

CHAPTER 1

Understanding Sexual Violence

I. Introduction

The purpose of this chapter is to increase the judicial system’s understanding of the dynamics of sexual violence, including its pervasive nature across the spectrum of sexual offenses. This bench guide is intended as a useful resource for judicial officers across the state of Washington when presiding over cases that involve sexual violence issues.

Understanding sexual violence is essential to the administration of justice, as the judicial system’s response to sexual assault victims can act as either encouragement or deterrence to victim crime reporting. Most sexual offenses are not reported to the police, and even fewer are prosecuted. For example, a study of Washington women found that only fifteen percent of women who were sexually assaulted reported their assault to the police, and only half of those reports resulted in charges being filed.¹ Comprehensive national data confirm that this phenomenon, known as the justice gap,² is a national problem. A national survey of crime victims ages 12 and over found that less than a quarter of rape and sexual assault victimizations were reported to police in 2018.³ Of those sexual assaults that are reported, very few are prosecuted, and fewer still result in convictions.⁴

Victims face a number of barriers to reporting, which will be discussed in depth later in this chapter. National surveys of sexual assault victims find that many victims who do report their crimes feel they are not believed; while many who do not report their crimes stay silent from fear of how they will be treated in the justice system.⁵ This holds true for victims in Washington. The Washington State Supreme Court Gender and Justice Commission, in conjunction with the Washington Coalition of Sexual Assault Programs, conducted a survey of 91 certified sexual assault advocates across the state of Washington to inform this bench guide. One out of five advocates (20%) who support victims of sexual assault at criminal and civil proceedings reported that judicial officers in criminal proceedings were accusatory to the victim and used blaming statements. One out of seven (13%) reported this response to victims in civil proceedings. In addition, 27% of all advocates responding to the survey disagreed with the statement, “Judicial officers here [in the specific area of the state I currently work in] understand the dynamics of sexual assault.”

¹ Lucy Berliner, David Fine & Danna Moore, “Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault: A Survey of Washington State Women”, 21 - 22 (Seattle: Harborview Medical Center 2001). Although these data are old, they represent some of the only Washington-specific research on female sexual assault victims and their experiences.

² Jennifer Temkin & Barbara Krahe, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing 2008)

³ RACHEL E MORGAN & BARBARA OUDEKERK, *Criminal Victimization, 2018* 37 (2019).

⁴ MELISSA S MORABITO, LINDA M WILLIAMS & APRIL PATTAVINA, *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Case Attrition in the U.S.* 237 (2019).

⁵ Kate B. Wolitzky-Taylor et al., *Is Reporting of Rape on the Rise? A Comparison of Women With Reported Versus Unreported Rape Experiences in the National Women’s Study-Replication*, 26 J INTERPERS VIOLENCE 807–832 (2011).

This chapter begins with definitions of terms and an explanation of how they are used in the rest of the chapter. The remainder of this chapter first provides statistics about the prevalence of sexual violence in Washington compared with national statistics, including information about the prevalence of sexual assaults within specific populations. Second, it explores the dynamics of sexual violence perpetration. Third, it addresses the characteristics of victims of sexual violence, dispelling some of the most common myths. Fourth, it details the physical, psychological, and emotional impacts that the trauma of sexual violence can have on victims. Finally, this chapter explains the role of sexual assault advocates and describes the structure of sexual assault service provision in Washington, including statewide and local resources.

II. Understanding the Problem

Sexual violence is a highly pervasive problem; these issues may arise in a wide variety of cases, including criminal matters, family law matters, and claims of sexual harassment in the workplace or in the rental of a dwelling.

A. Defining the Problem

The first step in understanding sexual violence is to define what it is and to understand how often it occurs.

1. What is sexual violence?

Sexual violence is an umbrella term that includes a wide range of victimizations. In the anti-sexual violence field, the term *sexual violence* is used to describe a continuum of behaviors, ranging, for example, from making sexist jokes, to dealing in or possessing depictions of minors engaged in sexually explicit conduct, to touching someone sexually without consent, to coercing someone into sexual activity, to rape. The behaviors along the continuum of sexual violence combine to create a culture in which victims are devalued, sexual violence is tolerated, and perpetrators are not held accountable.

The term “sexual assault” is sometimes used interchangeably with the term “sexual violence.” However, sexual violence refers to more than those sexual offenses that are specifically defined as sexual assaults or that involve a physical attack or threatened physical attack by a specific perpetrator against a specific victim. For the purposes of this bench guide every sexual offense listed in Chapter 2 is considered to be an offense involving sexual violence because each sexual offense, by its inherent nature, involves a perpetrator fundamentally violating the basic security, dignity, value, integrity and autonomy of an individual victim or distinct group of victims. Throughout, the terms “sex offense” and “sexual violence” are used interchangeably to refer to all the crimes listed in Chapter 2. When the term “sexual assault” is used, it refers to a subset within the range of sex offenses that represents offenses defined in Chapter 9A.44 as sexual assaults or for which there is a specific element of actual assault.

2. Washington law

Sexual assault is defined in the Victims of Sexual Assault Act⁶ as: (1) rape or rape of a child⁷, (2) assault with intent to commit rape or rape of a child⁸, (3) incest or indecent liberties⁹, (4) child molestation¹⁰, (5) sexual misconduct with a minor¹¹, (6) custodial sexual misconduct¹², (7) crimes with a sexual motivation¹³, or (8) an attempt to commit any of the aforementioned offenses.

B. How Big Is the Problem?

Accurately quantifying the problem of sex offenses is sometimes made difficult by a lack of uniformity in the definitions of the offenses. This is illustrated in Washington with respect to the offense of rape. The Washington definition of rape is broad, in that it encompasses victims of any gender and acknowledges that perpetrators can be the same sex as their victims. Until recently, the FBI definition of rape (established in 1927) was, “carnal knowledge of a female, forcibly and against her will.”¹⁴ Since this definition was used to track statistics for the FBI’s annual Uniform Crime Report, those statistics excluded all male victims, victims of oral or anal rape, rape by an object or other body part, persons raped by female perpetrators, and victims of “non-forcible” rape.¹⁵ Uniform Crime Report data prior to the definition change in 2012 are therefore not an accurate representation of the prevalence of sexual assault in the United States. The revised FBI definition now mirrors the Washington statute; this change was necessary to capture a more complete picture of sexual assault in the United States.

Several reliable national studies have reported on the prevalence of incidents of sexual assault in the United States, specifically the National Women’s Study,¹⁶ the National

⁶ RCW 70.125.030(7) <http://apps.leg.wa.gov/rcw/default.aspx?cite=70.125.030>

⁷ RCW 9A.44.040 – 9A.44.079 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.040>

⁸ RCW 9A.36.011, 9A.36.021 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.36.011>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.36.021>

⁹ RCW 9A.64.020, 9A.44.100 respectively <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.64.020>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.100>

¹⁰ RCW 9A.44.083, 9A.44.089 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.083>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.089>

¹¹ RCW 9A.44.093, 9A.44.096 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.093>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.096>

¹² RCW 9A.44.160, 9A.44.170 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.160>;
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.170>

¹³ RCW 9.94A.835 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9.94A.835>

¹⁴ FBI, National Press Releases, “Attorney General Eric Holder Announces Change to the Uniform Crime Report’s Definition of Rape”, (January 6, 2012) <http://www.fbi.wgov/news/pressrel/press-releases/attorney-general-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape>

¹⁵ Rape is, of course, inherently forcible or coercive; however this definition refers to rape that does not include the use of physical force.

¹⁶ Dean G. Kilpatrick, Christine N. Edmunds & Anne Seymour, “Rape in America: A Report to the Nation”, (Crime Victims Research and Treatment Center and the National Victim Center 1992)

Violence Against Women Survey,¹⁷ and the National Intimate Partner and Sexual Violence Survey.¹⁸ According to National Intimate Partner and Sexual Violence Survey of 2015, approximately one in five women (21%) and one in 38 men (three percent) have ever been raped.¹⁹ (This study—as most national studies do—collected gender in binary (male/female), and so does not record the experiences of people who identify as nonbinary or gender nonconforming; and did not record whether respondents were transgender or cisgender.) The majority of female victims (81%) had experienced their first rape or rape attempt before the age of 25, and 43% before the age of 18. Similarly, the majority of male victims (71%) had experienced their first rape or rape attempt before the age of 25, and 51% before the age of 18.²⁰

Nearly 7,000 Washington residents reported being the victim of a forcible sexual incident in 2019.²¹ The majority (86%) of victims were female.²²

1. Sexual violence against women in Washington

In 2001, the Office of Crime Victims Advocacy collected Washington-specific data on the incidence and prevalence of sexual assault and its characteristics. The survey reported in “Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault: A Survey of Washington State Women”²³ was conducted using the same methodology as the National Women’s Study and the National Violence Against Women Survey. The survey focused on adult women, and, in addition to asking the same screening questions as the national studies, asked questions to learn more about other sexual assault experiences of Washington women. Key findings included the following:

- Nearly one in four (23%) of Washington women had been raped, as defined by Washington law, during their lifetime.²⁴
- More than one in three Washington women had been victims of sexual assault—defined as rape, attempted rape, forced sexual contact, or child sexual abuse—at some time in their lives.²⁵

¹⁷ Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 7 (One in six women has been raped at some point in her life. About eighteen percent of women who were raped before the age of 18 also reported being raped since their 18th birthday. Over 92% of rapes of female victims were committed by a current or former intimate partner, a family member other than a spouse, or an acquaintance)

¹⁸ S.G. SMITH ET AL., *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* 272 (2017). Data collected in 2015.

¹⁹ *Id.*

²⁰ *Id.*

²¹ TONYA TODD & BROOK BASSETT, *Crime in Washington, 2019 Annual Report* (2020), <https://waspc.memberclicks.net/crime-statistics-reports>. A “forcible sexual incident” is defined as “Any sexual act directed against another person, forcible and/or against that person’s will; or not forcible or against the person’s will when the victim is incapable of giving consent.”

²² *Id.*

²³ Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions”

²⁴ *Id.* at 12

²⁵ *Id.*

- One in five women had had more than one sexual assault experience.²⁶
- Of the women who had been sexually assaulted, 92% were sexually assaulted by a family member, current or former intimate partner, or an acquaintance. Only eight percent were sexually assaulted by a stranger.²⁷
- Almost one in ten of the women were sexually assaulted when unable to consent due to the influence of alcohol or drugs.²⁸

According to the CDC’s 2011 National Intimate Partner and Sexual Violence Study, 45% of women in Washington State reported having experienced contact sexual violence²⁹ in their lifetime, compared to 36% of US women, and 22% of men.³⁰

2. Sexual violence against children

Since perpetrators target vulnerable victims,³¹ children and youth are especially vulnerable to sexual violence. Multiple studies have shown that the rate of sexual assault of boys and girls is exceedingly high:

- Nationally, one in four girls (27%) and one in twenty boys (five percent) report having experienced sexual abuse or sexual assault before the age of 18.³²
- Among 12th graders in Washington State, 31% of female students, compared to 13% of male students, reported having been forced into a sexual situation.³³
- The majority of sexual assaults against boys and girls are perpetrated by someone known to the victim (86% and 93%, respectively).³⁴

3. Sexual violence against men

Men are also victims of sexual violence.³⁵ While we know that men are victims, there is unfortunately less research about the prevalence and characteristics of male victimization. In the survey of certified sexual assault victim advocates, 28% of the advocates responding

²⁶ Id. at 13

²⁷ Id. at 19

²⁸ Id. at 39

²⁹ Combines responses for rape, being made to penetrate someone else, sexual coercion and/or unwanted sexual contact (involving touch, kissing and groping/fondling).

³⁰ SMITH ET AL., *supra* note 21.

³¹ Harborview Center for Sexual Assault and Traumatic Stress, “Information About Sexual Offenders”, http://depts.washington.edu/hcsats/PDF/infobrochures/sexual_offenders.pdf 2

³² David Finkelhor et al., *The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence*, 55 JOURNAL OF ADOLESCENT HEALTH 329–333 (2014).

³³ LOOKING GLASS ANALYTICS, *Healthy Youth Survey 2018: Report of Results* (2019).

³⁴ Ateret Gewirtz-Meydan & David Finkelhor, *Sexual Abuse and Assault in a Large National Sample of Children and Adolescents*, 25 CHILD MALTREAT 203–214 (2020).

³⁵ Lynn Hecht Schafran, “Writing and Reading About Rape: A Primer,” 66 *St. John’s L. Rev.* 979, 998 (1993)

disagreed with the statement, “The justice system [in the specific area of the state I currently work in] gives fair/equal treatment to sexual assault cases when the victim is male.”

Findings from national surveys of men include the following:

- The National Intimate Partner and Sexual Violence survey reports that about 1 in 4 (25%) US men have ever experienced contact sexual violence, including three percent of men who have experienced rape or attempted rape, seven percent who were made to penetrate someone, ten percent who experienced sexual coercion, and eighteen percent who experienced unwanted sexual contact.³⁶
- Among male victims of rape, 71% reported that their first experience of rape took place before the age of 25, and 51% reported that the first rape took place before the age of 18.³⁷
- Male victims of rape and sexual assault in the US generally know their perpetrators, who are usually reported to be acquaintances or former intimate partners – fewer than one fifth of male sexual violence victims in 2010 reported that their perpetrator was a stranger.³⁸

Sexual violence impacts these male victims in some of the same ways it affects female victims (see, “Understanding the Victim,” section V., p. 1-18 below), but also in other ways that are specific to men. Research has shown that the rape myths and traditional stereotypes can lead to negative attitudes towards male sexual assault victims, and can discourage men from reporting their sexual assault experience.³⁹

An informal survey of 200 male victims of sexual assault found that 81% were afraid that people would think they were or would become perpetrators.⁴⁰ In addition, many men who have been sexually assaulted may experience confusion about their gender identity or sexual orientation.⁴¹

4. Sexual violence against specific populations

Although sexual violence can be perpetrated against anyone, and affects all cultural communities, research shows that people of color, people with disabilities, sexual and gender minorities, and people experiencing incarceration often experience sexual violence at higher rates.

³⁶ SMITH ET AL., *supra* note 21.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Nicola L. Fisher & Afroditi Pina, *An overview of the literature on female-perpetrated adult male sexual victimization*, 18 AGGRESSION AND VIOLENT BEHAVIOR 54–61 (2013).

⁴⁰ The Oprah Winfrey Show, “A Two Day Oprah Show Event: 200 Adult Men Who Were Molested Come Forward” (Harpo Productions November, 2010) (TV series)

⁴¹ lin6, “Myths & Facts” <http://lin6.org/therapists-and-other-professionals/myths-facts/>

National data show that people of color, particularly Black, American Indian/Alaska Native, and multiracial people, experience rates of sexual violence much higher than the average:

- Data from the National Intimate Partner and Sexual Violence Survey show that 19% of US women experienced rape at some point in life, and one percent of women experienced rape in the year prior to responding to the survey.⁴² Higher rates of lifetime experience of rape were reported by multiracial women (32%), AI/AN (29%), and non-Hispanic Black women (21%). Men of color similarly report higher than average rates of sexual violence.⁴³

Similarly, individuals who identify as gay, lesbian, or bisexual, and those who identify as transgender, experience higher than average rates of sexual assault:

- Bisexual women are more likely than lesbian and heterosexual women to report having experienced rape (46% compared to 13% and 17%, respectively).⁴⁴ Gay and bisexual men report higher rates of sexual violence compared to heterosexual men.⁴⁵
- Among high school students nationwide, female students and sexual minority (lesbian, gay and bisexual) students report higher rates of rape, sexual assault or violence, sexual dating violence, and physical dating violence than their male and heterosexual peers.⁴⁶ In all categories, female sexual minority (lesbian and bisexual) girls report higher rates than their male sexual minority (gay and bisexual) peers.⁴⁷
- Among college students, transgender students have significantly higher odds of experiencing sexual victimization compared to their cisgender (non-transgender) peers.⁴⁸
- According to the 2015 US Transgender survey, nearly half of all respondents (47%) had ever been sexually assaulted, and 10% had been sexually assaulted in the previous year.⁴⁹ Transgender respondents with disabilities reported higher

⁴² SMITH ET AL., *supra* note 21.

⁴³ *Id.* Because the rates of reported rape for men are so low, the survey doesn't disaggregate racial/ethnic groups for reported rape. However, the survey does report that while 17.1% of all US men report having experienced contact sexual violence in their lifetime, the reported rates are higher for multiracial men (31.9%), AI/AN men (23.1%), Black men (19.4%), and Hispanic men (18.5%).

⁴⁴ M.L. WALTERS & M.J. BREIDING, *The National Intimate Partner and Sexual Violence Survey: 2010 Findings on Victimization by Sexual Orientation* (2013).

⁴⁵ *Id.*

⁴⁶ Laura Kann et al., *Youth Risk Behavior Surveillance —United States, 2017*, 67 479 (2018).

⁴⁷ *Id.*

⁴⁸ Stacey B. Griner et al., *The Intersection of Gender Identity and Violence: Victimization Experienced by Transgender College Students*, 35 J INTERPERSONAL VIOLENCE 5704–5725 (2020).

⁴⁹ S.E. JAMES ET AL., *The Report of the 2015 U.S. Transgender Survey*.

rates of lifetime sexual assault (61%), as did respondents who identify as transgender nonbinary (55%).⁵⁰

Women with disabilities report higher rates of sexual violence compared to the general population:

- National Public Radio (NPR) analyzed unpublished data from the US Department of Justice and found that people with disabilities have rates of sexual assault seven times higher than people without disabilities.⁵¹
- Among people with disabilities, some are at greater risk: women with serious mental illness have been found to have experienced higher rates of lifetime sexual victimization compared to women with other disabilities.⁵²

Finally, people experiencing incarceration can be sexually victimized by correctional staff or by other incarcerated people. Female inmates and LGBTQ+ inmates are at particularly high risk of sexual assault while incarcerated:⁵³

- Washington State Department of Corrections reports that a total of 644 sexual abuse allegations were investigated in 2020 (or about four percent of the total inmate population, assuming only one allegation per person).⁵⁴ However, experts note that sexual assault is likely very underreported in prisons.
- In the most recent national survey of sexual victimization among incarcerated people, four percent of state and federal prison inmates and three percent of jail inmates reported having experienced sexual victimization in the previous twelve months.⁵⁵ Sexual and gender minority individuals experiencing incarceration reported higher rates of sexual victimization than their heterosexual peers.⁵⁶

Victims of sexual violence who come from communities that are oppressed or discriminated against may experience additional trauma. The oppression they experience may affect their interest in engaging with the justice system and their willingness or ability to

⁵⁰ *Id.*

⁵¹ Joseph Shapiro, *The Sexual Assault Epidemic No One Talks About*, NPR, January 8, 2018, <https://www.npr.org/2018/01/08/570224090/the-sexual-assault-epidemic-no-one-talks-about>.

⁵² Karen Hughes et al., *Prevalence and risk of violence against adults with disabilities: a systematic review and meta-analysis of observational studies*, 379 THE LANCET 1621–1629 (2012); Maria W. Mauritz et al., *Prevalence of interpersonal trauma exposure and trauma-related disorders in severe mental illness*, 4 EUROPEAN JOURNAL OF PSYCHOTRAUMATOLOGY 19985 (2013); Tonya B Van Deinse et al., *Intimate partner violence and sexual assault among women with serious mental illness: A review of prevalence and risk factors*, 19 JOURNAL OF SOCIAL WORK 789–828 (2019). However in these large population studies it's not possible to determine if the victimization occurred before or after the development of the mental illness.

⁵³ ALLEN J BECK ET AL., *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012* (2013), <https://bjs.ojp.gov/content/pub/pdf/svjfry12.pdf>; ALLEN BECK ET AL., *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12* (2013), <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf>.

⁵⁴ WASHINGTON STATE DEPARTMENT OF CORRECTIONS, *Annual PREA Report* (2021).

⁵⁵ BECK ET AL., *supra* note 74.

⁵⁶ *Id.*

participate in an ongoing criminal justice process. They may be reluctant to seek services that are not culturally or linguistically appropriate.⁵⁷ In addition, they may be more reluctant to access the legal system or seek help in general because of cultural values or past negative experiences.⁵⁸

As Washington has many diverse communities, judicial officers will see a diverse range of individuals in their courtrooms. The survey of certified sexual assault advocates referenced above indicates that judicial officers may lack an understanding of sexual assault of members of specific cultural communities. Twenty-six percent of advocate respondents disagreed with the statement, “The justice system [in the specific area of the state I currently work in] gives fair/equal treatment to sexual assault cases when the victim is gay/lesbian/bisexual/transgender.” Twenty-one percent of the advocates disagreed with the same statement in regard to members of particular cultural groups. Examples of cultural groups named included the immigrant community, people with disabilities, senior citizens, and Native Americans. Nineteen percent of the advocates also disagreed that the justice system gives fair/equal treatment to “sexual assault cases when the victim speaks a language other than English.”⁵⁹

If a judicial officer is not familiar with a particular cultural community, it is important to avoid assumptions, and seek the information necessary to make an informed and unbiased decision. See Chapter 11 (Cultural Competency) of this bench guide.

III. Washington Statutes

Many Washington statutes address issues of sexual violence. While several of these statutes will be covered in depth in later chapters, and criminal sexual offense statutes are listed and discussed in Chapter 2, the following list of other relevant criminal and civil statutes, court rules and constitutional provisions is provided here (the online version of this bench guide contains links to the full text of the following provisions for ease of reference):

- A. Sex Offenses – RCW 9A.44,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44>
- B. Harassment and Stalking – RCW 9A.46,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.46>
- C. Sexual Exploitation of Children – RCW 9.68A,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9.68A>

⁵⁷ Women of Color Network, “Facts & Stats Collection, Sexual Violence Factsheet” (2006)

⁵⁸ Kimberly Lonsway, Joanne Archambault, & David Lisak, “False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault”, *The Voice* (The National Center for the Prosecution of Violence Against Women 2009)

⁵⁹ Results compiled from an unpublished survey of Washington sexual assault advocates conducted by the Washington State Gender and Justice Commission and the Washington Coalition of Sexual Assault Programs in March & April, 2012

- D. Indecent Exposure – RCW 9A.88.010,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.88.010>
- E. Criminal Limitations of Actions – RCW 9A.04.080,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.04.080>
- F. Rape Shield
 - 1. Civil – Evidence Rule 412,
http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=gaer0412
 - 2. Criminal – RCW 9A.44.020,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.020>
- G. Criminal Records Privacy Act – RCW 10.97,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.97>
- H. Address Confidentiality for Victims of Domestic Violence, Sexual Assault, and Stalking – RCW 40.24, <http://apps.leg.wa.gov/rcw/default.aspx?cite=40.24>
- I. Polygraph Examinations – Victims of Alleged Sex Offenses – RCW 10.58.038,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.58.038>
- J. Abuse of Children – RCW 26.44,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.44>
- K. Protection Orders⁶⁰
 - 1. Sexual Assault Protection Order – RCW 7.90,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.90>
 - 2. Domestic Violence Protection Order – RCW 26.50,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.50>
 - 3. Anti-Harassment Protection Order – RCW 10.14,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=10.14>
 - 4. Vulnerable Adult Protection Order – RCW 74.34.110,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=74.34.110>
- L. Housing
 - 1. Victim Termination of Rental Agreement – RCW 59.18.575,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=59.18.575>
- M. Employment
 - 1. Discrimination – RCW 49.60,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=49.60>
 - 2. Family Leave – RCW 49.78,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=49.78>

⁶⁰ Effective July 1, 2022, statutes governing protection orders will be consolidated in Chapter 7.105 RCW.

3. Domestic Violence Leave (applies to victims of domestic violence, sexual assault, or stalking) – RCW 49.76,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=49.76>

N. Family Law

1. Restrictions in Temporary or Permanent Parenting Plan – RCW 26.09.191,
<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.09.191>

O. Victims' Rights

1. Crime Victims, Survivors, Witnesses – Washington State Constitution Article 1, Sec. 35; RCW 7.69.030,

<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.69.030>

2. Child Crime Victims and Witnesses – RCW 7.69A.030,

<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.69A.030>

3. Dependent Persons – RCW 7.69B.020,

<http://apps.leg.wa.gov/rcw/default.aspx?cite=7.69B.020>

P. Victims of Sexual Assault Act – RCW 70.125,

<http://apps.leg.wa.gov/rcw/default.aspx?cite=70.125>

1. Records of Community Sexual Assault Program and Underserved Populations Provider Not Available as Part of Discovery – RCW 70.125.065,

<http://apps.leg.wa.gov/rcw/default.aspx?cite=70.125.065>

2. Right to be accompanied by a personal representative during treatment or proceedings – RCW 70.125.060,

<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.020>

Q. Sexual Assault Advocate-Victim Privileged Communication – RCW

5.60.060(7), <http://apps.leg.wa.gov/rcw/default.aspx?cite=5.60.060>

IV. Understanding the Dynamics of Sexual Violence Perpetration

Understanding perpetrator behavior is essential to comprehend sexual violence victimization and to determine appropriate sanctions and treatment. Individuals who sexually offend make a conscious choice to victimize another person.⁶¹ Perpetrators of sexual violence can be any age, gender, race, or marital status. They can come from any socioeconomic, educational, cultural, or family background. While offenders include both males and females, the majority of perpetrators are male.⁶²

Sex offenders are not easily categorized because the individual and their offending behavior, patterns and predilections vary with the individual: “Researchers have concluded that sexual assault perpetration is a complex behavior that is likely influenced by a combination of

⁶¹ Center for Sex Offender Management, “Understanding Sex Offenders: An Introductory Curriculum, Section 3: Common Characteristics of Sex Offenders” http://www.csom.org/train/etiology/3/3_1.htm

⁶² Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 21

factors, including an individual’s developmental and family history, personality, and environmental and societal influences.”⁶³ However, there are a number of factors that may increase a person’s likelihood of offending, including the following general categories:

- “Physiological/biological (e.g., imbalanced hormones, being sexually attracted to children);
- Sociocultural (e.g., being exposed to broader social messages supportive of aggression);
- Developmental/environmental (e.g., having witnessed domestic violence);
- Situational/circumstantial (e.g., having easy access to victims, extreme levels of stress).”⁶⁴

In addition, researchers have found that some sex offenders have deviant sexual arousal, interests, or preferences. In other words, they are aroused by things that are outside the realm of healthy sexual behavior. Some examples of these interests are:

- Engaging in sexual contact with young children or adolescents;
- Having sexual contact with others against their will or without their consent;
- Inflicting pain or humiliation on others;
- Participating in or watching acts of physical aggression or violence;
- Exposing oneself in a public setting;
- Secretly watching others who are undressing, unclothed, or engaging in sexual activities.⁶⁵

These deviant sexual preferences are very strong, and “it is believed that they are a significant driving force behind the initial onset of sexually abusive behaviors for some offenders.”⁶⁶ They are also linked to recidivism.

A. For the Vast Majority of Perpetrators, Sexual Offenses Are Acts of Power and Control, Not Acts of Sexual Desire

⁶³ SARAH MICHAL GREATHOUSE ET AL., A REVIEW OF THE LITERATURE ON SEXUAL ASSAULT PERPETRATOR CHARACTERISTICS AND BEHAVIORS (2015).

⁶⁴ Center for Sex Offender Management, “Fact Sheet: What You Need to Know About Sex Offenders” at 3 http://www.csom.org/pubs/needtoknow_fs.pdf

⁶⁵ Center for Sex Offender Management, “Understanding Sex Offenders: An Introductory Curriculum, Section 3: Common Characteristics of Sex Offenders”

⁶⁶ Id.

It is imperative to understand that for most perpetrators, sexual assault is not about sexual gratification; it is about one person using sexual assault to exert power and control over another person.⁶⁷ Perpetrators may be driven by feelings of powerlessness or anger.⁶⁸ Research has found that male sexual assault perpetrators frequently hold strong beliefs about traditional gender roles and demonstrate hostility and aggression towards women.⁶⁹

B. Most Sexual Offenses Are Committed by Someone the Victim Knows

Contrary to common belief and typical media coverage, the great majority of sexual assaults are perpetrated by someone the victim knows. In a review of nation-wide incidents of sexual assault against female victims age twelve and older between 2005-2010, the Department of Justice reports that 78% of incidents involved an offender who was a family member, intimate partner, friend, or acquaintance.⁷⁰ This number is likely even higher for children younger than twelve.⁷¹ Perpetrators can be spouses, partners, neighbors, friends, community members, or family members of the victim. Among reports of contact sexual violence by female victims in Washington State, 40% report victimization by a current or former intimate partner, 17% by a family member, and 58% by an acquaintance; and only 24% by a stranger.⁷²

Although sexual violence by strangers does occur, it is uncommon.⁷³ Furthermore, non-stranger sexual assaults are at least as devastating as stranger sexual assaults.⁷⁴ In addition to the trauma of sexual assault, victims must cope with the breach of trust caused when someone they know assaults them.

C. Most Perpetrators of Sexual Assault Do Not Use a Weapon

In the Washington study, only eight percent of the sexual assault experiences involved the use of a weapon.⁷⁵ This is consistent with national estimates. In a review of

⁶⁷ See Lisak, “Understanding the Predatory Nature of Sexual Violence” at 4; Washington Coalition of Sexual Assault Programs, “Understanding Sexual Assault: What is Sexual Violence, Sexual Abuse and Sexual Assault?” <http://www.wcsap.org/what-sexual-violence-sexual-abuse-and-sexual-assault>

⁶⁸ Poco Donna Kernsmith, *Perpetrators (Overview)*, SEXUAL VIOLENCE AND ABUSE: AN ENCYCLOPEDIA OF PREVENTION, IMPACTS AND RECOVERY (2012).

⁶⁹ GREATHOUSE ET AL., *supra* note 83.

⁷⁰ Michael Planty et al., *Female Victims of Sexual Violence, 1994-2010* (2013), <http://doi.apa.org/get-pe-doi.cfm?doi=10.1037/e528212013-001> (last visited Jul 21, 2020).

⁷¹ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault” at 11 (1997)

⁷² SMITH ET AL., *supra* note 21. Percentages exceed 100 because some reports include multiple perpetrators.

⁷³ See Center for Sex Offender Management, “Myths and Facts About Sex Offenders” at 1 (2000); Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault” at 19 (only eight percent of the offenders were strangers to the victims); Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 21 (seventeen percent of the women and 23 percent of the men were raped by a stranger); Black et al., “The National Intimate Partner and Sexual Violence Survey” (fourteen percent of the females and fifteen percent of the men were raped by strangers; 93% of the female victims of alcohol or drug-facilitated rape were raped by someone they knew.)

⁷⁴ Schafran, “Writing and Reading About Rape” at 1031

⁷⁵ Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 18

nation-wide incidents of SA against female victims age twelve and older between 2005-2010, the Department of Justice reported that only ten percent of incidents involved a weapon, and 35% involved an injury that was later treated.⁷⁶

Dr. David Lisak, a clinical psychologist and one of the leading researchers on perpetrators of sexual assault, has served on the faculty for the National Judicial Education Project. His research found that perpetrators “exhibit strong impulse control and use only as much violence as is needed to terrify and coerce their victims into submission... [they] use psychological weapons – power, control, manipulation, and threats – backed up by physical force, and almost never resort to weapons such as knives or guns.”⁷⁷

Surveys with adult male perpetrators of sexual assault find that perpetrators are much more likely to report verbally coercing their victims or intentionally providing intoxicants until their victim is unable to resist or provide consent, rather than using physical force.⁷⁸

D. Most Perpetrators of Sexual Assault Are Not Caught or Convicted

Most sexual assaults are not reported to the police. The Washington study found that only fifteen percent of the female victims reported their assault to the police.⁷⁹ However, even when assaults are reported, very few reports result in arrest or conviction. A national study found that fewer than twenty percent of sexual assaults reported to the police resulted in an arrest, and that only seven percent resulted in a guilty verdict.⁸⁰ The majority of sexual assault cases remain open, are closed administratively without arrest, or see no charges filed.⁸¹

It is estimated that the total number of sex offenders under the authority of corrections agencies, including those under community supervision, represents only ten percent of all sex offenders living in communities nationwide.⁸²

E. Perpetrators of Sexual Violence Target Their Victims and Premeditate Their Attacks

The great majority of perpetrators of sexual violence do not commit acts of sexual violence impulsively. These acts, for most offenders, are associated with a cycle of behavior and planning that begins hours, days, weeks, or even months before the violent act.⁸³ Perpetrators target vulnerable victims, including the very young and the very old,⁸⁴ and create situations in which they have access to these victims in order to commit sex crimes.

⁷⁶ Planty et al., *supra* note 91.

⁷⁷ Lisak, “Understanding the Predatory Nature of Sexual Violence” at 7

⁷⁸ GREATHOUSE ET AL., *supra* note 83.

⁷⁹ Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 21

⁸⁰ MORABITO, WILLIAMS, AND PATTAVINA, *supra* note 5.

⁸¹ *Id.*

⁸² Center for Sex Offender Management, “Myths and Facts About Sex Offenders” at 2

⁸³ Center for Sex Offender Management, “An Overview of Sex Offender Management” at 2

⁸⁴ See Schafran, “Writing and Reading About Rape” at 994-995; Harborview Center for Sexual Assault and Traumatic Stress, “Information About Sexual Offenders” at 2

Both stranger and non-stranger rapists plan their attacks.⁸⁵ Dr. David Lisak spent 20 years interviewing, in research and forensic settings, “undetected rapists,” a term that he coined for perpetrators who are living in our communities and have not been caught or convicted. The perpetrators he interviewed fell into the category of “date or acquaintance rapists.” Lisak explains that the use of these terms is problematic because it implies that these rapes are less serious and less harmful to the victims. On the contrary, these rapists use strategies similar to stranger rapists, and the impact is just as harmful to victims.

These undetected rapists: are extremely adept at identifying “likely” victims, and testing prospective victims’ boundaries; plan and premeditate their attacks, using sophisticated strategies to groom⁸⁶ their victims for attack, and to isolate them physically; use alcohol deliberately to render victims more vulnerable to attack, or completely unconscious.⁸⁷

F. Sex Offenders Do Not Commit Sexual Crimes Because They Are Under the Influence of Alcohol⁸⁸

Alcohol use by the perpetrator is common in sexual assaults—according to the research, roughly half of all sexual assaults occur when the perpetrator has been consuming alcohol.⁸⁹ However, alcohol use is not a root cause of sexual assault: “It is unlikely that a person who otherwise would not commit a sexual assault would do so as a direct result of excessive drinking.”⁹⁰ Rather, by lowering inhibitions, alcohol may increase the likelihood that perpetrators may act on their existing impulses and beliefs.⁹¹

⁸⁵ Schafran, “Writing and Reading About Rape” at 1007

⁸⁶ Grooming is a term that describes a tactic that perpetrators of sexual assault use to gain access to victims for the purpose of committing a sex offense. It is often used in the context of perpetration of child sexual abuse. Perpetrators identify a vulnerable child and build a relationship with that child long before they ever sexually abuse the child. In addition to grooming the child, perpetrators go to great length to groom the child’s parent(s)/caregiver(s) and the community. This why a common reaction to allegations of child sexual abuse is that the parents and/or community cannot believe the alleged perpetrator could have done it. See Carla Van Dam, *Identifying Child Molesters: Preventing Child Sexual Abuse by Recognizing the Patterns of the Offenders* (Routledge, 2001)

⁸⁷ See Lisak, “Understanding the Predatory Nature of Sexual Violence” at 7; Schafran, “Writing and Reading About Rape” at 1009

⁸⁸ Center for Sex Offender Management, “Myths and Facts About Sex Offenders” at 4

⁸⁹ Melanie Lowe Hoffman, *Alcohol and Drug Abuse, Perpetration, SEXUAL VIOLENCE AND ABUSE: AN ENCYCLOPEDIA OF PREVENTION, IMPACTS AND RECOVERY* (2012).

⁹⁰ *Id.*

⁹¹ Melanie Lowe Hoffman, *supra* note 115.

G. Most Perpetrators of Sexual Violence Are Not Mentally Ill

Sex offenders do not commit sex crimes because they are mentally ill.⁹² Diana Scully's comprehensive study of convicted rapists included a detailed psychiatric history. She found that only 26% of rapists had received some type of outpatient care for an emotional problem (of any kind, not limited to mental illness). This was less than the percentage in the control group and was similar to other felons. The majority of rapists did not have a history of mental illness, which was consistent with other research reviewed by Scully.⁹³

H. Perpetrators of Sexual Assault Often Perpetrate Against Multiple Victims

A study of 1,882 men that identified 120 "undetected rapists" found that 76 of the men (63%) were serial offenders who were responsible for a total of 439 rapes.⁹⁴ This finding is consistent with research on incarcerated rapists that found that researchers have estimated the recidivism rate for sexual assault perpetration to be between 14 and 68 percent.⁹⁵

I. Perpetrators of Sexual Assault Often Commit Other Acts of Interpersonal Violence

In the same study referenced above, the researchers found that 58% of the rapists had also committed 1,225 other acts of interpersonal violence. About fourteen percent committed sexual assault other than rape, about 38% committed battery of an adult intimate partner, fewer than eleven percent committed physical abuse of a child, and 18% committed sexual abuse of a child.⁹⁶

Multiple studies on the subject have documented that between 33% and 66% of rapists have also sexually assaulted children; up to 82% of child molesters have also sexually assaulted adults.⁹⁷

J. Most Children Who Are Sexually Abused Do Not Grow Up to Sexually Offend Against Others

It is a common myth that children who are sexually abused will become sex offenders. However, this has not been borne out by the research.⁹⁸ While some studies have found an association between childhood sexual assault and sexual offending as an adult,

⁹² Center for Sex Offender Management, "Understanding Sex Offenders: An Introductory Curriculum, Section 3: Common Characteristics of Sex Offenders," http://www.csom.org/train/etiology/3/3_1.htm (accessed September 4, 2012)

⁹³ Scully, "Understanding Sexual Violence" at 75

⁹⁴ David Lisak & Paul M. Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," 17 *Violence and Victims* 73, 78 (2002)

⁹⁵ GREATHOUSE ET AL., *supra* note 83.

⁹⁶ Lisak & Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists" at 78-79

⁹⁷ Lisak, "Understanding the Predatory Nature of Sexual Violence" at 5

⁹⁸ GREATHOUSE ET AL., *supra* note 83.

these studies often do not differentiate between perpetrators who target children and those who target other adults. Additionally, most studies rely on self-reported childhood sexual abuse history by incarcerated perpetrators. These self-reports may not be reliable or accurate.⁹⁹ While sexual offenders have higher than average rates of exposure to abuse and trauma in childhood, this is not an excuse for perpetrating sexual assault. Most abuse survivors do not go on to perpetrate sexual assaults.¹⁰⁰

K. Sex Offender Treatment is Specialized and Offense Specific

In order for sex offender treatment to be effective, it must be targeted to the deviant behavior and individualized for the particular offender.¹⁰¹ According to the Center for Sex Offender Management:

The majority of sex offender treatment programs...now use a combination of cognitive-behavioral treatment and relapse prevention (designed to help sex offenders maintain behavioral changes by anticipating and coping with the problem of relapse). Offense specific treatment modalities generally involve group and/or individual therapy focused on victimization awareness and empathy training, cognitive restructuring, learning about the sexual abuse cycle, relapse prevention planning, anger management and assertiveness training, social and interpersonal skills development, and changing deviant sexual arousal patterns. Different types of offenders typically respond to different treatment methods with varying success.¹⁰²

Effectiveness of treatment depends on many factors, including type of offender, treatment model, treatment modalities, and related community interventions.¹⁰³ Juveniles, in particular, appear to respond to treatment and demonstrate lower rates of recidivism.¹⁰⁴ There is no “one size fits all” model. It is important for judicial officers to understand that the specialized nature of treatment and the many variables that contribute to its success make it different from other types of therapy that may be suggested for perpetrators. Washington State requires that professionals who provide treatment for sex offenders undergo specialized certification from the Department of Health.¹⁰⁵

⁹⁹ GREATHOUSE ET AL., *supra* note 83.

¹⁰⁰ Poco Donna Kernsmith, *supra* note 88.

¹⁰¹ Center for Sex Offender Management, “Understanding Treatment for Adults and Juveniles Who Have Committed Sex Offenses” at 4-5

¹⁰² Center for Sex Offender Management, “Myths and Facts About Sex Offenders” at 5

¹⁰³ *Id.*

¹⁰⁴ See Center for Sex Offender Management, “Fact Sheet: What You Need to Know About Sex Offenders” at 7; Center for Effective Public Policy, “The Role of Judges in Managing Juvenile Sex Offense Cases: Keys to Informed Decision making, A Judicial Education Curriculum” 32, 44 (2009)

¹⁰⁵ RCW 18.155 <https://apps.leg.wa.gov/rcw/default.aspx?cite=18.155&full=true>

V. Understanding the Victim

Sexual violence affects people from all backgrounds. Victims are of every race, class, culture, gender, sexual orientation, and sexuality. Having an understanding of some common impacts of the trauma of sexual violence and common characteristics of victims is useful, but not all victims react in the same ways. Victims' responses may vary by their sociocultural background.¹⁰⁶ Additionally, sexual violence may impact men differently than women. For example, society tells men to behave in certain ways in order to conform to a masculine ideal; this may include not showing vulnerability or expressing emotions.¹⁰⁷

Regardless of a victim's background or identity, a positive and supportive response from those around the victim can be hugely impactful for their recovery. Unfortunately, many victims face the opposite. In a study comparing victims of sexual assault with victims of nonsexual assault, victims of sexual assault were found to experience more unsupportive behavior from society. Lack of support can make it more difficult for victims to adjust post-assault.¹⁰⁸ In the study of certified sexual assault victim advocates referenced above, 35% of the advocates responding reported that judicial officers in criminal proceedings are professional, attentive, and informative toward defendants. In contrast, only 22% of the advocates reported observing these qualities in the judicial officers' demeanor toward the victim. The justice system's treatment of victims can help or hurt their recovery process.¹⁰⁹

A. Impact of Sexual Violence on the Victim

Rape Trauma Syndrome is a term coined by Ann Wolbert Burgess, a psychiatrist, and Lynda Lytle Holstrom, a sociologist, in 1974.¹¹⁰ It describes the reactions reported by victims of sexual assault. These emotional, physical, and behavioral reactions were grouped into an immediate stage and a long-term stage. Professionals who have worked with victims often describe a third stage, in between these two, referred to as the "underground stage," where victims attempt to forget the assault and move on with their lives without adequately dealing with the trauma.¹¹¹

¹⁰⁶ A. L. Roberts et al., *Race/ethnic differences in exposure to traumatic events, development of post-traumatic stress disorder, and treatment-seeking for post-traumatic stress disorder in the United States*, 41 *PSYCHOL. MED.* 71–83 (2011).

¹⁰⁷ 1in6, "How Being Male Can Make it Hard to Heal", <http://1in6.org/men/get-information/online-readings/masculinity-self-esteem-and-identity/how-being-male-can-make-it-hard-to-heal/>

¹⁰⁸ P. A. Resnick & P. Nishith, "Sexual Assault" 39, *Victims of Crime*, 2nd edition, eds. R. C. Davis, A. J. Lurigio, & W. G. Skogan (Sage 1997)

¹⁰⁹ See Schafran, "Writing and Reading About Rape" at 1022; Resnick & Nishith, "Sexual Assault" at 45

¹¹⁰ King County Sexual Assault Resource Center, "Rape Trauma Syndrome," <http://www.kcsarc.org/sites/default/files/Resources%20-%20Rape%20Trauma%20Syndrome.pdf>

¹¹¹ Id.

1. Emotional

Some common emotional reactions to the trauma of sexual violence include guilt, shame, self-blame, embarrassment, fear, distrust, sadness, vulnerability, isolation, lack of control, anger, numbness, confusion, shock, disbelief, and denial.¹¹²

Thirty-eight percent of the women responding to a survey of Washington women who were sexually assaulted reported that the assault had a negative impact on how trusting they were of other people.¹¹³ In another study, victims of rape reported significantly greater fear and anxiety than non-victims over a three-year post-rape period.¹¹⁴ However, the exact emotional response varies from victim to victim, and may be influenced by the victim's socio-cultural background.¹¹⁵

Victims often blame themselves for the violence, thinking that they could have done something to prevent it from happening. As discussed above, perpetrators make a choice to sexually assault victims and this choice is not based on the victim's actions. When the justice system focuses on the victim's actions and behavior rather than the perpetrator's behavior, it engages in victim-blaming that reinforces the victim's self-blame. Victims who blame themselves experience more negative reactions to the violence.¹¹⁶

2. Psychological

Studies have found that survivors of sexual violence are commonly diagnosed with the following psychological disorders: anxiety disorders, depressive disorders, eating disorders, OCD, PTSD, and substance use disorders.¹¹⁷ Other reactions commonly reported in victims of sexual violence include nightmares, flashbacks, difficulty concentrating, phobias, and low self-esteem.¹¹⁸

Washington women who had been sexually assaulted were six times more likely than women who had not been sexually assaulted to meet the diagnostic criteria for PTSD and three times more likely to meet the diagnostic criteria for major depressive disorder in their lifetime.¹¹⁹ Another study found that over the two-year period immediately following an assault, victims of rape had significantly lower self-esteem than non-victims.¹²⁰ "Some victims...experience chronic problems for an indefinite time in the areas of fear/anxiety, depression, social adjustment, sexual functioning, and self-esteem."¹²¹

¹¹² National Sexual Violence Resource Center, "Impact of Sexual Violence, Fact Sheet," (2010)

http://www.nsvrc.org/sites/default/files/NSVRC_Publication_Factsheet_Impact-of-sexual-violence.pdf

¹¹³ Berliner, Fine & Moore, "Sexual Assault Experiences and Perceptions" at 28

¹¹⁴ Resnick & Nishith, "Sexual Assault" at 30

¹¹⁵ Roberts et al., *supra* note 135.

¹¹⁶ *Id.* at 39

¹¹⁷ Emily R. Dworkin, *Risk for Mental Disorders Associated With Sexual Assault: A Meta-Analysis*, 21 *TRAUMA, VIOLENCE, & ABUSE* 1011–1028 (2020).

¹¹⁸ National Sexual Violence Resource Center, "Impact of Sexual Violence, Fact Sheet"

¹¹⁹ Berliner, Fine & Moore, "Sexual Assault Experiences and Perceptions" at 42

¹²⁰ Resnick & Nishith, "Sexual Assault" at 30

¹²¹ *Id.* at 31

The justice system often fails to take into account these reactions by not showing as much sensitivity as is permissible to the victim's ongoing healing process.

3. Physical

A 2010 study by the Centers for Disease Control and Prevention found that both male and female victims reported significant short-term or long-term health impacts, such as PTSD symptoms, and overall poorer health than non-victims.¹²² Although victims experience the effects of sexual violence in varying ways, the trauma of sexual violence has a profound impact on any victim's life.

Some common physical reactions to the trauma of sexual violence include changes in eating or sleeping patterns, increased startle response, concerns about physical safety, and concerns about pregnancy or contracting an STI or HIV.¹²³ In addition, about half of Washington women victims of sexual assault surveyed reported changing their daily routines due to safety concerns.¹²⁴

B. Characteristics of the Victim

An understanding or lack of understanding of the dynamics of sexual violence influences reactions to and beliefs about the victim. If judicial officers or jurors assume that the victim will appear a certain way on the stand, or should exhibit particular behavior when giving testimony, it can affect the listeners' ability to understand or find credible a victim who appears or behaves differently. This concept of implicit bias may need to be explained to the fact-finder. See WPI 1.01 and Comment (Rev. Dec 2017).

1. About half of the victims of sexual assault display a flat affect (little or no emotional expression) when giving testimony.

One of the main expectations that jurors and judicial officers often have is that the victim will appear frightened or emotional when testifying about the sexual assault. About half of the victims do testify in an expressive style that exhibits such emotion. However, the other half displays a controlled style, appearing calm and not showing emotion while testifying. This may be the result of intentional control, numbness, or of the victim having a naturally flat affect. The victim may also have had to tell the story so many times that they are unable to relate it with emotion.¹²⁵ In addition, because of the increased likelihood that

¹²² Black, et al. "The National Intimate Partner and Sexual Violence Survey" at 1-3

¹²³ National Sexual Violence Resource Center, "Impact of Sexual Violence, Fact Sheet"

¹²⁴ Berliner, Fine & Moore, "Sexual Assault Experiences and Perceptions" at 43

¹²⁵ See Schafran, "Writing and Reading About Rape" at 1024-1025; Lynn Hecht Schafran, "Maiming the Soul: Judges, Sentencing, and the Myth of the Nonviolent Rapist", 20 *Ford. Urban L. Jour.* 439, 451 (1992)

adult victims of sexual violence were also sexually abused as children, they may have learned to detach themselves emotionally from the experience of victimization.¹²⁶

Judges or jurors who are expecting the victim to appear emotional may find a controlled victim's testimony not credible because it is not consistent with how they expect a victim to react. On the other hand, victims who are too emotional may appear hysterical.¹²⁷ It is reasonable to expect victims of sexual violence to react in a variety of ways, as everyone does, to a traumatic event. The testimony of victims should not be discounted simply because it is not expressed in the manner in which listeners believe they would express it or expect the victim to express it.

2. Most victims of sexual violence do not have physical injuries.

Most victims of sexual violence do not experience lasting, visible physical injuries—according to the US Department of Justice, just over half of female victims of rape and sexual assault suffered from a physical injury during their assault.¹²⁸ The fact that there are no physical injuries does not mean that a sexual offense was nonviolent, however. Sexual offenses are inherently violent and discounting the psychological injury of sexual violence does a disservice to victims.¹²⁹

Although most victims do not experience physical injuries, many fear serious injury or death. The National Violence Against Women Survey found that, during sexual assaults, about 43% of the women victims surveyed thought that they or someone close to them would be seriously injured or killed.¹³⁰ In a survey of Washington women victims of sexual assault, 45% of those who were rape victims feared death or serious harm, and one-third of those who were victims of sexual assaults other than rape had such fears.¹³¹ Such fears of serious injury or death have been found by several studies to predict increased psychological impacts for victims.¹³²

3. Many victims of sexual violence do not report the violence to the police or delay in doing so.

It is commonly assumed that a victim of sexual violence will immediately report it to the police. However, victims face a range of barriers to reporting sexual assault. In the Washington study, the women who did not report their sexual assault included the following as reasons: concern about not being believed, shame, fear, and not being sure it was a crime. In addition, victims of sexual assault were significantly more likely than non-victims to think

¹²⁶ Jeremy Coid, Ann Petruckevitch, Gene Feder, Wai-Shan Chung, Jo Richardson & Stirling Moorey, "Relation Between Childhood Sexual and Physical Abuse and Risk of Revictimisation in Women: A Cross-sectional Survey", 358 *The Lancet* 450 (2001)

¹²⁷ Schafran, "Writing and Reading About Rape" at 1024-1025

¹²⁸ Planty et al., *supra* note 91.

¹²⁹ Schafran, "Maiming the Soul: Judges, Sentencing, and the Myth of the Nonviolent Rapist" at 441, 443

¹³⁰ U.S. Department of Justice, National Institute of Justice & the Centers for Disease Control and Prevention, Special Report, "Extent, Nature, and Consequences of Rape Victimization" at 27

¹³¹ Berliner, Fine & Moore, "Sexual Assault Experiences and Perceptions" at 18

¹³² Resnick & Nishith, "Sexual Assault" at 31

that the police and legal response to sexual assault victims was poor, with nineteen percent rating it as fair or poor and only nine percent rating it as excellent.¹³³ These findings are supported by evidence from the National Women’s Study: of female rape survivors who had reported their rape, over a quarter (30%) felt that the police did not believe them; and that among non-reporters, 43% did not report out of fear of the justice system.¹³⁴ These specific barriers to reporting may vary by community: the majority (80%) of respondents to a national survey reported that sexual assault survivors are influenced by police-community relations when deciding whether to report their assault to the police, noting concerns about police bias against women who are immigrants, LGBTQ+, or living in poverty.¹³⁵ In the 2015 Transgender Survey, more than half (57%) of respondents noted they wouldn’t feel comfortable going to law enforcement for help after being the victims of any crime.¹³⁶

Those victims who do report may not do so immediately following the assault.¹³⁷ This is because of the considerations above and also because of factors such as the stage they are at in their healing process; their ability to begin processing the trauma; and the possible continued power and control, both emotional and financial, a perpetrator may have over them (e.g. a victim of a sexual assault by an intimate partner may continue to be dependent on the perpetrator for financial support and may weigh reporting the assault against the need for that support).

4. Victims of sexual violence may not be able to recall details of the violence or may make inconsistent statements.

During a traumatic event, such as an act of sexual violence, victims may dissociate in order to cope with what is happening to them. Dissociation is “a disruption in the normal flow of consciousness that results in a lack of integration between thoughts, feelings, and physical sensations and our ongoing flow of awareness of the world around us.”¹³⁸ A victim may “check out” in order to endure the assault, making it difficult to later recall details of the assault.¹³⁹ Like dissociation, shock, denial, and suppression may make some details of a victim’s account inconsistent.¹⁴⁰ The effects of victim dissociation, shock, denial, and suppression should be carefully considered in determining whether inconsistent statements by a victim give reason to question the victim’s credibility.¹⁴¹

¹³³ Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 34 -35

¹³⁴ Wolitzky-Taylor et al., *supra* note 9.

¹³⁵ Donna Coker et al., *Responses from the Field: Sexual Assault, Domestic Violence, and Policing*, SSRN JOURNAL (2015), <http://www.ssrn.com/abstract=2709499> (last visited Dec 5, 2021).

¹³⁶ JAMES ET AL., *supra* note 68.

¹³⁷ Schafran, “Writing and Reading About Rape” at 1016

¹³⁸ Resnick & Nishith, “Sexual Assault” at 31

¹³⁹ Id.

¹⁴⁰ Schafran, “Writing and Reading About Rape” at 1017

¹⁴¹ Fiona Mason & Zoe Lodrick, *Psychological consequences of sexual assault*, 27 BEST PRACTICE & RESEARCH CLINICAL OBSTETRICS & GYNAECOLOGY 27–37 (2013).

5. Many victims of sexual violence do not physically resist the assault.

Jurors and judicial officers may expect a victim of sexual violence to physically resist the violence or fight back. One study found that 32% of the jurors in the study believed resistance was a critical factor in determining if the defendant was culpable, and 59% believed that a woman “should do everything she can to repel her attacker.”¹⁴² In fact, many victims do not resist for a variety of reasons.

Some studies have shown that resistance can increase the violence of the attack.¹⁴³ As noted above, many victims fear that they or someone close to them will be seriously injured or killed. Other victims are too afraid to move; they dissociate (see above) or black out.¹⁴⁴ Since most victims know and trust the person who assaulted them, they may be caught off guard and may not have the opportunity to fight back.¹⁴⁵

In addition, some sexual assaults occur when the victim is unable to give or withhold consent due to disability or mental incapacity.¹⁴⁶ These victims are likely to be unable to offer physical resistance.

6. Drug or alcohol use by the victim may increase vulnerability to sexual assault but does not cause sexual assault

Alcohol or other drug use by the victim is common in sexual assaults, and may increase someone’s vulnerability to sexual assault by decreasing their awareness of their surroundings and their interpretation of social cues and threats; and, in extreme cases, by rendering the person incapable of consenting to sexual activity.¹⁴⁷ Perpetrators may target individuals who are consuming alcohol or other drugs, believing that they are easier targets, and some may even intentionally provide drugs or alcohol to their intended victims in order to facilitate an assault.¹⁴⁸ However, it’s important to note that drug or alcohol use does not cause an assault; and no matter the victim’s state of intoxication, they are never to blame for their own assault.¹⁴⁹

7. Contrary to popular belief, most rape allegations are truthful.

Public perceptions of rape include the belief that many rape allegations are false. One survey found that 49% of men and 42% of women agreed with the statement: “Many women cry rape – saying they have been raped when it really hasn’t happened.”¹⁵⁰ However, a meta-

¹⁴² National Judicial Education Project, “Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases, Voir Dire, What the Research About Rape Jurors Tells Us” 3 (2000)

¹⁴³ Schafran, “Writing and Reading About Rape” at 989

¹⁴⁴ Id. at 990

¹⁴⁵ Schafran, “Writing and Reading About Rape” at 991

¹⁴⁶ RCW 9A.44.050 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.050>

¹⁴⁷ Brady Root, *Alcohol and drug abuse, victimization, SEXUAL VIOLENCE AND ABUSE: AN ENCYCLOPEDIA OF PREVENTION, IMPACTS AND RECOVERY* (2012).

¹⁴⁸ Melanie Lowe Hoffman, *supra* note 115.

¹⁴⁹ Brady Root, *supra* note 177.

¹⁵⁰ National Judicial Education Project, “Understanding Sexual Violence” at 3

analysis of US studies on the topic estimated that only about five percent of rape and sexual assault allegations made to the police are false.¹⁵¹

8. Victims of sexual violence by an intimate partner are as traumatized as victims of non-intimate perpetrators.

When the perpetrator is someone that the victim knows and trusts, it can have very serious negative consequences. For example, in the Washington study, if the perpetrator was an intimate partner, this was associated with worse impacts and women were significantly more likely to have developed PTSD.¹⁵² For victims of sexual violence by an intimate partner the trauma of the sexual violence includes coping with the impact of the perpetrator being someone the victim knows, loves, trusts, and may depend on for financial support or co-parenting of children. Also, intimate partner sexual violence is often a repeated crime, with 79% of women victims reporting repeated episodes of forced sex.¹⁵³ Victims of sexual violence by an intimate partner may face additional barriers to reporting, including fear of having their children taken away or fear of “dual arrest” policies.¹⁵⁴

9. Some victims experience a sexual response during rape.

Although a small number of victims experience a sexual response during rape, jurors and judicial officers should not equate a sexual response with consensual sex. This sexual stimulation and response is purely a physical reaction over which the victim does not have control.¹⁵⁵ Victims who experience this may feel betrayed by their own bodies.

10. Victims have a variety of reasons for engaging with the criminal justice process, not all of them retributive.

Although some victims report sexual violence and go through the criminal justice process because they want their perpetrator to be punished, many do not have this goal. Many victims access the legal system because they want, “acknowledgement of wrongdoing and repair of the damage caused.”¹⁵⁶ This means different things to different victims. For some victims, it is enough that someone other than themselves acknowledges that they were sexually assaulted. They want validation from their community that the crime happened and they were harmed by it.¹⁵⁷ Even victims who desire punishment for the perpetrator are more interested in consistency from victim to victim than they are with the severity of

¹⁵¹ Claire E. Ferguson & John M. Malouff, *Assessing Police Classifications of Sexual Assault Reports: A Meta-Analysis of False Reporting Rates*, 45 ARCH SEX BEHAV 1185–1193 (2016).

¹⁵² Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 22, 29

¹⁵³ Judith McFarlane & Ann Malecha, “Sexual Assault Among Intimates: Frequency, Consequences and Treatments” (2005)

¹⁵⁴ Elizabeth N. Wright et al., *Help-Seeking and Barriers to Care in Intimate Partner Sexual Violence: A Systematic Review*, TRAUMA, VIOLENCE, & ABUSE 152483802199830 (2021).

¹⁵⁵ Schafran, “Writing and Reading About Rape” at 997-998

¹⁵⁶ Mary P. Koss, “Restoring Rape Survivors: Justice, Advocacy, and a Call to Action”, 1087 *Annals of the New York Academy of Sciences* 206, 207 (2006)

¹⁵⁷ Judith Herman, “Justice from the Victim’s Perspective”, 11 *Violence Against Women* 571, 585 (Sage 2005)

punishment.¹⁵⁸ Since the criminal justice process is, by nature, retributive, judicial officers should be mindful that victims may have other goals and needs.

C. Recognizing the Traumatic Effect of Court Proceedings Upon Victims

In addition to the devastating impacts of sexual violence described above, the legal process itself can be traumatizing. Victims often experience what has been called “secondary victimization” by the justice system. This term is used because victims often report that the system’s treatment of them feels like a second assault, in that it is hurtful, invasive, and traumatizing.¹⁵⁹ When legal system personnel ask victims what they were wearing, or whether they were drinking, such questions can often be perceived as excusing the perpetrator’s behavior and blaming the victim for violence that was not the victim’s fault. In the survey of certified sexual assault victim advocates referenced above, 34% of the advocates responding disagreed with the statement, “The justice system [in the specific area of the state I currently work in] gives fair/equal treatment to sexual assault cases when the victim has been under the influence.” Approximately half of all victims of rape report experiencing this secondary victimization.¹⁶⁰ Research suggests that when victims incorporate self-blaming attitudes towards an assault, they may be more likely to develop PTSD.¹⁶¹

As discussed above, very few victims report being sexually assaulted to the police. A review of research on the subject found that many victims who did report said they would not have reported if they had known what the experience was going to be like.¹⁶² In fact, many victims predicted that they would never seek help from the criminal justice system again.¹⁶³

Two key points about the justice system’s treatment of victims are important. First, the system should not engage in blaming the victim for the violence.¹⁶⁴ Sexual violence is the result of a perpetrator’s choices, not a victim’s actions or behavior.

Second, continuances and other delays have a negative impact on the victim’s ability to process and heal from the sexual violence.¹⁶⁵ Victims cite delay as a primary reason why they do not follow through with the process.¹⁶⁶ If delay cannot be avoided, the person who informs the victim of the delay should do so with concern and acknowledge the impact it may have.¹⁶⁷

¹⁵⁸ Id. at 595

¹⁵⁹ Debra Patterson, “The Linkage Between Secondary Victimization and Rape Case Outcomes,” 20 *Journal of Interpersonal Violence* 1, 2 (2010)

¹⁶⁰ Id. at 13

¹⁶¹ Nora K. Kline et al., *Self-Blame and PTSD Following Sexual Assault: A Longitudinal Analysis*, 36 J INTERPERS VIOLENCE NP3153–NP3168 (2021).

¹⁶² Id. at 2

¹⁶³ Id. at 14

¹⁶⁴ Resnick & Nishith, “Sexual Assault” at 31

¹⁶⁵ Id.

¹⁶⁶ Schafran, “Writing and Reading About Rape” at 1032

¹⁶⁷ Id.

When victims of sexual assault are treated with compassion by the justice system, they show an increased commitment to participating in the judicial process.¹⁶⁸ This is not unique to victims of sexual assault – research has demonstrated the importance of procedural justice (the perceived fairness of court procedures and interpersonal interactions during the pendency of a case) to how participants act during and after a court case.¹⁶⁹ Cases with victims who are committed to participating in the process are less likely to put a strain on limited court resources. Doing everything permissible to reduce the traumatic impact of court proceedings is a necessary step.

VI. Victims’ Rights

In Washington, victims of crime have certain rights that are afforded them by statute and the state constitution:

- A. Victims of Crime – Rights – Washington State Constitution: Article I, Section 35
- B. Rights of Victims, Survivors, and Witnesses – RCW 7.69.030, <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.69.030>
- C. Rights Enumerated – RCW 7.69B.020, <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.69B.020>
- D. Rights of Child Victims and Witnesses – RCW 7.69A.030, <http://apps.leg.wa.gov/rcw/default.aspx?cite=7.69A.030>

VII. Jury Selection in Sex Offense Trials

The National Judicial Education Project canvassed judges who had attended their judicial education programs and compiled the report, “Judges Tell: What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case.” One of the things judges who were canvassed wished they had known was that “a thorough voir dire that includes questions about the rape myths relevant in the case at bar is essential to seating an impartial jury.”¹⁷⁰

A rape myth is a belief about the dynamics of sexual assault that is not based in fact. For example, the belief that the clothing a victim wears has an impact on the likelihood that the victim will be raped is a rape myth. Belief in this myth easily translates into the belief that a victim who wears particular types of clothing “was asking for it” and the perpetrator is not at fault. Many of these rape myths are addressed above in the sections on perpetrators and victims.

¹⁶⁸ Patterson, “The Linkage Between Secondary Victimization and Rape Case Outcomes” at 15

¹⁶⁹ Please refer to Appendix G of this bench guide for a procedural justice bench card (p. 9-36).

¹⁷⁰ National Judicial Education Project, “Judges Tell: What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case” at 15 (2010). As to Implicit Bias, see also WPI 1.01 and Comment (Rev. Dec 2017).

Studies have found that jurors make their decisions based on the victim’s character and lifestyle, disregarding the evidence and deciding cases based on personal values.¹⁷¹ “Juror adherence to rape myths presents a major barrier to fairness in these trials” because these biased jurors cannot be impartial.¹⁷² Thus, it is essential to know if potential jurors adhere to rape myths and are likely to decide cases based on those beliefs.

VIII. Victim Advocacy Resources

A. Washington Coalition of Sexual Assault Programs

The Washington Coalition of Sexual Assault Programs (WCSAP) is a nonprofit organization, founded in 1979 to address sexual assault in Washington. WCSAP’s mission is to unite agencies engaged in the elimination of sexual violence, through education, advocacy, victim services, and social change. WCSAP is a statewide membership organization of community rape crisis centers/sexual assault programs and supportive individuals committed to the elimination of sexual violence.

WCSAP supports the rights of people to have access to quality information, advocacy, crisis intervention, treatment, education, and prevention services. The organization also supports the right of a victim to make choices about reporting, prosecution, healthcare, future safety, and other issues raised by the experience. To these ends, WCSAP:

- provides technical assistance and training on sexual assault issues and service provision to program and individual members who support victims, victims’ family and friends, the general public, and all those whose lives have been affected by sexual assault;
- develops and publishes educational materials on relevant advocacy and prevention topics, including addressing current research;
- advocates for public policy changes on a state and national level;
- promotes awareness and education about the impact of sexual assault on individuals and communities through an annual statewide Sexual Assault Awareness Month (April) campaign;
- operates a Prevention Resource Center to provide technical assistance, trainings, and resources on the prevention of sexual violence

¹⁷¹ National Judicial Education Project, “Understanding Sexual Violence: Prosecuting Adult Rape and Sexual Assault Cases, Voir Dire, What the Research About Rape Jurors Tells Us” at 1 (2000); see also Christopher Mallios & Toolsi Meisner, “Educating Juries in Sexual Assault Cases: Part 1: Using Voir Dire to Eliminate Jury Bias” (2010)

<http://www.aequitasresource.org/EducatingJuriesInSexualAssaultCasesPart1.pdf>

¹⁷² Schafran, “Writing and Reading About Rape” at 1029, 1033

WCSAP is located in Olympia, Washington. Connect with WCSAP or learn more about what communities are doing to end sexual assault in Washington at www.wcsap.org.

B. Community-based Efforts That Address Sexual Assault¹⁷³

Rape crisis centers/sexual assault programs are available in every community in Washington. Advocates work directly with victims of sexual assault, using an individual and community empowerment model. Empowerment means promoting a sense of power from within by supporting a survivor's self-determination and autonomy. Advocates create conditions for empowerment by supporting a survivor's safety and healing and by educating their individual communities about sexual violence.

Sexual assault programs provide a myriad of services to individual survivors, survivors' friends and family, and their communities. In Washington, some of the services that advocates provide include:

- general advocacy in the form of ongoing support, psycho-educational support groups, resources, and referrals for other services;
- crisis intervention, including operating a 24-hour hotline;
- medical advocacy, which includes accompaniment to forensic exams;
- system advocacy;
- legal advocacy, which includes accompaniment to legal proceedings, assistance understanding the justice system and processes, and acting as a liaison between the victim and the legal system.

Sexual assault advocates' communication with the victims with whom they work is privileged under RCW 5.60.060(7). The statute provides that "A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate."

Although there is limited research on the effectiveness of advocacy,¹⁷⁴ a recent study compared victims of rape who worked with an advocate to those who did not, to determine if victims with advocates received more services or had fewer negative experiences with system personnel.¹⁷⁵ Victims of rape who had advocates reported receiving more services, and reported less secondary victimization from system personnel.¹⁷⁶ Secondary victimization

¹⁷³ See Appendix A starting on p. 1-30 of this chapter for a list of community sexual assault programs by county

¹⁷⁴ Janine Zweig et al., *Community Approaches to Sexual Assault: VAWA's Role and Survivors' Experiences*, 27 *VIOLENCE AGAINST WOMEN* 30–51 (2021).

¹⁷⁵ Rebecca Campbell, "Rape Survivors' Experiences With the Legal and Medical Systems: Do Rape Advocates Make a Difference?", 12 *Violence Against Women* 30, 32 (2006)

¹⁷⁶ *Id.* at 38

has been defined as “insensitive, victim-blaming treatment” from system personnel that “exacerbates the trauma of the rape.”¹⁷⁷ Another study reported that victims were treated better when advocates were present during interviews, and that detectives did not engage in secondary victimization behavior.¹⁷⁸ Since this same study found a linkage between secondary victimization and worse case outcomes, it seems that the presence of an advocate may improve case outcomes. Finally, it’s possible that case outcomes may be improved by the presence of an advocate: experts familiar with advocacy note that victims may face challenges in disclosing all the details of an assault if they are uncomfortable with law enforcement, and that the presence of an advocate can create a more comfortable environment for victims to participate in interviews.¹⁷⁹ When interviewed by researchers, prosecutors and detectives who work with sexual assault cases overwhelmingly agreed with these perspectives, noting the multiple ways in which advocates improve victims’ experiences in the criminal justice system.¹⁸⁰

The 2001 Washington study referenced above found that 39% of women who reported to the police had a legal advocate and that the large majority of victims who contacted a rape crisis line found it helpful.¹⁸¹ A 2011 report by CourtWatch, a former program of King County Sexual Assault Resource Center, found a strong correlation between a victim having an advocate and the victim obtaining a full Sexual Assault Protection Order (SAPO).¹⁸² Victims with advocates obtained full orders in 80% of SAPO cases, while victims without advocates obtained full orders only 34% of the time.¹⁸³ Two of the reasons cited by the report that the presence of an advocate may improve outcomes for victims were: (1) advocates can explain the protection order process, and (2) there is less likelihood that a victim will not appear for a hearing if they are working with an advocate.¹⁸⁴

IX. Conclusion

Sexual violence is prevalent in Washington and the impact of sexual violence is devastating. Often the dynamics of sexual violence and the negative impacts that secondary victimization has on victims are not well understood within the justice system. This lack of understanding is part of what causes the justice gap – the tiny number of convictions that result from the already very small number of reported sexual assaults.

¹⁷⁷ Id. at 30 – 31

¹⁷⁸ Debra Patterson, “The Linkage Between Secondary Victimization and Rape Case Outcomes”, 20 *J. Interpers. Viol.* 1, 16 (2010)

¹⁷⁹ Debra Patterson, *The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes*, 26 *J. INTERPERS VIOLENCE* 328–347 (2011).

¹⁸⁰ D Cody Gaines & William Wells, *Investigators’ and Prosecutors’ Perceptions of Collaborating With Victim Advocates on Sexual Assault Casework*, 28 *CRIMINAL JUSTICE POLICY REVIEW* 15 (2017). The researchers interviewed prosecutors and detectives in Harris County, Texas.

¹⁸¹ Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 20 - 21

¹⁸² Court form SA 3.015 <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=65>

¹⁸³ CourtWatch, A Program of KCSARC, “Analyzing the Impact and Application of the Sexual Assault Protection Order in King County” 17, <http://www.kcsarc.org/courtwatchreports>

¹⁸⁴ Id.

Expanded judicial education resources and increased judicial leadership are yielding promising practices in courtrooms. However, continued improvement is critically needed. In the survey of certified sexual assault victim advocates referenced above, only 25% of the advocates responding who accompany victims of sexual assault to criminal and civil proceedings reported that judicial officers are respectful, kind, and compassionate to victims in civil proceedings. Similarly, in criminal cases, only twenty percent of the advocates reported that judicial officers are respectful, sensitive, and patient to victims.

Judicial officers have the power and authority to create an atmosphere in which fair and impartial justice is both perceived and administered. Judicial leadership will continue to be critical in better understanding the dynamics of sexual offenses in order to maintain the delicate balance between the rights of victims, the accused, and the public that will foster that atmosphere.