

# CHAPTER 1

## Understanding Sexual Violence

By  
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### I. Introduction

This chapter provides a broad overview of the dynamics of sexual violence for the purpose of promoting a consistent and unbiased response to alleged victims of sexual violence in Washington's courts. It 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. This section also includes information about the prevalence of sexual assaults within specific populations and cultural communities. 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 the sexual assault advocates and describes the structure of sexual assault service provision in Washington, including statewide and local resources.

Understanding sexual violence is essential to the administration of justice. Most victims of sexual offenses do not report the offense to the police. For example, a study of Washington women found that only 15 percent of women who were sexually assaulted reported their assault to the police and 50 percent of those reports resulted in charges being filed.<sup>1</sup> A comprehensive national study confirms that this phenomenon, known as the justice gap,<sup>2</sup> is a national problem. The National Violence Against Women Survey found that just over 19 percent of rapes of women and about 13 percent of rapes of men were reported to the police.<sup>3</sup> Of those rapes that are reported, very few are prosecuted, and fewer still result in convictions.<sup>4</sup> In the national study, just under eight percent of the women whose rapes were reported said their rapist was criminally prosecuted, about three percent said their rapist was convicted, and just over two percent said their rapist was incarcerated.<sup>5</sup>

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<sup>1</sup> 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)

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

<sup>3</sup> Patricia Tjaden & Nancy Thoennes, "Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence Against Women Survey", Special Report (U.S. Department of Justice, National Institute of Justice & the Centers for Disease Control and Prevention 2006)

<sup>4</sup> David Lisak, "Understanding the Predatory Nature of Sexual Violence" (University of Massachusetts at Boston 2008)

<sup>5</sup> Tjaden & Thoennes, "Extent, Nature, and Consequences of Rape Victimization" at 33

Victims choose not to report for a variety of reasons, which will be discussed in depth later in this chapter. However, two of the main reasons that victims of sexual offenses consistently cite for not reporting are (1) the fear that they will not be believed by the system and (2) the fear that they will be blamed.<sup>6</sup> This holds true for victims in Washington. The Washington State Gender & 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 percent) 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 percent) reported this response to victims in civil proceedings. In addition, 27 percent 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.”

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, thereby enabling judges to more effectively close the justice gap. 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.

## **II. Understanding the Problem**

This bench guide focuses on criminal sexual offenses and the Sexual Assault Protection Order. However, sexual violence is a highly pervasive problem, and, as such, issues of sexual violence may be present 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 work to create a culture where victims are devalued, sexual violence is tolerated, and perpetrators are not held accountable.

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<sup>6</sup> Id. at 34

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 Act<sup>7</sup> as: (1) rape or rape of a child<sup>8</sup>, (2) assault with intent to commit rape or rape of a child<sup>9</sup>, (3) incest or indecent liberties<sup>10</sup>, (4) child molestation<sup>11</sup>, (5) sexual misconduct with a minor<sup>12</sup>, (6) custodial sexual misconduct<sup>13</sup>, (7) crimes with a sexual motivation<sup>14</sup>, 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.”<sup>15</sup> 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. Uniform

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

<sup>8</sup> RCW 9A.44.040 – 9A.44.079 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.040>

<sup>9</sup> 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>

<sup>10</sup> 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>

<sup>11</sup> 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>

<sup>12</sup> 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>

<sup>13</sup> 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>

<sup>14</sup> RCW 9.94A.835 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9.94A.835>

<sup>15</sup> 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.gov/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape>

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 incidence and prevalence of sexual assault in the United States, specifically the National Women’s Study,<sup>16</sup> the National Violence Against Women Survey,<sup>17</sup> and the recent National Intimate Partner and Sexual Violence Survey.<sup>18</sup> In 2001, the Office of Crime Victims Advocacy collected Washington-specific data on the incidence and prevalence of sexual assault and its characteristics.

### **1. Sexual violence against women in Washington**

The survey reported in “Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault: A Survey of Washington State Women”<sup>19</sup> 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. Some of the keys findings were:

- Twenty-three percent of Washington women have been raped, as defined by Washington law, during their lifetime.<sup>20</sup>
- More than one in three Washington women have been victims of sexual assault—defined as rape, attempted rape, forced sexual contact, or child sexual abuse—at some time in their lives.<sup>21</sup>
- One in five women has had more than one sexual assault experience.<sup>22</sup>
- Of the women who were sexually assaulted, 92 percent were sexually assaulted by a family member, current or former intimate partner, or an acquaintance. Only eight percent were sexually assaulted by a stranger.<sup>23</sup>

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<sup>16</sup> 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)

<sup>17</sup> 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 18% of women who were raped before the age of 18 also reported being raped since their 18<sup>th</sup> 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)

<sup>18</sup> Michele Black, Kathleen Basile, Matthew Breiding, Sharon Smith, Mikel Walters, Melissa Merrick, Jieru Chen, & Mark Stevens, “The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report, Executive Summary” (Centers for Disease Control and Prevention, National Center for Injury Prevention and Control & Division of Violence Prevention, November 2011) (Nearly one in five women and one in 71 men have been raped in their lifetime. Most female victims were raped before the age of 25, about 42% before the age of 18. Twenty-eight percent of male victims were raped before the age of ten and 35% of women who were raped as minors were also raped as adults.)

<sup>19</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions”

<sup>20</sup> Id. at 12

<sup>21</sup> Id.

<sup>22</sup> Id. at 13

<sup>23</sup> Id. at 19

- Almost one in ten of the women were sexually assaulted when they were unable to consent due to the influence of alcohol or drugs.<sup>24</sup>

## 2. Sexual violence against children

Since perpetrators target vulnerable victims,<sup>25</sup> 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:

- One in four girls is sexually abused before the age of 18.<sup>26</sup>
- One in six boys is sexually abused before the age of 18.<sup>27</sup>
- Twenty-eight percent of male victims were raped when they were ten or younger.<sup>28</sup>
- Eighty percent of Washington women who were sexually assaulted reported that their sexual assault experiences happened before they reached the age of 18.<sup>29</sup>
- Seventy-four percent of sexual abuse incidents perpetrated against 12 to 17-year-olds were committed by someone the victim knew well,<sup>30</sup> according to one study on youth victimization.
- Ninety percent of sexual assaults on children younger than 12 years old are perpetrated by someone the victim knows.<sup>31</sup>

## 3. Sexual violence against men

Men are also victims of sexual violence, and not just men in prison or homosexual men.<sup>32</sup> 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 percent 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 is male.”

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<sup>24</sup> Id. at 39

<sup>25</sup> Harborview Center for Sexual Assault and Traumatic Stress, “Information About Sexual Offenders”, [http://depts.washington.edu/hcsats/PDF/infobrochures/sexual\\_offenders.pdf](http://depts.washington.edu/hcsats/PDF/infobrochures/sexual_offenders.pdf) 2

<sup>26</sup> Centers for Disease Control and Prevention, “Adverse Childhood Experiences (ACE) Study, Data and Statistics, Prevalence of Individual Adverse Childhood Experiences”, <http://www.cdc.gov/ace/prevalence.htm>

<sup>27</sup> Id.

<sup>28</sup> Centers for Disease Control and Prevention, National Center for Injury Prevention and Control & Division of Violence Prevention, “The National Intimate Partner and Sexual Violence Survey, Fact Sheet”

<sup>29</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 38

<sup>30</sup> Dean Kilpatrick, Benjamin Saunders & Daniel Smith, “Youth Victimization: Prevalence and Implications” (U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Research in Brief, (April, 2006) <https://www.ncjrs.gov/pdffiles1/nij/194972.pdf>

<sup>31</sup> 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” 11 (1997)

<sup>32</sup> Lynn Hecht Schafran, “Writing and Reading About Rape: A Primer,” 66 *St. John’s L. Rev.* 979, 998 (1993)

Some national studies have surveyed men. Some of the findings about male victims were:

- Seventeen percent of the men surveyed were sexually abused before the age of 18.<sup>33</sup>
- One in every 33 men surveyed has been raped.<sup>34</sup>
- Nearly three in four of the male rape victims were raped before turning 18.<sup>35</sup>
- About 81 percent of the rapes of male victims were committed by an acquaintance, current or former intimate partner, or family member other than a spouse.<sup>36</sup> About 85 percent of these male rape victims reported being raped by a male.<sup>37</sup>

Sexual violence impacts these male victims in some of the same ways it affects female victims (see, “Understanding the Victim,” section V., p. 15 below), but also in other ways that are specific to men. An informal survey of 200 male victims of sexual assault found that 81 percent were afraid that people would think they were or would become perpetrators.<sup>38</sup> In addition, many men who have been sexually assaulted may experience confusion about their gender identity or sexual orientation.<sup>39</sup>

#### **4. Sexual violence against specific populations**

Although sexual violence can happen to anyone, and affects all cultural communities, research shows that minority and other underserved populations often experience sexual violence at higher rates. The findings are staggering:

- Native American/Alaska Native women were significantly more likely to be raped at some point in their lifetime.<sup>40</sup> In fact, Native American women were two-and-one-half times as likely to experience rape/sexual assault as compared to all other races in the United States.<sup>41</sup>
- Washington Hispanic women experienced higher rates of rape than white women.<sup>42</sup>
- Forty-three percent of lesbian and bisexual women, and 30 percent of gay and bisexual men, reported having experienced at least one form of sexual assault victimization.<sup>43</sup>

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<sup>33</sup> Centers for Disease Control and Prevention, “Adverse Childhood Experiences (ACE) Study”

<sup>34</sup> Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 7

<sup>35</sup> *Id.* at 18

<sup>36</sup> *Id.* at 21

<sup>37</sup> *Id.*

<sup>38</sup> The Oprah Winfrey Show, “A Two Day Oprah Show Event: 200 Adult Men Who Were Molested Come Forward” (Harpo Productions November, 2010) (TV series)

<sup>39</sup> lin6, “Myths & Facts” <http://lin6.org/therapists-and-other-professionals/myths-facts/>

<sup>40</sup> Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 13

<sup>41</sup> Steven Perry, “American Indians and Crime: 1992-2002” ( U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, <http://bjs.ojp.usdoj.gov/content/pub/pdf/aic02.pdf> 5

<sup>42</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 39

- Women with disabilities are raped and abused at a rate at least twice that of the general population of women.<sup>44</sup>
- A 2007 study found that five percent (or 60,500) of the more than 1.3 million inmates held in federal and state prisons had been sexually abused in the previous year.<sup>45</sup>

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 participate in an ongoing criminal justice process. They may be reluctant to seek services that are not culturally or linguistically appropriate.<sup>46</sup> 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.<sup>47</sup>

Since Washington has many diverse communities, judicial officers will see members of these communities 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: immigrant community, disabled, senior, and Native American. 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.”<sup>48</sup>

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. The Washington Coalition of Sexual Assault Programs maintains a section on cultural considerations for working with specific populations on its website.<sup>49</sup>

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<sup>43</sup> Emily F. Rothman, Deineria Exner & Allyson L. Baughman, “The Prevalence of Sexual Assault Against People Who Identify as Gay, Lesbian, or Bisexual in the United States: A Systematic Review”, *Trauma Violence, & Abuse*, 12(2) 55-66 (Sage 2011)

<sup>44</sup> Dick Sobsey, *Violence and Abuse in the Lives of People with Disabilities: The End of Silent Acceptance* (Paul H. Brooks Publishing Co, Inc. 1994)

<sup>45</sup> Allen Beck & Paige Harrison, “Sexual Victimization in State and Federal Prisons Reported by Inmates”, (Office of Justice Programs, Bureau of Justice Statistics, National Inmate Survey 2007)  
<http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1149>

<sup>46</sup> Women of Color Network, “Facts & Stats Collection, Sexual Violence Factsheet” ( 2006 )  
[http://womenofcolornetwork.org/docs/factsheets/fs\\_sexual-violence.pdf](http://womenofcolornetwork.org/docs/factsheets/fs_sexual-violence.pdf)

<sup>47</sup> 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)

<sup>48</sup> 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

<sup>49</sup> [www.wcsap.org](http://www.wcsap.org)

### 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>
- 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](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 Orders
  - 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>
  - 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 offender behavior is essential to comprehend the many facets of sexual violence victimization and to determine appropriate offender sanctions and treatment. Individuals who sexually offend make a conscious choice to victimize another person.<sup>50</sup> 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 females have been found to offend, the majority of perpetrators are male.<sup>51</sup>

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<sup>50</sup> 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](http://www.csom.org/train/etiology/3/3_1.htm)

<sup>51</sup> Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 21

Sex offenders are not easily categorized, in that offending behavior varies from individual to individual. Each sex offender is unique, and his or her offending pattern or predilections are unique. However, there are a number of factors that may increase a person's likelihood of offending that fall within 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)”<sup>52</sup>

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.<sup>53</sup>

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.”<sup>54</sup> 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

It is imperative to understand that for the vast majority of perpetrators, sexual assault is not about sexual gratification; it is about one person using sexual assault to exert power and control over another person.<sup>55</sup> Also, the majority of perpetrators has access to

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<sup>52</sup> 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](http://www.csom.org/pubs/needtoknow_fs.pdf) 2008

<sup>53</sup> Center for Sex Offender Management, “Understanding Sex Offenders: An Introductory Curriculum, Section 3: Common Characteristics of Sex Offenders”

<sup>54</sup> Id.

<sup>55</sup> 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>

consensual sex and is not motivated by sexual frustration.<sup>56</sup> As discussed above, they often are married or dating and have biological children.

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

Contrary to common belief and typical media portrayals of a sexual offender as an evil-looking stranger, 80 percent of sexual assaults are perpetrated by someone the victim knows and trusts.<sup>57</sup> This number increases to 90 percent for children younger than 12.<sup>58</sup> Perpetrators are thus often normal appearing spouses, partners, neighbors, friends, community members, or family members. Although sexual violence by strangers does occur, it is uncommon.<sup>59</sup> Non-stranger sexual assaults are at least as devastating as stranger sexual assaults.<sup>60</sup> 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.<sup>61</sup> This is consistent with the National Violence Against Women Survey, which found that the perpetrator used a weapon in just under 11 percent of the sexual assaults against women and about eight percent of the sexual assaults against men.<sup>62</sup>

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...use psychological weapons – power, control, manipulation, and threats – backed up by physical force, and almost never resort to weapons such as knives or guns.”<sup>63</sup>

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<sup>56</sup> Diana Scully, “Understanding Sexual Violence: A Study of Convicted Rapists,” 3 *Perspectives on Gender* 74 (Unwin Hyman 1990); Schafran, “Writing and Reading About Rape: A Primer”, at 1001

<sup>57</sup> See Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 39; Schafran, “Writing and Reading About Rape” at 984-986

<sup>58</sup> 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)

<sup>59</sup> 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 (16.7% of the women and 22.8% of the men were raped by a stranger); Black et al., “The National Intimate Partner and Sexual Violence Survey” (13.8% of the females and 15.1% of the men were raped by strangers; 93.4% of the female victims of alcohol or drug-facilitated rape were raped by someone they knew)

<sup>60</sup> Schafran, “Writing and Reading About Rape” at 1031

<sup>61</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 18

<sup>62</sup> Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 26

<sup>63</sup> Lisak, “Understanding the Predatory Nature of Sexual Violence” at 7

## 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 15 percent of the female victims reported their assault to the police.<sup>64</sup> The National Violence Against Women Survey found that just over 19 percent of the rapes of women and about 13 percent of the rapes of men were reported to the police.<sup>65</sup>

Of those rapes that are reported, very few are prosecuted, and fewer still result in convictions.<sup>66</sup> The National Violence Against Women Survey found that of the women whose rapes were reported, just under eight percent said their rapist was criminally prosecuted, about three percent said their rapist was convicted, and just over two percent said their rapist was incarcerated.<sup>67</sup>

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.<sup>68</sup>

## 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.<sup>69</sup> Perpetrators target vulnerable victims, including the very young and the very old,<sup>70</sup> and create situations in which they have access to these victims in order to commit sex crimes.

Both stranger and non-stranger rapists plan their attacks.<sup>71</sup> 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.

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<sup>64</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 21

<sup>65</sup> Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 33

<sup>66</sup> Lisak, “Understanding the Predatory Nature of Sexual Violence” at 1

<sup>67</sup> Tjaden & Thoennes, “Extent, Nature, and Consequences of Rape Victimization” at 35 – 36

<sup>68</sup> Center for Sex Offender Management, “Myths and Facts About Sex Offenders” at 2

<sup>69</sup> Center for Sex Offender Management, “An Overview of Sex Offender Management” at 2

<sup>70</sup> See Schafran, “Writing and Reading About Rape” at 994-995; Harborview Center for Sexual Assault and Traumatic Stress, “Information About Sexual Offenders” at 2

<sup>71</sup> Schafran, “Writing and Reading About Rape” at 1007

These undetected rapists:  
are extremely adept at identifying “likely” victims, and testing prospective victims’ boundaries; plan and premeditate their attacks, using sophisticated strategies to groom<sup>72</sup> their victims for attack, and to isolate them physically; use alcohol deliberately to render victims more vulnerable to attack, or completely unconscious.<sup>73</sup>

#### F. Sex Offenders Do Not Commit Sexual Crimes Because They Are Under the Influence of Alcohol<sup>74</sup>

Excessive alcohol use is not a root cause of sexual assault. Although alcohol may heighten the risk that someone will act on an impulse to commit a 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.”<sup>75</sup>

#### G. Most Perpetrators of Sexual Violence Are Not Mentally Ill

Sex offenders do not commit sex crimes because they are mentally ill.<sup>76</sup> Diana Scully’s comprehensive study of convicted rapists included a detailed psychiatric history. She found that only 26 percent 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.<sup>77</sup>

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<sup>72</sup> 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)

<sup>73</sup> See Lisak, “Understanding the Predatory Nature of Sexual Violence” at 7 ; Schafran, “Writing and Reading About Rape” at 1009

<sup>74</sup> Center for Sex Offender Management, “Myths and Facts About Sex Offenders” at 4

<sup>75</sup> Id.

<sup>76</sup> 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](http://www.csom.org/train/etiology/3/3_1.htm) (accessed September 4, 2012)

<sup>77</sup> Scully, “Understanding Sexual Violence” at 75

## 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% percent) were serial offenders who were responsible for a total of 439 rapes.<sup>78</sup> This finding is consistent with research on incarcerated rapists that found that, “when researchers have granted immunity to offenders in exchange for a truthful accounting of their sex offending history the reality of rape emerges. In one study, the average number of victims for each rapist was seven, and in another study it was 11.”<sup>79</sup>

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

In the same study referenced above, the researchers found that 58.3 percent of the rapists had also committed 1,225 other acts of interpersonal violence. About 14 percent committed sexual assault other than rape, about 38 percent committed battery of an adult intimate partner, fewer than 11 percent committed physical abuse of a child, and 17.5 percent committed sexual abuse of a child.<sup>80</sup>

Multiple studies on the subject have documented that between 33 percent and 66 percent of rapists have also sexually assaulted children; up to 82 percent of child molesters have also sexually assaulted adults.<sup>81</sup>

## 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. Some people who commit sex offenses have been victims of sexual abuse themselves, but many have not. Being sexually abused does not cause people to become sex offenders, and most children who were sexually victimized do not go on to sexually abuse others.<sup>82</sup>

## 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.<sup>83</sup> According to the Center for Sex Offender Management

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<sup>78</sup> David Lisak & Paul M. Miller, “Repeat Rape and Multiple Offending Among Undetected Rapists,” 17 *Violence and Victims* 73, 78 (2002)

<sup>79</sup> Lisak, “Understanding the Predatory Nature of Sexual Violence” at 6

<sup>80</sup> Lisak & Miller, “Repeat Rape and Multiple Offending Among Undetected Rapists” at 78-79

<sup>81</sup> Lisak, “Understanding the Predatory Nature of Sexual Violence” at 5

<sup>82</sup> Center for Sex Offender Management, “Fact Sheet: What You Need to Know About Sex Offenders” at 2

<sup>83</sup> Center for Sex Offender Management, “Understanding Treatment for Adults and Juveniles Who Have Committed Sex Offenses” at 4-5

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.<sup>84</sup>

Effectiveness of treatment depends on many factors, including type of offender, treatment model, treatment modalities, and related community interventions.<sup>85</sup> Juveniles, in particular, appear to respond to treatment and demonstrate lower rates of recidivism.<sup>86</sup> 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.

## 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. In particular, it is important to understand that sexual violence may impact men differently than women. 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.<sup>87</sup>

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. Researchers also found that lack of support makes it more difficult for victims to adjust post-assault.<sup>88</sup> In the study of certified sexual assault victim advocates referenced above, 35 percent of the advocates responding reported that judicial officers in criminal

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<sup>84</sup> Center for Sex Offender Management, “Myths and Facts About Sex Offenders” at 5

<sup>85</sup> Id.

<sup>86</sup> 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 Decisionmaking, A Judicial Education Curriculum” 32, 44 (2009)

<sup>87</sup> 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/>

<sup>88</sup> P. A. Resnick & P. Nishith, “Sexual Assault” 39, *Victims of Crime*, 2<sup>nd</sup> edition, eds. R. C. Davis, A. J. Lurigio, & W. G. Skogan (Sage 1997)

proceedings are professional, attentive, and informative toward defendants. In contrast, only 22 percent 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.<sup>89</sup>

## 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.<sup>90</sup> 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.<sup>91</sup>

### 1. Emotional

Some common emotional reactions to the trauma of sexual violence are: guilt, shame, self-blame, embarrassment, fear, distrust, sadness, vulnerability, isolation, lack of control, anger, numbness, confusion, shock, disbelief, and denial.<sup>92</sup>

Thirty-eight percent of the women responding in 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.<sup>93</sup> In another study, victims of rape reported significantly greater fear and anxiety than non-victims over a three-year post-rape period.<sup>94</sup>

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.<sup>95</sup>

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<sup>89</sup> See Schafran, "Writing and Reading About Rape" at 1022; Resnick & Nishith, "Sexual Assault" at 45

<sup>90</sup> King County Sexual Assault Resource Center, "Rape Trauma Syndrome," <http://www.kcsarc.org/sites/default/files/Resources%20-%20Rape%20Trauma%20Syndrome.pdf>

<sup>91</sup> Id.

<sup>92</sup> 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](http://www.nsvrc.org/sites/default/files/NSVRC_Publication_Factsheet_Impact-of-sexual-violence.pdf)

<sup>93</sup> Berliner, Fine & Moore, "Sexual Assault Experiences and Perceptions" at 28

<sup>94</sup> Resnick & Nishith, "Sexual Assault" at 30

<sup>95</sup> Id. at 39

## 2. Psychological

Some common psychological reactions to the trauma of sexual violence are: nightmares, flashbacks, depression, difficulty concentrating, posttraumatic stress disorder (PTSD), anxiety, eating disorders, substance use or abuse, phobias, and low self-esteem.<sup>96</sup>

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.<sup>97</sup> Another study found that over the two-year period immediately following an assault, victims of rape had significantly lower self-esteem than non-victims.<sup>98</sup> “Some victims...experience chronic problems for an indefinite time in the areas of fear/anxiety, depression, social adjustment, sexual functioning, and self-esteem.”<sup>99</sup>

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.<sup>100</sup> 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 are: changes in eating or sleeping patterns, increased startle response, concerns about physical safety, and concerns about pregnancy or contracting an STI or HIV.<sup>101</sup> In addition, about half of Washington women victims of sexual assault surveyed reported changing their daily routines due to safety concerns.<sup>102</sup>

### B.Characteristics of the Victim

An understanding or lack of understanding of the dynamics of sexual violence colors reactions to and beliefs about the victim. If judicial officers and jurors believe that the victim will appear a certain way on the stand, or should exhibit particular behavior when giving testimony, it can affect their ability to understand or find credible a victim who appears or behaves differently.

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<sup>96</sup> National Sexual Violence Resource Center, “Impact of Sexual Violence, Fact Sheet”

<sup>97</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 42

<sup>98</sup> Resnick& Nishith, “Sexual Assault” at 30

<sup>99</sup> Id. at 31

<sup>100</sup> Black,et al. “The National Intimate Partner and Sexual Violence Survey” at 1-3

<sup>101</sup> National Sexual Violence Resource Center, “Impact of Sexual Violence, Fact Sheet”

<sup>102</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 43

## **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 he or she is unable to relate it with emotion.<sup>103</sup> In addition, because of the increased likelihood that adult victims of sexual violence were also sexually abused as children, they may have learned to detach themselves emotionally from the experience of victimization.<sup>104</sup>

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.<sup>105</sup> 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.<sup>106</sup> 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.<sup>107</sup>

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 percent of the women victims surveyed thought that they or someone close to them would be seriously injured or killed.<sup>108</sup> In a survey of Washington women victims of sexual assault 45 percent 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

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<sup>103</sup> 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)

<sup>104</sup> 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)

<sup>105</sup> Schafran, "Writing and Reading About Rape" at 1024-1025

<sup>106</sup> See Berliner, Fine & Moore, "Sexual Assault Experiences and Perceptions" at 18 (20% of victims experienced physical injury); Tjaden & Thoennes, "Extent, Nature, and Consequences of Rape Victimization" at 26 (31.5% of females and 16.1% of males were physically injured)

<sup>107</sup> Schafran, "Maiming the Soul: Judges, Sentencing, and the Myth of the Nonviolent Rapist" at 441, 443

<sup>108</sup> 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

had such fears.<sup>109</sup> Such fears of serious injury or death have been found by several studies to predict increased psychological impacts for victims.<sup>110</sup>

### **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, data shows that sexual assault is rarely reported. 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 that the police and legal response to sexual assault victims was poor, with 19 percent rating it as fair or poor and only nine percent rating it as excellent.<sup>111</sup>

Those victims who do report are likely to delay doing so.<sup>112</sup> 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.”<sup>113</sup> A victim may “check out” in order to endure the assault, making it difficult to later recall details of the assault.<sup>114</sup> Like dissociation, shock, denial, and suppression may make some details of a victim’s account inconsistent.<sup>115</sup> 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

### **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 percent of the jurors in the study believed resistance was a critical factor in determining if the defendant was culpable, and

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<sup>109</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 18

<sup>110</sup> Resnick & Nishith, “Sexual Assault” at 31

<sup>111</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 34-35

<sup>112</sup> Schafran, “Writing and Reading About Rape” at 1016

<sup>113</sup> Resnick & Nishith, “Sexual Assault” at 31

<sup>114</sup> Id.

<sup>115</sup> Schafran, “Writing and Reading About Rape” at 1017

59 percent believed that a woman “should do everything she can to repel her attacker.”<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup>

In addition, some sexual assaults occur when the victim is unable to give or withhold consent due to disability or mental incapacity.<sup>120</sup> These victims are likely to be unable to offer physical resistance.

## **6. 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 percent of men and 42 percent of women agreed with the statement: “Many women cry rape – saying they have been raped when it really hasn’t happened.”<sup>121</sup> However, a recent comprehensive review of reliable research on the percentage of false reports determined that only two to eight percent of rape reports are false.<sup>122</sup>

## **7. 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.<sup>123</sup> 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 percent of women victims reporting repeated episodes of forced sex.<sup>124</sup>

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<sup>116</sup> 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)

<sup>117</sup> Schafran, “Writing and Reading About Rape” at 989

<sup>118</sup> Id. at 99

<sup>119</sup> Schafran, “Writing and Reading About Rape” at 991

<sup>120</sup> RCW 9A.44.050 <http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.44.050>

<sup>121</sup> National Judicial Education Project, “Understanding Sexual Violence” at 3

<sup>122</sup> Lonsway, Archambault & Lisak, “False Reports: Moving Beyond the Issue” at 2-3

<sup>123</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 22, 29

<sup>124</sup> Judith McFarlane & Ann Malecha, “Sexual Assault Among Intimates: Frequency, Consequences and Treatments” (2005) <http://www.ncjrs.gov/pdffiles1/nij/grants/211678.pdf> 3

## **8. 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.<sup>125</sup> Victims who experience this may feel betrayed by their own bodies.

## **9. 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.”<sup>126</sup> 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.<sup>127</sup> Even victims who desire punishment for the perpetrator are more interested in consistency from victim to victim than they are with the severity of punishment.<sup>128</sup> 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.<sup>129</sup> 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 percent 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.<sup>130</sup>

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<sup>125</sup> Schafran, “Writing and Reading About Rape” at 997-998

<sup>126</sup> 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)

<sup>127</sup> Judith Herman, “Justice from the Victim’s Perspective”, 11 *Violence Against Women* 571, 585 (Sage 2005)

<sup>128</sup> *Id.* at 595

<sup>129</sup> Debra Patterson, “The Linkage Between Secondary Victimization and Rape Case Outcomes,” 20 *Journal of Interpersonal Violence* 1, 2 (2010)

<sup>130</sup> *Id.* at 13

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.<sup>131</sup> In fact, many victims predicted that they would never seek help from the criminal justice system again.<sup>132</sup>

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.<sup>133</sup> 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.<sup>134</sup> Victims cite delay as a primary reason why they do not follow through with the process.<sup>135</sup> 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.<sup>136</sup>

When victims of sexual assault are treated with compassion by the justice system, they show an increased commitment to participating in the judicial process.<sup>137</sup> 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>

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<sup>131</sup> Id. at 2

<sup>132</sup> Id. at 14

<sup>133</sup> Resnick & Nishith, "Sexual Assault" at 31

<sup>134</sup> Id.

<sup>135</sup> Schafran, "Writing and Reading About Rape" at 1032

<sup>136</sup> Id.

<sup>137</sup> Patterson, "The Linkage Between Secondary Victimization and Rape Case Outcomes" at 15

## 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.”<sup>138</sup>

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 deserves to be raped and thus, the perpetrator is not at fault because “[the victim] was asking for it.” Many of these rape myths are addressed above in the sections on perpetrators and victims.

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.<sup>139</sup> “Juror adherence to rape myths presents a major barrier to fairness in these trials” because these biased jurors cannot be impartial.<sup>140</sup> Thus, it is essential to know if potential jurors adhere to rape myths and are likely to decide cases based on those beliefs.

## VIII. 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:

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<sup>138</sup> 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)

<sup>139</sup> 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>

<sup>140</sup> Schafran, “Writing and Reading About Rape” at 1029, 1033

- 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

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](http://www.wcsap.org).

## B. Community-based Efforts That Address Sexual Assault

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:

- crisis intervention, including operating a 24-hour hotline;
- general advocacy in the form of ongoing support, psycho-educational support groups, resources, and referrals for other services;
- 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, 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.<sup>141</sup> Victims of rape who had advocates reported receiving more services, and reported less secondary victimization from system personnel.<sup>142</sup> Secondary victimization has been defined as “insensitive, victim-blaming treatment” from system personnel that “exacerbates the trauma of the rape.”<sup>143</sup> Another study reported that victims were treated better when advocates were present during interviews, and that detectives did not engage in secondary victimization behavior.<sup>144</sup> 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.

The 2002 Washington study referenced above found that 39 percent 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.<sup>145</sup> A 2011 report by CourtWatch, a program of the 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).<sup>146</sup> Victims with advocates obtained full orders in 80 percent of SAPO cases, while victims without advocates obtained full orders only 34 percent of the time.<sup>147</sup> 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 he or she is working with an advocate.<sup>148</sup>

## IX. Conclusion

Sexual violence is highly prevalent in Washington and the impact of sexual violence on victims 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. Too often Washington’s justice system fails to hold sex offenders accountable. Without accountability, perpetrators of sexual violence, most of whom research shows are serial offenders of interpersonal violence, are likely to continue to perpetrate.

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, 25 percent of

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<sup>141</sup> Rebecca Campbell, “Rape Survivors’ Experiences With the Legal and Medical Systems: Do Rape Advocates Make a Difference?”, 12 *Violence Against Women* 30, 32 (2006)

<sup>142</sup> *Id.* at 38

<sup>143</sup> *Id.* at 30 – 31

<sup>144</sup> Debra Patterson, “The Linkage Between Secondary Victimization and Rape Case Outcomes”, 20 *J. Interpers. Viol.* 1, 16 (2010)

<sup>145</sup> Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions” at 20 - 21

<sup>146</sup> Court form SA 3.015 <http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=65>

<sup>147</sup> CourtWatch, A Program of KCSARC, “Analyzing the Impact and Application of the Sexual Assault Protection Order in King County” 17, <http://www.kcsarc.org/courtwatch>

<sup>148</sup> *Id.*

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. Twenty percent reported that judicial officers are respectful, sensitive, and patient to victims in criminal proceedings.

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.