

# Chapter 8

## Consequences of Gender-Based Violence: Domestic Violence and Sexual Violence

Laura Jones, JD and Judge Jacqueline Shea-Brown

Katrina Goering, BSW, MPH; Stephanie Larson; Rob Mead, JD, MLS

### Contents

I.Summary .....	351
II.Introduction .....	353
III.Domestic Violence .....	359
A.Reduction of domestic violence perpetrator access to firearms .....	361
B. Evaluation of perpetrator treatment, risk assessment, and mandatory arrest via legislatively-convened domestic violence work groups .....	365
1.Domestic Violence Perpetrator Treatment/Intervention .....	365
2.Domestic Violence Risk Assessment.....	368
3.Mandatory Arrest .....	369
C.Additional changes and developments related to domestic violence law .....	372
IV.Sexual Violence.....	378
A.Rape shield.....	379
B.Sexual Assault in Prisons and Jails.....	381
1.Washington PREA reports .....	381
2.Demographic information .....	382
3.Impact of trauma .....	388
4.Underreporting and perceptions of sexual violence against incarcerated people.....	390
5.Criminal and civil remedies.....	392
6.PREA implementation.....	395

B.Civil Commitment.....	396
C.Sexual assault kit backlog.....	398
D.Sexual Assault Protection Orders .....	399
E.Extension of statute of limitations for sexual assault .....	402
F.Sexual assault advocate privilege.....	402
G.Other rights for sexual assault victims.....	403
V.Immigrant Women.....	404
VI.Violence Against Indigenous Women and Girls.....	407
A.Missing and Murdered Indigenous Women and Girls (MMIWG).....	407
B.Child Welfare.....	411
C.Enforcement of protection orders issued by Tribal Courts .....	412
VII.Education for Justice System Professionals.....	413
A.Education for Judicial Officers .....	414
B.Education for law enforcement .....	417
C.Multi-disciplinary education/additional stakeholders.....	417
VIII.Conclusion.....	419
IX.Recommendations .....	419
Appendix I .....	422

## I. Summary

Domestic and sexual violence are categories of gender-based<sup>1</sup> violence perpetrated against a person or group of people due to their actual or perceived sex, gender, sexual orientation, or gender identity. In the 1989 Gender and Justice in the Courts Study (1989 Study), the Task Force’s Subcommittee on the Consequences of Violence evaluated the judicial system’s response to domestic violence and adult rape to determine whether gender bias was evident in the implementation of domestic violence and sexual assault laws and in the treatment of victims.<sup>2</sup> The 1989 Study identified gender-related problems in both areas.

Since the 1989 Study was published, Washington has addressed remedies for victims of domestic and sexual violence primarily through the passage of criminal and civil laws. Despite numerous improvements in the law since 1989, these types of violence remain prevalent, and have a disproportionate impact on women; Black, Indigenous, and people of color; immigrants; those living in poverty; and LGBTQ+<sup>3</sup> people. For example, in Washington State from 2010-2012, 44.8% of women reported having experienced contact sexual violence in their lifetime, compared to 21.6% of men. National data from 2010 shows: 1) 55.5% of American Indian/Alaska Native<sup>4</sup> women reported having experienced physical violence by an intimate partner and 56.1% reported sexual violence in their lifetime, 2) nearly half of bisexual women (46.1%) reported having experienced rape in their lifetime, compared to 17.4 % of heterosexual women and 0.7% of heterosexual men; and 3) gay and bisexual men reported a significantly higher prevalence of sexual violence other than rape, compared to heterosexual men. A 2009 review of United States

<sup>1</sup> Please note that the data and research referenced throughout this section are limited based on the historically inadequate collection of data using a gender binary that causes erasure of many gender-diverse populations and masks disparities. Where datasets or research allowed for analysis for transgender or gender nonbinary populations we have done so, but where that is not done it is because the dataset did not allow for that analysis.

<sup>2</sup> Throughout this report, the terms “victim” and “survivor” will be used interchangeably, depending on context. We understand the limitations of each of these terms.

<sup>3</sup> Lesbian, gay, bisexual, transgender, queer, or questioning.

<sup>4</sup> The 2021 Gender Justice Study uses the race and ethnicity terms used in the underlying sources when citing data in order to ensure we are presenting the data accurately and in alignment with the how the individuals self-identified. When talking more broadly about the body of literature we strive to use the most respectful terms. See Section V of the full report (“2021 Gender Justice Study Terminology, Methods, and Limitations”) for a more detailed explanation of terminology used throughout the report.

data found that approximately half of transgender individuals experienced unwanted sexual contact.

There is also an urgent need to respond to the crisis of Missing and Murdered Indigenous Women and People. Indigenous women are murdered at significantly higher rates than women of other races. Meetings of tribal nations and community members across the state highlighted barriers and solutions to addressing this crisis. Some of the mentioned solutions include collaboration between law enforcement, government, and community; training for law enforcement on aspects such as the missing person process, human emotions, and Native American culture; respect for the government-to-government relationship; and increased community resources.

Women, LGBTQ+ individuals, and youth who are incarcerated are also at particularly high risk of sexual assault while in confinement. And incarcerated individuals who experienced sexual victimization before incarceration are more likely to report being sexually victimized by other incarcerated individuals or staff while in prison or jail.

In addition to the prevalence of domestic and sexual violence, barriers to access remain for victims seeking to access civil and criminal legal remedies stemming from and related to the violence perpetrated against them. These barriers may contribute to the choice many survivors of domestic and sexual violence make not to report this violence to law enforcement or to engage with the justice system. An estimated 44% of intimate partner violence incidents and 65% of sexual assaults go unreported to law enforcement.

Research shows that domestic violence survivors also decline to report due to fear of unintended consequences, previous negative interactions with the system, lack of confidence in the ability of the legal system to improve their lives, or not identifying their experience as intimate partner violence. Research also indicates that some immigrant women report withdrawing their court case out of fear of deportation. Similarly, for survivors of sexual violence, rape myths, perceived false reports, negative system response and treatment of victims, and high rates of case attrition are deterrents to engaging with the justice process.

Moving forward, Washington needs to prioritize increasing access to legal aid attorneys for civil domestic and sexual violence cases. Washington needs to expand data collection and research

on gender-based violence, to increase evidence-based prevention efforts including treatment options for perpetrators of domestic violence such as Domestic Violence Moral Reconciliation Therapy (DV-MRT), and to promote and require education for justice system stakeholders working on cases involving domestic and sexual violence.

## II. Introduction

For the 1989 Study mentioned above, the Task Force's Subcommittee on the Consequences of Violence gathered information from public hearings and surveys from domestic violence service providers, sexual assault service providers, judges, and lawyers.<sup>5</sup> The 1989 Study found that gender bias was reflected in the Washington State Courts, reporting gender-related problems in the areas of domestic violence and sexual assault.<sup>6</sup> Largely focused on the criminal justice process in its evaluation of gender bias within the judicial system, the Task Force's recommendations to address bias as it impacted the treatment of victims and the interpretation and application of laws included the following:

- Strengthen the laws;
- More education and funding to adequately address violence for those working in the justice system;
- Uniform and simpler forms;
- Legal counsel for victims;
- Quality and accessible treatment for offenders;
- Sensitivity towards victims from court staff and judges; and
- More rigorous prosecution and punishment.

<sup>5</sup> WASH. STATE TASK FORCE ON GENDER & JUST. IN THE CTS., GENDER AND JUSTICE IN THE COURTS (1989), <http://www.courts.wa.gov/subsite/gjc/documents/Gender%20and%20Justice%20in%20the%20Courts--Final%20Report,%201989.pdf>.

<sup>6</sup> *Id.* at 4.

These recommendations stemmed from a necessity to require institutions, including police, prosecutors, and the courts, to address domestic and sexual violence as serious crimes and to communicate that such violent behavior would not be excused or tolerated.

Since the 1989 Study was published, Washington has primarily addressed remedies for victims of domestic and sexual violence through the passage of criminal and civil laws. Please also note that in this section of the 2021 Gender Justice Study, we recognize the focus is Washington State; however, we have included information from other jurisdictions where we lack information, or where it is a valuable source for guidance.

Despite numerous improvements in the law since 1989, these types of violence remain prevalent, and have a disproportionate impact on women; Black, Indigenous, and people of color; immigrants;<sup>7</sup> those living in poverty;<sup>8</sup> and LGBTQ+ people:

- Nationally representative data from 2010-2012 show that 37.3% of U.S. women report a lifetime prevalence of intimate partner violence (sexual violence, physical violence, and/or stalking), compared to 30.9% of men and that 36.3% of women reported experiencing contact sexual violence during their lifetime, compared to 17.1% of men.<sup>9</sup>
- The majority of violence against men is perpetrated by acquaintances or strangers, whereas women are more likely to experience violence and abuse from their intimate partner, reinforcing an imbalance of power in the relationship.<sup>10</sup>
- In Washington State, from 2010-2012, 44.8% of women reported having experienced contact sexual violence in their lifetime, compared to 21.6% of men.<sup>11</sup>

<sup>7</sup> See e.g., Yeon-shim Lee & Linda Hadeed, *Intimate Partner Violence Among Asian Immigrant Communities: Health/Mental Health Consequences, Help-Seeking Behaviors, and Service Utilization*, 10 *VIOLENCE* 143 (2009) (summarizing evidence from community-based studies on Asian Immigrant populations and revealing high prevalence of intimate partner violence and chronic underreporting).

<sup>8</sup> See e.g. Matthew J. Breiding et al., *Economic Insecurity and Intimate Partner and Sexual Violence Victimization*, 53 *AM. J. PREVENTIVE MED.* 457 (2017).

<sup>9</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJ. PREVENTION & CONTROL, *THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010-2012 STATE REPORT 128* (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> (Table 5.7).

<sup>10</sup> PATRICIA MAHONEY ET AL., U.S. DEP'T OF JUST., OFF. OF JUST. PROGRAMS, *VIOLENCE AGAINST WOMEN BY INTIMATE RELATIONSHIP PARTNERS (FROM SOURCEBOOK ON VIOLENCE AGAINST WOMEN, P 143-178, 2001, CLAIRE M. RENZETTI, JEFFREY L. EDLESON, AND RAQUEL K. BERGEN, EDS. -- SEE NCJ-201429)* (2011), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/violence-against-women-intimate-relationship-partners-sourcebook>.

<sup>11</sup> *Id.*

- Multiracial women, American Indian/Alaska Native women and Black women report higher rates of lifetime intimate partner violence (IPV) than their white, Hispanic and Asian, Native Hawaiian, and other Pacific Islander peers.<sup>12</sup> It is important to note that grouping diverse populations into one category (such as combining all Asian, Native Hawaiian, and other Pacific Islanders) frequency masks disparities.
- The Black population is disproportionately overrepresented among both victims and perpetrators of intimate partner violence, with 45.1% of Black women reporting an experience of sexual violence, physical aggression, or stalking from an intimate partner.<sup>13</sup>
- In 2010, 55.5% of American Indian/Alaska Native women reported having experienced physical violence by an intimate partner and data from 2010 also shows that 56.1% of American Indian/Alaska Native women have experienced sexual violence in their lifetime.<sup>14</sup>
- Nearly half of bisexual women (46.1%) report having experienced rape in their lifetime, compared to 17.4% of heterosexual women and 0.7% of heterosexual men.<sup>15</sup>
- Gay and bisexual men have a significantly higher prevalence of sexual violence other than rape, compared to heterosexual men.<sup>16</sup>
- A 2009 review of United States data found that approximately half of transgender individuals experienced unwanted sexual contact.<sup>17</sup> Transgender feminine individuals

<sup>12</sup> *Id.*

<sup>13</sup> Carolyn M. West, *Widening the Lens: Expanding the Research on Intimate Partner Violence in Black Communities*, 30 *J. Aggression Maltreatment & Trauma* 1 (2021).

<sup>14</sup> ANDRÉ B. ROSAY, NAT'L INST. OF JUST., *VIOLENCE AGAINST AMERICAN INDIAN AND ALASKA NATIVE WOMEN AND MEN: 2010 FINDINGS FROM THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (2016)*, <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

<sup>15</sup> MIKEL L. WALTERS, JIERU CHEN & MATTHEW J. BREIDING, CTNS. FOR DISEASE CONTROL & PREVENTION, NAT'L CTR. FOR INJ. PREVENTION & CONTROL, *THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION (2013)*, [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_sofindings.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_sofindings.pdf).

<sup>16</sup> *Id.*

<sup>17</sup> See e.g., Rebecca L. Stotzer, *Violence Against Transgender People: A Review of United States Data*, 14 *AGGRESSION & VIOLENT BEHAV.* 170 (2009). Data from multiple sources (self-report surveys and needs assessments, hot-line call and social service records, and police reports) indicates that violence against transgender people starts early in life, that transgender people are at risk for multiple types and incidences of violence, and that this threat lasts throughout their lives.

have the highest risk of sexual victimization out of any other subset of the United States population.<sup>18</sup>

In addition to the prevalence of domestic and sexual violence, barriers to access remain for those victims seeking to access civil and criminal legal remedies stemming from and related to the violence perpetrated against them. These barriers contribute to the choice many survivors of domestic and sexual violence make not to report this violence to law enforcement or to engage with the justice system.<sup>19</sup> An estimated 44% of intimate partner violence incidents and 65% of sexual assaults go unreported to law enforcement.<sup>20</sup>

Research shows that in addition to a lack of understanding<sup>21</sup> and inaccessibility of the process,<sup>22</sup> domestic violence survivors also do not report due to the fear of unintended consequences,<sup>23</sup> previous negative interactions with the system,<sup>24</sup> lack of belief that engaging with the legal

<sup>18</sup> See Sara Matsuzaka & David E. Koch, *Trans Feminine Sexual Violence Experiences: The Intersection of Transphobia and Misogyny*, 34 *AFFILIA* 28 (2019). See also Daniela Jauk, *Gender Violence Revisited: Lessons from Violent Victimization of Transgender Identified Individuals*, 16 *SEXUALITIES* 807, 816 (2013) (“Transgender women face disadvantage because they choose to be feminine in a world in which women and men devalue femininity.”); JULIA SERANO, *WHIPPING GIRL: A TRANSEXUAL WOMAN ON SEXISM AND THE SCAPEGOATING OF FEMININITY* (2007).

<sup>19</sup> E.g., BRYAN A. REAVES, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT., *POLICE RESPONSE TO DOMESTIC VIOLENCE, 2006-2015* (2017), <https://bjs.ojp.gov/library/publications/police-response-domestic-violence-2006-2015>; LYNN LANGTON ET AL., U.S. DEP’T OF JUST., BUREAU OF JUST., STAT., *VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006-2010* (2012), <https://bjs.ojp.gov/content/pub/pdf/vnrp0610.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> See e.g., Margaret E. Adams & Jacquelyn Campbell, *Being Undocumented & Intimate Partner Violence (IPV): Multiple Vulnerabilities Through the Lens of Feminist Intersectionality*, 11 *WOMEN’S HEALTH & URB. LIFE* 15 (Undocumented immigrant individuals may be unaware of the laws that exist to protect them in their communities, or may choose not to involve law enforcement due to fear of deportation of themselves or their partners). See also Emerson Beishline, *An Examination of the Effects of Institutional Racism and Systemic Prejudice on Intimate Partner Violence in Minority Communities*, 4 *LAW RAZA* 1 (2012).

<sup>22</sup> See e.g., Margret E. Bell et al., *Battered Women’s Perceptions of Civil and Criminal Court Helpfulness: The Role of Court Outcome and Process*, 17 *VIOLENCE AGAINST WOMEN* 71 (2011) (A qualitative study conducted with nearly 300 women, mostly low-income Black women and women of color involved in civil and criminal justice system in a mid-Atlantic city, yielded mixed perceptions of the helpfulness of civil and criminal court involvement).

<sup>23</sup> See e.g., MIEKO YOSHIHAMA ET AL., *LIFECOURSE EXPERIENCES OF INTIMATE PARTNER VIOLENCE AND HELP-SEEKING AMONG FILIPINA, INDIAN, AND PAKISTANI WOMEN: IMPLICATIONS FOR JUSTICE SYSTEM RESPONSES* 123 (2010), [http://www.ncdsv.org/images/LifecourseExpIPVHelpseekingAmongFilipinaIndianPakistaniWomenImpJusticeSystemResponse\\_10-2011.pdf](http://www.ncdsv.org/images/LifecourseExpIPVHelpseekingAmongFilipinaIndianPakistaniWomenImpJusticeSystemResponse_10-2011.pdf). In a series of 143 interviews with Filipina, Indian and Pakistani women in the San Francisco Bay Area, nearly half of the women who reported lifetime IPV did not call the police. Among the most common reasons for not calling police were a lack of knowledge and familiarity with the system; concerns about immigration status; and fear, as well as personal, cultural and family factors. *Id.*

<sup>24</sup> See e.g. PURI SHAH, *VAWNET, OVER-INCARCERATION OF TRANS SURVIVORS & IMMIGRATION DETENTION AS PART OF MASS INCARCERATION: REPORT FROM THE FIELD: ECONOMIC POLICY AND LEADERSHIP SERIES* (2018), <https://vawnet.org/material/over-incarceration-trans-survivors-immigrant-detention-part-mass-incarceration> (finding that mass incarceration in Black, Indigenous, and communities of color may lead victims belonging to



system will improve their lives,<sup>25</sup> or not identifying their experience as intimate partner violence.<sup>26</sup> Similarly, for survivors of sexual violence, rape myths,<sup>27</sup> perceived false reports,<sup>28</sup> negative system response and treatment of victims,<sup>29</sup> and high rates of case attrition<sup>30</sup> are deterrents to engaging with the justice process.

these communities to avoid law enforcement involvement); Lauren B. Cattaneo, *The Role of Socioeconomic Status in Interactions with Police Among a National Sample of Women Experiencing Intimate Partner Violence*, 45 AM. J. CMTY. PSYCH. 247 (2010); LAMBDA LEGAL, PROTECTED AND SERVED? (2015), <https://www.lambdalegal.org/protected-and-served>; JAIME M. GRANT ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY (2011) (Transgender and gender-nonconforming people are particularly unlikely to report abuse to police due to common experiences of harassment and discrimination).

<sup>25</sup> Sandra S. Park, Donna Coker, & Julie Goldscheid, *Advocates and Service Providers Criticize Police Response to Victims*, 10 FAM. & INTIMATE PARTNER VIOLENCE Q. 73, 73-79 (2018).

<sup>26</sup> Jenna M. Calton, Lauren B. Cattaneo, Kris T. Gebhard, *Barriers to Help Seeking for Lesbian, Gay, Bisexual, Transgender, and Queer Survivors of Intimate Partner Violence*, 17 TRAUMA, VIOLENCE, & ABUSE 585 (2016) (victims in same-sex relationships may not identify their experiences as domestic violence because of common depictions of intimate partner violence as existing in heterosexual relationships).

<sup>27</sup> "Rape myth" is a term used to describe attitudes or beliefs about rape that do not align with the best available evidence. Examples include assumptions about the "typical" rape and the "typical" rape victim, which can influence perceptions of credibility and blame. Katie M. Edwards et al., *Rape Myths: History, Individual and Institutional-Level Presence, and Implications for Change*, 65 SEX ROLES 761 (2011). The stereotypical idea of rape is that it is committed by a stranger, in a public or semi-public place, and that the assailant uses force during the attack. In reality, studies have shown that most rapes and sexual assaults are committed by a person known by the victim; often take place in the victim's or suspect's home; and force is not always used. MICHAEL PLANTY ET AL., U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., FEMALE VICTIMS OF SEXUAL VIOLENCE, 1994-2010 (2016), <https://bjs.ojp.gov/content/pub/pdf/fvsv9410.pdf> (for data set, see AM. PSYCH. ASS'N, <https://doi.org/10.1037/e528212013-001>).

<sup>28</sup> Estimates of false reporting hover around 5%. See e.g., David Lisak et al., *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, 16 VIOLENCE AGAINST WOMEN 1318 (2010); Claire E. Ferguson & John M. Malouff, *Assessing Police Classifications of Sexual Assault Reports: A Meta-Analysis of False Reporting Rates*, 45 ARCHIVES SEXUAL BEHAV. 1185 (2016); Cassia Spohn, Clair White & Katharine Tellis, *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports*, 48 LAW & SOC'Y REV. 161 (2014). Whereas surveys of law enforcement demonstrate false reporting is consistently overestimated. See e.g., Annelise Mennicke et al., *Law Enforcement Officers' Perception of Rape and Rape Victims: A Multimethod Study*, 29 VIOLENCE & VICTIMS 814 (2014); Rachel M. Venema, *Police Officers' Rape Myth Acceptance: Examining the Role of Officer Characteristics, Estimates of False Reporting, and Social Desirability Bias*, 33 VIOLENCE & VICTIMS 176 (2018).

<sup>29</sup> For example, analysis of the National Women's Study showed that of rape survivors who reported their rape, over a quarter (29.7%) felt that the police did not believe them; and that among non-reporters, 42.6% did not report out of fear of the justice system. 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. INTERPERSONAL VIOLENCE 807 (2011).

<sup>30</sup> A Department of Justice-funded study of six (confidential) representative jurisdictions and cases involving nearly 3,000 female sexual assault victims from 2008-2010 provides the best current evidence on case attrition among cases reported to law enforcement. Melissa Schaefer Morabito, April Pattavina & Linda M. Williams, *It All Just Piles Up: Challenges to Victim Credibility Accumulate to Influence Sexual Assault Case Processing*, 34 J. INTERPERSONAL VIOLENCE 3151 (2019). It found that of all reported cases, only 1.6% end up being tried in court. The rest were dropped during investigation, charging, or a plea bargain was reached. In an earlier study, the researchers conducted an analysis of data combined from several sources and concluded that of 100 adult rapes committed in the U.S., between 0.2 and 2.8 ultimately result in incarceration for the offender. Kimberly A. Lonsway & Joanne

Additionally, Washington’s “Civil Legal Needs Study Update (2015)”<sup>31</sup> found that domestic violence and sexual assault victims experience the highest number of legal problems per capita of any group.<sup>32</sup> “Low-income Washingtonians who have suffered domestic violence or been a victim of sexual assault experience an average of 19.7 legal problems per household, twice the average experienced by the general low-income population.”<sup>33</sup> The Civil Legal Needs Study mentions the following as examples of legal issues that victims of domestic and sexual violence need assistance with: health, consumer and financial services, municipal services/utilities/law enforcement, employment, public benefits, housing, family law, estate planning, education.

Moving forward, the following goals should be prioritized to improve the system response to domestic and sexual violence:

1. Increase Access: This includes increased funding for civil legal aid attorneys who can assist victims with obtaining protection orders, protecting their privacy during a criminal case, keeping their housing, keeping their jobs, helping them access public benefits, or preventing them from losing their children.
2. Expand Data Collection and Research: In order to monitor the efficacy of laws and regulations in combating gender-based violence and to identify gaps,<sup>34</sup> a critical focus moving forward should be on continued data collection and analysis.<sup>35</sup> Relatedly, there should also be a focus on evidence-based prevention efforts, such as increasing the accessibility and effectiveness of perpetrator treatment.<sup>36</sup>

Archambault, *The “Justice Gap” for Sexual Assault Cases: Future Directions for Research and Reform*, 18 VIOLENCE AGAINST WOMEN 145 (2012).

<sup>31</sup> WASH. STATE SUP. CT., 2015 WASHINGTON STATE CIVIL LEGAL NEEDS STUDY UPDATE (2015), [https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy\\_October2015\\_V21\\_Final10\\_14\\_15.pdf](https://ocla.wa.gov/wp-content/uploads/2015/10/CivilLegalNeedsStudy_October2015_V21_Final10_14_15.pdf)

<sup>32</sup> *Id.* at 13, 25.

<sup>33</sup> *Id.* at 13.

<sup>34</sup> See e.g., MIA NEIDHARDT ET AL., KING CNTY. AUDITOR’S OFF., SEX OFFENSE CASES: SOME VICTIMS AND THEIR CASES MAY BE HARMED BY GAPS ( 2020), <https://www.kingcounty.gov/~media/depts/auditor/new-web-docs/2020/sai-2020/sai-2020.ashx?la=en>.

<sup>35</sup> This should also include a component of “on-the-ground” feedback, such as using focus groups, to identify the nuances of how gender bias occurs in both subtle and overt ways.

<sup>36</sup> This is considered secondary or tertiary prevention because it is an intervention after the violence has occurred. For a discussion regarding prevention, see CTRS. FOR DISEASE CONTROL & PREVENTION, SEXUAL VIOLENCE PREVENTION: BEGINNING THE DIALOGUE (2004), <https://www.cdc.gov/violenceprevention/pdf/SVPrevention-a.pdf>.

3. Promote and Require Education: There also has been a recent emphasis on providing education opportunities for judges, law enforcement, attorneys, and other system stakeholders. Education opportunities should continue to be offered to and required for system stakeholders working on cases involving domestic and sexual violence, including mandatory continuing education.

This section of the study gives an overview of changes and developments that have been made in the laws related to domestic and sexual violence since 1989; discusses the disproportionate impact of these types of gender-based violence on women; Black, Indigenous, and women of color; immigrants; those living in poverty; and LGBTQ+ people; specifically examines violence perpetrated against immigrant and Indigenous women and girls;<sup>37</sup> highlights education opportunities and requirements for stakeholders to the justice system, both of which were prominent subjects in the 1989 Study. It concludes by making recommendations regarding the aspects of the responses to domestic and sexual violence that require change or ongoing monitoring.

### III. Domestic Violence

Comparison of Washington State domestic violence prevalence data from 1989 to today is difficult because the state data that is now collected was not collected previously. Nationally, serious intimate partner violence rates appear to have declined 72% between 1993 and 2011.<sup>38</sup> However, more recent Washington-specific data indicates that domestic violence remains a significant problem in Washington State:

- From 1997 through June 2020, there have been over 1,300 domestic violence-related fatalities in the state of Washington.<sup>39</sup>

<sup>37</sup> The 1989 Study did not directly address these specific populations and others, which we hope to rectify in this study.

<sup>38</sup> SHANNAN CATALANO, U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., INTIMATE PARTNER VIOLENCE: ATTRIBUTES OF VICTIMIZATION, 1993-2001 1 (2013), <https://bjs.ojp.gov/content/pub/pdf/ipvav9311.pdf>.

<sup>39</sup> Domestic violence fatalities include domestic violence homicide (984), death by suicide of the abuser (295), and abusers killed by law enforcement (63). See *Washington State Domestic Violence Fatalities by County*, WASH. STATE

- In 2018, there were 56,815 domestic violence incident reports to law enforcement.<sup>40</sup>
- In the state fiscal year ending June 30, 2017, 42 domestic violence shelter and advocacy programs in Washington State served 24,692 survivors of domestic violence and their children, including 5,672 who used emergency shelter. Shelter programs received 97,688 crisis hotline and information/referral calls.<sup>41</sup>

The Washington Supreme Court has found that Washington has evinced “a clear public policy to prevent domestic violence....” Instead of creating separate crimes of domestic violence, the Washington State Legislature has added specific procedures and requirements for addressing and preventing it:

The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence. However, previous societal attitudes have been reflected in policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers.<sup>42</sup>

Domestic violence laws are codified primarily at [chapter 26.50 RCW](#) (domestic violence prevention) and [chapter 10.99 RCW](#) (addressing the official response to domestic violence by police). [Chapter 70.123 RCW](#) provides funding and requirements for community-based domestic violence services and shelters.

Current criminal legal reform efforts to reduce domestic violence in Washington focus on the following issues that will be discussed in-depth, including reduction of domestic violence (DV) perpetrator access to firearms and evaluation of perpetrator treatment, risk assessment, and

COAL. AGAINST DOMESTIC VIOLENCE (2020), <https://wscadv.org/wp-content/uploads/2016/12/fatalities-by-county-through-06-30-2020.pdf>.

<sup>40</sup> TONYA TODD, BROOK BASSETT, JOAN L. SMITH, 2018 CRIME IN WASHINGTON ANNUAL REPORT (2019), <https://washingtonretail.org/wp-content/uploads/2019/11/Crime-In-Washington-2018-small.pdf>. As discussed on the preceding page, the actual number of domestic violence incidents is likely much higher, as an estimated 44% of intimate partner violence incidents are not reported to law enforcement. REAVES, *supra* note 19.

<sup>41</sup> WASH. STATE DEP’T OF SOC. & HEALTH SERVS., WASHINGTON STATE EMERGENCY DOMESTIC VIOLENCE SHELTER AND SUPPORTIVE SERVICES (2017), <https://wscadv.org/wp-content/uploads/2016/12/DVDATA.FY17.pdf>.

<sup>42</sup> RCW 10.99.010.

mandatory arrest.<sup>43</sup> Additionally, many other reforms have been implemented at the state and national level, and there have been several appellate decisions by Washington State courts interpreting the laws related to domestic violence, which will also be discussed in this section.<sup>44</sup>

## A. Reduction of domestic violence perpetrator access to firearms

Because firearms are used in over half of domestic violence homicides committed in Washington, one focus of the Washington State Legislature has been the attempt to significantly reduce lethality by limiting perpetrator access to firearms.<sup>45</sup> In 2014, the Legislature amended [RCW 9.41.040](#) to strengthen the requirement to surrender firearms by parties subject to various types of protection orders.<sup>46</sup> This state law works in tandem with the 1994 amendment to the federal Gun Control Act, [18 U.S.C. § 922\(g\)](#), prohibiting gun possession by those convicted of domestic violence crimes. These gun restriction laws are important efforts to attempt to reduce the lethality of domestic violence. In 1997, the Courts also amended [CrR 4.2](#) and [CrRLJ 4.2](#) to require written advisement of the effect of a guilty plea on the right to possess a firearm.<sup>47</sup> The Washington State Coalition Against Domestic Violence (WSCADV) has also recommended numerous strategies for advocates, courts, and law enforcement to ensure safe removal of firearms from perpetrators subject to protective orders, including the following: “[i]nclude Motion for Surrender and Order to Surrender in all Protection Order packets and with domestic

<sup>43</sup> Please note that there will be a separate discussion of missing and murdered Indigenous women and girls (MMIWG). We recognize that Indigenous women experience domestic violence and physical assault at rates as much as 50% higher than other populations when living on tribal reservations. STEVEN W. PERRY, U.S. DEP’T OF JUST., BUREAU OF JUST. STAT., AMERICAN INDIANS AND CRIME- A BJS STATISTICAL PROFILE 1992-2002 (2004), <https://bjs.ojp.gov/content/pub/pdf/aic02.pdf>.

<sup>44</sup> Please note that the best source for a systematic overview of domestic violence law in Washington is the Domestic Violence Manual for Judges, WASH. CTS., <https://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/domViol/index>, most recently updated in 2016, produced by the Administrative Office of the Courts, and available on the Washington State Supreme Court Gender and Justice Commission’s website.

<sup>45</sup> WASH. STATE COAL. AGAINST DOMESTIC VIOLENCE, DOMESTIC VIOLENCE FATALITIES IN WASHINGTON STATE 8 (2016), <https://wscadv.org/wp-content/uploads/2016/12/2016-DV-FATALITIES-IN-WA-STATE-updated-links.pdf> (perpetrators used firearms in 56% of domestic violence homicides between 2006 and 2015).

<sup>46</sup> Please note that as of the time of writing this section, HB 1320 had just passed the Washington State Legislature in order to “modernize, harmonize, and improve the efficacy and accessibility of laws concerning civil protection orders.” This legislation impacts surrender of firearms and dangerous weapons. See S.B. 5297, 67th Leg., Reg. Sess. (Wash. 2021); ENGROSSED SECOND SUBSTITUTE H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021).

<sup>47</sup> Former CrR 4.2 (1997); former CrRLJ 4.2 (1997).

violence forms on [Administrative Office of the Court] AOC website,” and “[a]lways ask about guns in safety planning.”<sup>48</sup>

To improve compliance with firearm surrender, in 2019, the Washington State Legislature amended [RCW 9.41.800](#) (in SHB 1786) to emphasize the duty to immediately surrender all weapons.<sup>49</sup> This law also adds a new section to chapter 9.41 RCW explaining that:

Because of the heightened risk of lethality to petitioners when respondents to protection orders become aware of court involvement and continue to have access to firearms, and the frequency of noncompliance with court orders prohibiting possession of firearms, law enforcement and judicial processes must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of firearms.<sup>50</sup>

The new section instructs law enforcement to explain to respondents that immediate surrender is required at the time of service of process and that the officer shall take possession of all firearms, dangerous weapons, and concealed carry licenses at that time. Law enforcement is directed to alert the court of any failure to comply so that the court may issue a search warrant for the weapons.<sup>51</sup> In order to monitor compliance, information about weapons that respondents may own or possess should be made available and accessible to the courts.<sup>52</sup> This would help to ensure that there is adequate information available to a judicial officer to make compliance findings.

SHB 1786 was signed into law and became effective on July 28, 2019. This bill revised protection order, no-contact order, and restraining order provisions that include an order to surrender firearms, dangerous weapons, and concealed pistol licenses, including the following changes:

<sup>48</sup> *Strategies for Effective Protective Orders*, WASH. STATE COAL. AGAINST DOMESTIC VIOLENCE (Feb. 2018), <https://wscadv.org/resources/strategies-effective-orders/>.

<sup>49</sup> LAWS OF 2019, ch. 245.

<sup>50</sup> See RCW 9.41.801.

<sup>51</sup> Research and evaluation into how often search warrants are requested and issued, and the outcomes, would be informative to assess implementation of this provision.

<sup>52</sup> For example, this information could be obtained through police reports, protection order petitions, purchase history records from the Washington State Department of Licensing.

- Requires service by law enforcement of an order that includes a provision to surrender firearms, dangerous weapons, and any concealed pistol license;
- Establishes a procedure for surrender of firearms, dangerous weapons, and any concealed pistol licenses to law enforcement and authorizes courts to issue warrants to seize firearms and dangerous weapons when there is probable cause to believe the respondent has failed to comply with the order to surrender;
- Makes it Unlawful Possession of a Firearm when a respondent possesses a firearm in violation of a qualifying order that meets certain criteria and includes an order to surrender firearms and prohibition on possessing firearms; and
- Requires AOC to create a statewide pattern form and issue annual reports on the number of orders issued by each court, degree of compliance, and number of firearms obtained.

In 2020, the Washington State Legislature passed SHB 2622, and it took effect on June 11, 2020. SHB 2622 provides additional procedures for judges to ensure compliance with court-ordered firearms surrender as related to protection orders, no-contact orders and restraining orders.<sup>53</sup> The procedures include issuing an order to show cause at a compliance review hearing, requiring law enforcement to accomplish service of the order on the respondent and authorizing the court to impose remedial sanctions “designed to ensure swift compliance with the order to surrender weapons.”<sup>54</sup>

The legal remedies for limiting access to weapons by domestic violence perpetrator are hampered by the fact that many perpetrators illegally keep weapons. For example, the Washington State Coalition Against Domestic Violence found that firearms were used in 369 of the 678 domestic violence homicides between 1997 and 2014; 54% of those perpetrators were prohibited from owning guns.<sup>55</sup> While there are no known studies of barriers to implementation

<sup>53</sup> LAWS OF 2020, ch. 126.

<sup>54</sup> RCW 9.94.801(7)(e). Please note that there have been Fifth Amendment challenges to firearms surrender laws related to the required declaration from the accused about weapons in their possession or control. See Andrew Binion, *Kitsap Judges: Law to Help Keep Guns Away from Abusers Violates the Fifth Amendment*, KITSAP SUN (July 8, 2020), <https://www.kitsapsun.com/story/news/2020/07/08/kitsap-judges-law-help-keep-guns-away-abusers-violates-fifth-amendment/5394659002/>.

<sup>55</sup> WASH. STATE COAL. AGAINST DOMESTIC VIOLENCE, ISSUE BRIEF: FIREARMS PROHIBITIONS & DOMESTIC VIOLENCE HOMICIDES (2015), <https://wscadv.org/resources/issue-brief-firearms-prohibitions-domestic-violence-homicide/>.

of Washington State’s forfeiture laws, one out-of-state study “found that even when a protective order banned possession of a firearm, law enforcement officials failed to take effective steps to enforce those orders by seizing or otherwise removing those firearms from abusive households.”<sup>56</sup> The conclusion of the study, surveying 782 female victims of IPV in New York and Los Angeles, was that “[b]ased on the perceptions of the IPV victims in this study, laws designed to disarm domestic violence offenders were either poorly implemented or failed to inform victims when their abuser’s firearms were surrendered or confiscated.”<sup>57</sup>

Although barriers to enforcement of forfeiture laws exist in both urban and rural communities, those barriers may be different based on the setting, and thus, local policies implemented may need to be framed differently based on the urban-rural divide. For example, a survey of professionals and law enforcement officers conducted in Kentucky, the state with the highest proportion of gun-related intimate partner deaths of both men and women between 2003-2012, found that while both urban and rural communities experienced difficulties preventing the purchase of new guns and perpetrators lying about or hiding their guns, every other issue related to ability to enforce gun confiscation showed significant urban and rural differences.<sup>58</sup>

In order to evaluate how the requirements of Washington’s forfeiture laws are being applied across the state, a review of the number of Orders to Surrender Weapons issued, recovery rates, number of compliance hearings, compliance rates, and accounting of firearms, would be informative.<sup>59</sup>

<sup>56</sup> BATTERED WOMEN’S JUST. PROJECT, POLICE SEIZURE OF FIREARMS AT SCENES OF DOMESTIC VIOLENCE 5, <https://www.preventdvgunviolence.org/assets/documents/legal-landscape/police-seizure-of-firearms-at-scenes-of-domestic-violence.pdf> (citing Daniel W. Webster et al., *Women with Protective Orders Report Failure to Remove Firearms from Their Abusive Partners: Results from an Exploratory Study*, 19 J. WOMEN’S HEALTH 93 (2010)).

<sup>57</sup> Webster et al., *supra* note 56, at 93.

<sup>58</sup> Kellie R. Lynch, TK Logan & Dylan B. Jackson, “*People will Bury Their Guns before They Surrender Them*”: *Implementing Domestic Violence Gun Control in Rural, Appalachian versus Urban Communities*, 83 RURAL SOCIO. 315 (2018). *See also* Kellie R. Lynch & TK Logan, *Implementing Domestic Violence Gun Confiscation Policy in Rural and Urban Communities: Assessing the Perceived Risk, Benefits, and Barriers*, 35 J. INTERPERSONAL VIOLENCE 4913 (2020).

<sup>59</sup> *See id.* at 77 (discussing the recommendations related to funding data collection and research which encompasses this evaluation).



## B. Evaluation of perpetrator treatment, risk assessment, and mandatory arrest via legislatively-convened domestic violence work groups

Another area of legislative focus has been improving treatment and risk assessment of domestic violence offenders, in addition to evaluating the efficacy of mandatory arrest. In 2017, the Washington State Legislature enacted E2SHB 1163<sup>60</sup> which began the process of significantly reforming domestic violence law with the intent to reduce recidivism. The Senate Bill Report noted:

DV offenders are the most dangerous offenders we deal with and have the highest recidivism rates among offenders. Fifty-four percent of mass shootings are related to DV and police are three times more likely to be murdered responding to a DV call than any other call with shots fired. Progression of violence is prevalent among offenders.<sup>61</sup>

The Legislature created domestic violence work groups to evaluate these interventions.

### 1. Domestic Violence Perpetrator Treatment/Intervention

Section 7 of E2SHB 1163, effective July 23, 2017, created the Domestic Violence Perpetrator Treatment Work Group (hereafter referred to as the Section 7 Work Group) co-chaired by Judges Eric Lucas and Marilyn Paja of the Gender and Justice Commission. This Work Group submitted a reported entitled "[Domestic Violence Perpetrator Treatment: A Proposal for an Integrated System Response](#)" to the Washington State Legislature in June 2018. The report called for the end of Washington's "'one size fits all' treatment regime, which is largely seen as unsatisfactory and in need of correction."<sup>62</sup> To move forward on the issue of domestic violence treatment, the Section 7 Work Group called for an Integrated System Response, coalescing around the new state rules for domestic violence treatment, [WAC 388-60B](#), which replaces "one size fits all" treatment with a four-tiered cognitive behavioral therapy treatment approach. Additionally, the Section 7

<sup>60</sup> LAWS OF 2017, ch. 272.

<sup>61</sup> S.B. REP. ON ENGROSSED SECOND SUBSTITUTE H.B. 1163, 65<sup>th</sup> Leg., Reg. Sess. (Wash. 2017).

<sup>62</sup> E2SHB 1163 SECTION 7 WORK GROUP, DOMESTIC VIOLENCE PERPETRATOR TREATMENT: A PROPOSAL FOR AN INTEGRATED SYSTEM RESPONSE (ISR) 5 (2018), [https://www.courts.wa.gov/content/publicUpload/GJCOM/DV\\_Perpetrator\\_Treatment\\_Sec7.pdf](https://www.courts.wa.gov/content/publicUpload/GJCOM/DV_Perpetrator_Treatment_Sec7.pdf).

Work Group advocated for better information sharing via a therapeutic courts approach; a “reliable funding scheme for all court-ordered treatment,”<sup>63</sup> given that many batterers are unable to afford the current cost of domestic violence treatment, which is not covered by most health insurance; ongoing monitoring of system performance through data collection, research, and adaptation of treatment regulations; and the provision of training and resources to professionals working in the area of DV.

The 2019 Legislature responded to the Section 7 Work Group in E2SHB 1517<sup>64</sup> noting the pervasiveness of domestic violence, and that “victims and offenders are owed effective treatment and courts need better tools.” In addition to reconvening the work groups, subsequently co-chaired by Judges Eric Lucas and Mary Logan, for further work related to DV Perpetrator Treatment, the Legislature directed Harborview Abuse & Trauma Center<sup>65</sup> to develop a “training curriculum for domestic violence perpetrator treatment providers that incorporates evidence-based practices and treatment modalities” consistent with the new Washington State Department of Social and Health Services (DSHS) regulations by June 30, 2020,<sup>66</sup> and authorized a domestic violence sentencing alternative.<sup>67</sup>

The E2SHB 1517 DV Perpetrator Treatment Work Group submitted its recommendations in a report entitled “Domestic Violence Intervention Treatment: Removing Obstacles to Implementation” to the Legislature in October 2020.<sup>68</sup> Its recommendations included fully funding Domestic Violence Intervention Treatment (DVIT); supporting ongoing education and outreach related to recent changes to the laws and regulations governing DVIT; and improving information-sharing practices for stakeholders in the system across disciplines and jurisdictions, and to enable data collection and research related to the efficacy of DVIT. With regard to

<sup>63</sup> As of the time of this report, there is no statewide funding scheme. There are currently pilot projects underway in Seattle and Whatcom County/Bellingham with fee for service reimbursement models. The Department of Children, Youth & Families also utilizes this approach.

<sup>64</sup> LAWS OF 2019, ch. 263.

<sup>65</sup> Previously named Harborview Center for Sexual Assault and Traumatic Stress (<https://depts.washington.edu/uwhatc/about-us/hatc-history/>).

<sup>66</sup> See *infra* Part IV.

<sup>67</sup> See *infra* Part V.

<sup>68</sup> E2SHB 1517 DOMESTIC VIOLENCE PERPETRATOR TREATMENT WORK GROUP, DOMESTIC VIOLENCE INTERVENTION TREATMENT, REMOVING OBSTACLES TO IMPLEMENTATION: REPORT TO THE WASHINGTON STATE LEGISLATURE (2020), [http://www.courts.wa.gov/content/publicUpload/GJCOM/FINAL\\_DV\\_Treatment\\_Work\\_Group\\_Report\\_2020.pdf](http://www.courts.wa.gov/content/publicUpload/GJCOM/FINAL_DV_Treatment_Work_Group_Report_2020.pdf).

funding DVIT, three strategies were suggested and outlined in the report. The first was to support the Administrative Office of the Courts' proposed budget package for "Responding to Behavioral Health Needs in Courts." It was envisioned that allocation of funding to therapeutic courts could be supported through this team. The second strategy discussed was for the state to fund pilot projects, in order to allow the simultaneous collection of data and monitoring of system performance. The report discussed several pilots currently underway in Washington State: City of Seattle's Domestic Violence Intervention Pilot (DVIP);<sup>69</sup> Whatcom County/City of Bellingham Pilot Project;<sup>70</sup> Okanogan County Remote Treatment Pilot Project;<sup>71</sup> and the DV-MRT Evaluation<sup>72</sup> conducted as a [pilot project](#) of this study.<sup>73</sup> The third strategy referred to as the "insurance option" outlined for DVIT to be covered by health insurance.

The recommendations related to supporting ongoing education and outreach related to DVIT were made because justice system stakeholders need to be aware of significant recent changes to the laws. These changes include the new DVIT treatment standards under Washington Administrative Code (WAC) 388-60B and the DV definition refinement which differentiates between domestic violence cases involving intimate partner violence and those involving violence between family or household members who are not current or former intimate partners.<sup>74</sup> As the report states, "[t]here will be no impact if treatment providers and others making decisions in these cases are not aware of new legal standards and best practices."<sup>75</sup>

With regard to recommendations related to improving information-sharing practices, the report highlights the need for two categories of information: 1) information for decision-makers in an

<sup>69</sup> *Id.* at 26-28. See also Paul Kiefer, *Domestic Violence Intervention Project Experiments with Restorative Justice for a Stigmatized Group*, PUBLICOLA (Nov. 20, 2020), <https://publicola.com/2020/11/20/domestic-violence-intervention-project-experiments-with-restorative-justice-for-a-stigmatized-group/>.

<sup>70</sup> E2SHB 1517 DOMESTIC VIOLENCE PERPETRATOR TREATMENT WORK GROUP, *supra* note 68, at 28-29.

<sup>71</sup> *Id.* at 29-31.

<sup>72</sup> *Id.* at 31-32.

<sup>73</sup> Amelie Pedneault, Samantha Tjaden, and Erica Magana. *Evaluation of Washington State Domestic Violence – Moral Reconciliation Therapy (DV-MRT) Programs Process and Outcomes* (2021) showed DV-MRT to be a promising practice in reducing domestic violence recidivism and addressing the lack of affordable domestic violence intervention options for justice involved individuals. The full evaluation is available in Appendix C of this report.

<sup>74</sup> At the 2021 Domestic and Municipal Court Judges Association (DMCJA) Conference, there was a training session offered on the new DVIT treatment standards. A subsequent training will be offered in 2021 regarding innovative practice related to domestic violence intervention, including DV-MRT.

<sup>75</sup> *Id.* at 4.

individual case to make informed decisions regarding DVIT and 2) data for future research and analysis related to DVIT.

## 2. Domestic Violence Risk Assessment

Section 8 of E2SHB 1163 created a Domestic Violence Risk Assessment Work Group (hereafter referred to as the Section 8 Work Group), also co-chaired by Judges Paja and Lucas, to “study how and when risk assessment can best be used to improve the response to domestic violence offenders and victims and find effective strategies to reduce domestic violence incidents in Washington State.” The Section 8 Work Group submitted the report entitled “[Domestic Violence Risk Assessment](#)” to the Washington State Legislator and Governor Jay Inslee in June 2018. The report emphasized the need for additional research before adoption of any risk assessment tool. The Section 8 Work Group also made recommendations for consideration of expanded use of risk assessment by victim advocates, and additional training and resources for system stakeholders.

Risk assessments are tools used at various stages of the criminal justice process, from assessment of potential lethality of a batterer by law enforcement to decisions by judges on whether to release an alleged batterer on bail pending trial. The Section 8 Work Group noted the importance of developing validated risk assessment tools with the “highest degree of predictive accuracy” and of maintaining high-quality statewide data in order to test and refine the assessment tools over time. The Section 8 Work Group also acknowledged the need to avoid creating risk assessment tools that unfairly target racial or ethnic groups, either directly or indirectly through over-emphasis of general criminal history, as prior arrests and convictions can be affected by implicit racial bias.<sup>76</sup> In addition to reconvening the DV risk assessment work group pursuant to E2SHB 1517, the Legislature directed the Washington State University Department of Criminal Justice to develop a risk assessment tool to predict future domestic violence by convicted offenders.<sup>77</sup>

<sup>76</sup> For additional discussion regarding implicit bias, please see e.g., Sandra Mayson, *Bias in, Bias out*, 128 YALE L. J. 2218 (2019); Julia Angwin et. al, *Machine Bias*, PROPUBLICA (May 23, 2016), <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.

<sup>77</sup> LAWS OF 2019, ch. 263, § 401 (which will be codified at RCW 9.94A).

One of the key issues identified by both the Section 7 and Section 8 Work Groups was that Washington’s definition of domestic violence, RCW 26.50.010, since 1995, had been a “narrow range of behavior applied across a wide range of relationships.” Because both intimate partners, former intimate partners, and all other people who are residing together were lumped into the same category under the law, it was impossible to isolate good data for risk assessment and treatment development and implementation. Effective DV treatment for intimate partners does not correlate to others who reside in the same household. In 2019, the Legislature remedied this problem in Laws of 2019, chapter 263, by separating intimate partner violence and other household member violence into separate sections of RCW 26.50.010(3):

(3) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, ~~((between family or household members; (b)))~~ sexual assault ~~((of one family or household member by another;)),~~ or ~~((c))~~ stalking as defined in RCW 9A.46.110 of one intimate partner by another intimate partner; or (b) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, sexual assault, or stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

Section (a) of RCW 26.50.010(3) now applies to intimate partners and section (b) applies to family or household members, which will allow separate tracking of the two very different types of domestic violence.

### 3. Mandatory Arrest

The evaluation of Washington’s mandatory arrest law was also a component of the Section 8 Work Group and E2SHB 1517 DV Work Groups’ inquiry. Pursuant to E2SHB 1517, Part VIII, Section 4(a)(i), the Domestic Violence Risk Assessment Work Group was mandated to “[r]esearch, review, and make recommendations on whether laws mandating arrest in cases of domestic violence should be amended and whether alternative arrest statutes should incorporate domestic violence risk assessment in domestic violence response to improve the response to domestic

violence, and what training for law enforcement would be needed to implement an alternative to mandatory arrest....”

The E2SHB 1517 DV Risk Assessment Work Group submitted its recommendations to the Washington State Legislature in October 2020 in a report entitled “Evolving Practices for a More Comprehensive Response to Domestic Violence.”<sup>78</sup> As summarized in that report:

Mandatory arrest laws were implemented in the early 1980s as a public policy response to the critique that domestic violence offenses were not treated as seriously as other crimes, and to reduce domestic violence lethality and re-offense. They were also responsive to concerns that the burden regarding the decision to arrest was on the victim; a perpetrator would only be arrested if the victim signed the citation. This was a huge safety concern because the victim would have to answer to the perpetrator upon their release.<sup>79</sup>

This, combined with a Minnesota study,<sup>80</sup> which found that batterers randomly assigned to mandatory arrest were less likely to reoffend than those not subject to mandatory arrest,<sup>81</sup> resulted in the passage of arrest laws around the United States in the 1980’s.<sup>82</sup>

Pursuant to RCW 10.31.100(2)(d), Washington’s mandatory arrest law passed in 1984, a police officer is required to arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that the person:

- is 18 years of age or older, AND
- has assaulted a family or household member within the past four hours, AND
  - a felonious assault has occurred, OR

<sup>78</sup> E2SHB 1517 DOMESTIC VIOLENCE RISK ASSESSMENT WORK GROUP, EVOLVING PRACTICES FOR A MORE COMPREHENSIVE RESPONSE TO DOMESTIC VIOLENCE (2020), [http://www.courts.wa.gov/content/publicUpload/GJCOM/FINAL\\_DV\\_Risk\\_Assessment\\_Work\\_Group\\_Report\\_2020.pdf](http://www.courts.wa.gov/content/publicUpload/GJCOM/FINAL_DV_Risk_Assessment_Work_Group_Report_2020.pdf).

<sup>79</sup> *Id.* at 19.

<sup>80</sup> Referred to as the “Minneapolis Experiment.”

<sup>81</sup> Lawrence W. Sherman & Richard A. Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 AM. SOCIO. REV. 261 (1984).

<sup>82</sup> Arrest laws fall into three categories: mandatory, preferred, and discretionary.

- an assault has occurred which has resulted in bodily injury to the victim (whether observable to responding officer or not), OR
- any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.<sup>83</sup>

Additionally, in what is known as a primary aggressor provision, “[w]hen the officer has probable cause to believe that family or household members or intimate partners have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: A) The intent to protect victims of domestic violence under RCW [10.99.010](#); (B) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (C) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.”<sup>84</sup>

Since Washington’s mandatory arrest law was passed, there have been no studies to evaluate its efficacy. It is difficult to assess the impact of mandatory arrest on homicide and arrest rates based on available research due to different laws and practices in other jurisdictions.<sup>85</sup> There are also many studies outlining the unintended consequences of mandatory arrest.<sup>86</sup>

<sup>83</sup> RCW 10.31.100(2)(d).

<sup>84</sup> *Id.*

<sup>85</sup> See April M. Zeoli, Alexis Norris & Hannah Brenner, *Mandatory, Preferred, or Discretionary: How the Classification of Domestic Violence Warrantless Arrest Laws Impacts Their Estimated Effects on Intimate Partner Homicide*, 35 EVALUATION REV. 129 (2011).

<sup>86</sup> *E.g.*, **Organizational policy may influence policy behavior and outcomes:** Richard R. Johnson & Dai Mengyan, *Police Enforcement of Domestic Violence Laws: Supervisory Control or Officer Prerogatives*, 33 JUST. Q. 185 (2016); Scott W. Phillips & James J. Sobol, *Twenty Years of Mandatory Arrest: Police Decision Making in the Face of Legal Requirements*, 21 CRIM. JUST. POL’Y REV. 98 (2010); **Diminishes batterers’ perceptions of procedural justice:** Deborah Epstein, *Procedural Justice: Tempering the States’ Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843 (2002); **Removes victims’ autonomy:** Nicole Miras Mordini, *Mandatory State Interventions for Domestic Abuse Cases: An Examination of the Effects on Victim Safety and Autonomy*, 52 DRAKE L. REV. 295 (2003); **Results in more frequent dual arrests with disproportionate impact on same sex couples, people of color, and women:** Alesha Durfee, *Situational Ambiguity and Gendered Patterns of Arrest for Intimate Partner Violence*, 18 VIOLENCE AGAINST WOMEN 64 (2012); David Hirschel & Lindsay Deveau, *The Impact of Primary Aggressor Laws on Single Versus Dual Arrest in Incidents of Intimate Partner Violence*, 23 VIOLENCE AGAINST WOMEN 1155 (2017); Carolyn M. West, *Sorry, We Have to Take You in: Black Battered Women Arrested for Intimate Partner Violence*, 13 J. AGGRESSION, MALTREATMENT & TRAUMA 95 (2008).

The E2SHB 1517 DV Risk Assessment Work Group in its above-referenced report, “Evolving Practices for a More Comprehensive Response to Domestic Violence,” included the following statement regarding its consideration of mandatory arrest:

The work group spent significant time considering the issue of mandatory arrest, and there is consensus that it has had unintended negative consequences. However, there are differing views on how to approach any amendments to mandatory arrest. The prevailing view is a strong discomfort with the idea of removing or amending Washington’s mandatory arrest statute, due to the high stakes [increased DV fatalities] and the fear of reversion back to an era where DV was not taken seriously. The other view is for a hybrid approach, which would entail the rollout of diversionary and support services prior to amendment of mandatory arrest. That is, that if mandatory arrest is amended, it should be under certain specified (and limited) circumstances, and it would be coupled with immediate access to services for both victims and the accused.<sup>87</sup>

The work group’s recommendations to the Legislature included collecting accurate Washington State data about domestic violence cases, expanding support for victims, increasing training and resources for system stakeholders, supporting prevention-focused options for perpetrators of domestic violence, continuing to focus on firearms surrender, adopting domestic violence-specific factors for pretrial release decisions, and utilizing domestic violence screening tools outside of criminal proceedings.

### C. Additional changes and developments related to domestic violence law

Other notable changes to domestic violence law since the 1989 Study include:

- At the national level, the most significant change in domestic violence law has been building on the Family Violence Services and Prevention Act through the passage of the [Violence Against Women Act \(VAWA\) of 1994](#).<sup>88</sup> VAWA has been reauthorized several

<sup>87</sup> E2SHB 1517 DOMESTIC VIOLENCE RISK ASSESSMENT WORK GROUP, *supra* note 78, at 18-19.

<sup>88</sup> Violence Against Women Act of 1994, Pub. L. 103-322 (1994).



times, has supported the National Domestic Violence Hotline, and has provided over a billion dollars in grant funding to states and localities to address violence against women.

- Pursuant to Washington’s Crime Victim’s Bill of Rights,<sup>89</sup> passed the same year as the 1989 Study, victims are afforded the right to “[t]o have, whenever practical, a victim advocate present at prosecutorial or defense interviews and at judicial proceedings.”
- 2004 amendments to landlord tenant law to allow victims of domestic violence to end residential leases to address their safety.<sup>90</sup>
- [RCW 5.60.060](#) was amended in 2006 to grant privilege to communications between a victim and their community-based domestic violence advocate.<sup>91</sup>
- The 2008 law requiring employers to allow “reasonable leave” for domestic violence victims to address legal and safety concerns.<sup>92</sup>
- 2011 amendments to the Domestic Violence Protection Act, clarifying standards for terminating or modifying domestic violence protection orders in situations where restrained parties allege that they are unlikely to resume acts of domestic violence if the protection order is terminated.<sup>93</sup>
- 2015 restructuring of domestic violence victim services to strengthen community-based services, non-shelter related programming and prevention and outreach to victims.<sup>94</sup>
- The 2018 amendment to chapter 49.76 RCW added provisions to ensure that “victims of domestic violence, sexual assault, or stalking should also be able to seek and maintain

<sup>89</sup> WASH. CONST. art. I, § 35,

<sup>90</sup> LAWS OF 2004, ch. 17, § 2.

<sup>91</sup> This privilege extends to community-based DV advocates, not system-based DV advocates. System-based advocates are typically employed by a criminal justice agency, and serve as the primary contact for victims with that particular agency and facilitate the victim’s participation in the justice process. Community-based advocates are typically employed by a non-profit or other social service agency and provide services to victims regardless of whether they choose to participate in the justice process. The scope of services tends to be broader. Information about Washington Domestic Violence Programs in each county is available at <https://wscadv.org/washington-domestic-violence-programs/>.

<sup>92</sup> RCW 49.76.010 et seq.

<sup>93</sup> LAWS OF 2011, ch. 137, § 2.

<sup>94</sup> LAWS OF 2015, ch. 275, § 1.

employment without fear that they will face discrimination,” prohibiting employment discrimination against victims and requiring workplaces to accommodate safety plans.<sup>95</sup>

- In 2018, Evidence Rule 413 was adopted. Pursuant to this rule, in criminal cases, “evidence of a party’s or witness’s immigration status shall not be admissible unless immigration status is an essential fact to prove an element of, or a defense to, the criminal offense with which the defendant is charged, or to show bias or prejudice of a witness pursuant to ER 607.”<sup>96</sup>
- Immigrant victims are now eligible to gain authorized status in the U.S. under the 1994 VAWA, a positive development since the 1989 Study. VAWA allows women who have experienced sexual violence to self-petition for lawful permanent resident (LPR) status without their partner’s involvement.<sup>97</sup>
- In addition to the reconvening of work groups regarding domestic violence treatment and risk assessment as discussed above, pursuant to E2SHB 1517,<sup>98</sup> the 2019 Legislature:
  - amended RCW 9.94A.500 to include a presentence investigation in drug offender sentencing alternative cases that include domestic violence convictions and RCW 9.94A.662 to require certification in domestic violence treatment in co-occurring drug and domestic violence cases;
  - included domestic violence in the community custody and re-entry statute RCW 9.94A.704;
  - restricted deferred prosecution if a defendant has previously participated in a domestic violence deferred prosecution; and
  - ordered the recognition and enforcement of Canadian domestic violence protection orders.

<sup>95</sup> This is an area where data, as well as focus groups, could be helpful to evaluate the efficacy of this provision. For example, does missing work for multiple protection order hearings result in discipline or dismissal on the grounds of poor performance?

<sup>96</sup> ER 413.

<sup>97</sup> CATALINA AMUEDO-DORANTES & ESTER ARENAS-ARROYO, POLICE TRUST AND DOMESTIC VIOLENCE: EVIDENCE FROM IMMIGRATION POLICIES 3 (2019), <http://ftp.iza.org/dp12721.pdf>.

<sup>98</sup> LAWS OF 2019, ch. 263.

- In 2019, the Legislature also amended [RCW 10.99.030](#) to include traumatic brain injury as it relates to domestic violence in law enforcement training curriculum.
- Since the 1989 Study, the use of technology has become an increasingly important and pervasive part of our lives; however, it has also been used as a tool by perpetrators to further stalk, harass, and abuse their victims. These emerging forms of abusive behaviors via technology are referred to as Technology-Enabled Coercive Control (TECC), and this is a significant issue that should be acknowledged and addressed. A recent Whitepaper about TECC in Seattle noted that “those who abuse technology maintain the advantage as TECC continues to outpace current laws, despite a recent flurry of newly enacted cybercrimes legislation across the country, particularly in response to nonconsensual pornography and the disclosure of intimate images.”<sup>99</sup>
- In 2021, the Legislature passed [E2SHB 1320](#), “An act relating to modernizing, harmonizing, and improving the efficacy and accessibility of laws concerning civil protection orders.” This purpose of this legislation is to streamline and promote consistency between Washington’s six different civil protection orders. The bill also addresses recognition and enforcement of Canadian domestic violence protection orders; revises the law governing orders to surrender firearms and dangerous weapons; and adds provisions regarding the responsibilities of school districts and staff when children are subject to protection orders. Additionally, this new law requires the Washington State Supreme Court Gender and Justice Commission to work with stakeholders to develop standards and recommendations related to filing evidence; private vendors who provide services related to filing systems; jurisdiction; the use of technology; improving access to unrepresented parties; best practices when there are concurrent civil and criminal proceedings based on the same alleged conduct; data collection best practices; interjurisdictional information sharing between state courts, Tribal courts, military courts, and other jurisdictions; and how protection orders can more effectively address coercive control.

<sup>99</sup> Dana Cuomo & Natalie Dolci, Gender-Based Violence and Technology Enabled Coercive Control in Seattle: Challenges and Opportunities, TECC Whitepaper Series, 2019.

In addition to the preceding statutory changes and developments related to domestic violence laws, the Washington Supreme Court has issued a number of key decisions regarding domestic violence since the 1989 Study. These cases include:

- *Danny v. Laidlaw Transit Services, Inc.*, 165 Wn.2d 200, 193 P.3d 128 (2008) – Recognized that Washington State has established, through legislative, judicial, constitutional, and executive expressions, a clear mandate of public policy of protecting domestic violence survivor and their families and holding abusers accountable.
- *State v. Bunker*, 169 Wn.2d 571, 238 P.3d 487 (2010) – The former version of RCW 26.50.110 regarding violations of domestic violence no-contact orders criminalizes all no-contact order violations and is not limited to only those contacts where the perpetrator was violent, threatened violence, or where the contact occurred in a specifically prohibited place, overruling *State v. Hogan*, 145 Wn. App. 210, 192 P.3d 915 and *State v. Madrid*, 145 Wn. App. 106, 192 P.3d 909.
- *State v. Schultz*, 170 Wn.2d 746, 248 P.3d 484 (2011) – In a case of first impression, likely domestic violence is sufficient reason for the police to search a home under the emergency aid exception to the requirement for a search warrant, but a loud verbal fight including the man saying he wanted to be left alone was insufficient evidence of domestic violence, thus the drug evidence found in the home should not have been admitted. Note that U.S. Supreme Court has recently limited the availability of this community caretaking or “aid” exception to the warrant requirement, and the impact of that decision in Washington has not yet been addressed. *Caniglia v. Strom*, \_\_\_ U.S. \_\_\_, 141 S. Ct. 1596 (May 17, 2021).
- *State v. Gunderson*, 181 Wn.2d 916, 337 P.3d 1090 (2014) – The probative value of evidence of a prior domestic violence incident between the defendant and one of two alleged victims was outweighed by its prejudicial effect where the alleged victim testified that the defendant did not assault her during an argument over childcare in his truck and the prosecutor attempted to use evidence of prior domestic violence against her to impeach her testimony.

- *State v. Ashley*, 186 Wn.2d 32, 375 P.3d 673 (2016) – The defendant’s prior acts of domestic violence were admissible to prove a pregnant mother’s lack of consent as an element of unlawful imprisonment where the defendant forced she and their two-year-old to stay in a bathroom while he hid from police in the apartment. She stayed in the bathroom as directed by the defendant because of her fear of getting battered while pregnant, as he had done three times during her prior pregnancy. The prior acts of domestic violence were inadmissible to bolster the victim’s credibility, but the error was harmless as they were already introduced for proper purpose.
- *Rodriguez v. Zavala*, 188 Wn.2d 586, 398 P.3d 1071 (2017) – The trial court’s exclusion of infant son from protective order against father because he did not witness father strangling mother was reversed by a unanimous court. The court held that “exposure to domestic violence constitutes harm under the DVPA and qualifies as domestic violence under chapter 26.50 RCW.”
- *Aiken v. Aiken*, 187 Wn.2d 491, 387 P.3d 680 (2017) – A father’s due process rights were not violated when a court commissioner denied his request to cross-examine his fourteen-year-old daughter in a domestic violence protection order proceeding where evidence was presented that he had tried to suffocate her. The child had attempted suicide, was unable to confront her father, and would have been traumatized by the cross-examination. The Court noted that there was no statutory right to cross-examination and that because due process rights may warrant cross-examination in other cases, a “bright line rule prohibiting cross-examination or live testimony in protective order hearings is inappropriate.”
- *State v. Granath*, 190 Wn.2d 548, 415 P.3d 1179 (2018) – The duration of a domestic violence no-contact order entered by a District Court pursuant to RCW 10.99.050 is limited to the length of the underlying sentence. The 2019 Legislature subsequently amended the relevant statutes and declared that the *Granath* interpretation “inadequately protects victims of domestic violence.”<sup>100</sup>

<sup>100</sup> LAWS OF 2019, ch. 263, § 301.

Notable decisions from the Washington State Court of Appeals related to Domestic Violence include:

- *Juarez v. Juarez*, 195 Wn. App. 880, 382 P.3d 13 (2016) – Recognized that short-term relief does not fulfill the legislative intent of Washington's Domestic Violence Prevention Act to afford victims of domestic violence with a valuable instrument to increase safety for victims. Denying lengthy protection, because of the availability of other relief or the pendency of another court proceeding, runs contrary to RCW 26.50.025(2).
- *Maldonado v Maldonado*, 197 Wn. App. 779, 391 P.3d 546 (2017) – Courts must state in writing the reasons for declining the extension for a Domestic Violence Protection Order to the petitioner's children.
- *Smith v. Smith*, 1 Wn. App.2d 122, 404 P.3d 101 (2017) – Found that the pendency of a parallel criminal case does not entitle the defendant to a stay of the protection order proceedings.
- *Braatz v Braatz*, 2 Wn. App.2d 889, 413 P.3d 612 (2018) – Held that when the trial court issues a Domestic Violence Protection Order that includes an order for the restrained person to surrender firearms or other dangerous weapons, the restrained person must prove by a preponderance of the evidence that they have surrendered their firearms and other dangerous weapons.

#### IV. Sexual Violence<sup>101</sup>

Similar to the prevalence data for domestic violence, comparing Washington data on sexual violence from 1989 to today is difficult; the state data now collected was not collected previously, and definitions of sexual violence have evolved since 1989 to encompass a broader range of victimizations.<sup>102</sup> If we look to national data, sexual violence against women appears to have

<sup>101</sup> The term “sexual violence” has been adopted in this section as it includes a wide range of victimizations. The 1989 Study was more narrowly focused on rape.

<sup>102</sup> For example, in 2011, the federal definition of “forcible rape” was expanded from “the carnal knowledge of a female, forcibly and against her will” to “[t]he penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.” See

declined by 64% from 1994-2010.<sup>103</sup> Nevertheless, more recent Washington State data shows that sexual violence remains a disturbing problem in Washington State:

- In 2018, 6,826 sexual assault incidents were reported to law enforcement.<sup>104</sup>
- In 2016, 13,171 individual victims of sexual assault accessed victim services.<sup>105</sup>

Several major changes and additions to the laws related to sexual violence have occurred in Washington since 1989. These changes include interpretation of the rape shield statute; passage of the Prison Rape Elimination Act (PREA); civil commitment of sexually violent predators; efforts to address the backlog of rape kits; the creation of the sexual assault protection order; extension of the statute of limitations for sexual assault crimes; amendment of the laws granting privilege to include sexual assault advocates; and other amendments to the rights of sexual assault victims.

## A. Rape shield

The Washington State Legislature enacted the rape shield statute, [RCW 9A.44.020](#), in 1975 with the intent to encourage victims to report sexual assault and to ensure that the jury is not unduly influenced by a victim's irrelevant prior sexual history.<sup>106</sup> In *State v. Peterson*, the court stated that “[t]he rape shield law was enacted to remedy the practice of producing evidence of a victim's past sexual conduct and attempting to show that there was a logical nexus between chastity and veracity.”<sup>107</sup>

The 1989 Study focused on the implementation of the rape shield law, noting that “[w]hile the 1975 ‘rape shield’ statute has certainly reduced the incidence of victims being subjected to improper questions about prior sexual history, it has not eliminated it from the process.”<sup>108</sup> The

*An Updated Definition of Rape*, U.S. DEP'T OF JUST. ARCHIVES (Jan. 6, 2012), <https://www.justice.gov/archives/opa/blog/updated-definition-rape>.

<sup>103</sup> MICHAEL PLANTY ET AL., *supra* note 27.

<sup>104</sup> TODD, BASSETT & SMITH, *supra* note 40, at 594. The actual number of sexual assault incidents is likely much higher; the most recent estimate from the Bureau of Justice Statistics is that 65% of incidents of sexual assault are not reported to law enforcement, compared with 58% of all crimes, 41% of robberies, and 44% of aggravated assaults. LYNN LANGTON ET AL., U.S. DEP'T OF JUST., BUREAU OF JUST. STAT., VICTIMIZATIONS NOT REPORTED TO THE POLICE, 2006-2010 18 (2012), <https://bjs.ojp.gov/content/pub/pdf/vnrrp0610.pdf>.

<sup>105</sup> INFO NET, OFFICE OF CRIME VICTIMS ADVOCACY, WASHINGTON INFO NET STATEWIDE DATA REPORT (2016), <http://www.commerce.wa.gov/wp-content/uploads/2016/10/ocva-infonet-report-2016.pdf>.

<sup>106</sup> *State v. Gregory*, 158 Wn.2d 759, 147 P.3d 1201 (2006).

<sup>107</sup> *State v. Peterson*, 35 Wn. App. 481, 485, 667 P.2d 645 (1983).

<sup>108</sup> WASH. STATE TASK FORCE ON GENDER & JUST. IN THE CTS., *supra* note 4, at 40-41.

study survey found that 34% of judges thought that victims were at least sometimes asked about their sexual history in depositions and other pre-trial interviews whereas 66% of sexual assault service providers thought that victims faced such questioning. The study concluded: “The very fact that a rape shield law is necessary suggests historical gender bias. Such bias is unfortunately still operating in the judicial system. The responses of rape victim service providers indicate that such biases still keep victims from making reports to police and from following through with prosecutions.”<sup>109</sup> Since then, a number of appellate decisions have interpreted this law:

- *State v. Gregory*, 158 Wn.2d 759, 147 P.3d 1201 (2006) – The Washington Supreme Court held that evidence that a victim had engaged in prostitution in the past was inadmissible to prove consent in subsequent sexual assault case due to the different nature of the incident at issue and the remoteness in time of the past sexual act. The factual similarities between the past sexual acts and the acts at issue in the case must be particularized, not general. Subsequently, the Legislature extended protection for evidence of past prostitution in 2013 by adding human trafficking, RCW 9A.40.100, to the list of crimes covered in the rape shield law.
- *State v. Posey*, 161 Wn.2d 638, 167 P.3d 560 (2007) – The defendant sought to introduce evidence of consent through an email from the victim to another that she would “enjoy” being raped and that she wanted a boyfriend who would “choke her” and “beat her.”<sup>110</sup> The Court found that the trial court did not abuse its discretion when it precluded admission of the e-mail evidence; the email was not probative since it was not addressed or sent to the defendant, and because it violated the rape shield statute as it only described potential prior sexual misconduct or potential sexual mores.
- *State v. Jones*, 168 Wn.2d 713, 230 P.3d 576 (2010) – The Court interpreted the rape shield law to apply only to past sexual behavior, not behavior contemporaneously connected to the assault. In a unanimous decision, the Court held that the defendant’s testimony of the victim’s consent during a sex party was highly probative evidence key to

<sup>109</sup> *Id.* at 42. It is unclear from the survey results whether any of these incidences of questioning about past sexual history were lawful pursuant to the rape shield statute. Future surveys should specify whether victims unlawfully questioned about previous sexual history.

<sup>110</sup> *State v. Posey*, 161 Wn.2d 638, 642, 167 P.3d 560 (2007).



the defendant's defense, thus the trial court violated the Sixth Amendment when it barred his testimony under the rape shield statute.

## B. Sexual Assault in Prisons and Jails<sup>111</sup>

Another change since the 1989 Study is the implementation of the federal Prison Rape Elimination Act (PREA). Congress passed PREA in 2003; its goal is to prevent the sexual abuse of individuals incarcerated in custodial facilities.<sup>112</sup> The first stated purpose of PREA is to “establish a zero-tolerance standard for the incidence of prison rape in all prisons, jails, juvenile detention facilities, and immigration detention centers in the United States.”<sup>113</sup> The PREA statute requires ongoing data collection by correctional and detention facility administrators in each state regarding the occurrence of custodial sexual abuse, and it provides financial grants for states to develop and implement policies and procedures to further the “zero-tolerance” goal.

The statute also directs the Bureau of Justice Statistics to perform “a comprehensive statistical review and analysis of the incidence and effects of prison rape” on an annual basis.<sup>114</sup> It is important to note that, though PREA's stated goal is to eliminate prison rape, it also incentivizes increased monitoring and surveillance technology in prisons to prove that rape occurs in prisons and increase data collection on the topic.<sup>115</sup> In its effort to eradicate rape in prisons, PREA provides funding for prisons that increases digital surveillance and monitoring.<sup>116</sup>

### 1. Washington PREA reports

As a result of PREA, prisons, jails, and detention facilities in Washington issue annual reports on the efforts made to comply with statutory requirements, along with statistics on the total number

<sup>111</sup> The 2021 Washington Supreme Court Symposium, *Behind Bars: Increased Incarceration of Women & Girls of Color*, presented research and testimony from impacted individuals on this issue. *2021 Supreme Court Symposium: Behind Bars: Increased Incarceration of Women & Girls of Color*, WASH. STATE COMM'N ON AFR. AM. AFFS. (June 2, 2021), <https://caa.wa.gov/news-and-events/2021-supreme-court-symposium-behind-bars-increased-incarceration-women-girls-color>.

<sup>112</sup> Prison Rape Elimination Act of 2003, 34 U.S.C. § 30301 et seq.

<sup>113</sup> 34 U.S.C. § 30302(1).

<sup>114</sup> 34 U.S.C. § 30303.

<sup>115</sup> Jessi Lee Jackson, *Sexual Necropolitics and Prison Rape Elimination*, 39 SIGNS: J. WOMEN IN CULTURE & SOC'Y 197 (2013).

<sup>116</sup> *Id.*

of prisoner complaints made and the number of complaints that the “Appointing Authority”<sup>117</sup> determined were sustained (i.e., proven), unsubstantiated (i.e., unproven), and unfounded (i.e., determined to be false). Sexual assault and misconduct allegations are conducted by incident review teams consisting of facility administration with input from supervisors, investigators, and medical or mental health professionals.<sup>118</sup> The Washington State Department of Corrections (DOC) has established more comprehensive definitions of sexual misconduct under the PREA than the definitions published by the Department of Justice.

The most recent Washington State PREA data published by DOC reported conducting investigations into 382 “inmate-on-inmate” allegations and 262 “staff-on-inmate” allegations for a total of 644 formal investigations of sexual assault, abuse, harassment, or misconduct in 2020.<sup>119</sup> Of these investigations, the Appointing Authority determined that only 33 of the inmate-on-inmate allegations and 12 of the staff-on-inmate allegations were “substantiated.”<sup>120</sup> The total number of sexual abuse allegations in the 2020 PREA report continued a downward trend since the 1,076 sexual abuse allegations reported in 2015.<sup>121</sup> There has similarly been an overall decrease in substantiated, unsubstantiated, and unfounded allegations for both inmate-on-inmate and staff-on-inmate sexual abuse since 2015.<sup>122</sup>

## 2. Demographic information

Demographic information about the victims and perpetrators of the sexual abuse among Washington prison and work/training release populations is publicly available only for substantiated inmate-on-inmate allegations and substantiated staff-on-inmate allegations. Of

<sup>117</sup> According to DOC’s PREA Investigation Process document, “When a new investigation is opened, it is assigned to an Appointing Authority (e.g., Superintendent, Health Services Administrator, Work Release Administrator),” and then the case is assigned to a staff member with “specialized training in administrative investigations.” WASH. STATE DEP’T OF CORRECTIONS, PREA INVESTIGATION PROCESS: DOC 490.850 (ATTACHMENT 1) (2020), <https://www.doc.wa.gov/information/policies/files/490850a1.pdf>. The “Appointing Authority will review the investigation and, based upon the information and evidence presented, determine whether the case is substantiated, unsubstantiated, or unfounded.” *Id.*

<sup>118</sup> STEPHEN SINCLAIR, WASHINGTON STATE DEPARTMENT OF CORRECTIONS ANNUAL PREA REPORT: CALENDAR YEAR 2020 (2021), <https://www.doc.wa.gov/docs/publications/reports/400-RE004.pdf>.

<sup>119</sup> *Id.* at 6.

<sup>120</sup> *Id.* at 7.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

the substantiated inmate-on-inmate cases, women and white individuals were overrepresented as victims compared to their percentage of the prison population in 2020.<sup>123</sup> While women made up only 6.4% of the total prison and work/training release population in Washington, they were the victim in 33% of the substantiated inmate-on-inmate cases. Transgender individuals were the victims in 15% of substantiated inmate-on-inmate sexual abuse cases. There is no comparable demographic data about the number of transgender individuals in the total prison population. White individuals were the victim in 82% of the substantiated inmate-on-inmate cases and only make up 69.1% of the total prison population.<sup>124</sup>

The trends for substantiated staff-on-inmate cases were not consistent with those for inmate-on-inmate cases in 2020. Women were still over-represented in these cases (representing 14% of the cases and only 6.4% of the prison and work/training release population). However, white individuals were underrepresented in the staff-on-inmate cases while Black individuals were overrepresented (representing 43% of cases but only 18.1% of the prison and work/training release population). None of the substantiated staff-on-inmate cases involved a transgender individual.<sup>125</sup> It is not clear if these somewhat dramatic differences in trends by gender and race when comparing substantiated inmate-on-inmate cases to staff-on-inmate cases are a result of differences in targeting, differences in reporting, or differences in which cases are ultimately substantiated. It is important to note that datasets, such as those provided in the DOC PREA reports, which combine diverse populations into one racial category (e.g., combining all Asian, Native Hawaiian, and other Pacific Islanders) often mask disparities within those diverse populations. In addition, these reports do not provide any information about Latinx individuals.

Because there is no demographic data for unsubstantiated and unfounded sexual abuse allegations, there is no way of knowing if there is a correlation between gender, race, or the intersection of race and gender, with which cases the incident review teams determine to be substantiated. Those who do not report their sexual victimization would not show up in the demographic information for substantiated sexual abuse cases. These gaps in the data expose

<sup>123</sup> *Id.* at 13.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 16.

the need for collection and analysis of demographic information for unsubstantiated and unfounded sexual abuse allegations as well as substantiated cases to assess sexual abuse investigations.

Some populations are at particularly high risk of sexual assault while in confinement. These groups include women and LGBTQ+ and youthful individuals.<sup>126</sup> Although women are not specifically addressed as a vulnerable population in PREA standards, women in the criminal justice system report more extensive physical and sexual victimization histories when compared with men in the criminal justice system or women who have not been incarcerated.<sup>127</sup> Incarcerated individuals who experienced sexual victimization before incarceration are more likely to report being sexually victimized by other incarcerated individuals or staff while in prison or jail.<sup>128</sup>

Under PREA standards, correctional agencies must assess all individuals housed in adult facilities for risk of being sexually abused or sexually abusive.<sup>129</sup> Information from these screenings is then used to inform housing, bed, work, education, and other assignments with the goal of separating those at high risk of sexual victimization from those at high risk of sexually abusing others.<sup>130</sup> The screenings take into account, among other factors, whether the individual has previously experienced sexual victimization.<sup>131</sup> Because women are more likely to have experienced sexual victimization prior to incarceration, “Women are more likely to screen as high-risk for sexual abuse related to past histories of child and adult trauma.”<sup>132</sup>

There is very little research examining whether prior sexual victimization among incarcerated women varies by race. One study<sup>133</sup> of incarcerated women found that white women and non-

<sup>126</sup> ANGELA BROWNE ET AL., KEEPING VULNERABLE POPULATIONS SAFE UNDER PREA: ALTERNATIVE STRATEGIES TO THE USE OF SEGREGATION IN PRISONS AND JAILS (2015); Ashley G. Blackburn, Janet L. Mullings & James W. Marquart, *Sexual Assault in Prison and Beyond: Toward an Understanding of Lifetime Sexual Assault Among Incarcerated Women*, 88 PRISON J. 351 (2008).

<sup>127</sup> BROWNE ET AL., *supra* note 126, at 12.

<sup>128</sup> Nancy Wolff, Jing Shi & Jane A. Siegel, *Patterns of Victimization Among Male and Female Inmates: Evidence of an Enduring Legacy*, 24 VIOLENCE VICTIMS 469 (2009).

<sup>129</sup> BROWNE ET AL., *supra* note 126.

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

<sup>131</sup> 28 C.F.R. § 115.41 (2015).

<sup>132</sup> BROWNE ET AL., *supra* note 126, at 11.

<sup>133</sup> This study is over 12 years old and may be outdated.

heterosexual women were significantly more likely to report lifetime sexual victimization. However, none of the demographic variables including race and sexual orientation were predictors of experiencing in-prison sexual abuse.<sup>134</sup>

A slightly more recent nationwide study of sexual violence found that an estimated 32.3% of multiracial women, 27.5% of American Indian/Alaska Native women, 21.2% of non-Hispanic Black women, 20.5% of non-Hispanic white women, and 13.6% of Hispanic women were raped during their lifetimes.<sup>135</sup> Additionally, an estimated 64.1% of multiracial women, 55.0% of American Indian/Alaska Native women, 46.9% of non-Hispanic white women, and 38.2% of non-Hispanic Black women experienced sexual violence other than rape in their lifetimes.<sup>136</sup> Although this study did not specifically focus on incarcerated women, the results suggest that white women are not the most likely racial group to have experienced sexual violence, that multiracial, Indigenous, and Black women are at higher risk for being victims of rape, and that multiracial and Indigenous women are at higher risk for being victims of other types of sexual violence. There is a need for more recent research examining differences in prior sexual victimization by race among incarcerated women, and this research is especially important as past sexual victimization is a risk factor for sexual victimization while in prison.<sup>137</sup>

A population at particularly high-risk for sexual assault in prisons and jails is LGBTQ+ individuals. One Department of Justice survey found that while 3.5% of heterosexual incarcerated men reported being sexually victimized by another incarcerated individual, 39% of gay men and 34% of bisexual men reported sexual this victimization.<sup>138</sup> Heterosexual incarcerated women reported lower rates of staff-on-inmate (4%) and inmate-on-inmate (13%) sexual victimization than incarcerated bisexual women (8% and 18%, respectively). Although incarcerated lesbian women

<sup>134</sup> Blackburn, Mullings & Marquart, *supra* note 126.

<sup>135</sup> MATTHEW BREIDING ET AL., CTRES. FOR DISEASE CONTROL & PREVENTION MMWR, PREVALENCE AND CHARACTERISTICS OF SEXUAL VIOLENCE, STALKING, AND INTIMATE PARTNER VIOLENCE VICTIMIZATION- NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY, UNITED STATES, 2011 5 (2014).

<sup>136</sup> *Id.*

<sup>137</sup> Wolff, Shi & Siegel, *supra* note 128; BROWNE ET AL., *supra* note 126.

<sup>138</sup> ALLEN BECK & CANDACE JOHNSON, SEXUAL VICTIMIZATION REPORTED BY FORMER STATE PRISONERS, 2008 52 (2012).

reported similar levels of inmate-on-inmate sexual victimization as heterosexual women, the rate of staff sexual victimization was twice that for heterosexual women.<sup>139</sup>

Transgender people face an especially high risk of sexual assault in confinement. One study of California prisons found that transgender women housed in a men's facility were 13 times more likely to have been sexually assaulted by other incarcerated individuals than non-transgender people.<sup>140</sup> While PREA standards also include protections for intersex people, there is very little comparable research to date.

PREA recognizes incarcerated youth as a vulnerable population at increased risk for sexual victimization in confinement. The statute states that "juveniles are five times more likely to be sexually assaulted in adult rather than juvenile facilities- often within the first 48 hours of incarceration."<sup>141</sup> Because of the high risk for juveniles housed in adult facilities, PREA imposes strict standards on contact between juveniles and adults in adult facilities, including that facilities may not place youth in a housing unit where they will have sight, sound, or physical contact with incarcerated adults, and that incarcerated juveniles may not interact with incarcerated adults without direct supervision.<sup>142</sup>

However, even among those who are over 18, age can be a risk factor for sexual victimization.<sup>143</sup> One study of incarcerated men found that teenagers age 18 to 19 were at particularly high risk for being sexually assaulted; although this age group made up only 3% of the prison population, they made up 17% of the sexual assault victims in the sample.<sup>144</sup> Perceived vulnerability, including being younger or a first-time offender, can increase the risk of sexual victimization, particularly among incarcerated men.<sup>145</sup> Among youth in custody, prior victimization and

<sup>139</sup> *Id.*

<sup>140</sup> VALERIE JENNESS ET AL., CTR. FOR EVIDENCE-BASED CORRECTIONS, VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT (2007).

<sup>141</sup> Prison Rape Elimination Act of 2003, 34 U.S.C. § 30301(4).

<sup>142</sup> 28 C.F.R. § 115.14 (2015).

<sup>143</sup> Richard B. Felson, Patrick Cundiff & Noah Painter-Davis, *Age and Sexual Assault in Correctional Facilities: A Blocked Opportunity Approach*, 50 CRIMINOLOGY 887 (2012); Tess Neal & Carl Clements, *Prison Rape and Psychological Sequelae: A Call for Research*, 16 PSYCH. PUB. POL'Y & L. 284 (2010).

<sup>144</sup> Felson, Cundiff & Painter-Davis, *supra* note 143.

<sup>145</sup> Neal and Clements, *supra* note 143.

identifying as non-heterosexual are additional risk factors for sexual assault.<sup>146</sup> Incarcerated youth may also experience more negative outcomes to their development and long-term wellbeing than older incarcerated individuals after being sexually victimized.<sup>147</sup> There is no data on youth as a risk factor for sexual victimization among incarcerated women, highlighting the need for gender to be studied along with other characteristics, including age, among incarcerated individuals.

In terms of race, numerous scientific studies focusing on incarcerated men have found that white individuals are disproportionately more likely to be sexually assaulted than members of other races for inmate-on-inmate sexual assault, while Black individuals are disproportionately more likely to perpetrate sexual assault while incarcerated than other races.<sup>148</sup> However, PREA finds that rape is “frequently interracial” and that interracial rape “increases the level of homicides and other violence against inmates and staff, and the risk of insurrections and riots.”<sup>149</sup> It is necessary to acknowledge the racist connotations of this language and assertion. Simply painting Black men as perpetrators who rape white men in prison inherently ignores the reprehensible history of policy regulating interracial sex and upholding supremacist ideology. There are other explanations for data disproportionately implicating Black incarcerated individuals. As discussed more below, there is significant underreporting of sexual violence in prisons, so it is unclear if the reported cases are representative of all sexual violence in prisons. In addition, one study of incarcerated men found that Black and Hispanic men were significantly more likely to report sexual violence committed by staff members against them as compared to white men. In addition, when sexual violence perpetrated by staff and by other incarcerated individuals were combined, there was very little difference between the rates of sexual victimization by race.<sup>150</sup>

<sup>146</sup> Eileen M. Ahlin, *Risk Factors of Sexual Assault and Victimization Among Youth in Custody*, 36 J. INTERPERSONAL VIOLENCE 164 (2021).

<sup>147</sup> BROWNE ET AL., *supra* note 126; Ahlin, *supra* note 146.

<sup>148</sup> Christopher Man & John Cronan, *Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for Deliberate Indifference*, 92 J. OF CRIM. L. & CRIMINOLOGY 127, 161-63 (2001); Christopher Hensley, Richard Tewksbury & Tammy Castle, *Characteristics of Prison Sexual Assault Targets in Male Oklahoma Correctional Facilities*, 18 J. OF INTERPERSONAL VIOLENCE 595, 602 (2003); BECK & JOHNSON, *supra* note 138.

<sup>149</sup> 34 U.S.C. § 30301(9), (10).

<sup>150</sup> Nancy Wolff, Jing Shi & Cynthia Blitz, *Racial and Ethnic Disparities in Types and Sources of Victimization Inside Prison*, 88 PRISON J. 451 (2008).

There are comparably fewer studies focusing on race and sexual victimization of incarcerated women. One study of incarcerated women found that no demographic characteristics, including race, made an individual more likely than another to be sexually assaulted in prison.<sup>151</sup> Another study found that incarcerated women were more likely to be assaulted by white perpetrators than any other race, a finding that differed from incarcerated men, who were more likely to be assaulted by Black perpetrators.<sup>152</sup> This difference suggests that incarcerated men and women may have unique experiences when it comes to the connection between race and sexual assault and highlights the need for more research specifically focusing on race with regard to sexual assault among incarcerated women.

### 3. Impact of trauma

Incarcerated men and women also differ in their experience after an assault. While both experience trauma and negative consequences as a result of sexual assault, the few studies comparing the post-sexual assault impact based on gender indicate that incarcerated men suffer more negative consequences from sexual assault compared to incarcerated women.<sup>153</sup> However, it should be noted that these studies have notable limitations, including the use of self-reporting surveys and small sample sizes, especially for women, which may have influenced the results.

A comparison study of self-reports from ten southwestern correctional facilities examined sexual assault outcomes for incarcerated men and women.<sup>154</sup> The researchers found that similar percentages of male and female victims reported effects such as depression, distrust of people, nervousness around people, discomfort being physically close to others, and worry that it would happen again. While both reported feeling upset, depressed, and negatively affected by the assault at similar rates, 37% of the male victims reported having suicidal thoughts and 19% reported a suicide attempt compared to 11% and 4% of female victims, respectively. Additionally, 36% of male victims reported having become violent with others after the assault while 22% of

<sup>151</sup> Blackburn, Mullings & Marquart, *supra* note 126.

<sup>152</sup> Cindy Struckman-Johnson & David Struckman-Johnson, *A Comparison of Sexual Coercion Experiences Reported by Men and Women in Prison*, 21 J. INTERPERSONAL VIOLENCE 1591 (2006).

<sup>153</sup> *Id.*; Janine M. Zweig et al., *Using General Strain Theory to Explore the Effects of Prison Victimization Experiences on Later Offending and Substance Use*, 95 PRISON J. 84 (2015).

<sup>154</sup> Struckman-Johnson & Struckman-Johnson, *supra* note 152.



female victims reported violent outbursts post-assault. Incarcerated men also reported being concerned about their sex-role reputation, fear of catching AIDS, feelings of hatred, and being physically injured at a higher rate than incarcerated women.<sup>155</sup> Victims of rape in prison would benefit from comprehensive mental health programming, which is currently minimally available or accessible. There does not appear to be a standardized requirement among prison facilities to provide specific types or levels of care post-sexual assault.

Although men reported higher rates of some negative consequences after sexual assault, it is possible that a number of the consequences that the study measured for, such as causing violent outbursts and fear of catching AIDS, were the ones more likely to be experienced by men. Furthermore, there were a significant number of outcomes that the researchers did not evaluate, including PTSD, self-blame, guilt, denial, and self-harm, which other studies have found particularly affect female victims of sexual assault.<sup>156</sup> Beyond the limitations of this study, there is a significant gap in the research examining the impacts of sexual victimization during incarceration for other populations, particularly for transgender and non-binary individuals. There is also a need for more research comparing sexual assault victimization outcomes by race and whether the intersection of race and gender has unique outcomes for incarcerated Black, Indigenous, and women of color.

Trauma from sexual assault can also have a negative impact on victims post-release. A comparative analysis of interview data from formerly incarcerated individuals found that victims of sexual assault are more likely to engage in drug use and commit criminal acts within fifteen months after their release compared to non-victimized individuals.<sup>157</sup> When comparing the impact of male victimization and female victimization on post-release drug use and crime, only the males had a significant finding. This suggests that sexual victimization in prison had a greater effect on male victims' substance abuse and recidivism after release. However, the female

<sup>155</sup> *Id.*

<sup>156</sup> N. N. Sarkar & Rina Sarkar, *Sexual Assault on Woman: Its Impact on Her Life and Living in Society*, 20 *SEXUAL & RELATIONSHIP THERAPY* 407 (2005).

<sup>157</sup> Zweig et al., *supra* note 153.

sample in this study was small, as noted by the researcher, which may have influenced the findings. The study did not explore other negative outcomes post-release.

Males and females that had been sexually victimized while incarcerated reported higher rates of depression and hostility after release than non-victimized individuals.<sup>158</sup> Importantly, the few studies that compare the consequences of sexual victimization in prison treat gender as a dichotomy, exposing the need for more data on gender nonconforming individuals and more inclusive definitions of gender in scientific studies. Additionally, there is a significant gap in the research examining whether the intersectionality of gender with race and socioeconomic status impacts the consequences and trauma victims face from sexual assault during incarceration. Furthermore, although LGBTQ+ individuals are at high risk for sexual victimization during incarceration, there is little research examining the outcomes for these populations post-release.

#### 4. Underreporting and perceptions of sexual violence against incarcerated people

One of the difficulties in determining the consequences and scope of sexual assault in prisons is getting an accurate estimate of the prevalence of sexual violence. Sexual violence is the most underreported act of violence within the prison system.<sup>159</sup> One study comparing allegations of sexual victimization reported in adult corrections facilities with sexual victimization disclosed in a confidential survey estimated that only 8.4% of prisoners reported at least one of their incidences of sexual victimization.<sup>160</sup>

For inmate-on-inmate sexual assaults, the ability to define the act as a sexual assault can be problematic, especially for male victims.<sup>161</sup> Reporting male sexual assault, even outside of prison, is hindered by complicated factors such as concerns about family and peer reactions, fear of not

<sup>158</sup> *Id.*

<sup>159</sup> Struckman-Johnson & Struckman-Johnson, *supra* note 152; Shannon K. Fowler et al., *Would They Officially Report an In-Prison Sexual Assault? An Examination of Inmate Perceptions*, 90 PRISON J. 220 (2010).

<sup>160</sup> Sheryl Pimlott Kubiak et al., *Reporting Sexual Victimization During Incarceration: Using Ecological Theory as a Framework to Inform and Guide Future Research*, 19 TRAUMA, VIOLENCE, & ABUSE 94 (2018).

<sup>161</sup> Helen M. Eigenberg, *Correctional Officers and Their Perceptions of Homosexuality, Rape, and Prostitution in Male Prisons*, 80 PRISON J. 415 (2000).

being believed by authorities, and concerns around feelings of loss of masculinity, resulting in an estimated 75% of sexual assaults of incarcerated males going unreported.<sup>162</sup>

Sexual assault in prison is not limited to sexual intercourse and can include coercion, harassment, fondling, sodomy, and other acts.<sup>163</sup> Threats do not need to be physical to be coercive. When incarcerated individuals do report sexual victimization, despite the requirement of taking all sexual assault reports seriously per PREA, some correctional staff will not respond. Others even participate in or facilitate assaults.<sup>164</sup>

Sexual acts between incarcerated individuals and correctional staff are inherently nonconsensual due to the power imbalance.<sup>165</sup> With officers as common perpetrators – a survey of three Midwestern prisons uncovering that 45% of incidents involved staff as perpetrators – an incarcerated individual’s ability to report incidents of sexual assault to staff can be a possibly insurmountable challenge, particularly if an individual is concerned about lack of proof, lack of credibility, not wanting to be put into protective custody, and not wanting to be labeled a “snitch.”<sup>166</sup>

A study of 500 wardens [in Washington, these officials are “superintendents”] found that wardens perceived that sexual assaults did not occur very often, with most wardens reporting that their prison’s sexual assault rate was either zero percent or below one percent.<sup>167</sup> The wardens were able to identify sexual assault in situations where force and coercion were utilized; however, in situations without the presence of obvious force or coercion, wardens were unsure about whether it was sexual assault. A study of correctional officers’ perceptions found that correctional officers had difficulty distinguishing rape from consensual sexual acts.<sup>168</sup> Officers

<sup>162</sup> Brett Garland & Gabrielle Wilson, *Prison Inmates’ Views of Whether Reporting Rape Is the Same as Snitching: An Exploratory Study and Research Agenda*, 18 J. INTERPERSONAL VIOLENCE 1201 (2013).

<sup>163</sup> 28 C.F.R. § 115.6 (2015).

<sup>164</sup> Neal & Clements, *supra* note 143.

<sup>165</sup> See e.g., Jim Harvey & Kelly Shelton, *Law Says Inmate Consent to Sex Is Nonexistent*, ALBUQUERQUE J. (July 10, 2017), <https://www.abqjournal.com/1030674/law-says-inmate-consent-to-sex-is-nonexistent.html>.

<sup>166</sup> Struckman-Johnson & Struckman-Johnson, *supra* note 152; Shannon K. Fowler et al., *Would They Officially Report an In-Prison Sexual Assault? An Examination of Inmate Perceptions*, 90 PRISON J. 220 (2010).

<sup>167</sup> Aviva N. Moster & Elizabeth L. Jeglic, *Prison Warden Attitudes Toward Prison Rape and Sexual Assault*, 89 PRISON J. 65 (2009).

<sup>168</sup> Eigenberg, *supra* note 161.

also had contradictory thoughts and beliefs regarding how to react to homosexuality and prostitution, which is concerning as it makes recognizing and responding to sexual assault more difficult.<sup>169</sup> However, both of these studies on the perceptions of prison staff toward sexual assault and rape are over ten years old, and the study on correctional officers' attitudes is over twenty years old. It is likely that perceptions of sexual victimization among prison staff have changed during this time, especially with the implementation of PREA, exposing the need for more recent research on the attitudes of prison staff regarding sexual assault of incarcerated individuals.

There is also an overall emphasis on the act of rape, a narrower definition than the definition of sexual abuse that appears in PREA.<sup>170</sup> One study surveying correctional officers found that overwhelming responses indicated rape required the use of force and the overpowering of the victim.<sup>171</sup> A considerable proportion of correctional officers were unwilling to define coercive acts of assault as rape. While most officers appeared reluctant to blame the victim, 16% of officers indicated that incarcerated homosexual individual get what they deserve if they are raped and almost one-fourth of officers believed that people deserved rape if they previously engaged in consensual sexual acts in prison.<sup>172</sup> Attitudes of victim-blaming and not defining coercive acts as rape among correctional officers may make incarcerated individuals more unwilling to report being sexually victimized.<sup>173</sup>

## 5. Criminal and civil remedies

In addition to the requirements of PREA, Washington also provides for the criminal prosecution of perpetrators of sexual violence in state prisons and municipal jails. Although Washington State law provides the means to punish these perpetrators, prosecution requires both a formal complaint and a determination that the allegation of sexual assault has merit. In other words, even if an incarcerated individual reports a sexual assault, if the incident review team in the

<sup>169</sup> *Id.*

<sup>170</sup> 28 C.F.R. § 115.6 (2015).

<sup>171</sup> Eigenberg, *supra* note 161.

<sup>172</sup> *Id.* Please note, again, that this study is over 20 years old.

<sup>173</sup> Neal & Clements, *supra* note 143.

prison determines that there is not enough evidence of a sexual assault, prosecution cannot go forward.<sup>174</sup>

If an individual has been sexually assaulted by another incarcerated individual or by a corrections officer or staff member, the perpetrator could be charged with a sexual offense such as rape or indecent liberties as described in chapter 9A.44 RCW or elsewhere in the Washington criminal code. Washington State also has specific laws pertaining to sexual misconduct perpetrated by an officer, staff member, or contractor of a correctional facility against an incarcerated individual. An officer, staff member, or contractor commits the crime of Custodial Sexual Misconduct in the First Degree (RCW 9A.44.160) when they have sexual intercourse<sup>175</sup> with an individual incarcerated in a jail, prison, or juvenile facility, and the perpetrator has the actual or perceived ability “to influence the terms, conditions, length, or fact” of incarceration or supervision. Consent of the victim is not a defense. This crime is a class C felony; therefore, the maximum possible term of incarceration is five years in prison. Custodial Sexual Misconduct in the Second Degree (RCW 9A.44.170) involves sexual contact rather than sexual intercourse, but the elements of the crime are otherwise the same.<sup>176</sup> Custodial Sexual Misconduct in the Second Degree is a gross misdemeanor, which means the maximum term is 364 days in jail.

Civil actions at the state and federal level may also be pursued as a result of sexual abuse in a custodial setting. In federal court, an incarcerated individual who has been victimized may seek damages by filing suit against the institution’s superintendent under 42 U.S.C. § 1983, provided

<sup>174</sup> See WASH. STATE DEP’T OF CORRECTIONS, DOC POLICY 490.860 PRISON RAPE ELIMINATION ACT (PREA) INVESTIGATION (2020), <https://www.doc.wa.gov/information/policies/files/490860.pdf>.

<sup>175</sup> As defined in RCW 9A.44.010(1),

(1) “Sexual intercourse” (a) has its ordinary meaning and occurs upon any penetration, however slight, and

(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and

(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

<sup>176</sup> As defined in RCW 9A.44.010(2), “Sexual contact” means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.”

that the individual can demonstrate a violation of their civil rights.<sup>177</sup> However, the Prison Litigation Reform Act (PLRA) requires an incarcerated individual to exhaust all available administrative remedies before filing suit.<sup>178</sup> There is a short period of time in which an incarcerated individual can report and file a complaint. In addition, damages for mental or emotional injuries cannot be sought without a showing of physical injury, or “the commission of a sexual act” as defined by 18 U.S.C. § 2246<sup>179</sup>. For an incarcerated individual whose sexual abuse or sexual harassment is outside the scope of these narrow definitions, they may seek damages in state court under tort law.

Relevant cases that have interpreted laws and policies related to sexual assault in prisons include the following:

- PRP of Williams (Order issued March 2021)<sup>180</sup> – Article I, Section 14 of the Washington State Constitution provides more protection than the Eighth Amendment to the United States Constitution.
- Farmer v. Brennan, 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994) — While ruling that an official’s “deliberate indifference” to a substantial risk of serious harm does violate the Eighth Amendment, the Court found “deliberate indifference” to be a subjective standard, under which the official must be aware of the facts that would lead to inference

<sup>177</sup> Prison officials have a duty to provide humane conditions and to protect incarcerated individuals from violence under the Eighth Amendment. *See Farmer v. Brennan*, 511 U.S. 825, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994), discussed further *infra*.

<sup>178</sup> 42 U.S.C. § 1997e.

<sup>179</sup> As defined in 18 U.S.C. § 2246(2), the term “sexual act” means:

- (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
- (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- (D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person[.]

<sup>180</sup> Order, *In re Pers. Restraint of Williams*, No. 99344-1 (Wash. Mar. 12, 2021), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/993441%20Public%20Order%20031221.pdf> (court opinion to follow).

about the existence of the substantial risk of serious harm, and then also draw that inference.

- *Teamsters Local Union No. 117 v. Washington Dept. of Corrections*, 789 F.3d 979, 982 (9th Cir. 2015) —DOC did not violate Title VII of the Civil Rights Act of 1964<sup>181</sup> when it designated 110 correctional employee positions in Washington’s two women’s prisons to be filled only by women.<sup>182</sup> The court held that DOC’s “individualized, well-researched decision to designate discrete sex-based correctional officer categories” was justified because sex is a bona-fide occupational qualification (BFOQ) for those positions.<sup>183</sup>
- *State v. Clapper*, 178 Wn. App. 220, 313 P.3d 497 (2013) — The Court of Appeals held that the statute defining Custodial Sexual Misconduct in the First Degree (RCW 9A.44.160) is not unconstitutionally vague, and that “an ordinary person would clearly understand that a corrections officer supervising inmates within a prison has the ability to influence the terms of incarceration.”<sup>184</sup>
- *State v. Torres*, 151 Wn. App. 378, 212 P.3d 573 (2009) — For the crime of Custodial Sexual Misconduct committed when the victim is being detained, “detention” is broader than mandatory arrest. Within this context, detention means “restraint on freedom of movement to such a degree that a reasonable person would not have felt free to leave.”<sup>185</sup>

## 6. PREA implementation

In 2012, the Department of Justice finalized standards that govern implementation of PREA, including a facility’s responsibility to provide incarcerated survivors with access to confidential

<sup>181</sup> 42 U.S.C. § 2000(e).

<sup>182</sup> The positions in question involved sensitive tasks, including pat-down and strip searches of incarcerated women.

<sup>183</sup> In so holding, the court observed that Washington had “faced problems common to a number of states in their women’s prisons: sexual abuse and misconduct by prison guards, breaches of inmate privacy, and security gaps,” and that “a primary driver” of these problems “was the lack of female correctional officers to oversee female offenders and administer sensitive tasks[.]” *Teamsters Local Union No. 117*, 789 F.3d at 981-82.

<sup>184</sup> *State v. Clapper*, 178 Wn. App. at 226-27.

<sup>185</sup> *State v. Torres*, 151 Wn. App. 378, 389, 212 P.3d 573 (2009).

sexual assault advocacy services.<sup>186</sup> In partnership with DOC and the Department of Commerce’s Office of Crime Victims Advocacy (OCVA), the Washington Coalition of Sexual Assault Programs (WCSAP) has worked to coordinate advocacy services, including culturally specific supports, which are provided by community sexual assault programs around the state.<sup>187</sup>

To facilitate implementation of the PREA victim advocacy standards, in 2016, the United States Department of Justice’s Office for Victims of Crime lifted their restrictions on using Victims of Crime Act funds to serve incarcerated victims.<sup>188</sup> This, plus the Violence Against Women Act 2013 addition of two new purpose areas specifically including services to men, including “purpose area 17, (focusing on programs addressing sexual assault against men, women, and youth in correctional and detention settings),”<sup>189</sup> has greatly expanded the ways that Washington programs can use federal funds to support victims of sexual assault, including incarcerated people.<sup>190</sup> Allowing incarcerated survivors to access services funded by these grant programs requires cooperation by prisons and jails to allow physical access to their facilities, confidentiality, and distribution of resources.

## B. Civil Commitment

Another change since 1989 was the enactment of the Community Protection Act in 1990, making Washington the first state to create a system for the involuntary, indefinite civil commitment of sexually violent predators. A sexually violent predator is defined as “any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of

<sup>186</sup> U.S. DEP’T OF JUST., PRISONS AND JAIL STANDARDS: UNITED STATES DEPARTMENT OF JUSTICE FINAL RULE (2012), [https://www.prearesourcecenter.org/sites/default/files/content/prisonsandjailsfinalstandards\\_0.pdf](https://www.prearesourcecenter.org/sites/default/files/content/prisonsandjailsfinalstandards_0.pdf) (specifically, 28 C.F.R. Part 115, Section 53).

<sup>187</sup> See *Working With Survivors*, WASH. COAL. OF SEXUAL ASSAULT PROGRAMS, <https://www.wcsap.org/advocacy/focus-areas/incarcerated-survivors>.

<sup>188</sup> See *New Voca Assistance Rule Means More Services, More Funds for Victims*, U.S. DEP’T OF JUST. ARCHIVES (Dec. 31, 2016), <https://www.justice.gov/archives/opa/blog/new-voca-assistance-rule-means-more-services-more-funds-victims>.

<sup>189</sup> See U.S. DEP’T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, FREQUENTLY ASKED QUESTIONS (FAQS) ABOUT STOP FORMULA GRANTS 1 (2014), <https://www.justice.gov/sites/default/files/ovw/legacy/2014/02/06/consolidated-stop-faqs-bla.pdf> (Question 2).

<sup>190</sup> See Allison Hastings, *Lifting of Funding Restrictions Paves the Way for Incarcerated Survivors of Sexual Abuse to Access Victim Services*, VERA INST. OF JUST. (Jan. 13, 2017), <https://www.vera.org/blog/lifting-of-funding-restrictions-paves-the-way-for-incarcerated-survivors-of-sexual-abuse-to-access-victim-services>.



sexual violence if not confined in a secure facility.”<sup>191</sup> The process for such commitment can be initiated when the person’s criminal sentence is about to expire or after the criminal trial if the person is found incompetent or not guilty by reason of insanity.<sup>192</sup> The statute allows for pleadings for conditional release to a less restrictive alternative or unconditional discharge.

There has been ample litigation in the Washington appellate courts regarding the standards of proof required for civil commitment and the procedural steps of the process. The most important foundational case is *In re Young*,<sup>193</sup> which upheld the constitutionality of civil commitment against challenges under the double jeopardy and ex post facto clauses of the state and federal constitutions. Several years later, the U.S. District Court for the Western District of Washington found that the statute violated the due process, ex post facto, and double jeopardy clauses of the federal constitution in *Young v. Weston*,<sup>194</sup> but that decision was remanded by the Ninth Circuit<sup>195</sup> in light of the U.S. Supreme Court’s 5 to 4 decision in *Kansas v. Hendricks*,<sup>196</sup> which upheld the constitutionality of the Kansas Sexually Violent Predator Act based on the Washington statute. In 2001, the U.S. Supreme Court upheld the sexually violent predator statute in *Seling v. Young*<sup>197</sup> against not just facial, but also applied arguments.

In 2007, the Washington State Institute for Public Policy (WSIPP) published a study that examined the recidivism of 135 sex offenders who were referred for civil commitment, but for whom no petitions were filed.<sup>198</sup> The study’s findings were that 50% of the subjects had a new felony as their most serious new conviction, with 23% convicted of new felony sex offenses; 19% of the group was convicted of failure to register as a sex offender; 10% of the group had at least one

<sup>191</sup> RCW 71.09.020(18).

<sup>192</sup> RCW 71.09.030(1).

<sup>193</sup> 122 Wn.2d 1 (1993).

<sup>194</sup> 898 F. Supp. 744 (W.D. Wash. 1995).

<sup>195</sup> 122 F.3d 38 (9th Cir. 1997).

<sup>196</sup> 521 U.S. 346 (1997).

<sup>197</sup> 531 U.S. 250 (2001).

<sup>198</sup> CHERYL MILLOY, WASH. STATE INST. FOR PUB. POL’Y, SIX-YEAR FOLLOW-UP OF 135 RELEASED SEX OFFENDERS RECOMMENDED FOR COMMITMENT UNDER WASHINGTON’S SEXUALLY VIOLENT PREDATOR LAW, WHERE NO PETITION WAS FILED (2007), [https://www.wsipp.wa.gov/ReportFile/985/Wsipp\\_Six-Year-Follow-Up-of-135-Released-Sex-Offenders-Recommended-for-Commitment-Under-Washington-s-Sexually-Violent-Predator-Law-Where-No-Petition-Was-Filed\\_Full-Report.pdf](https://www.wsipp.wa.gov/ReportFile/985/Wsipp_Six-Year-Follow-Up-of-135-Released-Sex-Offenders-Recommended-for-Commitment-Under-Washington-s-Sexually-Violent-Predator-Law-Where-No-Petition-Was-Filed_Full-Report.pdf).

additional referral for civil commitment by the end of the six-year period; and four percent of the group subsequently received sentences of life in prison without parole.<sup>199</sup>

### C. Sexual assault kit backlog

There has been recent scrutiny and legislative initiative to solve the testing backlog of sexual assault kits. Addressing this backlog is critical for law enforcement to catch serial rapists. Further, it sends the message to both victims and rapists that sexual assault is taken seriously. In 2015, the Washington State Legislature enacted a law requiring the preservation and forensic analysis of sexual assault kits.<sup>200</sup> In 2016, the Legislature ordered the Washington State Patrol to create a statewide tracking system to address the testing backlog.<sup>201</sup> And then in 2019, the Legislature established the Sexual Assault Forensic Examination Best Practices Advisory Group (hereafter Advisory Group) to work with the Attorney General to remedy the backlog and appropriated \$10.3 million for testing the nearly 10,000 untested kits.<sup>202</sup>

In its annual report issued in December 2019, the Advisory Group made five recommendations related to remedying the backlog:

1. Provide resources for the investigation and prosecution of cold cases (unanimous);
2. Convene an advisory group to develop standard protocols for access to victim advocacy services in hospitals (unanimous);
3. Store unreported sexual assault kits and any additional items collected during a forensic examination for 20 years (unanimous);
4. Store unreported sexual assault kits and any additional items collected during a forensic examination at local law enforcement agencies with funding appropriated (near unanimous); and
5. Collect DNA samples from qualifying offenders in the courtroom at the time of sentencing (near unanimous).

<sup>199</sup> *Id.*

<sup>200</sup> LAWS OF 2015, ch. 247.

<sup>201</sup> LAWS OF 2016, ch. 173.

<sup>202</sup> LAWS OF 2019, ch. 93; *See also* WASH. STATE. OFF. OF ATT'Y GEN., ANNUAL REPORT TO THE LEGISLATURE AND GOVERNOR: WASHINGTON SEXUAL ASSAULT FORENSIC EXAMINATION BEST PRACTICES ADVISORY GROUP (2019), [https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/SAFE%20Report%202019.pdf](https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/SAFE%20Report%202019.pdf).

Following the publication of the report, during the 2020 legislative session, the Legislature passed ESHB 2318, which requires unreported<sup>203</sup> sexual assault kits to be stored with local law enforcement and retained for twenty years.<sup>204</sup> The purpose of this legislation was to ensure that evidence remains viable if and when victims choose to report an assault to law enforcement. It will also allow evidence to be more easily linked between cases with the intent of identifying serial offenders.

In ESHB 1109, passed by the Legislature in 2021, the Office of the Attorney General is required, in consultation with the Washington Association of Sheriffs and Police Chiefs, to collect status updates on cases tied to previously un-submitted sexual assault kits collected before July 24, 2015.<sup>205</sup>

#### D. Sexual Assault Protection Orders<sup>206</sup>

Washington State was one of the first states to enact a sexual assault protection order (SAPO). Before the Sexual Assault Protection Order Act was passed, civil protection orders were not available to many sexual assault victims. Based on the eligibility requirements for a Domestic Violence Protection Order or an Antiharassment Protection Order, victims who were assaulted one time by a non-family or household member were precluded from applying for a protection order. This gap was significant because many sexual assaults are perpetrated by acquaintances or persons known to, but not related to, the victim.<sup>207</sup> In 2006, the Washington State Legislature filled this gap. As stated in the legislative intent:

Sexual assault is the most heinous crime against another person short of murder. Sexual assault inflicts humiliation, degradation, and terror on victims. According to the FBI, a woman is raped every six minutes in the United States. Rape is

<sup>203</sup> Not yet tied to a police report.

<sup>204</sup> LAWS OF 2020, ch. 26.

<sup>205</sup> LAWS OF 2021, ch. 118.

<sup>206</sup> Pursuant to the recently-passed E2SHB 1320, all of Washington's civil protection orders, including SAPOs, will have their different chapters repealed, and a new RCW chapter will be created to consolidate and harmonize protection order laws. As of the time of this writing, that new law had not yet been codified, so references are still made to relevant portions of chapter 7.90 RCW and E2SHB 1320.

<sup>207</sup> LUCY BERLINER, DAVID FINE & DANNA MOORE, SEXUAL ASSAULT EXPERIENCES AND PERCEPTIONS OF COMMUNITY RESPONSE TO SEXUAL ASSAULT: A SURVEY OF WASHINGTON STATE WOMEN (2001), <https://depts.washington.edu/uwhatc/PDF/research/sexualassaultexpr2001-11.pdf>.

recognized as the most underreported crime; estimates suggest that only one in seven rapes is reported to authorities. Victims who do not report the crime still desire safety and protection from future interactions with the offender. Some cases in which the rape is reported are not prosecuted. In these situations, the victim should be able to seek a civil remedy requiring that the offender stay away from the victim. It is the intent of the legislature that the sexual assault protection order created by this chapter be a remedy for victims who do not qualify for a domestic violence order of protection.<sup>208</sup>

SAPOs are intended to provide victims with a legal process that is independent of law enforcement or prosecutorial discretion to prevent their attacker from contacting them directly, indirectly, or through a third party or visiting their residence, school, or workplace.

A victim may seek a SAPO by filing a petition alleging that they have been the victim of nonconsensual sexual conduct or nonconsensual sexual penetration committed by the respondent.<sup>209</sup> Previously, the law stated that the petition “shall be accompanied by an affidavit... stating the specific statements or actions made at the same time of the sexual assault or subsequently thereafter, which give rise to a reasonable fear of future dangerous acts, for which relief is sought.”<sup>210</sup> Washington courts interpreted the “specific statements or actions” as required to be separate from the sexual assault itself.<sup>211</sup> Then, in 2019, the Washington State Legislature clarified its intent regarding requirements to obtain a SAPO<sup>212</sup> by amending RCW 7.90.020 to require that the petition “shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.”<sup>213</sup>

Denial of a remedy may not be based, in whole or in part, on evidence that the respondent was voluntarily intoxicated, the petitioner was voluntarily intoxicated, or the petitioner engaged in

<sup>208</sup> RCW 7.90.005.

<sup>209</sup> RCW 7.90.040(1).

<sup>210</sup> RCW 7.90.020(1).

<sup>211</sup> *Roake v. Delman*, 189 Wn.2d 775, 783-84, 408 P.3d 658 (2018).

<sup>212</sup> That “experiencing a sexual assault is itself a reasonable basis for ongoing fear.” LAWS OF 2019, ch. 258.

<sup>213</sup> *Id.*

limited consensual sexual touching.<sup>214</sup> Where there is evidence of intoxication, the court must determine the petitioner’s capacity to consent.<sup>215</sup>

The court shall issue a final order if the court finds by a preponderance of the evidence that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent.<sup>216</sup> Upon a full hearing, a final order may be granted for a fixed period or be permanent.<sup>217</sup> Pursuant to the recently passed HB 1320, the court must not grant a SAPO for less than one year unless specifically requested by the petitioner.<sup>218</sup> Additionally, if a court denies the protection order, it must state in writing the particular reasons for the denial.<sup>219</sup> Violations of a protection order are a gross misdemeanor but can be a class C felony if the respondent has at least two prior violations.<sup>220</sup>

Pursuant to RCW 7.90.070, the court may appoint counsel for an unrepresented petitioner when the respondent is represented; however, this provision is not widely used because many courts do not have a process to address the issue. This is a gap that should be remedied, given the disparity in outcomes for parties represented by counsel. For example, in its 2011 report, King County Sexual Assault Resource Center’s CourtWatch program found “in all of the cases where the petitioner did not have an attorney and the respondent did, the SAPO was dismissed. Similarly, in 3 out of the 4 cases where the petitioner was represented but the respondent was not, the SAPO was granted.”<sup>221</sup> As previously noted, the Washington State Legislature recently passed E2SHB 1320 in order to harmonize processes and legal requirements for Washington’s six civil protection orders, including SAPOs, in order to make the process more accessible and to maintain their purpose of “fast, efficient means to obtain protection....”<sup>222</sup> One of the statutory mandates to the Washington State Supreme Court Gender and Justice Commission is to work

<sup>214</sup> RCW 7.90.090(4)(a)-(c).

<sup>215</sup> *Nelson v. Duvall*, 197 Wn. App. 441, 387 P.3d 1158 (2017).

<sup>216</sup> RCW 7.90.090(1)(a).

<sup>217</sup> RCW 7.90.120(2). This provision of the statute was amended by the Legislature in 2017; previously, SAPOs could be granted for a maximum period of two years.

<sup>218</sup> See ENGROSSED SECOND SUBSTITUTE H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021) (Part VI, Sec. 40(1)).

<sup>219</sup> *Id.* at Part V, Sec. 29(5).

<sup>220</sup> RCW 7.90.110(5); RCW 26.50.110.

<sup>221</sup> KING CNTY. SEXUAL ASSAULT RES. CTR., ANALYZING THE IMPACT AND APPLICATION OF THE SEXUAL ASSAULT PROTECTION ORDER IN KING COUNTY (2011), <https://www.kcsarc.org/sites/default/files/CourtWatch-Report%20April%202011.pdf>.

<sup>222</sup> See ENGROSSED SECOND SUBSTITUTE H.B. 1320, 67th Leg., Reg. Sess. (Wash. 2021) (Part I, Section 1(1)).

with other stakeholders to develop recommendations to improve access for unrepresented parties.<sup>223</sup> Its recommendations are due to the courts by July 1, 2022.

### E. Extension of statute of limitations for sexual assault

In 2019, the Washington State Legislature passed SB 5649 to extend the statute of limitations for Rape in the First and Second Degree<sup>224</sup> from ten to twenty years, and remove the statute of limitations entirely for Rape of a Child in the First, Second, or Third Degree. In section 2 of the bill, the Legislature explained:

It is generally true that the longer a victim waits to report a crime, the more difficult it will be for the case to be successfully prosecuted. However, the statute of limitations should not prohibit prosecution for these heinous offenses when there is adequate evidence. Extending or eliminating the statute of limitations in these cases is imperative to provide access to justice for victims, hold perpetrators accountable, and enhance community protection.

Greater opportunities to prosecute might also help with the process of clearing the backlog of sexual assault kits.

### F. Sexual assault advocate privilege

Since the 1989 Study, Washington has extended protections to victim information communicated to community-based sexual assault advocacy programs.<sup>225</sup> In 2006, privilege was granted to communications between a victim and their community-based sexual assault advocate.”<sup>226</sup> This privilege extends only to community-based sexual assault advocates, not system-based sexual assault advocates. For further discussion of the differences between these types of advocates please refer to Footnote 91. When sexual violence is perpetrated, it takes personal autonomy

<sup>223</sup> *Id.* at Part V, Sec. 36(1)(b).

<sup>224</sup> Victim is over age 16.

<sup>225</sup> Information about Community Sexual Assault Programs is listed by county on the Washington Coalition of Sexual Assault Programs (WCSAP) website: <https://www.wcsap.org/help/csap-by-county>.

<sup>226</sup> RCW 5.60.060(7).

away from the victim; these privilege protections allow a victim the choice to waive privilege and disclose any of their private information.

## G. Other rights for sexual assault victims

In 2021, with the passage of ESHB 1109, the Legislature expanded statutory rights for sexual assault victims. This expansion includes the following:

- The right to consultation with a sexual assault advocate was modified to apply throughout both the investigation and prosecution of the case;
- Medical facilities, law enforcement officers, prosecutors, defense attorneys, courts, and other applicable criminal justice agencies are responsible for providing advocates access to facilities to fulfill a survivor's right to consult with an advocate;
- Survivors are entitled to receive written notice of benefits under the Crime Victim Compensation Program;
- Upon presenting at a medical facility for treatment related to an assault or when reporting to law enforcement, survivors have the right to receive a referral to an accredited community sexual assault program or, in the case of a minor, to be connected to services in accordance with that county's child sexual abuse investigation protocol, including referral to a children's advocacy center;
- The right to timely notification as to investigation status;
- The right to be informed regarding expected and appropriate time frames for receiving responses regarding inquiries to the status of the investigation and any related prosecution, and to receive responses in a manner consistent with those time frames;
- The right to access interpreter services where necessary to facilitate communication throughout the investigatory process and prosecution of the survivor's case; and
- Where the sexual assault survivor is a minor, the right to have the prosecutor consider and discuss the survivor's requests for remote video testimony, and the right to have the

court consider requests from the prosecutor for safeguarding the survivor's feelings of security and safety in the courtroom.<sup>227</sup>

These safeguards acknowledge the need to ensure that victims are treated respectfully throughout the process. The amendments regarding notice of rights and case status are of particular importance given that stakeholders report that the timeframes related to investigating and processing the cases through the judicial system can create additional hurdles to seeking justice.<sup>228</sup> This is an area where additional focus and data-collection, or a work group as the cited article suggests, could help inform how to improve and expedite the process.

## V. Immigrant Women

Research shows that immigrant women are particularly vulnerable and experience higher rates of domestic and sexual violence compared to U.S.-born women.<sup>229</sup> Although there are no statistics correlating the prevalence of gender-based violence to specific immigration statuses, studies do demonstrate that immigration from one country to another may exacerbate abuse. For example, one study reported that 48% of Latina immigrants reported an increase in their partner's violence against them after they immigrated to the United States.<sup>230</sup> These immigrant women experience barriers that increase their vulnerability including lack of familiarity with their legal rights, potential misinformation about the U.S. legal system, lack of access to service providers, and language-barrier issues.<sup>231</sup> Among this female population, adolescents and girls

<sup>227</sup> LAWS OF 221, ch. 118.

<sup>228</sup> See e.g., Jesse Franklin, *Prioritize Sexual-Assault Victims in Court Backlog*, SEATTLE TIMES (May 21, 2021), <https://www.seattletimes.com/opinion/prioritize-sexual-assault-victims/>.

<sup>229</sup> *SART Toolkit Section 6.12*, NAT'L SEXUAL VIOLENCE RES. CTR., <https://www.nsvrc.org/sarts/toolkit/6-12>. According to a review of 147,902 intimate partner homicides from 2003 to 2013 across 19 U.S. states, foreign-born victims were more likely than U.S.-born victims to be associated with intimate partner violence-related deaths. Bushra Sabri et al., *Intimate Partner Homicides in the United States, 2003-2013: A Comparison of Immigrants and Nonimmigrant Victims*, 36 J. INTERPERSONAL VIOLENCE 4735, 4735 (2018). In addition, foreign-born women killed by their intimate partners were more likely than U.S.-born women to be married, young, and killed by a young partner who strangled, suffocated, or stabbed them. *Id.* at 4736.

<sup>230</sup> See ELIZABETH MARSH DAS ET. AL., FAM. VIOLENCE PREVENTION FUND, UNDERSTANDING CHILDREN, IMMIGRATION, AND FAMILY VIOLENCE: A NATIONAL EXAMINATION OF THE ISSUES 3 (2005), <https://brycs.org/wp-content/uploads/2018/09/immigrationDV.pdf>.

<sup>231</sup> *SART Toolkit Section 6.12*, NAT'L SEXUAL VIOLENCE RES. CTR., <https://www.nsvrc.org/sarts/toolkit/6-12>.



who are undocumented or have temporary legal status are disproportionately prevented from reporting domestic and sexual abuse to officials.<sup>232</sup> These female victims are fearful of deportation if they report.<sup>233</sup>

Immigrant women with undocumented or lawful nonimmigrant<sup>234</sup> statuses are particularly reluctant to report domestic violence because they are often dependent on their partner for petitioning or changing their immigration status.<sup>235</sup> Orloff & Cajudo note that “[t]he rate of abuse is highest when U.S. citizen men marry immigrant women (59.5 percent) – three times the national average.”<sup>236</sup> Many abusive partners threaten to notify authorities of their female partner’s immigration status to prevent her from leaving the relationship.<sup>237</sup> This history, in addition to increased immigration enforcement in certain areas, has contributed to misunderstandings and fear regarding reporting.

Many of these women also are low-income and depend on their partner for financial resources related to changing immigration status.<sup>238</sup> Moreover, when language barriers exist between

<sup>232</sup> See generally AMUEDO-DORANTES & ARENAS-ARROYO, *supra* note 97; *SART Toolkit Section 6.12*, NAT’L SEXUAL VIOLENCE RES. CTR., <https://www.nsvrc.org/sarts/toolkit/6-12>; Michelle R. Decker et al., *Sexual Violence Against Adolescent Girls: Influences of Immigration and Acculturation*, 13 VIOLENCE AGAINST WOMEN 498 (2007); SCOTT H. DECKER ET AL., IMMIGRATION AND LOCAL POLICING: RESULTS FROM A NATIONAL SURVEY OF LAW ENFORCEMENT EXECUTIVES (2002), [https://www.policefoundation.org/wp-content/uploads/2015/06/Appendix-G\\_0.pdf](https://www.policefoundation.org/wp-content/uploads/2015/06/Appendix-G_0.pdf); Leslye E. Orloff & Janice V. Kaguyutan, *Offering a Helping Hand: Legal Projections for Battered Immigrant Women: A History of Legislative Responses*, 10 AM. U. J. GENDER, SOC. POL’Y & L. 95 (2002)

<sup>233</sup> See generally AMUEDO-DORANTES & ARENAS-ARROYO, note 97, at 12, 17–18, 23; *SART Toolkit Section 6.12*, NAT’L SEXUAL VIOLENCE RES. CTR., <https://www.nsvrc.org/sarts/toolkit/6-12>; DECKER ET AL., *supra* note 232; Orloff & Kaguyutan, *supra* note 232.

<sup>234</sup> Lawful nonimmigrant status is for individuals who are admitted to the United States for a specified period of time, such as for temporary work or for education purposes. *Glossary*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/tools/glossary>.

<sup>235</sup> *SART Toolkit Section 6.12*, NAT’L SEXUAL VIOLENCE RES. CTR., <https://www.nsvrc.org/sarts/toolkit/6-12>.

<sup>236</sup> Letter from Leslye E. Orloff & Tarja Cajudo, Nat’l Immigrant Women’s Advoc. Project, Am. U., Wash. Coll. of L., to Susan L. Carlson, Clerk, Wash. State Sup. Ct., (Sept. 15, 2017), [https://www.courts.wa.gov/court\\_Rules/proposed/2017May/ER413/Leslye%20Orloff.pdf](https://www.courts.wa.gov/court_Rules/proposed/2017May/ER413/Leslye%20Orloff.pdf) (outlining the authors’ endorsement of Washington’s proposed evidence Rule 413).

<sup>237</sup> See generally AMUEDO-DORANTES & ARENAS-ARROYO, *supra* note 97; *SART Toolkit Section 6.12*, NAT’L SEXUAL VIOLENCE RES. CTR., <https://www.nsvrc.org/sarts/toolkit/6-12>; JESSICA MINDLIN ET AL., NAT’L IMMIGRANT WOMEN’S ADVOC. PROJECT (2013), <https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/CULT-Man-Ch1-DyanimcsSexualAssaultImplications-07.10.13.pdf>.

<sup>238</sup> AMUEDO-DORANTES & ARENAS-ARROYO, *supra* note 97, at 6. See generally Edna Erez et al., *Intersections of Immigration and Domestic Violence: Voices of Battered Immigrant Women*, 4 FEMINIST CRIMINOLOGY 32 (2009); <sup>238</sup> Robert C. Davis et al., *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12 CRIMINAL JUST. POL’Y REV. 183, 186 (2001); Orloff & Kaguyutan, *supra* note 232.

victims and the authorities that the victims must report to, victims run the risk of relying on their abuser to interpret, which can result in the abuser distorting the facts and result in the victim getting arrested.<sup>239</sup> This points to the importance of language services in courtrooms and reducing the barriers many immigrant women experience when requesting court protection orders. See “Chapter 2: Communication and Language as a Gendered Barrier to Accessing the Courts” for more information on this topic.

It is also important to note that many immigrants are influenced by the justice system in their country of origin, and there are sometimes additional cultural elements where women may be ostracized by their communities if they leave their husbands.<sup>240</sup>

A coalition of seven national organizations sent a survey to victim advocates and attorneys to investigate immigrants’ fear of reporting domestic and sexual violence to authorities. The coalition received 575 completed surveys from victim advocates who work with survivors of domestic violence across the United States. Of these advocates, 52% “reported that those survivors dropped their civil or criminal case because they were fearful.”<sup>241</sup> The survey results do not provide a breakdown of responses by state. The results also do not provide specifics on gender identity. However, the results do include that immigrant women frequently withdraw their court case rather than separate from their family out of fear of deportation.<sup>242</sup> Moreover, 75% of those advocates surveyed said that immigrant survivors are concerned about going to court for domestic or sexual violence cases because of the abuser’s immigration status (particularly if the abuser is a U.S. citizen). This also relates to family court proceedings regarding child support.<sup>243</sup> See “Chapter 7: Gender Impact in Family Law Proceedings” for further discussion of the impacts of immigration status in family law cases.

<sup>239</sup> *Domestic Violence Bench Guide for Judicial Officers*, WASH. STATE SUP. CT. GENDER & JUST. COMM’N (2016), [https://www.courts.wa.gov/content/manuals/domViol/Complete percent20Manual percent202015.pdf](https://www.courts.wa.gov/content/manuals/domViol/Complete%20Manual%202015.pdf).

<sup>240</sup> See Davis et al., *supra* note 238; Orloff & Kaguyutan, *supra* note 232.

<sup>241</sup> TAHIRIH, IMMIGRANT SURVIVORS FEAR REPORTING VIOLENCE (2019), <https://www.tahirih.org/wp-content/uploads/2019/06/2019-Advocate-Survey-Final.pdf>.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

## VI. Violence Against Indigenous Women and Girls

Violence has been perpetrated against Indigenous women for centuries. Abigail Echo-Hawk, Director of the Urban Indian Health Institute (UIHI) and Chief Research Officer for the Seattle Indian Health Board, described this history in the preface to the UIHI report “MMIWG: We Demand More:”

Missing and murdered Indigenous women and girls (MMIWG) is not a new crisis in the United States. This continuous and pervasive assault on our matriarchs has existed since colonizers set foot on this land. Decades of advocacy and activism fell on deaf ears, while more and more of our women went missing and were murdered. And while their families sought justice, they were shown at every turn by police and government agencies that Indian women and girls don’t count.<sup>244</sup>

The U.S. Department of Justice has found that 84.3% of Native women have experienced violence.<sup>245</sup> According to the research, 56% of Native women have experienced sexual violence and 85% of lesbian, bi-sexual and Two Spirit<sup>246</sup> Native individuals have experienced sexual violence.<sup>247</sup> It is reported that 97% of women victims experienced violence by an interracial perpetrator.<sup>248</sup>

### A. Missing and Murdered Indigenous Women and Girls (MMIWG)

According to the Centers for Disease Control and Prevention, Indigenous women are murdered at significantly higher rates than women of other races.<sup>249</sup> There is a need for better data collection on the number of MMIWG. For example, in 2016 the National Crime Information

<sup>244</sup> URB. INDIAN HEALTH INST., MMIWG: WE DEMAND MORE, <https://www.uihi.org/resources/mmiwg-we-demand-more/>.

<sup>245</sup> *Id.*

<sup>246</sup> “Traditionally, Native American two spirit people were male, female, and sometimes intersexed individuals who combined activities of both men and women with traits unique to their status as two spirit people. In most tribes, they were considered neither men nor women; they occupied a distinct, alternative gender status.” *Two-Spirit*, Indian Health Serv., <https://www.ihs.gov/lgbt/health/twospirit/>.

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66 MMWR MORBIDITY & MORTALITY WKLY. REP. 741 (2017).

Center reported 5,712 missing American Indian and Alaska Native women and girls, whereas NamUs, the United States Department of Justice’s federal missing persons database, only reported 116 cases.<sup>250</sup> In a 2018 report, the UIHI, a division of the Seattle Indian Health Board, found that while 71% of Indigenous women live in urban areas, only 506 cases of MMIWG were identified in 71 cities from 1900-2018.<sup>251</sup> Reasons cited for the lack of quality data include “underreporting, racial misclassification, poor relationships between law enforcement and American Indian and Alaska Native communities, poor record-keeping protocols, institutional racism in the media, and a lack of substantive relationships between journalists and American Indian and Alaska Native Communities.”<sup>252</sup>

Recognizing the lack of a comprehensive data collection system and the need for the criminal justice system to better serve Native American women, in 2018, the Washington State Legislature passed Substitute House Bill [2951](#). This legislation directed the Washington State Patrol to conduct a study “to determine how to increase state criminal justice protective and investigative resources for reporting and identifying missing Native American women in the state” and to submit a report to the Legislature by June 1, 2019.<sup>253</sup>

In its report, the Washington State Patrol reported 56 missing Native American women in Washington State based on National Crime Information Center statistics.<sup>254</sup> It also identified the following barriers to collaboration between tribes, urban communities and law enforcement that have led to undercounting of MMIWG: inconsistency in reporting methods; cultural misunderstanding and distrust; lack of focused, easily accessible resources; and communication

<sup>250</sup> See *NamUs: Missing Persons Search*, U.S. DEP’T OF JUST., NAT’L CRIME INFO. CTR. (2018), <https://www.namus.gov/MissingPersons/Search>.

<sup>251</sup> URB. INDIAN HEALTH INST., *MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS: A SNAPSHOT OF DATA FROM 71 URBAN CITIES IN THE UNITED STATES* (2018), <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

<sup>252</sup> *Id.*

<sup>253</sup> LAWS OF 2018, ch. 101.

<sup>254</sup> CAPTAIN MONICA ALEXANDER, WASHINGTON STATE PATROL, *MISSING & MURDERED NATIVE AMERICAN WOMEN REPORT* (2019), [http://www.wsp.wa.gov/wp-content/uploads/2019/06/WSP\\_2951-SHB-Report.pdf](http://www.wsp.wa.gov/wp-content/uploads/2019/06/WSP_2951-SHB-Report.pdf).

missteps.<sup>255</sup> The Washington State Patrol report further recommended the study and development of a centralized database.<sup>256</sup>

In 2019, but prior to the release of the Washington State Patrol’s report, the Legislature passed Second Substituted House Bill [1713](#), which established two liaison positions within the Washington State Patrol for the purpose of improving law enforcement response to missing and murdered Native American women.<sup>257</sup> The Eastern Washington position was on hold due to a COVID-19-related hiring freeze, but was finally filled in late 2020.<sup>258</sup> In addition to building relationships between the government and Native communities, pursuant to this legislation, the Washington State Patrol is also required to develop a best practices protocol for law enforcement response to missing persons reports for Indigenous people.<sup>259</sup>

In September 2019, the UIHI issued a response to the Washington State Patrol’s report entitled “MMIWG: We Demand More,”<sup>260</sup> stating that “the [WSP] report is an imprecise recounting of the ten meetings held with tribal nations and community members across the state with no meaningful or scientifically based analysis of the knowledge shared in those meetings.”<sup>261</sup> It also cited a lack of meaningful analysis of quantitative data related to MMIWG.<sup>262</sup>

The UIHI response highlights the disparate rate of missing women in Washington State by race<sup>263</sup> as well as a high prevalence of racial misclassification of cases which is likely leading to an underestimate of the rate among American Indian/Alaska Native women. It also includes a qualitative analysis of the notes from the meetings convened by the Washington State Patrol and identifies the following themes that arose in the meetings: lack of proper data collection; no

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> LAWS OF 2019, ch. 127.

<sup>258</sup> *WSP Welcomes Eastern Washington Tribal Liaison*, GORGE COUNTRY MEDIA (Nov. 25, 2020), <https://gorgenewscenter.com/2020/11/25/wsp-welcomes-eastern-washington-tribal-liaison/>.

<sup>259</sup> *Id.*

<sup>260</sup> URB. INDIAN HEALTH INST., *supra* note 244.

<sup>261</sup> *Id.* at 5.

<sup>262</sup> *Id.*

<sup>263</sup> Estimated 78.64 per 100,000 American Indian/Alaska Native women missing in 2018 compared to 18.56 per 100,000 white women. Notably the rate for African American women is also disparity high at 78.37 per 100,000. *Id.* at 12.

centralized resources for law enforcement, families, and tribes; lack of coordination between jurisdictions; and human trafficking.

The analysis also includes the most commonly mentioned barriers to addressing this crisis experienced by urban and rural tribal communities. The most often cited barriers were data (e.g., lack of data sharing across jurisdictions, racial misclassification, and misuse of data), and bias among law enforcement. The report provides ten community-defined solutions with the solutions most frequently mentioned at meetings including: collaboration between law enforcement, government, and community; training for law enforcement on aspects such as the missing person process, human emotions, and Native American culture; respect for the government-to-government relationship; and increased community resources.<sup>264</sup>

This issue continues to receive much-needed attention on a statewide and national level, including in mainstream media. In 2019, Rosalie Fish, a member of the Cowlitz Tribe and a senior at Muckleshoot Tribal School made national headlines when she painted a red handprint over her mouth, the fingers extending across her cheeks to honor the lives of missing and murdered Indigenous women.<sup>265</sup> At the Washington State 1B track and field championships, Fish also painted on her right leg the letters “MMIW,” standing for Missing and Murdered Indigenous Women. As a member of the Cowlitz Indian Tribe, raising awareness for the issue was as natural as running. “I do like to think in native communities, the women are especially strong in the way they voice themselves,” said Fish. “I do see a little bit of hope ... I think that the MMIW movement is getting more attention than it has in the past.”<sup>266</sup> In her four events, Fish won one silver and three gold medals.

Additionally, in the fall of 2020, the U.S. Department of Justice appointed David J. Rogers, a Nez Perce citizen and former Nez Perce police chief, as the federal Missing and Murdered Indigenous Persons program coordinator in Washington State.<sup>267</sup> “As coordinator, Rogers will work with

<sup>264</sup> *Id.*

<sup>265</sup> Megan Rowe, *Leaving her Mark: Native High Schooler Uses State Track Meet to Raise Awareness for Missing and Murdered Women*, SPOKESMAN REV. (May 30, 2019), <https://www.spokesman.com/stories/2019/may/30/leaving-her-mark-native-high-schooler-uses-state-t/>.

<sup>266</sup> *Id.*

<sup>267</sup> See Donald W. Meyers, *Feds Hire Coordinator for Missing, Murdered Indigenous Cases in Washington State*, YAKIMA HERALD (May 5, 2021), [https://www.yakimaherald.com/special\\_projects/vanished/solutions/feds-hire-](https://www.yakimaherald.com/special_projects/vanished/solutions/feds-hire-)

federal, tribal, state and local law enforcement agencies to develop procedures for responding to cases of missing and murdered indigenous people.”<sup>268</sup> Washington is one of eleven states for which a coordinator was hired as part of this initiative.<sup>269</sup>

In May 2021, the Washington State Attorney general also announced the creation of a task force “to assess causes behind the high rate of disappearances and murders of Indigenous women.”<sup>270</sup> The 21-member task force, which will include tribes and tribal organizations and policymakers among its members, will report its findings in two reports to the governor and Legislature in August 2022 and June 2023.

## B. Child Welfare

The removal of Indigenous children from their families and communities can have devastating impacts on both the individual and the community. For example, according to a 2009 study conducted in Australia, “Indigenous women (with children) who had been removed from their natural family during childhood were at higher risk of experiencing violence as adults than those who had not been removed.”<sup>271</sup> Other research from Canada shows that two-thirds of women involved in street prostitution in Winnipeg [Manitoba, Canada] had been taken into care as children.<sup>272</sup>

In 1978, Congress enacted the Indian Child Welfare Act (ICWA) “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect

[coordinator-for-missing-murdered-indigenous-cases-in-washington-state/article\\_71a855cf-469a-58c0-b4d3-5a13ed827818.html](https://www.yakimaherald.com/thevanished/state-task-force-will-assess-causes-behind-crisis-of-missing-murdered-indigenous-women/article_1fbaa8e1-c63c-5be2-a4ee-58b3f268f59e.html).

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *State Task Force Will Assess Causes Behind Crisis of Missing, Murdered Indigenous Women*, YAKIMA HERALD (June 12, 2021), [https://www.yakimaherald.com/thevanished/state-task-force-will-assess-causes-behind-crisis-of-missing-murdered-indigenous-women/article\\_1fbaa8e1-c63c-5be2-a4ee-58b3f268f59e.html](https://www.yakimaherald.com/thevanished/state-task-force-will-assess-causes-behind-crisis-of-missing-murdered-indigenous-women/article_1fbaa8e1-c63c-5be2-a4ee-58b3f268f59e.html).

<sup>271</sup> Kyllie Cripps et al., *Victims of Violence Among Indigenous Mothers Living with Dependent Children*. 191 MED. J. AUSTRAL. 481 (2009).

<sup>272</sup> Anette Sikka, *Trafficking of Aboriginal Women and Girls in Canada*, 57 ABORIGINAL POL’Y RSCH. CONSORTIUM INT’L 201 (2009).

the unique values of Indian culture.”<sup>273</sup> Washington’s Indian Child Welfare Act codified in chapter 13.38 RCW was passed with the intent to commit to:

...protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.

ICWA courts can play a role in improving outcomes for Indigenous children and families.<sup>274</sup>

### C. Enforcement of protection orders issued by Tribal Courts

The interrelation between federal, state, and tribal court jurisdictions is complex. “Tribal governments are hampered by a complex set of laws and regulations created by the federal government that make it difficult, if not impossible, to respond to sexual assault in an effective manner.”<sup>275</sup>

Both state and federal law require that any protection order issued by the court of a state or of an Indian tribe be accorded full faith and credit and enforced by the court of another state or Indian tribe.<sup>276</sup> Moreover, in August 2018, the Washington State Attorney General’s Office issued

<sup>273</sup> 25 U.S.C. § 1901 et seq.

<sup>274</sup> It is also anticipated that the Administrative Office of the Courts will develop an ICWA bench card in 2022 to assist Washington State court judges regarding ICWA requirements of the Washington and federal statutes.

<sup>275</sup> *Maze of Injustice*, AMNESTY INT’L (Aug. 8, 2011), <https://www.amnestyusa.org/reports/maze-of-injustice/>.

<sup>276</sup> 18 U.S.C. § 2265; RCW 26.52.



an opinion concluding that “[f]ederal law requires that any protection order issued by the court of a state or Indian tribe be accorded full faith and credit and enforced by the court of another state or Indian tribe,” and that “[r]egistration of the order in a state court is not a prerequisite to enforcement.”<sup>277</sup>

However, difficulties with communication and information-sharing between state and Tribal courts can result in enforcement issues. This resulted in changes to Civil Rule (CR) 82.5 in 2019, to give “a framework to allow both state and tribal courts an efficient process to resolve jurisdictional issues and conflicts in orders to get to the substance of the disputes.”<sup>278</sup> Additionally, with the passage of E2SHB 1320 (previously discussed in sections III.C., IV.D, and VI.C of this report), the Washington State Legislature mandated further discussion and recommendations regarding information sharing between state and Tribal courts.<sup>279</sup>

## VII. Education for Justice System Professionals

Due to the emphasis in the 1989 Study on recommendations related to education for judges, prosecutors, and law enforcement, it is incumbent upon us to provide a summary of domestic and sexual violence-related training opportunities and requirements for these stakeholders, as well as other stakeholders such as advocates, interpreters, court administrators, and more. As one can see from this summary, there are many education opportunities available, including several mandatory introductory education requirements; however, there is no mandatory continuing education requirement specific to domestic or sexual violence.

<sup>277</sup> AGO 2018 No. 5, <https://www.atg.wa.gov/ago-opinions/state-obligation-enforce-protection-orders-issued-courts-other-states-or-tribal-courts>.

<sup>278</sup> *CR 82.5 – Tribal Court Jurisdiction*, WASH. CTS., [https://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.proposedRuleDisplay&ruleId=2700](https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=2700).

<sup>279</sup> LAWS OF 2021, ch. 215, § 36(1)(e).

## A. Education for Judicial Officers

In addition to required domestic violence training at Judicial College for all newly appointed or elected judicial officers, the following educational programming related to domestic violence has been provided for judicial officers at state judicial conferences during the past ten years:

- What's New with Domestic Violence Intervention Treatment? (2021)
- Black Women Victims of Intimate Partner Violence: Addressing the Challenges (2021)
- Implementing Changes in Weapons Surrender Laws in Your Jurisdiction (2020)
- Evidence Issues in Domestic Violence Trials: *Crawford* and Beyond (2019)
- Sexual Harassment Liability and Enforcement in the Age of #MeToo (2019)
- Neurobiology of Trauma in the Courtroom (2019)
- The Crisis of Missing and Murdered Indigenous Women and Girls (2019)
- Reducing Gun Violence by Upholding Protection Order Related Firearm Laws (2019)
- Missing and Murdered Indigenous Women and Girls (2019)
- New Models for DV Treatment (2019)
- Understanding the Impact of Trauma (2018)
- Civil Protection Orders (2018)
- Understanding Technological Misuse in Domestic Violence Cases (2017, 2018)
- The Impact of Domestic Violence on Children (2017)
- In the News...(Protection Orders and Procedural Justice) (2017)
- Washington's Children: A Judicial Response to Sex Trafficking (2017)
- Developments and Challenges in the Commitment of Sexually Violent Predators (2017)
- Beyond Recidivism: A Safer Family, A Safer Community (2016)
- Forfeiture of Firearms Rights (2016)
- Strangulation: All Things Lethal, Medical, and Legal (2015)
- Firearms & HB 1840 (2015)
- Battle within the Courts...Abusive Litigation Tactics in DV Civil Cases (2015)
- Domestic Violence Hot Topics and Court Appointed Special Advocates (CASAs) (2015)
- How Language Helps Shape Our Response to Sexual Violence (2015)

- Domestic Violence: Working With Diverse Populations (2015)
- Human Trafficking: How Do These Cases Come to Court and How Should Judges Respond? (2015)
- Sexual Violence in Intimate Partner Relationships (2015)
- Adverse Childhood Experiences and Judicial Practice (2014)
- Nonconsensual Pornography (aka Revenge Porn) (2014)
- Violence Against Women’s Act in Indian Country (2014)
- Complicated and Conflicting Protection Orders: All in a Day’s Work (2013)
- Domestic Violence Batterers (2013)
- Sexual Assault & Protection Orders (2013)
- Trauma and Compassion Fatigue (2013)
- Cyberspace: A Stalker’s New Playground (2010)
- Science of Domestic Violence (2010)

The Washington State Supreme Court Gender and Justice Commission has also sponsored roundtables and workshops on domestic and sexual violence, and has created comprehensive bench guides on these topics for judicial officers, including:

- [The Domestic Violence Manual for Judges](#)
- [Sexual Violence Bench Guide](#)
- [The DV Criminal Trial Bench Guide](#)
- [Education for Prosecuting Attorneys](#)

The Washington Association of Prosecuting Attorneys (WAPA), in conjunction with the King County Prosecuting Attorney’s Domestic Violence Unit, has developed a [Prosecutors’ Domestic Violence Handbook](#), and oversees statewide education programming and sponsors conferences in the fall and spring. Domestic and sexual violence-related educational programming sponsored by WAPA during the past ten years includes:

- When Your Victim Is an Immigrant: U-Visas and ER 413 (2019)
- Evidentiary Issues Unique to Domestic Violence Cases (2019)
- Cyber Stalking and Intimate Images (2019)

- Dynamics of Domestic Violence (2019)
- U-Visas & RCW 7.98 (2019)
- Victim Rights, Protecting Victim Privacy, and How to Keep Victims on Board (2018)
- Working with DV Survivors (2018)
- Evidence: Hearsay, Confrontation Clause & 911 Tapes, *Smith* Declarations & Absentee DV Victims (2018)
- Vulnerable Victims & Witnesses (2017)
- Violations of No Contact Orders & Harassment via Social Media (2016)
- Domestic Violence Case Preparation (2015)
- U-Visas (2013)
- Jury Selection in Violence Against Women Cases (2013)
- Domestic Violence Manual and Treatment Efficacy Update (2013)
- Protective Orders (2013)
- Strangulation and Smothering – Medical Proof (2013)
- 404(b) after *Gresham* and Forfeiture by Wrongdoing (2013)
- Voir Dire: Strategies for DUI and Domestic Violence (2012)
- Domestic Violence: Full Faith & Credit, Plead & Prove, Firearms (2012)
- Understanding Victims’ Rights: RCW 7.69.030 (2012)
- Victims’ Rights: Historical Perspective and Future Outlook (2012)
- Protection Orders: The Ins and Outs (2012)
- Victim Awareness (2012)
- Working With Victims (2011)
- U-Visas (2011)
- Using Technology to Serve Victims (2011)

Additionally, there are local and national workshops that many Washington prosecutors have the opportunity to attend. Currently, there is no statewide requirement that prosecutors undergo training related to domestic and sexual violence; education specific to these topics is up to the individual prosecutors’ offices.

## B. Education for law enforcement

Domestic and Sexual Violence are taught as part of the mandatory Basic Law Enforcement Academy (BLEA) through the Washington State Criminal Justice Training Center (WSCJTC).<sup>280</sup> Following BLEA graduation, the WSCJTC offers continuing education and training through their programs and instructors and also through outside instructors. WSCJTC has a page that lists available training and any criminal justice agency can advertise trainings they are hosting regionally through WSCJTC's site.<sup>281</sup>

State law requires that every Washington State Peace Officer obtain a minimum of 24 hours continuing education every year.<sup>282</sup> This is often referred to as Police Skills Refresher (PSR) Training. The WSCJTC audits each agency every year for PSR compliance. PSR training is not standardized, but many agencies include refresher training in DV law, Human Trafficking, and/or Sexual Violence.

Pursuant to ESHB 1109 passed by the Washington State Legislature in 2021, the Criminal Justice Training Commission is required to conduct an annual case review program to review sexual assault investigations and prosecutions, for which one of the purposes is improving training.<sup>283</sup>

## C. Multi-disciplinary education/additional stakeholders

- Domestic Violence Symposium: Since 2009, there has been an annual multi-disciplinary training exclusively on domestic violence issues.
- Children's Justice Conference: This conference is the largest welfare-related conference in the Pacific Northwest. While open to all, the attendees are typically involved with assessment, investigation, and prosecution of child abuse and neglect cases. The trainings focus on basic and advanced training and skill development in the identification, investigation, and prosecution of child maltreatment, including domestic and sexual violence.

<sup>280</sup> *WSCJTC Curriculum*, WASH. STATE CRIM. JUST. TRAINING COMM'N, <https://www.cjtc.wa.gov/resources/curricula>.

<sup>281</sup> *Training & Education*, WASH. STATE CRIM. JUST. TRAINING COMM'N, <https://www.cjtc.wa.gov/training-education/Courses/all/>.

<sup>282</sup> WAC 139-05-300.

<sup>283</sup> LAWS OF 2021, ch. 118.

- Domestic Violence Advocates: The required training for Domestic Violence Advocates is set out in WAC 388-61A-1080. It mandates that Domestic Violence Advocates receive at least 20 hours of initial training, which includes theory and implementation of empowerment-based advocacy; the history of the domestic violence movement; active listening skills; legal, medical, social service, and systems advocacy; anti-oppression and cultural competency theory and practice; confidentiality and ethics; safety planning; crisis intervention; working with culturally specific populations; and the policies and procedures of the domestic violence program.<sup>284</sup> This provision further requires that this training be undertaken before working with clients or their children.<sup>285</sup> Additionally, those staff providing supportive services to clients, engaged in prevention work, or who are in a supervisory role, are required to complete 20 hours of continuing training on an annual basis.<sup>286</sup>
- Sexual Assault Advocates: Staff employed at a Community Sexual Assault Program are required to undergo 30 hours of initial core sexual abuse/assault training and a minimum of 12 hours of ongoing training each year that meets the training certification requirements of the Washington Coalition of Sexual Assault Programs (WCSAP).<sup>287</sup>
- Domestic Violence Intervention Treatment Providers: In July 2020, Harborview Abuse & Trauma Center<sup>288</sup> developed a Cognitive Based Therapy manual for domestic violence intervention providers, along with an accompanying training and exercises.
- There have also been sexual assault and domestic violence trainings sponsored by the Gender and Justice Commission for court administrators, courthouse facilitators, attorneys, interpreters, and advocates.

<sup>284</sup> WAC 388-61A-1080(1).

<sup>285</sup> WAC 388-61A-1080(2).

<sup>286</sup> WAC 388-61A-1080(5)-(8).

<sup>287</sup> See *Training*, WASH. COAL. OF SEXUAL ASSAULT PROGRAMS, <https://www.wcsap.org/training/approval/>.

<sup>288</sup> Previously called Harborview Center for Sexual Assault and Traumatic Stress (<https://depts.washington.edu/uwhatc/about-us/hatc-history/>).

## VIII. Conclusion

In the time after the 1989 Study was published, the legislative, executive, and judicial branches have undertaken dedicated efforts to address domestic and sexual violence in Washington. Unfortunately, despite this attention and the improvements made, high levels of domestic and sexual violence persist now, over 30 years later. These high rates of violence are amplified as we write this report in the midst of the COVID-19 pandemic.<sup>289</sup> Proposed recommendations to support and strengthen previous efforts are outlined in the recommendations section below.

## IX. Recommendations

- In order to improve access to the courts for litigants in cases involving gender-based violence, the Washington State Legislature should allocate increased funding to the Office of Civil Legal Aid for more civil legal aid attorneys who can assist victims of domestic and sexual violence with their legal issues. Although Washington State has enacted laws that provide protections to victims of domestic and sexual violence, legal assistance is needed to enforce them.
- Stakeholders, including the District and Municipal Court Judges Association (DMCJA) and Superior Court Judges Association (SCJA), in coordination with AOC, should review the HB 1320 work group's future recommendations<sup>290</sup> and develop a model guidance memo to implement them.
- Given that the evaluation of Domestic Violence Moral Reconciliation Therapy (DV-MRT) showed it to be a promising practice in reducing domestic violence recidivism, and that litigants bear significantly lower costs to participate in the program, more courts in Washington State should consider implementing court-based DV-MRT programs.

<sup>289</sup> Refer to Appendix I of this chapter for information obtained from victim advocacy organizations related to increased reports of domestic violence in the first quarter of 2020.

<sup>290</sup> This work group will be convened by the Washington State Supreme Court Gender and Justice Commission, with its report due to the courts by July 1, 2022.

- The Gender and Justice Commission should support the Tribal State Court Consortium’s efforts regarding a judicial branch response to the pervasive problem of Missing and Murdered Indigenous Women and People and enforcement of Tribal Court protection orders.
- To monitor the efficacy of laws and regulations that combat gender-based violence and to identify gaps in protection, statewide data on the following topics should be collected: the barriers to enforcement of firearms surrender orders; the efficacy of domestic violence perpetrator treatment (in light of our pilot project report on the value of DV-MRT treatment); the prevalence and consequences of sexual assault in prison – especially for understudied populations; the prevalence and consequences of coercion for sex and sexual assault in the workplace – especially for female workers in the farm labor, service, and related low-paying industries; and data on the investigation and processing of sexual violence cases, including time from the alleged assault to filing, to resolution via the court process, and the reasons for any delays. This work will require legislative funding.
  - One component of this data collection could be development of a statewide online dashboard where law enforcement reports its data, as it already does pursuant to the Safety and Access for Immigrant Victims Act (2018) and pursuant to SHB 1501 (2017) to track denied firearm transactions.
  - Requirements for the data could include the following: (1) data collected should include disaggregated demographic information, including gender information that goes beyond the male-female binary, and (2) that non-confidential data and information about the process should be transparent and available to the public to promote system accountability.
- The Legislature should fund Washington-specific primary research to evaluate the current requirement for mandatory arrest in domestic violence cases, including research regarding the impact on women; Black, Indigenous, and other people of color; immigrants; those living in poverty; and LGBTQ+ people.
- In light of the findings about the disparate impact of gender-based violence on women, Black, Indigenous, and people of color, immigrants, those living in poverty, and LGBTQ+



people and the continuing barriers to their access to justice, the Gender and Justice Commission should partner with stakeholders and experts to suggest modifications to judicial branch education on gender-based violence for judges, law enforcement, attorneys, and others working on such cases.

## Appendix I.

### **From WSCADV**

*Provided by Kelly Starr, Public Affairs*

#### **Increased Violence**

Seattle Police Department reported an increase in domestic violence calls by [21% in March](#). Domestic violence programs across our state do not have quantitative stats to share with us at this point, but anecdotally we are hearing a variety of responses. Some programs report many contacts from survivors in their communities who need a range of services, including from those that had left an abusive situation only to now be facing economic hardship (such as being laid off from their job) as a result of COVID-19. There's the very real concern that folks are facing the untenable choice of returning to an abusive partner or becoming homeless. Other programs are reporting a decrease in calls, noting that survivors trapped at home with an abuser cannot safely call for help.

#### **Racially Disproportionate Impacts**

Latinx people are 13% of the state population but make up [31% of the COVID-19 cases](#). Yakima County has over 1,000 cases (King County has about 6,000). Infection rates among African Americans and Native Americans are almost double the size of their populations in Washington. These rates reflect health inequality, and substandard working and housing conditions. Domestic violence programs serving these communities note that survivors lack access to basics – like running water – for health precautions in fruit packing and farm labor housing.

### **From Spokane Regional Domestic Violence Coalition**

*Provided by Annie Murphey, Executive Director*

Spokane Regional Domestic Violence Coalition includes participants from the entire spectrum related to the issues of domestic violence: law enforcement, judicial officers, prosecution, defense counsel, victim-serving agencies, child-serving agencies, perpetrator treatment providers, prevention programs, healthcare, etc. As soon as school closures in Washington were announced mid-March due to COVID-19 there was significant concern from all of our child-serving organizations who respond to domestic violence and child abuse issues.

We quickly called a meeting and met with Spokane Regional Health District to issue a press release, and then worked to implement region-wide resource distribution. We know 1 in 3 women and 1 in 7 men in Spokane County are victims of Domestic Violence. We have approximately 4,000 confirmed victims each year but upwards of 14,000 potential victims based off 911 DV calls to law enforcement. The potential impacts of weeks of isolation, children out of contact with safe childcare and mandatory reporters are momentous.

We are now weeks into the Stay Home, Stay Healthy order and we know calls to law enforcement, medical cases brought to hospitals, as well as calls to victim service agencies are all down in comparison to last year. We do not believe that this means abuse is not occurring. We believe it is happening and people do not have the means to safely report and access services. Additionally, those cases that are being reported, however, are ones of significant

abuse of children and teens who have the ability to use their own voices and seek their own services.

In this current environment, stressors like financial strain, unemployment, food scarcity, and housing instability are all realities. These are also the same risk factors for abuse, neglect, and violence. And in addition to these stressors, parents and caregivers also have the responsibility to help educate their children and provide constant supervision. Families are facing unprecedented stress during this time, and inequities that were present before are now being exacerbated. If you are a parent who is considered “essential” or whose job is necessary to keep our society going, you may have already have had to make tough decisions on childcare options. The constant stress also puts all persons at risk for mental health and substance abuse issues, in efforts to cope. Again, these risk factors can affect domestic violence and child abuse and we have examples here locally that show those results. Additionally, there is much data around ACES and the impact of children not only experiencing abuse, but also WITNESSING abuse at home. Schools and childcare facilities not only provide a break for parents, but they also can be the only safe place for a child and put them in touch with a caring, consistent adult which promotes their own resilience.

In Spokane, we have had homicides as well as significant child abuse cases seen in the media as a result of parents leaving children in the care of persons they thought they could trust. Recently, Spokane has been recognized as having the highest rates of domestic violence in Washington State. As a result, the SRDVC collaborated with media, business and community partners for a large awareness campaign, ‘End the Violence.’ which included creating a documentary which aired on all major networks simultaneously on September 30, 2019; it had billboards, print materials, commercials, TV, Radio, and Print media stories which continue to run. Please visit [www.endtheviolencespokane.org](http://www.endtheviolencespokane.org) to see our documentary and resources.

Spokane Regional Domestic Violence Coalition has a focus on prevention and education using a coordinated community response model. Our efforts are to reduce the catastrophic impacts of violence (specifically as we see them cyclically and systemically play out among children and families) in our community. We will achieve this through exploring and developing domestic violence prevention strategies such as our widescale resource distribution during the COVID-19 pandemic. During this time, we were able to successfully support printing and distribution of 35,000 domestic violence and child abuse resources in lunches and meal distributions across Spokane County. Additionally, we partnered with the City of Spokane and Spokane Police Department to distribute 85,000 fliers with utility bills for the month of May inside the City of Spokane.

We must be preventative and strategic in how we address domestic violence, along with child abuse and neglect. By getting paper resources directly into people’s hands, inside of people’s homes we decrease some of the barriers of knowing where or how to look for resources during this time, as well as knowing what is still open. All of our victim service agencies, as well as 911, also has texting abilities. Many involved with SRDVC believe we will see our local domestic violence and child abuse reports rise as we move through the re-opening phases. We need to

start planning now for what this will look like for both child and adult survivors and continue to advocate for our most vulnerable.

### **In the News...COVID-19 and Domestic Violence**

1. Seattle Police Department reported an increase in domestic violence calls by [21% in March](#).
2. [Police data shows domestic violence has not gone up because of quarantine](#)
3. [Domestic Violence Calls Mount as Restrictions Linger: 'No One Can Leave'](#)
4. [A Double Pandemic: Domestic Violence in the Age of COVID-19](#)
5. [Is Domestic Violence Rising During the Coronavirus Shutdown? Here's What the Data Shows](#).
6. [It's hard to flee from your domestic abuser during a coronavirus lockdown](#)
7. [An increasing risk of family violence during the Covid-19 pandemic: Strengthening community collaborations to save lives](#)
8. [Why the Increase in Domestic Violence During COVID-19?](#)