_508_0.pdf.

²⁹ There are many types and combinations of pronouns not thoroughly discussed here. It is important to note that the order someone provides their pronouns can be significant. Sometimes, when a person indicates they use they/she pronouns it means that they are expressing a primary preference for use of they/them pronouns unless impractical, in which case she/her pronouns should be used. Some transgender people do not have a preference about the order of their pronouns, while others want both sets of pronouns to be used equally. Other transgender people use “all” pronouns (he/she/they) or none at all. In the context of court proceedings, it is acceptable to specify that you need clarity for the court record.

gendered patterns of abuse among heterosexual couples and may assume that sexual offenses are always crimes committed by males against females.³⁰

In the absence of the familiar relationship between a controlling male partner and a controlled female partner, professionals working in the field of domestic violence and sexual assault may fail to recognize cues of abusive behavior or adequately address abusive situations. One study found that crisis-line workers “tended to rate same-sex [domestic violence] abuse as less serious, less likely to recur, and less likely to get worse over time than opposite-sex abuse. They also believed that it was easier for survivors in same-sex relationships to leave their partners.”³¹ Corollary to the observation above is that law enforcement has been considered less likely to intervene in same-sex abusive relationships. Furthermore, largely “heterosexist beliefs” held by many mental-health service providers can impact the assistance same-sex sexual abuse survivors receive.³² Even where the authorities do not themselves hold such beliefs, sexual and gender-minority survivors’ fears of an unsympathetic or uncomfortable response to the survivor’s LGBTQ status can deter sexual offense reporting.³³

B. How Widely-Held Myths May Deprive LGBTQ People of Compassion and Respect

Two distinct myths regarding sexuality markedly affect the LGBTQ community: first, the myth that rape can “correct” sexual and gender-nonconforming people by causing them to change their behavior and become heterosexual; and second, the belief that sexual and gender-minorities either deserve victimization or bring assaults upon themselves. As one female-to-male transgender focus group member in the Sydney study related, “I got raped at 18 because they wanted to send me straight. I went to the police and the police said to me, ‘he who lays with dogs should expect to get fleas,’ that’s what I got.”³⁴ This comment speaks directly to the “desire to correct” and “deserved victimization” attitudes.

The first of these myths, so called “corrective rape,” may cause a perpetrator to select and sexually assault a victim out of the belief that doing so will either “cure” the victim of LGBTQ status, or discourage the victim from acting on same-sex attractions or expressing their gender in nonconforming ways. Corrective rape against LGBTQ people, and women in particular, has been observed internationally as rates of those identifying as LGBTQ have risen.³⁵ Some (self-identified) butch lesbian women have even reported experiencing sexual

³⁰ Mika Albright & DeAnn Alcantara-Thompson, “Contextualizing Domestic Violence from an LGBTQ Perspective,” Northwest Network of Bisexual, Trans, Lesbian and Gay Survivors of Abuse; (Sexual violence among heterosexual couples often takes place against the background of a dynamic of domestic violence in which, approximately 90% of the time, a male partner seeks to assert power and control over a female partner.)

³¹ Michael Brown & Jennifer Groscup, Perceptions of Same-Sex Domestic Violence Among Crisis Center Staff,” 24 *Journal of Family Violence* (2), 87-93 (2009).

³² Id.

³³ Id.

³⁴ Moran & Sharpe, “Violence, identity and policing...”, supra.

³⁵ See generally, “Violated Hopes: A nation confronts a tide of sexual violence,” *The New Yorker*, May 28, 2012 (describing corrective rape in South Africa).

assault because of the perception that they had “turned” straight women lesbian (and needed to be punished for this offense)³⁶ or experienced violence because they rejected a man’s advances based on their sexuality.³⁷

The second myth is that of “blaming the victim,” a fallacy recognized in many sexual offense contexts.³⁸ Blaming the victim takes place when a victim’s conduct or lack of precautions is cited to explain his or her victimization. In the context of LGBTQ sexual offenses, victim blaming is used to justify or to dismiss reports of abuse. This myth is reflected in the following three examples: First, some perpetrators may rationalize their own sexual offenses as what the victims “deserve,” which ties back in with the other myth of “corrective” rape.³⁹ Second, some teachers hearing reports of sexual offenses from LGBTQ students may choose not to respond, due to a belief that “queer teens bring this harassment on themselves.”⁴⁰ Third, police officers may fail to investigate violence against transgender people who deal drugs or engage in other criminalized conduct (e.g. sex workers) because the victim’s criminal conduct is assumed to explain (and perhaps justify) the assault.⁴¹

It is important to note that sexual offenses can also take place in the context of a more pervasive experience of homophobic or transphobic harassment. For instance, “out” LGBTQ high school students may receive frequent and invasive sexual touching and comments from other students at school, with their sexuality cited as an “excuse” for provoking such behavior.⁴²

Internalized homophobia also causes survivors to engage in their own forms of victim-blaming. After being sexually assaulted in high school, one survivor describes feeling

like i (sic) deserved all of it because i wasn’t normal, like i was sick, bad, wrong, diseased ... and also, ... it made me feel like i was somehow a perpetrator—because i knew that the nature of what was ‘wrong’ with me was sexual/about my sex, i felt like i was criminal in some way, or i was perpetrating unwholesomeness on all of the normal people around me, just by being there.⁴³

³⁶ See Meyer, Doug, *Violence against queer people: race, class, gender and the persistence of anti-LGBT discrimination*. Rutgers University Press (2015) at p. 60.

³⁷ *Id.* p. 77.

³⁸ For a further discussion of blaming the victim, see Section V., Chapter 1: Understanding Sexual Violence, of this bench guide.

³⁹ See footnote 27, *supra*.

⁴⁰ Wyss, “This was my hell...” *supra*.

⁴¹ See Moran & Sharpe, “Violence, identity and policing...” *supra* (police end investigation of assault against transgender victim when they discover that victim deals drugs).

⁴² See generally Wyss, “This was my hell...” *supra*.

⁴³ *Id.*; see also Gold, Marx & Lexington, “Gay Male Sexual Assault Survivors...” *supra* at 559 (mere awareness of myths relating to sexual assault can “cause individuals to react to their sexual assault histories with shame, self-blame, and guilt”).

As this quotation displays, survivors can experience profound feelings of guilt and shame surrounding not only their victimization, but also the sexual minority identity that they believe motivated their abuse.

Due to the economic and social marginalization of those within the LGBTQ community, the traditional barriers faced by all survivors seeking to leave an abuser are more pronounced for the sexual and gender-minority community. In particular, those experiencing homelessness, unemployment, living in rural areas, people of color, and those involved in underground economies, like economically-motivated sex work, are even more likely to face barriers to leaving an abuser.⁴⁴ This isolation allows abusers to use a victim's own gender or sexual identity against them to prevent them from leaving because they know the victim has no one else to turn to.

These and other myths relating to sexual offenses can harm LGBTQ sexual offense survivors from the moment they choose to bring their complaints to the legal system. Although many who experience sexual offenses choose not to report them to the authorities, those who do report can face an insensitive or traumatically intrusive investigative and litigation process. A court process sensitive to gender and sexuality-related sexual offense myths will be of benefit to a significant number of survivors.

C. How Binary Gendered Spaces Further Traumatize Gender Minorities

Transgender people face a unique difficulty when confronted with binary-gendered spaces such as bathrooms and other public facilities. That difficulty becomes more threatening in the context of incarceration where transgender people face the increased threat of prison rape: a 2009 study in California found trans women incarcerated in men's prisons are thirteen times more likely to experience sexual assault than cisgender men.⁴⁵ This is particularly concerning because LGBTQ communities are at increased risk for incarceration due to increased profiling, policing, and targeted discrimination.⁴⁶

Moreover, without community or familial support, transgender individuals do not have access to shelters and services which prioritize their safety. Frequently, women's shelters and services prioritize the safety of cisgender female safety resulting in the exclusion of transgender women who do not meet the requirements for a woman's shelter due to their

⁴⁴ See Danielle C. Slakoff & Jaelyn A. Siegel, "Barriers to Reporting, Barriers to Services: Challenges for Transgender Survivors of Intimate Partner Violence and Sexual Victimization" in *Queering Criminology in Theory and Praxis: Reimagining Justice in the Criminal Legal System and Beyond*, Bristol University Press (2022), pp 275-288.

⁴⁵ National Center for Transgender Equality (2018) "Ending abuse of transgender prisoners: a guide for advocates on winning policy change in jails and prisons." citing Jenness, V., Maxson, C. L., Matsuda, K. N., & Sumner, J. M. (2009). *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault*, p. 3. Irvine, CA: Center for Evidence-Based Corrections.

⁴⁶ *Id.*

anatomy, presentation, gender identity, and/or document incongruence.⁴⁷ It is especially troubling that research shows that transgender women are more likely to be victims of violence in a shelter setting than perpetrators of violence against their cisgender peers.⁴⁸

It is important to recognize that courthouses are also frequently binary gendered spaces. Traditional court proceedings emphasize the use of formal binary gendered honorifics such as Mr. and Ms. Although most Washington laws have been amended to reduce binary gendered terms and allow for changing one's legal gender, many court documents and databases are still reliant on binary genders as forms of identification of individuals which may have a traumatizing impact on LGBTQ individuals appearing before the court in any capacity.

Courthouses are also full of literal and figurative gatekeepers, creating opportunities for discrimination before a person even gets to a courtroom. From the security checkpoint to the bathrooms, there will be numerous interactions that can further compound stigmatization and prevent access to justice.

IV. What Judges Can Do: Confronting Myths in the Courtroom and Beyond

Under Washington law the essential elements of sexual assault crimes are gender neutral, and there is little in the way of unique legal doctrine relating to sexual assault against sexual minorities in Washington.⁴⁹ Because of the legislature's conscious decision to remain gender-neutral in its statutes, judges should employ the same best practices relevant in any sexual offense case: whether a victim or defendant is lesbian, gay, bisexual, transgender, or genderqueer does not require additional statutory guidance. This does not mean the court should not consider such cases carefully and with heightened sensitivity.

For many LGBTQ sexual offense survivors, the prospect of revisiting experiences of victimization during the litigation process remains deeply traumatic. The act of reporting an offense may subject survivors to ridicule or may force the survivor to confront hostile or stereotype-driven questions and assumptions during the investigation any subsequent litigation.

⁴⁷ Document incongruence is a term to describe the legal limbo trans people experience when legally changing their name or gender marker and delays in completing the process resulting in conflicting information in official records or databases.

⁴⁸ Slakoff at 281; Mottet, Lisa & Ohle, John. (2006) "Transitioning our shelters: making homeless shelters safe for transgender people." *Journal of Poverty*, 10(2): 77-101; at 87.

⁴⁹ See RCW 9A.44.010(1)(c) (gender neutral definition of sexual intercourse) <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.010>, RCW 9A.44.010(2) (gender neutral definition of sexual contact); for a unique analysis applying the gender-neutral sexual assault definitions, see generally *State v. A.M.*, 163 Wn. App. 414, 260 P.3d 229 (2011) (rejecting government's argument that, since the labia are considered part of the vagina, the buttocks should be considered part of the anus under RCW 9A.44.010(1)(a), and holding that sexual penetration of the buttocks but not the anus does not constitute sexual intercourse under that section).

Through sensitive courtroom management, judges can make significant contributions towards how sexual offenses against sexual and gender-minorities are investigated and, especially, how they are litigated. As one researcher has recently concluded, “[l]egal efforts ... must be augmented with advocacy and interventions to increase respect for diversity and reduce community acceptance of violence toward those marginalized.”⁵⁰ The legal system, and the judiciary in particular, are uniquely situated to contribute to increased respect for diversity and diminished community acceptance of sexual violence against marginalized people, including the LGBTQ population.

Practice Tip: Courts should consider the wording of forms and office practices that include binary gender identifications and terms and adopt gender neutral options where possible. Jury Instructions should be prepared using the pronouns provided by the case participants wherever possible.

Gender or sexuality-related myths like those discussed in Section III may be especially hurtful or distracting to jurors, or prejudicial to both victim and defendant. They should therefore be dispelled to the extent possible by the court, through court rules and procedures, general information, evidentiary rulings, instructions to lawyers and litigants, and specific jury⁵¹ instructions where necessary. It is important for judges considering how to conduct court proceedings involving sexual violence and the LGBTQ community to be mindful that, while Washington has gender-neutral definitions, the decriminalization of behavior commonly associated with LGBTQ individuals and the identities themselves are a matter of legal debate in other jurisdictions and decriminalization of LGBTQ individuals has never been universally applied.⁵² These legal realities in history or other jurisdictions may be an influence on individuals appearing before a Washington court including attorneys, victims, perpetrators, jurors and the public. Such fears or prejudices must be taken into consideration to create a safe and respectful courtroom.

There are limited options for judges to address preconceived myths and stereotypes that jurors may hold. The court will instruct a jury at the opening of the case using WPIC 1.01 and at the close of the case using WPIC 1.02. Each instruction reminds the jury that they may not discriminate on the basis of gender or sexual orientation. Courts should be aware in trials involving LGBTQ individuals of the potential for attorney argument addressing this instruction and consider carefully any rulings on objections to argument by counsel related to implied bias. Consistent with the sexual myths explored in Section III, jurors’ own societal perceptions may lead them to be more sympathetic to female victims to males.⁵³ In a 2000

⁵⁰ Saewyc, Pettingell, Ries, Bearinger, Resnick, Murphy & Combs, “Hazards of Stigma...” supra at 210-211

⁵¹ WPIC 1.01 instructs the jury on implied bias generally but there are no WPIC instructions specifically related to these concepts other than those that relate to charges of hate crimes for sexual orientation, gender expression or identity.

⁵² “A History of LGBT Criminalisation” Human Dignity Trust, www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/ last accessed October 18, 2023.

⁵³ Jodi A. Quas, Bette L. Bottoms, Tamara M. Haegerich, & Kari L. Nysse-Carris, “Effects of Victim, Defendant, and Juror Gender on Decisions in Child Sexual Assault Cases,” 32 *J. Applied Soc. Psychol.* 1993, 1995 (2002).

study, mock jurors were found to assign less “blame” to females assaulted by a male, than to males assaulted by a female.⁵⁴ This may have dire consequences in how jurors address cases regarding transgender individuals, where gender-based assumptions are at play.

Although female victims may find a more sympathetic audience, a “general pattern” of leniency towards female defendants has also been identified.⁵⁵ However, in dealing with same-sex sexual assaults, heterosexual men are reportedly more negative in their perceptions of victim or abuser than are heterosexual women.⁵⁶ This may provide insight as to the “differences in men and women jurors’ decisions in same-gender assault cases and that direct associations should exist between homophobic attitudes and case results.”⁵⁷

Because much of what jurors believe is based upon societal perceptions and judgments, it would not be surprising for such beliefs to also be present among court staff, judges, and attorneys. It is particularly important that both judges and lawyers be aware of such assumptions and myths.

Practice Tip: Court management software that allows for private notes viewable only by the judge may allow for the judge to indicate the preferred pronouns of individuals that will appear before the court for repeated hearings and whose physical appearance does not remind the judge of the individual’s preferred pronouns. This practice can minimize the need for the individual to re-state their preferred pronouns at every hearing and provides affirmation to the individual of the court’s recognition of the individual’s gender identity.

Judges and lawyers should not only be cognizant of such societal perceptions, but should also strive to instruct jurors in a manner that dispels harmful stereotypes and dismantles common myths. During voir dire, narrowly tailored questions addressing sexual offense myths may help identify juror biases relevant to a sexual offense trial involving an LGBTQ survivor (judges should also be mindful that members of the jury pool, witnesses, or others in the courtroom may identify as LGBTQ). In particular, limiting attorney’s questions or theories that present some victims as ‘deserving’ or ‘un-deserving’ of sexual assault is particularly beneficial for LGBTQ survivors, who may be engaged in activities or work that could be easily construed as the reason for their assault. However, a thoughtfully constructed voir dire may serve to educate not only those harboring gender-based stereotypes, but also those who are largely apathetic.⁵⁸ Being mindful of language used and references made is essential to communicating in a neutral and impartial manner.

⁵⁴ Id.

⁵⁵ Id. at 1996, (where “the combination of a general leniency toward women sexual abuse perpetrators, [and] a bias against same-gender sexual abuse... leads to the hypothesis that there will be fewer guilty verdicts when jurors are presented with an abuse allegation that involves a woman defendant.”)

⁵⁶ Id. at 1998.

⁵⁷ Id.

⁵⁸ Courts may want to consider a pre-trial discussion with counsel to review voir dire questions related to LGBTQ stereotypes and issue pre-trial rulings regarding the appropriate topics for voir dire if this issue is anticipated to be discussed by attorneys during a trial.

A judge who is well informed on the myths and realities surrounding sexual offenses against LGBTQ people will be better prepared to address challenges in jury selection based on bias or prejudice regarding LGBTQ people. To challenge a juror for cause of actual bias, the record must show:

the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging, and which is known in this code as actual bias.⁵⁹

To excuse a juror for actual bias, the court must be satisfied “from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.”⁶⁰ As judges are aware, a discriminatory peremptory challenge may be more difficult to identify. It is well established that peremptory challenges that discriminate on the basis of gender, race or ethnicity violate the equal protection clause. In Washington State, that protection against discrimination has been unequivocally extended to protect against discrimination on the basis of sexual orientation.⁶¹ The abuse of discretion standard applies to a judge's dismissal of a juror based on bias or prejudice when grounds for challenge are present.⁶²

It is important for judges to be mindful of a LGBTQ victim's fear of isolation. Due to only a small percentage of the American population identifying as LGBTQ, many LGBTQ people can feel marginalized by society. LGBTQ victims may be much more invested in or dependent upon their communities or networks of peers and may be reluctant to cease those interactions despite a strong possibility of coming in to contact with their abusers.⁶³ Understanding this dynamic within the LGBTQ community may be helpful when ordering SAPOs or issuing rulings regarding violations of such protection orders.

Finally, courts should at least be aware of community resources that either specifically aid, or are friendly to, the LGBTQ community. Information regarding these resources may be passed along to others appearing in a judge's court, as the judge sees fit. Appendix A to this chapter lists some of those resources.

V. Conclusion

Sexual offenses against lesbian, gay, bisexual, transgender, and genderqueer, or questioning people remain a problem of great proportion, both because sexual offenses are perpetrated against LGBTQ people frequently and because social norms and assumptions about sexual offenses tend to marginalize sexual minorities. Gender and sexuality-related sexual offense myths are likely to compound the difficulties facing LGBTQ survivors within the courts.

⁵⁹ RCW 4.44.170(2).

⁶⁰ RCW 4.44.190.

⁶¹ *State v. Arlene's Flowers, Inc.* 193 Wn.2d 469, 441 P.3d 1203 (2019).

⁶² *State v. Lawler* (2016) 194 Wn. App. 275, 374 P.3d 278, review denied 186 Wn.2d 1020, 383 P.3d 1027, habeas corpus denied 2018 WL 2561070.

⁶³ Albright & Alcantara-Thompson, “Contextualizing Domestic Violence...” *supra*.

Section I provided the framework for understanding Washington law in how it relates to LGBTQ survivors in the context of sexual assault, and it broadly introduced the reader to the contents of the following sections.

Section II provided the backdrop and context for the pervasiveness of sexual assault in our society. Three themes emerged from this: (1) the high rates of sexual violence against sexual and gender minorities; (2) the high rate of sexual offense victimization among sexual and gender-minorities is not attributable to a single source of abuse; and (3) LGBTQ sexual offense survivors often have their experiences trivialized and experience secondary trauma when seeking services.

Section III discussed ways in which gender-based assumptions play down the abuse of same-sex assaults. It then explained that two common myths are primarily responsible for the trivialization of LGBTQ victimization. The first of these is “corrective rape,” where the abuser seeks to “cure” the victim of LGBTQ status or discourage the victim from acting on same-sex attractions. The second myth is in “blaming the victim,” operating under the notion that the victim merely got what they deserved.

Section IV explored how judges can pave the way for more fair and respectful treatment of litigants in sexual offense investigations and litigation. By understanding common myths and juror perceptions based on societal influence, judges can effectively address a jury pool, conduct a sensitive voir dire, execute unbiased jury instructions, and be mindful in ordering conditions or resolving violations of SAPOs.

It is important to remember that gender and sexuality-related sexual offense myths are also likely to influence juries in cases involving no sexual minorities at all, meaning that working to minimize their effect on juries could reduce the risk of prejudice across the board. Maintaining an awareness of and respect for diversity within the courtroom can significantly improve LGBTQ survivors’ experiences on the witness stand and in the jury box, and could even promote better reporting of, and responses to, sexual assault crimes in the future. Moreover, such mindfulness also promotes the fair administration of justice as well as a bench that more accurately reflects the diversity of the community that it serves.

A list of resources for the LGBTQ community is provided in Appendix A, along with a brief description of the services each provides. These may be helpful in supplying further information for judges looking to broaden their knowledge and understanding of LGBTQ issues. Appendix B provides reference materials utilized in the preparation of this chapter that are also helpful sources of additional information.