



Statewide Sexual Assault Training for Advocates

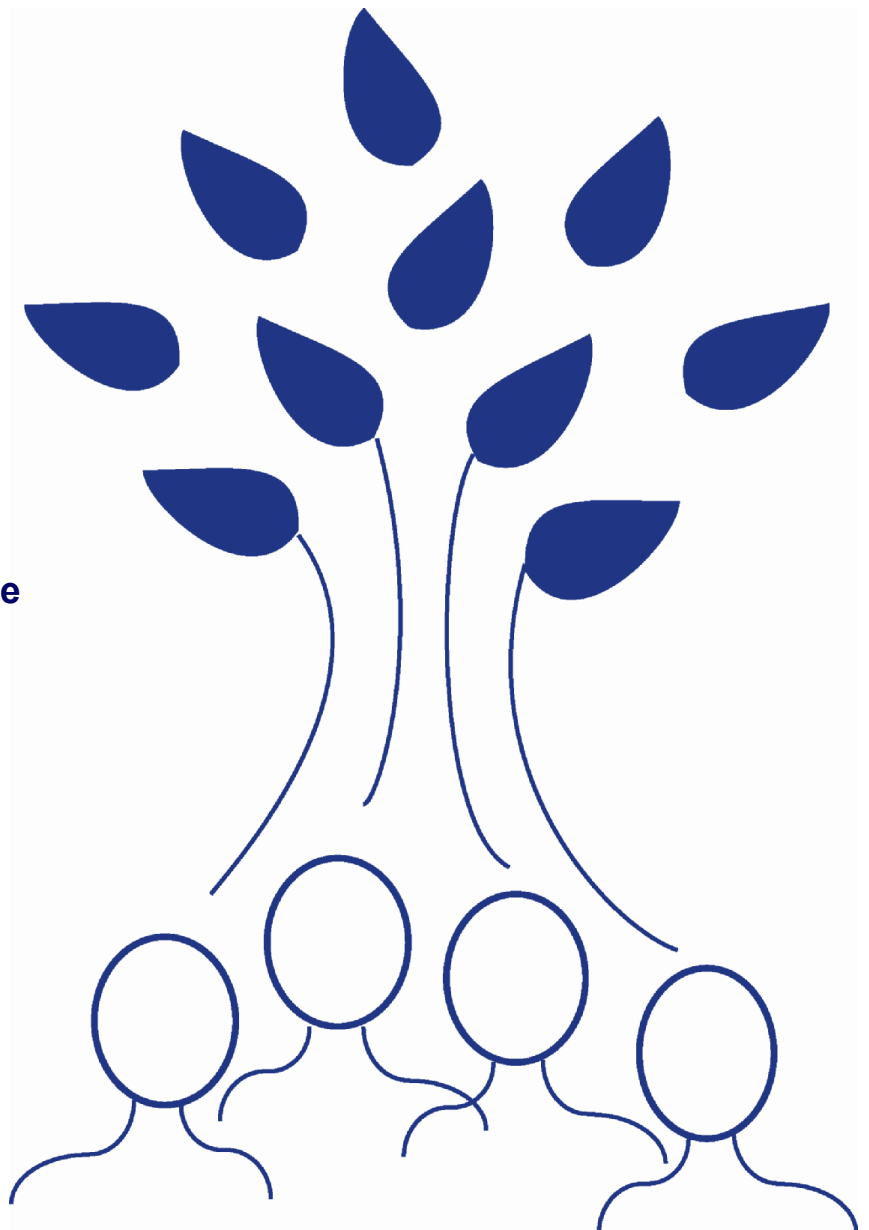
Sexual Assault: Providing Core Services

October 22-26, 2012 — Salem, Oregon

Advocacy Manual

Sexual Assault Training Institute Advocate Instructors:

Amy Davidson
Caroline Holmes
Kim Larson
Lisa Norton
Dara Pearson



This training made possible with funding from the Oregon Department of Justice, Crime Victims' Services Division

2012 ADVOCACY MANUAL

Table of Contents

Introduction	iii
Sexual Assault Dynamics.....	1
Cultural Competency	8
How to Support Victims	20
Victim Blaming.....	27
Victim Impact	31
Medical Response Advocacy	39
Criminal Justice System.....	47
Crime Victims' Rights	62
Sex Offender Registration and Notification	89
Sexual Offenders.....	93
Civil Legal Remedies.....	97
Adolescent Sexual Assault	117
LGBTIQ Survivors of Sexual Assault	123
Native American Victims of Sexual Assault	151
People with Disabilities	154
Sexual Harassment.....	160
Prevention	167
Sustainable Advocacy.....	191

APPENDICES

Genital Photography as an Adjunct to the Sexual Assault Medical Forensic Examination (Position Paper)

Mandatory Abuse Reporting and Confidentiality: Considerations for Advocates (Position Paper)

MANUAL INTRODUCTION

Introduction

The Sexual Assault Advocate Manual is intended for use by advocates and other service providers as a general resource on sexual assault advocacy and as a specific resource on Oregon laws, rights and remedies specific to sexual assault. This manual is not intended as a resource for victims and survivors of sexual assault, and it is not recommended that chapters in the advocate manual be used as informational handouts for victims and survivors. Rather, the intent of the manual is to provide up-to-date information and resources that will enable advocates and other service providers to assist victims and survivors in the best possible way. Thus, the information may be presented in such a way as to not be appropriate for direct dissemination to victims and survivors.

About the Language in the Advocate Manual

Throughout most of the advocate manual the term “victim” is used as short-hand to denote an individual who has been a victim of sexual assault. It is always important, however, for advocates to keep in mind and communicate that a person is not, and should not be, solely defined by the experience of being sexually assaulted. Being the victim of sexual assault is an experience, not an identity. Additionally, the term “victim” (rather than “survivor”) is purposefully used to convey the always unwanted and sometimes criminal nature of sexual assault. Victims of sexual assault do not choose to be assaulted and, in fact, are sexually assaulted against their will and their wishes. While most individuals who are sexually assaulted survive the assault, they are nonetheless victims of unwanted and non-consensual sexual acts. The use of the term “victim” reminds us of the presence of an offender who chose to commit an act of violence against another person, whereas the term “survivor” creates a distance from the actual act and often removes the offender from our awareness. When the term “survivor” is used in the manual it is meant to acknowledge and denote the healing and recovery process of victims.

Although the advocate manual does not frequently use male and female pronouns, when pronouns are used, “she” is used to denote a victim of sexual assault and “he” is used to denote a sexual offender. The intent of this manual is to analyze and describe the broader context in which sexual violence occurs. While sexual assault can be perpetrated by both women and men against female and male victims, the majority of sexual assault victims are women and the majority of sexual offenders are men. This is documented in victim surveys as well as disclosures and reporting to advocacy agencies, medical facilities and law enforcement agencies. Moreover, most if not all girls and women experience some level of sexual assault and/or harassment throughout their lifetimes, while most boys and men do not.¹

In addition to considering sexual violence an action of choice made by the perpetrator and a violation of the victim’s human rights, this advocate manual conceptualizes the perpetration of sexual violence, in addition to other forms of “gendered

¹ 11% of total sexual assault victims are male, 89% are female. 1999 National Crime Victimization Survey (NCVS), U.S. Department of Justice, Bureau of Justice Statistics, 2000.

MANUAL INTRODUCTION

violence,” such as domestic violence, as manifestations of *oppression*. In this context, oppression can be defined as systematic social forces that justify, normalize and support the marginalization and mistreatment of people belonging to certain social identities, for the purpose of exploiting them for the dominant group’s benefit. It is important to note that oppression, like identity, is multifaceted and experienced uniquely by each individual, based upon the individual’s life experiences and how the various aspects of the individual’s identity (race/ethnicity, socioeconomic status, gender, sexual orientation, age, ability status, etc.) intersect. Throughout this manual, intersecting identities and corresponding oppression will be discussed primarily in the context of how they relate to sexual assault victimization, response, and prevention, with the awareness that oppression is also the root cause of a much broader range of effects throughout society.

As previously mentioned, the majority of victims and perpetrators of sexual assault are women and men respectively. Taking into consideration historic and ongoing social inequalities along gender lines, this exemplifies how sexual violence is used to maintain superior or dominant status by men over women—sexism. This is reflected in society at large in that sexual violence is considered a “women’s issue” and is not something the vast majority of men identify with personally.² Sexual violence is also used to oppress individuals who do not conform to dominant gender roles, which define what is appropriate for men and appropriate for women. Dominant gender roles, in part, enforce men’s entitlement to sex. If we ignore the gendered nature of this crime, we lose the complexity of why sexual violence occurs. (For more information, see the Sexual Assault Dynamics chapter).

This analysis is in no way intended to minimize the real harm and trauma suffered by boys and men at the hands of male and female sexual offenders. Sexual assault is painful, harmful and traumatic for all victims. In individual practice, advocates should always keep in mind the specific experience of each victim and use appropriate language and pronouns that reflects an individual’s experience (for more information see the Cultural Competency chapter).

Additionally, the terms rape, sexual assault and sexual violence are used throughout the manual. Sexual assault and sexual violence are meant to convey the range of sexually assaultive and violent behaviors that can begin with behaviors such as “cat calls,” exposing, frottage (intentional “accidental” touching for sexual stimulation and gratification) and escalate to rape and other crimes.

² Rus Ervin Funk, “Reaching Men: Strategies for Preventing Sexist Attitudes, Behaviors, and Violence,” Indianapolis, IN: JIST Life (2006).

SEXUAL ASSAULT DYNAMICS

Sexual Assault Dynamics

Overview

While most of society agrees that sexual assault is a threat to public safety, debate continues over what constitutes rape and sexual violence. The dynamics of sexual assault are influenced by the context in which sexual assault occurs and how that has been and continues to be shaped by history, culture and popular culture, religion and individual beliefs. An examination of sexual assault dynamics is paramount to understanding our individual, systemic, and societal responses to sexual assault; it is how we come to define what does and does not constitute rape and sexual assault.

Much money and time has been spent on the question of why sexual assault occurs, and why it is so prevalent. To begin to understand the causes of sexual assault, it is important to have a sense of the historical context. Rape was originally a property crime in the U.S. and Europe. If a woman was raped and an assailant was identified, the assailant would have to pay restitution to the father or husband of the victim for damaging his property. Although women are no longer considered property in our contemporary legal system, the impact of this early law can be seen in our current laws and socio-cultural values. For instance, it was not until 1993 that all fifty U.S. States eliminated their marital rape exemption laws. Prior to 1979, all U.S. states had an exemption for marital rape, arguably a legal reflection of the status of women in society and of the historical understanding of marriage as a property contract that eliminated individual autonomy and the need for consent. Similar to domestic violence and child abuse, sexual assault and rape have largely been viewed as private, women's issues that should not be talked about or made public.

What has remained consistent for many decades is the focus on the behavior, actions and choices of victims of sexual assault rather than those of offenders or the broader societal context in which sexual assault occurs. A focus on the victim is arguably rooted in the belief that if the victim had not made a particular choice, engaged in a particular activity or acted in a particular way she would not have been sexually assaulted. In short, this is a belief that the victim is responsible, even in part, for the sexual assault. The message is clear: we can avoid being assaulted ourselves if we avoid making the same bad choices that victims have made.

Meanwhile, offenders continue committing acts of sexual assault with little fear of consequence. For some offenders, there is no afterthought at all; for others, sexual assault feeds their sexual fantasies. Many offenders never experience consequences of any kind. Victims, on the other hand, will *always* suffer the consequences of sexual assault. Victims experience financial consequences in the form of low work productivity or missed time, health consequences in the form of substance abuse or depression, and social consequences in the form of broken relationships, fear, trauma and a changed worldview.

SEXUAL ASSAULT DYNAMICS

Defining Sexual Assault

Sexual assault is any nonconsensual sexual act. A sexual act is nonconsensual if it is inflicted upon a person unable to grant consent OR is unwanted and compelled through the use of physical force, manipulation, coercion, threats, or intimidation.

Offenders

Who are sexual offenders and what characterizes them? This is a straightforward question with complex answers. Offenders are grouped and classified by experts into many different categories and subcategories. For the purpose of supporting and advocating for victims, however, typologies may not be relevant. A more frequent question that many victims ask is “why” — why did he rape me and what was the motivation?

Individuals who commit sexual assault are motivated by many different things. Rape and sexual assault have long been defined as a crime of power and control. While power and control can be a motivation for sexual offending, the motivations for rape and sexual assault are more complex than power and control alone. Sexual gratification alone is also not a motivation for sexual assault; however, it is a component of the motivation, because without the desire for sexual gratification, we might expect to see power and control represented in other ways. Motivations for offending can also include:

- Arousal — arousal to children, arousal to pain, arousal to fear/terror, arousal to shame and humiliation, arousal to power/dominance/control, etc.
- Entitlement — a sense of entitlement to sexual gratification, a sense of entitlement to have what they want when they want it, a sense of entitlement that their needs and wants are more important than someone else’s, etc.
- Sexism and gender roles— are rooted in a belief that women have and/or should have less status, autonomy and access because of their inherent differences and inferiority to men. Gender roles can be seen as a means for justifying women’s subordinate status to men, maintaining that women be limited to specific work, functions and roles most commonly associated with care-taking and serving. Gender roles can also be a factor when an individual’s gender identity or expression does not reflect dominant ideals and characteristics of femininity (for women) or masculinity (for men).

This is by no means an exhaustive list of what may motivate sex offenders; however, it begins to provide perspective on the question of “why” by outlining the thinking errors or justifications that are common among those who commit sexual assault.

It is also important to keep in mind that offenders choose their victims based on their ability to successfully commit the assault, not necessarily what the general population considers “sexy” or sexually arousing. It has been estimated that 83% of women with a disability will be sexually assaulted in their lifetime,¹ while 25% of college women have

¹ Stimpson, L. & Best, M. Courage “Above All: Sexual Assault Against Women with Disabilities.” DisAbled Women’s Network: Toronto. 1991.

SEXUAL ASSAULT DYNAMICS

been victims of rape or attempted rape.² If we realize that what is necessary to commit a sexual assault is an *offender*, the rest becomes clear. If there were no offenders, every person at risk or who engages in “risky behavior” would be safe. For instance, most people identify hitchhiking as a very high risk behavior; indeed a common reaction to hitchhikers who have been raped is “What did you expect?” However, what if it were *you* that picked up that hitchhiker? Would you have committed a rape? The answer, of course, is *no*, and that is because you are not a sex offender.

To really understand the dynamics of sexual assault is to understand that **it is offenders and their behaviors** (not victims OR their behaviors) **that cause sexual assault to exist**. It is the lack of understanding or acceptance of this fact by our society that allows sexual assault to flourish.

Victims

Victims of sexual assault can be anyone. However, victims are most often selected by offenders based on the offender’s perception that he will be able to successfully sexually assault the other person and that the victim will not report, or if the victim does report, she will not be believed. Offenders most often select individuals who they perceive as accessible, or can be made so, vulnerable, or can be made so, and lacking in credibility, or can be made to seem so.

ACCESSIBLE: (or can be made to be so)

A victim is accessible when an offender perceives her or him as attainable by proximity and/or as easily approached, coerced or influenced. In each of our lives we are accessible to any number of people whether it is at work, school, home, or social events. Accessibility can also be created by the perpetrator. For example, someone who is an offender of adolescents might choose to become a volunteer coach, a tutor, a youth group leader at church or work in an outreach program for homeless teens, which will provide a tremendous amount of access to adolescents and will likely grant a certain amount of trust and respect.

VULNERABLE: (or can be made to be so)

For our purposes, vulnerability is any way in which someone may not have the full force or volition of her or his mind or body or perceived or tangible limitations in individual options and choices. For example, an elderly woman in a retirement home may be accessible to all of the staff who works at the retirement home as well as vulnerable because she has limited strength and mobility. She may not have the ability to fight off an attack, call out for help, or find other housing. She may be considered vulnerable by a predator because of her age and need for long-term and permanent care.

² Fisher, B., Cullen, F., and Turner, M. “The sexual victimization of college women: Findings from two national-level studies.” National Institute of Justice and Bureau of Justice Statistics: Washington, DC, 2000.

SEXUAL ASSAULT DYNAMICS

LACKING IN CREDIBILITY: (or can be made to seem so)

In our society there are individuals who are considered trustworthy and credible and individuals whom we are more likely to distrust and not consider credible. The pastor of a church is likely to have credibility by virtue of her or his profession. A prostitute, on the other hand, is someone who may be inherently distrusted by virtue of her or his profession. People with a criminal history or history of substance abuse are likely to be considered as lacking in credibility. Individuals who have communication impairments or poor grammar and speech may also be perceived as lacking in credibility.

Individuals who are perceived as vulnerable, accessible and having the least credibility are those who are most often sexually assaulted. Further, while sexual assault is not exclusive to people from any background, the effects of systemic oppression can influence who is more vulnerable and perceived as lacking credibility. For example, a lesbian woman of color may be perceived as less likely to report a sexual assault to the authorities than a heterosexual white woman, due to fears of not being believed or encountering racism and homophobia in the criminal justice system. In part, this contributes to higher victimization rates among people who are members of non-dominant identity groups. Offenders use accessibility and vulnerability to successfully carry out their crimes and *count on* the victim's lack of credibility to ensure that they will get away with their actions (For more information see the chapters on Adolescents, Native Americans, LGBTIQ, and People with Disabilities).

Who are some of the most accessible, vulnerable and perceived as lacking in credibility in our society?

- Women, especially women of color
- Children
- Adolescents
- People with developmental disabilities
- People with communication impairments
- People who have a mental illness
- ANY person dependent upon another for care
- ANY institutionalized or incarcerated person
- Non-English speaking people
- People who are undocumented
- People who are poor, especially the homeless
- People on the fringe of crime
- Low-wage workers
- People with physical disabilities
- People who are drunk or on drugs
- Sexual minorities
- People with non-dominant gender identity and/or expression
- People of color/racial minorities

At any given time, victims may experience several of the identities listed above; some identities may be permanent while others can change throughout one's lifetime.

SEXUAL ASSAULT DYNAMICS

However, it is important to note that while multiple identities may be experienced simultaneously, the effects of experiencing both a dominant and non-dominant identity do not necessarily “cancel out” the “amount” of oppression one may face. It may be more helpful to conceptualize a person’s whole identity as a rope, with each intertwined strand representing an aspect (race/ethnicity, age, socioeconomic status, gender, sexual orientation, etc). Each strand contributes to the whole of a person’s identity and experience, but no single strand negates the effects of the others.

Victim Reporting

Sexual Assault is the most under-reported crime in the United States.³ Offenders who select victims based on vulnerability, accessibility and lack of credibility are selecting victims that they not only believe they will be able to sexually assault but also victims who will not report. Between 1992 and 2000, an average of 31 percent of attempted and completed rapes were reported. When victims of rape, attempted rape, and sexual assault did not report the crime to the police, the most often cited reason was that the victimization was a personal matter (personal matter, 23.3%; fear of reprisal, 16.3%; police biased, 5.8%). The belief that sexual assault is a personal matter is deeply rooted in our socio-cultural beliefs about sexual assault and can be used to further silence victims.⁴

The likelihood of a prior relationship between victim and offender can also misconstrue sexual assault as a “personal matter.” The closer the relationship is between the victim and the offender, the greater the likelihood that the police will not be notified about the sexual assault. One study by the department of Justice indicates that when the offender is a current or former husband or boyfriend, 75% of sexual assaults are not reported. When the offender is a friend or acquaintance, 82% of sexual assaults are not reported. However, when the offender was a stranger, only 34% of sexual assaults were not reported to the police.⁵

Victims who do decide to report may be blamed by responders (law enforcement, prosecutors, medical professionals, etc.), the community, the media, and their family or support system (see “Victim Blaming” chapter). In particular, with court cases that have media attention, victim blaming has a stifling affect on a victim’s willingness to ask for assistance or to report the assault. In the Kobe Bryant case, for example, the victim was accused of mental illness, promiscuity, and “gold digging” in both the media and in the court room. Robert Laurino, the Essex County, NJ prosecutor who prosecuted the rape of a mentally-impaired 17-year old Glen Ridge girl by a group of popular high school athletes, has said that the airing of this information and accusations “... has a chilling effect

³ Dr. Dean G. Kilpatrick, Christine N. Edmunds, and Anne Seymour. *Rape in America: A Report to the Nation*. Arlington, VA: National Center for Victims of Crime, 1992.

⁴ National Crime Victimization Survey, 1992–2000, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2001, available at webapp.icpsr.umich.edu/cocoon/ICPSR-STUDY/03140.xml.

⁵ Callie Marie Rennison, Ph.D., “Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000.” Washington, DC: Bureau of Justice Statistics, Department of Justice, August 2002.

SEXUAL ASSAULT DYNAMICS

on rape victims coming forth.”⁶ As victim advocates, it is your job to believe victims and to support them with whatever choice they make, whether it is to report or not.

Sexual Assault vs. Healthy Sexuality

It is important to understand how the behaviors that are part of sexual assault and healthy sexuality can compare and contrast. The behaviors that may be part of a sexual assault may be some of the same behaviors that are part of healthy sexuality, such as touching, kissing, fondling, and sexual intercourse. We have to remember that sexual assault is *not* “sex gone bad” but that it is different from healthy sexuality *altogether*. The difference is simply one of mutuality. In a sexual assault, there is no consent and no care or concern for the other person. On the other hand, healthy sexuality is defined by consent and by care and concern for the other person.

It may be confusing to victims, as well as to people to whom victims disclose, when some of the sexual behaviors that occurred prior to the assault were consensual and mutual. Our culture often supports the belief that once consent is given or any level of consensual intimacy is initiated, consent has then been given for future or further sexual activity. In particular, a common misconception is that once you get a man excited, he cannot stop. However, it is important to keep in mind that healthy sexuality is not “all or nothing.” For most individuals who are sexually active, sexual intimacy includes a range of mutual behaviors that sometimes leads to intercourse and other times may not.

In addition to the differences in mutuality and consent noted above, sexual assault begins with *victim selection*. Once we come to understand that victims are chosen because they are perceived as accessible, vulnerable and lacking in credibility, we also know that victim selection is intentional and purposeful.

Healthy Sexuality

Healthy sexuality is fundamentally based on all sexual intimacy being both mutual and consensual. That is, the persons who are involved want to participate (the intimacy is consensual) and are actively participating (the intimacy is mutual). In fact, within the context of healthy sexuality, sexual arousal is derived from the participation, interest, excitement and pleasure of each other. Of course, there are many other sexually intimate behaviors and activities that individuals can engage in on the continuum of healthy sexuality. The point is, whatever the behavior or activity, all involved parties are actively consenting, and the intimacy is mutual. The moment that one person decides he or she is no longer willing or interested in continuing or engaging in more sexual intimacy, the sexual intimacy stops. It stops because the involved parties have concern and respect for one another and are not engaging in sexual intimacy solely for their own needs and interests.

⁶ Elaine D'Aurizio. “Kobe Bryant rape case seen having a chilling effect -- Some fear fewer women will report assaults.” *The Record* (Bergen County, NJ), June 15, 2004.

SEXUAL ASSAULT DYNAMICS

Sexual Assault

Sexual assault is by definition any nonconsensual sexual act where one person is acting upon his or her own interests, wants, and needs without care or concern for the other person. That is, the non-verbal and/or verbal cues denying consent are ignored and a choice is made to continue the progression of sexual activity or sexual behaviors without the participation of the other person. Thinking errors based on entitlement, gender roles, and a host of other socio-cultural factors are routinely used to justify the choice of sexual assault and to create doubt regarding the issue of consent.

Conclusion

The dynamics of sexual assault are influenced and informed by history, socio-cultural values, culture and individual beliefs and can therefore vary depending on the setting. Sexual assault does not occur in a vacuum; the thinking errors and justifications of offenders are informed by society just as the responses and options are perceived by victims. Victims may very well embrace the same thinking errors as offenders, such as believing that drinking or using drugs is a risky behavior that can result in rape or that engaging in sexual intimacy gets men so excited that they cannot stop. These responses contribute to victim self-blame after an assault as well as to victims who do not recognize that what happened to them was rape—both situations can lead to the victim choosing not to report or disclose the assault. Victims are confronted by their own doubts as much as that of responders, the community, and friends and family. A victim advocate may be one of only a few people who support, validate and believe victims unconditionally.

CULTURAL COMPETENCY

Cultural Competency¹

What is Cultural Competency?

Within the context of sexual assault advocacy, cultural competency can be described as the ability to plan and the skill to provide a response that is consistent, specific, appropriate and useful to the unique needs of **each victim** and her/his family. The advocacy response will take into consideration how race, ethnicity, religion, gender identity, sexual orientation, ability, cognitive functioning, age, socioeconomic status and sex may color both victims' and advocates' experiences, in order to appropriately tailor the advocacy services and response. Additionally, as we work to increase our cultural competency, our understanding of the relationship between oppression and the causes and responses to sexual violence will increase accordingly.

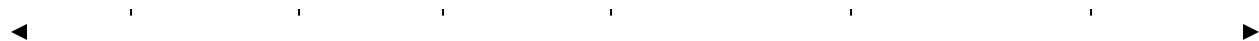
Cultural competency is a continuous developmental process for both the individual and the agency. The sheer magnitude of diversity that exists in the world, in the United States, in Oregon, and in our own communities makes cultural competency a skill in which growth is always necessary and possible.

What is Involved in Becoming Culturally Competent?

The Nonprofit Association of Oregon (NAO), located in Portland, has identified the **attitudes, policies and practices** of an agency as three areas in which development can and must occur in order to gain cultural competence. The NAO further suggests that:

- Attitudes can change to become less ethnocentric and biased;
- Policies can change to become more flexible and culturally impartial; and
- Practices can become more congruent with the culture of the client from initial contact through completion.

In order to establish a starting point for cultural competency development and work, it may be helpful to look at the following continuum and identify where your agency is located.



Destructiveness Incapacity Blindness Pre-Competence Basic Competence Adv.Competence

¹Materials from Cross, Terry, et. al., *Towards a Culturally Competent System of Care, With the Assistance of the Portland Research and Training Center for Improved Services to Severely Emotionally Handicapped Children and Their Families*, Washington, D.C. CASSP Technical Assistance Center, Georgetown University Development Center, Washington D.C., 1989.

Saldana, D. *Cultural Competency: A Practical Guide for Mental Health Service Providers*, Hogg Foundation for Mental Health, The University of Texas at Austin Austin, TX, 2001.

National MultiCultural Institute, 3000 Connecticut Avenue NW, Suite 438, Washington, DC 20008-2556. Phone: 202-483-0700 Fax: 202-483-5233

Nonprofit Association of Oregon, 5100 SW Macadam Avenue, Ste. 360, Portland, Oregon 97239. Phone: 503.239.4001 Fax: 503.236.8313 Email: info@nonprofitoregontacs.org

CULTURAL COMPETENCY

Cultural Destructiveness

The most negative end of the continuum is represented by attitudes, policies and practices that are destructive to cultures and consequently to the individuals within the culture. The most extreme example of this orientation are programs that actively participate in cultural genocide — the purposeful destruction of culture.

Cultural Incapacity

The system or agencies do not intentionally seek to be culturally destructive but rather lack the capacity to help culturally specific clients or communities. The system remains extremely biased, believes in the superiority of the dominant group and assumes a paternal posture toward “lesser” minority groups. The characteristics of cultural incapacity include: discriminatory hiring practices, subtle messages to those from specific cultural groups that they are not valued or welcome, and generally lower expectations of culturally identified clients.

Cultural Blindness

The system and its agencies provide services with the express philosophy of being unbiased. They function with the belief that color or culture makes no difference and that we are all the same. Culturally blind agencies are characterized by the belief that helping approaches traditionally used by the dominant culture are universally applicable; if the system worked as it should, all people — regardless of race or culture — would be served with equal effectiveness.

Cultural Pre-Competence

This term implies movement. The pre-competent agency realizes its weaknesses in serving culturally specific populations and attempts to improve some aspect of their services to a specific population. Such agencies try experiments, hire minority staff, explore how to reach minorities in their service area, initiate training for their workers on cultural sensitivity, enter into needs assessments concerning minority communities, and recruit minority individuals for their boards of directors or advisory committees.

Pre-competent agencies are characterized by the desire to deliver quality services and a commitment to civil rights.

Basic Cultural Competence

Culturally competent agencies are characterized by acceptance and respect for difference, continuing self-assessment regarding culture, careful attention to the dynamics of difference, continuous expansion of cultural knowledge and resources, and a variety of adaptations to service models in order to better meet the needs of specific populations. The culturally competent agency works to hire unbiased employees, seeks advice and consultation from the culturally specific communities and actively decides what it is and is not capable of providing to specific clients.

CULTURAL COMPETENCY

Advanced Cultural Competence

The culturally proficient agency seeks to add to the knowledge base of culturally competent practice by conducting research, developing new therapeutic approaches based on culture and publishing and disseminating the results of demonstration projects. The culturally proficient agency hires a staff that specializes in culturally competent practice. Such an agency advocates for cultural competence throughout the system and improved relations between cultures throughout society.

Positive movement along this continuum requires that agencies respond to the many different levels, structures and facets of how an agency operates and implements policies and practices. Forward movement comes not only from the top down, but also from the bottom up. Agency administrators and board members support and model work toward cultural competence just as much as staff, volunteers and clients. As the attitudes, policies and practices change at each level of the agency structure, the agency will become increasingly culturally competent.

Victimization and Diversity

The National Institute of Justice conducted a survey of 319 victims' assistance programs based in law enforcement agencies and prosecutors offices in 1995 and found:

- 65% of the victims served were white;
- 22% were African American;
- 8% were Latino; and
- 5% were Asian, Native American and "other" ethnic groups.

As noted in the previous chapter entitled "Sexual Assault Dynamics," people of color, people with disabilities and non-English speaking people are victimized at a higher rate than their white, abled and English speaking counterparts. The Bureau of Justice's National Crime Victimization Survey² indicated the following:

- Asian and Native American women are more likely to be victims of rape than Caucasian or African-American women
- Women from lower income households are significantly more likely to be victims of rape and sexual assault than women from higher income levels.
- People with disabilities (physical and cognitive) comprise the single largest "minority" population (approximately 45 million).

² U.S. Department of Justice. National crime victimization study (NCVS), Washington, DC, 2005.

CULTURAL COMPETENCY

- Among people with developmental disabilities, as many as 83% of females and 32% of males are victims of sexual assault.³
- 79% of people with disabilities who have been sexually assaulted have been assaulted on more than one occasion.⁴
- Latinas report a higher rate of rape than Caucasian women (Tjaden & Thoennes, 2000. USDOJ)

Barriers to Effective Victim Assistance⁵

Individual Barriers

- Stereotyping
- Personal Biases
- Assumed Similarity
- Cross-Cultural Communication
- Language

Programmatic and Systemic Barriers

- Misinformation about Victim Service Providers
- Location of Victim Service Providers
- Victim Compensation
- Limited Resources
- Lack of Diversity on Program Staff
- Lack of staff training on diverse issues

Victim and Provider Belief System

- Distrust of the Criminal Justice System
- Fear of Deportation
- Loyalty to Own Cultural Group
- Shame and Taboo
- Expectations of Service Provider's Role
- Grieving and Healing Processes
- Conceptions of Privacy
- The Role of the Family

³ Stimson, L. & Best, M.D., "Courage Above All:" Sexual Assault Against Women with Disabilities. Toronto, Disabled Women's Network, Canada, 1991.

⁴ Sobsey, D. & Doe, T. "Patterns of Sexual Abuse and Assault." Sexuality and Disability, 9 (3), 1991: 243-259.

⁵ Adapted from materials developed by the National MultiCultural Institute, 1998.

CULTURAL COMPETENCY

Overcoming Barriers to Cultural Competency

Overcoming Individual Barriers to Cultural Competency

Stereotyping

People are not born with racist, sexist, ageist, anti-Semitic, homophobic or other oppressive attitudes and beliefs. People, through the process of development and socialization, learn information and misinformation about people who are different from themselves. Information and misinformation can come from both individual and structural/cultural sources, which can include:

- Parents
- Family
- Community
- Peers
- School
- Personal experience
- Media
- Popular culture
- Institutions
- Laws

▫ What are some examples of the information or misinformation that you have received from these sources?

Does one source of information factor in more greatly than the others?

Learned stereotypes and misinformation (as well as good information) can affect our **thoughts, feelings, and behaviors** towards other people. As a result, we may operate in certain situations with little awareness of where we got the information and why we believe the information. We may respond automatically to people who are different from us without thought or consideration. If our thoughts, feelings and behaviors have been informed by misinformation, our automatic response to someone who is different from ourselves could include hurtful and harmful stereotypes, which runs counter to our primary goal as advocates to provide consistent, compassionate and effective services for victims.

It is also important to recognize and deconstruct stereotypes because stereotyping and sexual violence are both means through which people from non-dominant identities experience oppression. Stereotypes and sexual violence disproportionately target people of non-dominant identities, objectify their victims' purpose of being, and rob them of power and agency. This is *not* to suggest that sustaining the trauma of sexual violence and the pain of enduring stereotypes are equivalent, but rather that they both inflict emotional harm in a similar fashion and share systemic oppression as their root cause.

As service providers, we have the responsibility of being accountable for our words and actions. Make a conscious decision to:

- Become more self-aware of mental filters and assumptions;
- Not act on stereotypes; and

CULTURAL COMPETENCY

- Actively seek new information and question assumptions. This can go a long way toward eliminating the harmful and negative effects of stereotyping.

Assumed Similarity

When an individual is part of the culture that dominates (in the United States: white, middle-class, heterosexual, Christian, able-bodied, cisgendered), it is easy to assume that others are the same. This assumption of similarity can occur without thought or awareness. Those who are identified as part of the dominant culture have the enormous privilege of very infrequently feeling out-of-place or having their behaviors and demeanor questioned. As a result, they may also have a tendency to assume that their experience in the world is the same for everyone else.

Cultural competency posits that this could not be further from the truth. People who are not a part of the dominant culture (e.g.: people of color, people with disabilities, people who do not identify as heterosexual, members of other marginalized populations) experience the world very differently. It is an important part of cultural competency development to recognize and transform these assumptions.

Consider the following statements to determine your personal comfort with cultural differences. *I get uncomfortable when someone:*

1. speaks a language other than English in the workplace.
2. speaks English with a (foreign) accent.
3. does not take initiative.
4. agrees with everything I say, even if she doesn't understand or agree with me.
5. constantly challenges me.
6. stands too close or too far away during conversation.
7. fails to acknowledge what I say or show understanding.
8. agrees with everything I say but does not follow my advice or instructions.
9. insists on bringing his or her entire extended family to appointments.
10. Who is a male answers for a female.
11. always asks questions or never asks questions.
12. is never on time for an appointment.
13. does not make eye contact.
14. cannot handle negative feedback.
15. addresses conflict situations head-on.
16. shies away from conflict.
17. speaks very softly or speaks loudly.
18. giggles and smiles at "inappropriate" times.
19. uses "inappropriate" humor.
20. is often silent.
21. does not answer questions directly.
22. refuses to discuss the crime.

CULTURAL COMPETENCY

Cross-Cultural Communication

70% of communication is non-verbal. This includes smiling, silence, gestures, nodding, eye contact, body language, touch and personal space. Physical context, whether or not someone uses a wheelchair or other aide, and circumstantial context, for example if someone is in a hospital bed or a police department, can also affect communication. Verbal language comes with a host of nuances that affect the significance and meaning of what we say. Accent, tempo, diction, slang, idioms, technical jargon, word choice and direct vs. indirect language are among the many ways that verbal language is influenced and modified.

Being cognizant and aware of both non-verbal and verbal communication is critical to cross-cultural communication. For example, a person who has had a stroke may speak slowly and with difficulty, however that does not mean that he or she has difficulty hearing or understanding. It can be a natural inclination, in a situation in which another person is struggling to communicate verbally, to speak slowly and loudly even if it is not appropriate or may even be offensive in response to specific individuals.

What are other examples in which interpretation of another person's communication could be misguided and potentially alienate or offend? What can we do to overcome this challenge?

A few suggestions to facilitate more effective cross-cultural communication:

- Be aware of stereotypes and preconceptions.
- Do not assume similarity.
- Avoid interpreting verbal and non-verbal communication using your own cultural filter.
- Be willing to ask questions and admit that you are unsure.
- Express a desire to do your best to communicate effectively, appropriately and with respect.

Language

Shared language is critical to effective communication. Although it is possible to express basic concepts, needs, or feelings with someone who does not share our language, it is a challenge to exchange more detailed information effectively. In situations where you do not share the same language with another person or where you share limited language with another person, it is recommended to use an interpreter in order to ensure accuracy and effectiveness and to protect the dignity of the other person.

Tips on using interpreters:

- Make sure the interpreter is appropriate in terms of culture, gender and age.
- Ensure that the selection of the interpreter maintains the victim's privacy and confidentiality.
- If at all possible, never use family members as interpreters.

CULTURAL COMPETENCY

Spend time with the interpreter first. Ask prospective interpreters several screening questions that are relevant to the situation (e.g., Do you have any relationship to the victim? Have you ever been a victim of a person crime? How do you think that experience or lack of experience might influence your ability to interpret for this situation?) If possible, use two interpreters to offset bias.

- Review interpreter roles/procedures and provide in-service training ahead of time.
- Speak in short, simple and jargon-free sentences, so interpretation is easier. Ask the same questions in different ways.
- Avoid colloquialisms, idioms, slang and similes.
- Encourage the interpreter to translate literally rather than paraphrase, although sometimes paraphrasing is necessary for cultural understanding.
- Look and speak directly to the victim, not the interpreter, even though the victim does not understand.
- Listen, even though you may not understand the language.
- Watch for non-verbal cues.
- Have the interpreter ask the victim to repeat the information communicated to see if there are any gaps in understanding.
- Using an interpreter is not easy for any of the parties involved. Be patient and take all the time that is needed.

Overcoming Programmatic and Systematic Barriers to Cultural Competency

Consider how the following things might impact your agency's ability to provide services and assistance in a culturally competent manner.

- Misinformation about Victim Services
Are people from historically underrepresented backgrounds in your community (e.g.: Latina women, women from other communities of color, recently immigrated women) aware of your program? Does your agency provide any culturally-specific services (e.g. support groups in multiple languages, etc.)? Does your agency have a collaborative working relationship with culturally specific providers in your community (e.g. Seniors and People with Disabilities, etc.)?
- Location of Victim Services
Is your agency accessible by bus? Is your agency accessible to people using wheelchairs or with limited mobility? Is your agency located in a central area where community members see who is coming and going?
- Victim Compensation
What limitations to Victim Compensation exist in your state? Do victims need to have a Social Security Number? Do victims need to prove residency or citizenship? Does your agency work to inform the community on the availability of Victim Compensation?

CULTURAL COMPETENCY

- Limited Resources

All agencies struggle with funding– the question is, does your agency make a priority of its existing (limited) funding to provide services to the diversity that exists within your community? To what degree is making services available and accessible to diverse populations a priority? To what degree is making culturally appropriate services available and accessible to diverse populations a priority?

- Lack of Diversity on Program Staff

Does the program staff at your agency reflect the diversity within your community? If not, how might that be possible? What attitudes, policies and practices need to be put in place or revised in order to make hiring a diverse staff possible?

These questions are intended to be used as a way of assessing your agency's current attitudes, policies and practices. Cultural competency is an ongoing process for both the individual and the agency. In order to gain some degree of proficiency in cultural competency, agencies need to be willing to honestly evaluate themselves. This self-assessment includes examining how resources are used, existing hiring practices, the degree to which cultural competency is a part of training, how all levels of the organization take responsibility for ensuring cultural competency among many other structural and policy issues.

Conclusion

Regardless of where you live and work, you will be confronted with issues of cultural competency. The most important factor in increasing your cultural competency is related to you and your agency's willingness to be open and responsive to the needs of your community. Ignorance is not bliss—it can be harmful, offensive and have a lasting impact on the safety, security and confidence of the community you serve. Cultural competency is an active and on-going process. Advocates play an important role in serving as role models of professional and cultural competence.

CASE STUDIES

The following case studies are provided as a resource to your agency as a mechanism to consider how you would or could best serve victims from a variety of circumstances and backgrounds.

Case Study #1:

Anna is a 45-year old woman with cerebral palsy. She uses a power wheelchair to get around. Anna lives in a house that she shares with her husband Larry, who attends to her health care needs.

After seeing your agency's ad on TV, Anna calls your crisis line to see if you can help her. She reports that Larry has called her stupid, ugly and worthless, saying she can't even "make him feel like a man." Anna says that when she and Larry first started dating, he

CULTURAL COMPETENCY

“made me feel like a woman” for the first time in her life. In the two years they have been married, Larry has forced her to cut off all ties with her friends and family, insisting that he is the only one she needs. He has frequently raped her, saying he could have sex with her any time he wanted as long as she is his wife.

Anna and Larry drank socially together when they were dating. Shortly after their marriage, Anna discovered him using cocaine and reports that he now also drinks to excess. When he comes home intoxicated from a night at the bar with his buddies, he picks fights with Anna that usually end with him throwing things at her. Sometimes he does not come home at all.

Anna, who is completely dependent on Larry for her health care needs, reports that she has spent many nights having to sleep in her wheelchair sitting in her own excrement. Larry also often neglects to feed her. Anna received a call from her doctor’s office yesterday and discovered that Larry has been regularly canceling her appointments. She did not tell the nurse about her situation out of fear of Larry’s anger and the prospect of being sent back to a nursing home.

Anna lived in a nursing home for twenty-two years where she was mistreated and abused. She is beginning to wonder if Larry has been writing to her family in Indiana saying that Anna is fine and the marriage is going well. Anna’s family was very upset with her when she married Larry so soon (six months) after leaving the nursing home.

When Anna calls, the crisis line worker at first assumes she is drunk and then becomes embarrassed because she then believes that Anna is developmentally disabled.

1. What barriers have prevented Anna from reporting the sexual assault and domestic violence that she is experiencing?
2. How could your agency help Anna?
3. If your agency cannot help Anna, what agency in your community can help her?
4. What services does this other agency provide?
5. What could be done, in advance, to prepare your agency to meet the needs of clients with cerebral palsy?

Case Study #2

Mi-ran, a 14 year old Korean student, is a victim of sexual assault. Mi-ran does not talk about the incident to her parents, but confides instead to a cousin who is a school teacher. She pleads with the cousin not to tell her parents as she is afraid that they will be angry with her and will disown her. The cousin convinces Mi-ran that she needs to file a police report. Mi-ran is afraid of what her parents and the rest of the community will say. She is intimidated about appearing in court and nervous about the entire process. Mi-ran’s cousin promises to be with her and help her.

Mi-ran’s parents hear about the incident only after charges are filed. The cousin reports that the parents are furious and accuse Mi-ran of being “loose” and of being “too

CULTURAL COMPETENCY

American.” “What can you expect when you wear tight, revealing clothes and go to parties late into the night? You have brought shame on the family. How will your sister ever get married now?” they shout at her.

The case finally goes to court, and Mi-ran is assigned a court interpreter. She watches as the interpreter and the perpetrator laugh and smoke together as they wait for the case to be tried. The prosecutor’s office seats Mi-ran’s family in front of the court room thinking that this will make her feel comfortable and that her family will be supportive of her. Instead, Mi-ran never looks at her family. She is evasive and shaky about the details of the incident and flinches each time the word “rape” or “sex” is used.

1. What barriers prevented Mi-ran from reporting the rape herself?
2. What could the prosecutor’s office have done differently?
3. What are the interpreter issues? What guidelines could be used to select an interpreter? What policies or ground rules could be established when using interpreters?
4. What could be done, in advance, to prepare your agency to respond to cases like Mi-ran’s?

Case Study #3

You are a member of the Sexual Assault Response Team and are asked to review a case involving a 14-year old Latina female, Rachel, who is reported to have been sexually assaulted by more than one offender. The offenders, it is reported, have a history of assault and the name and address of one of the other victims has been provided by Rachel’s mother, Mrs. Peralta.

You understand that Mrs. Peralta and her daughter waited two weeks before filing the report. Initially Mrs. Peralta told the officer that her daughter was being teased by these boys in the neighborhood. “It is so bad,” she said, “that my daughter has not slept for two weeks. I have asked her to forget about it, but she can’t. She cries and can’t do her school work.”

A week later, Mrs. Peralta and Rachel came back and said that the boys had “tried to force themselves on Rachel,” and had done the same thing to another 13-year old girl in the neighborhood. Upon further questioning, it is reported that Rachel and her mother filed a complaint of sexual assault.

The DA’s office has dismissed the case on the grounds that the original complaint was filed two weeks after the event, was later changed to sexual assault and because the other “victim” did not file a complaint and when approached, denied any such incident involving her.

The DA believes this is a case of “teasing” and “barrio rivalry.”

1. What factors may be preventing Mrs. Peralta and Rachel from reporting?

CULTURAL COMPETENCY

2. Do you think that race or gender play a role in the DA's decision? Why or why not?
3. What strategies could be used to help Mrs. Peralta articulate her story?
4. How might the DA's decision impact future reporting? What longer term strategies can be used to encourage reporting or overcome barriers to reporting in communities?

Case Study #4

Anthony is a 35-year-old Caucasian, gay, transgender male (non-operative, female-to-male) who has come to your agency for support and resources. A friend recommended that he come by, because he heard your agency was gay- and trans-friendly.

Last weekend, Anthony's boyfriend, Jesse, forced Anthony to have sex against his will. Jesse also threatened to sexually assault him with a broomstick. Since then, Anthony has been staying with a friend; he has no place else to go. Jesse has been waiting for Anthony outside of his apartment, place of work, and friends' houses. Anthony fears that his work will discriminate against him if they know about his transgender and gay identities.

The last time Anthony saw Jesse he was waiting outside his friend's house. Jesse grabbed Anthony and forced Anthony to kiss him. His friend ran outside and pushed Jesse away, yelling at him. This caused Jesse to leave, but Anthony fears he will find him again. Anthony has attempted to leave on several occasions prior to this past weekend, but each time Anthony left Jesse threatened to kill himself. Anthony's family is not supportive of his gender identity and doesn't want to have anything to do with his "homosexuality." Anthony says he doesn't know what to do or where to go.

1. What barriers may have prevented Anthony from reporting earlier?
2. What are the multiple needs that Anthony has that you as a victim advocate may address with him?
3. If your agency cannot help Anthony, what agency in your community can help him? What resources or allies do you know in your community for people who identify as lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ)?
4. What are the issues specific to transgender and gay survivors that you should address as a victim advocate? What policies and procedures does your agency have or what could be implemented to be more welcoming and supportive to LGBTQ survivors?

HOW TO SUPPORT VICTIMS/SURVIVORS

- *Compassion is not a relationship between the healer and the wounded. It's a relationship between equals. Only when we know our own darkness well can we be present with the darkness of others. Compassion becomes real when we recognize our shared humanity.*
—Pema Chödrön, *The Places That Scare You*, 2004

How to Support Victims/Survivors

The Role of the Advocate

Your role as an advocate includes providing support to victims of sexual assault who come to you for assistance or who are referred to you by another means. The advocate's role is to provide knowledgeable, compassionate and supportive intervention to the victim in an effort to mitigate the effects of the assault. Advocates also help victims navigate the criminal justice, civil legal, medical, and social services systems and work to ensure victim rights and dignity are respected and upheld by these systems. They provide information, education, and referral services. Advocates, above all other responders, are responsible for keeping the best interests of the victim in mind.

The Victim's Choices Determine Advocacy Strategy

Like other specialized disciplines, advocates have the same need for skills and information that enable them to be effective and to provide high quality services. When thinking about advocacy and the role of an advocate, consider this question: ***what should sexual assault victims/survivors be able to expect from advocates?*** The following list details some of the many skills, characteristics and information necessary for advocates:¹

Empathy & Compassion – One of the key responsibilities of advocates is to perceive what the survivor is experiencing and communicate that perception. This does not mean that the advocate has to have been sexually assaulted in order to be empathic. However, the advocate will be able to understand the trauma of the experience. Because it can be difficult to identify completely with individuals whose life circumstances, socioeconomic status, race/ethnicity, sexuality, and gender identity are different from one's own, it is important not to overemphasize similarity. Rather, the focus should be on exhibiting interest, concern and compassion for the victim's particular situation.

Respect – Given the traumatic nature of sexual assault, respect is an essential element in the advocate-victim relationship. It requires advocates to exhibit genuine appreciation for the victim, her experiences and her behavior. This includes protecting the victim's rights to make her own decisions, acknowledging her assessment and account of the situation, and supporting her ability to overcome the crisis without being overprotective and without holding the client in a negative regard.

Warmth – Being treated warmly by an advocate has a comforting, reassuring affect on the victim of sexual assault. Warmth carries with it a sense of care, concern and closeness

¹ Material adapted from the Pennsylvania Coalition Against Rape, "Trainers Toolbox: A Resource Guide for Sexual Assault Counselor Training," 2000.

HOW TO SUPPORT VICTIMS/SURVIVORS

that results in trust. It is possible to exhibit warmth non-verbally. It is good to remember that non-verbal cues such as body language, eye contact and facial expressions can be effective ways to communicate appropriate messages.

Genuine – It is important for advocates to be themselves when intervening with victims of sexual assault, taking care not to assume behaviors or express opinions that are not authentic. Being “real” allows the advocate to relax and focus on the victim, rather than on her own behavior or appearance. Genuineness conveys to the victim the advocate’s trustworthiness and desire to assist.

Concrete Choices – One of the common reactions to rape is a feeling of disorientation, which can emphasize feelings of powerlessness and confusion. Therefore, effective advocacy will include offering choices to a victim so she might regain her own sense of personal power (“who would you like to call?”). It is also important to be as clear and specific as possible when interacting with a victim. This does not mean being directive (giving unsolicited advice or instruction), but rather providing detailed information in relevant, understandable terms. This concept is related to the need for immediacy – discussing issues in the here and now.

Competency in addressing Cultural Factors, Social Conditions and Personal Identities

It is important for advocates to understand how cultural factors, social conditions and identities impact upon a victim’s experience of sexual assault. The relationship will be significantly strengthened if the advocate can demonstrate knowledge and respond sensitively to victims from various social and cultural groups. This includes being aware of who the victim is and learning something about her background/experience and how social issues affect her life. It is important not to make assumptions based on generalizations and stereotypes. If necessary, check with the victim about her background to understand better ways in which her culture, religion and/or identity influence her life and the way she perceives the assault.

Responsibilities of the Advocate

It is the responsibility of the advocate to develop the relationship with the sexual assault victim – to build trust, establish rapport and maintain communication. This is not to say that advocates should not respect the wishes of a victim who no longer chooses to participate in the system or attend a support group. Rather, an advocate does not wait for a victim to ask for assistance, support or services but is actively developing ways to meet the needs of each individual victim and offer that support in the form of options, information and referrals.

There are a number of ways that advocates can help victims recover and gain a sense of control in the aftermath of the assault:²

² Adapted from Jane Doe, Inc. “Counseling and Empowerment in the Aftermath of Sexual Assault.” In *Supporting Survivors of Sexual Assault: A Journey to Justice, Health, and Healing*. Boston: Massachusetts Coalition Against Sexual Assault and Domestic Violence, 2007: 6-6—6-7.

HOW TO SUPPORT VICTIMS/SURVIVORS

Validate and Believe – Sexual assault advocates will validate a victim's feelings by reiterating what the victim says and offering supportive feedback. The goal of support is to communicate to the victim that the sexual assault was not her fault, she did not deserve to be assaulted, and she is not to blame – in any way – for what happened. The advocate's role is to support the victim and communicate her belief in the victim and support for the victim's needs. One way to do this is to refrain from interrogating the victim, allow her to tell what she will; information is gathered on a need-to-know basis. If the advocate is in need of particular information and is unsure, based on what the victim has disclosed, the advocate can phrase the question in such a way that she is taking responsibility for not knowing – rather than implying that the victim was inconsistent or untruthful. For example, the advocate might say, "I know that you have shared a great deal with me and must be exhausted, and I am sorry but I don't remember if you said you had anyone waiting for you at home, can we talk about this for a minute?"

Dispel Untruths and Misconceptions – The advocate can support and empower the victim by talking about society's myths and misconceptions regarding sexual assault. This can be done with sensitivity to the victim's feelings and emotional state. It would not be an appropriate time to dispel myths, for example, if the victim is crying intensely or is dealing with a specific concern. This is most often done when the victim begins blaming herself for the assault or expresses feeling of guilt or shame.

Normalize – Victims often feel that there is something wrong with them, and that their reactions are abnormal. Effective advocacy includes sharing the information that there are no "wrong" ways to feel after a sexual assault and that a victim's feelings (whatever they are) are commonly experienced AND entirely expected due to the trauma of the assault.

Be Responsible – It is vital for advocates to keep appointments with victims and follow through with the information, assistance and resources promised. Victims may distrust the system and people working within it – it is the advocate's responsibility to ensure that victims understand exactly what they can expect from the advocate. Finally, be clear about confidentiality and explain the procedures and policies governing your agency – don't risk a situation where the victim might feel betrayed after disclosing information to you.

Create a Safe Environment – It is the responsibility of the advocate to ensure that interactions with the victim are safe and feel safe for the victim. It is important to be clear about physical touching; any touch or closeness must be appropriate and occur only with clear permission from the victim. This also includes ensuring that the physical/visual space in which you work together does not feel unsafe for the victim (small enclosed room, uncomfortable furniture, disturbing pictures or information readily visible, etc.).

HOW TO SUPPORT VICTIMS/SURVIVORS

Offer Options not Advice – Victims may be struggling with important and complex decisions. An advocate's responsibilities include identifying all the options available and helping the victim decide which option is best. It is important that this is done in a nonjudgmental way, with the advocate acting as a sounding board and not providing her personal opinions.

Let the Victim Express a Full Range of Feelings – It is vital for advocates to be comfortable with the entire continuum of emotions -- and their expression (this includes anger). This might include crying, laughing, animated talking, yelling, expressing anger, shaking, silence, etc. The goal is to be attentive and compassionate but not personally involved in these emotions.

Sensitivity – A victim and an advocate may have differences in cultural backgrounds, gender, sexual orientation, age, race, religion, nationality, gender identity or socioeconomic status. Effective advocacy includes learning as much as possible about the diversity of cultures of the potential population that you serve. This includes thinking about how those differences might have an influence on the impact and healing for a victim. It is important to remember that individuals from a particular background, culture, or race may not all have the same reaction and response to the assault – as is true for the dominant culture as well. It is important that advocates do not employ stereotypes or make assumptions about any victim. If you do not know or are unsure about anything, ask the victim. A victim is much more likely to feel respected by you if you have a willingness to acknowledge your ignorance or lack of knowledge about a particular culture or issue than if you employ stereotypes and make assumptions that are inaccurate, hurtful and/or derogatory. If necessary, ask about the survivor's background or identity to better understand ways in which her culture influenced her life and the way she perceives her rape. It is okay to let the victim know that you recognize that differences exist and may very well be relevant to her experience and healing.

Help Build a Long-Term Support Network – One area of tremendous concern for many victims is disclosing the assault to their family, friends, and potential advisors, such as spiritual leaders. An advocate can assist the victim in identifying who she wants to disclose to and how much – who is “safe to tell.” If wanted, advocates may also help victims to prepare for making disclosures and help them to prepare for responses that are blaming, non-supportive and alienating. Peer support groups can be an excellent resource for victims who have limited family or friends who are safe to disclose to. This can help the victim to feel less isolated and build support networks.

Help Develop Constructive Ways of Coping – Advocates know that it is not uncommon for victims to develop defense mechanisms or coping patterns that may be harmful to themselves. This can include the use of drugs or alcohol, abusing prescriptions, overeating or not eating, sleeping all of the time or not sleeping at all, or taking extreme risks or engaging in potentially harmful and unhealthy behavior. At some point these defense mechanisms will stop working and the feelings behind them will begin to

HOW TO SUPPORT VICTIMS/SURVIVORS

emerge. Validating the victim and helping her to understand her desire to avoid or suppress her feelings is important. The advocate can then assist the victim in identifying positive or healthy coping skills – exercise, support groups, talking with friends, counseling, etc. Advocates will have information and referrals for when victims might be in need of services from additional providers like drug and alcohol treatment. Additionally, if a victim declines referrals for professional services that the advocate cannot provide, the advocate will respect the choices of the victim. The role of the advocate is to provide support, information and assistance to victims – not to insist that they attend a particular support group or enroll in a treatment program; doing so may alienate the victim from the advocate.

Provide Information, Education and Referral – Advocates communicate information about the criminal justice system, the medical system, community resources and sexual assault. It is critical that advocates provide victims with accurate and up-to-date information and referrals. Additionally, when making a referral, it is a much better practice for advocates to gather information and assist in making appointments or accessing services rather than making a “cold” referral or just handing a contact number to the victim.

Advocate on Behalf of the Victim — Based on the choices and needs of the victim, advocates work with individuals, agencies, and systems to ensure that the rights of the victim are honored and respected and that victims have full access to services and assistance. Advocates may need to advocate on behalf of victims to ensure that they have the option of being present during a trial, or access to a stalking order through the courts or law enforcement.

Interrupt in Victim Blaming — One of the more challenging roles of advocates is to interrupt victim blaming and educate the community and responders about the myths and misconceptions that are often associated with sexual assault. Victim blaming refers to the attitudes or beliefs that hold victims responsible, even in part, for being sexually assaulted. Victim blaming typically utilizes the arguments that if the victim had not made a particular choice, engaged in a particular activity, or acted in a particular way, she or he would not have been assaulted. This type of second-guessing is usually one that victims are already doing to themselves—hearing any variation of this theme from others adds to the trauma already being experienced.

Reframing — An effective strategy for advocates to utilize in supporting victims and addressing victim blaming is to reframe the experience for the victim, family, friends and responders. An example of reframing is to identify the specific way the victim is being blamed, such as for drinking alcohol.

Natural Consequences — The next step is to identify what the natural consequences are for drinking alcohol—or even for drinking too much alcohol. The possible natural consequences are headache, making a fool of oneself, throwing up, perhaps falling

HOW TO SUPPORT VICTIMS/SURVIVORS

down, etc. These are consequences that might be faced by every person that drinks too much alcohol.

Logical Conclusions — The next reframing technique is to ask if everyone who drinks too much is sexually assaulted. The answer of course is no. The next question is, why not? The answer is that there is not a sexual offender in place—with a plan—every time and place that a person drinks too much. There will only ever be a sexual assault if there is a sexual offender present.

Knowledge: What should advocates know cold vs. be able to find out?

Know Cold:

- Victims' Rights
- Criminal Justice System Procedures and Processes
- Civil Legal Options and Rights—Orders for Protection
- Resources in the Community—Housing, Food, Childcare, Emergency \$\$, etc.
- Medical Procedures/Evidence Collection
- *What else?*

Be Able to Find Out:

- Dates/Times/Locations—CJ System
- Leave laws, Title VII, ORS 659A
- Specific parameters of the law including:
 - Criminal Statutes
 - Sentencing/Mandatory Minimums
 - Sex Offender Registration
 - Statute of Limitations
- Out-of-Area Resources—shelters, services, transportation, etc.
- *What else?*

Empowerment

The term EMPOWERMENT is often used in conjunction with advocacy and support. What exactly is meant by empowerment and how do we empower a victim? The goal of empowerment is to strive to provide victims with good information in a compassionate and respectful manner so that victims feel encouraged to make the choices that are best for them, as identified by them.

Empowerment Is:

- Respecting boundaries and confidentiality
- Honoring choices
- Believing and validating her experiences
- Understanding the role of culture
- Promoting access to services

HOW TO SUPPORT VICTIMS/SURVIVORS

Empowerment Is Not:

- Trying to “save” or “help” the victim
- Confusing your needs with hers
- Being punitive
- Being stoic or unemotional
- Sympathy
- Giving advice or telling her what to do

Victims should be able to expect that advocates will:

- Listen to the victim/survivor and identify what is needed and wanted;
- Identify and obtain the information and resources that will be necessary; and
- Provide compassionate, empowering support.

VICTIM BLAMING

Victim Blaming

One of the more challenging roles of being an advocate is interrupting victim blaming and educating other responders and the community about the myths and misconceptions that are often associated with sexual assault. Victim blaming is a term used to describe attitudes or beliefs that suggest victims are responsible, even in part, for being sexually assaulted.

Victim blaming typically relies on the argument that if the victim had not made a particular choice, engaged in a particular activity or acted in a particular way, she would not have been sexually assaulted. This argument is problematic for several reasons: 1) there is no particular activity, choice or behavior for which sexual assault is a natural (and usual) consequence, 2) there are victims who may not necessarily engage in activities, choices or behaviors that are widely viewed as risky, and 3) the only common denominator that always exists in sexual assault is a sex offender who is willing to commit a sexual assault.

For example, drinking or using drugs at a party to the point of passing out might be considered a “high risk” behavior. However, sexual assault is not a natural consequence of the behavior of drinking or using drugs to the point of passing out. First, not all women (or men) who drink to the point of passing out are sexually assaulted. Second, a sexual assault will only occur if there is an individual at the party who is willing to engage in sexual contact with someone without that person’s consent and mutuality. That is, some, and perhaps even the vast majority, of party-goers may merely notice the passed-out person, while others may demonstrate a measure of care and concern and cover the person up, place a bowl near the person should he or she need to vomit, or perhaps check to make sure that he or she is not suffering from alcohol or drug poisoning. It is therefore not the behavior of the victim that leads to or results in sexual assault, but rather the conscious choice of the offender.

Intervening by Reframing

The above scenario is an example of reframing. Reframing is an effective tool for responding to victim blaming comments, suggestions or questions. Reframing allows the individual who is engaging in the victim blaming behavior to reach a different conclusion without conceding the fundamental point: that the victim engaged in a high risk activity or behavior or even made a poor choice. While that may be true, rape and sexual violence are neither a natural consequence of poor choices nor are they appropriate punishments.

The notion of risky behavior (or poor choices) can also be reframed. Most people engage in some level of calculated risk on a monthly, weekly and sometimes daily basis, and most of the time those calculated risks do not result in harm to ourselves or others.

VICTIM BLAMING

On the other hand, calculated risk sometimes does result in harm or consequence. For example, many people routinely drive without their seatbelts fastened, despite it being against the law in all 50 states. This would seem to be a reasonable risk based on our collective experience that individual car accidents are relatively infrequent. On the other hand, we also collectively know that wearing a seatbelt will decrease risk of injury or death in the event of a car accident. Is the person who chooses not to wear a seatbelt at fault for being injured in the event of a car accident or is the driver of the car that caused the accident ultimately responsible for the injury? In the end, no harm would have come to the person not wearing a seatbelt had there not been an accident. It is not the wearing or not wearing of a seatbelt that causes an accident but rather drivers themselves. While wearing a seatbelt can prevent the likelihood of injury, it cannot stop an accident from occurring.

Victim Blaming

- “She was dancing provocatively and wearing revealing clothes that invited or provoked the assault.”
- “She started the kissing and touching, how was he to know she didn’t want to continue?”
- “She agreed to stay over, and even slept in the same bed with him.”
- “It was a miscommunication. How was he supposed to know she didn’t want to have sex if she didn’t say ‘no’?”
- “She has lied about things before.”
- If you leave your front door unlocked and have a welcome mat on your front stoop, does that invite a robber to rob your home?
- If you order one cup of coffee does that mean you cannot decline subsequent refills?
- Every time you sleep in a bed with someone do you have sex?
- If you are playing catch with someone and without saying anything that person turns and walks away from the game, do you still throw the ball?
- Once a liar always a liar? Or do most people have the capacity for truth AND deception?

Reframing

While the circumstances surrounding or leading up to a sexual assault may be relevant for the purpose of investigation or prosecution, they are not relevant to culpability of the victim. For instance, whether the victim and the offender were drinking may be important pieces of the investigation in terms of identifying the ability to consent or planning on the part of the offender. A criminal investigation will need to identify premeditation, force or threat of force, inability to consent and so on. However, the behaviors, actions or choices of the victim are not relevant, because regardless of the circumstances, the sexual offender is the sole responsible individual.

Roots of Victim Blaming

The roots of victim blaming most often originate in socio-cultural values and beliefs that support the mainstream world view. Victim blaming can also result from a desire to create a sense of individual safety. Finally, victim blaming can come from being exposed to the pain and suffering of others.

VICTIM BLAMING

- “Innocent Victim” versus “Rape-able Offenses” – This is a socio-cultural value that divides victims into two categories: innocent and culpable. An innocent victim is someone who is naïve and sexually inexperienced, someone who was the victim of a random act of violence. If you are an innocent victim, the community will rally around you to provide support and demand justice on your behalf. A culpable victim is someone who went to a club, got drunk and went home with someone she just met. If you are a culpable victim, the community may claim that “you deserved it.”
- “Good Victim” versus the “Discreditable Victim” – This is another socio-cultural value that divides victims into two categories: those whom we want to help and those whom we would rather not deal with. A “discreditable victim” often needs multiple services, has what is considered a “complex” case or simply is not well liked or deemed creditable. “Discreditable” victims can include sex workers, the poor or homeless, individuals with drug addiction or mental health issues and so on.
- Preserving the myth of personal safety – This socio-cultural value is intended to provide a sense of safety for women and the community. Becoming aware of an assault, whether through the media or another means, can create fear and anxiety for one’s own personal safety. Victim blaming enables the community to focus on the behaviors, actions and choices of the victim and to assign culpability for the assault based on those behaviors, actions and choices. The myth of personal safety is preserved by embracing the notion that you can avoid being raped or sexually assaulted if you simply avoid *those* behaviors, actions and choices.
- Vicarious trauma and compassion fatigue – Victim blaming may be a sign of burnout for a responder or provider who is no longer able to feel empathy and compassion for someone who has been harmed.
- Intersections of oppression – We live in a socio-cultural framework that creates divisions based on what is the “norm” and what is not. These divisions extend to behaviors, physical appearance, and various other markers of social identity. This framework confers opportunity, access, power and credibility to people who fit into the “norm” or dominant group and restricts the potentialities of those who do not. When individuals who are not a part of a dominant group or “norm” are sexually assaulted, victim blaming attitudes may be expressed based solely on the individual’s association with a marginalized or oppressed group, suggesting that they somehow “deserved” or “should have expected” to be assaulted based upon being identified as deviating from the expected “norm.” In the U.S. context, manifestations of victim blaming can be seen rooted in (group representing the dominant norm in parentheses):
 - Sexism (men)
 - Racism (White/Caucasian people)
 - Able-ism (able-bodied)
 - Age-ism (middle aged)

VICTIM BLAMING

- Heterosexism (heterosexual/"straight")
- Classism (middle class and higher)
- Dominant Religion (Christianity)
- Xenophobia (U.S. citizen)

Conclusion

It may be helpful to identify the nature or "root" of victim blaming you encounter in order to most effectively intervene. If a disclosure is doubted or dismissed because the individual reporting has a developmental disability, the reframing might include looking at the ways in which a sexual offender would perceive someone with a developmental disability to be vulnerable, accessible and lacking in credibility. By acknowledging that people with developmental disabilities may be perceived as lacking in credibility, we can also address how this perception can impede a consistent, thorough, and professional response.

Victims should be able to expect that regardless of their ability, age, sexual orientation, gender, gender identity, religion, race, ethnicity, nationality or whether they are likeable or made "poor choices," we treat them with respect, dignity, and compassion and provide them a consistent, thorough, and professional response.

VICTIM IMPACT

WHAT CAUSES TRAUMA?

A life-shattering event shocks the body and mind and leaves a person changed. The feelings and impact in the aftermath of such an event are known as “trauma.” Trauma experienced after a sexual assault is directly related to the individual's unique life experience, the circumstances of the sexual assault(s) itself and the support, or lack thereof, that the victim is provided in the aftermath of the assault.

In the case of sexual assault, there is a myth that the level of trauma is related only to penetration, violence, the use of a weapon or the number of assaults. These however, are not the only underlying causes of the trauma, though they may be factors used by the criminal justice system to determine charging and/or sentencing.

The following is a list of factors specific to the assault and/or the response to the assault that cause trauma:

BETRAYAL causes trauma. There is an expectation that people, especially those whom we know, trust and/or love, will not hurt us. When anyone who violates these expectations by harming us, it generates feelings of betrayal. Betrayal by sexual assault can cause a victim to experience decreased feelings of trust for certain people, groups of people or all people. It is important to keep in mind that betrayal, even by someone not well known to a victim, can lead to a victim questioning her confidence in assessing the safety, integrity or intentions of another person.

EXTREME FEAR or TERROR causes trauma. Terror and extreme fear can be described as the inability to stop or control an event that can cause, or does cause, emotional or physical harm, injury or death to oneself or others. The effect of this trauma can be for life, and the terror may be re-experienced when victims are *triggered* or *re-stimulated* by sounds, smells, activities, individuals or circumstances that can result in reliving the assault or the feelings that were experienced at the time of the assault.

BLITZ or SURPRISE ATTACKS cause trauma. Whether an assault is perpetrated by a stranger hiding in the bushes in the literal sense of a “blitz attack” or by someone known to the victim, the assault itself is always a surprise. It is perhaps more obvious how a stranger sexual assault is a surprise or blitz attack; however, if we consider that we do not accept rides, go on dates or put our trust in individuals whom we believe may rape us, we can begin to understand how non-stranger sexual assault is also a surprise. The traumatic result of a blitz or surprise attack is an altered sense of safety. Victims may question their ability to assess or determine whether another person is safe or trustworthy as much as they question their ability to protect themselves in general.

SELF-BLAME causes trauma. Often no one is harder on a victim than she is on herself. If this is true in general, it will remain true in the aftermath of a sexual assault. More than likely, victims will believe the broadly held socio-cultural values that assign rape and sexual assault as a natural consequence of *risky* behaviors. Unfortunately, self-blame takes away

VICTIM IMPACT

one of the biggest possible avenues of support—the victim herself. It also gives the message that the victim did something wrong or that there is something wrong with her. Reframing or changing this message and belief can lessen the trauma.

INVALIDATION causes trauma. If a victim's experience is minimized by herself or others, it gives a confusing message to the victim. Her body, mind and spirit know that she has experienced great pain and trauma. Being told that it is "no big deal" leads to the confusion of hearing one thing but feeling or experiencing another. Minimizing or invalidating the pain or experience can give the message that the victim not only doesn't deserve support but may deserve punishment. A victim often internalizes invalidation and uses it to avoid processing the pain and/or to avoid nurturing and taking care of herself.

Common Reactions to Sexual Violence¹

Humiliation

Sexual assault itself is an act of humiliation. One of its key components is to force unwanted sexual contact. For most, talking about anything sexual is difficult enough – to have to talk about being sexually forced, exploited or coerced to an often-skeptical audience can greatly increase the victim's feelings of humiliation and embarrassment.

Shame and Self-Blame

Most victims blame themselves, all or in part, for the assault. They blame themselves for something they did or didn't do, for what they wore, whether they fought back, or if they were drinking or using drugs. Victims often blame themselves if they were engaging in illegal or risky behavior prior to the assault.

Guilt

Guilt comes from a person's sense that she could have and should have done something to protect herself or prevent the assault.

Fear

It is important to remember that most sexual assault victims feel a level of terror during the attack. This fear will stay with the victim for a long period of time. Since most sexual assaults are committed by someone known to the victim, the victim often feels unsure of who is worthy of trust, and her fear of everyone increases. It is also important to recognize that the victim may still be in the presence of or in close proximity to her rapist.

Concern for the Rapist

In some cases, a victim may express concern about what will happen to the rapist if the incident is reported to the police. The victim may know, care about, be dependent upon the perpetrator (as in the case of a husband) and/or have an aversion to involvement in the criminal justice system.

¹ Material adapted from the Pennsylvania Coalition Against Rape, "Trainers Toolbox: A Resource Guide for Sexual Assault Counselor Training," 2000.

VICTIM IMPACT

Grief

An assault is a profound loss and is often characterized by intense sadness. A victim may feel her life has been shattered to such an extent that she will never recover. A grief reaction often involves tearfulness, weeping and disorientation.

Depression

Deep feelings of emptiness, remorse and unhappiness may affect a victim following a sexual assault. This reaction may result in a victim feeling hopeless, immobilized and unable to make decisions. Depression often makes a victim feel like everything is going wrong and nothing will ever be resolved.

Denial

Some victims respond to the trauma of an assault by minimizing it, avoiding talking about the experience or by blocking it out of their consciousness altogether.

Anger and Irritability

For some victims, being sexually assaulted results in tremendous rage. While anger is a natural and healthy response, it may be misdirected towards the advocate, the law enforcement official, the prosecutor, or others who may be trying to offer assistance. A victim's anger is one of the most difficult emotions for responders to feel comfortable accepting or addressing.

Common Symptoms Experienced by Sexual Assault Victims

Victims of rape and sexual assault have consistently described certain common symptoms that include but are not limited to those listed above. It is clear that the suffering of victims is mitigated by the quality and quantity of validation and support they receive from their own support systems and from professionals with whom they come into contact. As for all types of trauma, memories of the assault will remain and may always cause pain; it is not something the victim "gets over." What does mitigate the impact in the aftermath is how much support a victim receives from professionals, friends, coworkers, and family members.

Not everyone exhibits outward signs of pain and trauma. Because each victim of sexual assault has her own unique history, experience, culture, coping and support systems, each victim's response is unique to her. There is no "one way" or "right way" to feel or to respond to rape. It is as varied as the victim herself.

Immediately following the assault, the victim may feel a heightened sense of fear: fear of the rapist returning, fear of men, fear of being alone, fear of sleeping, or fear of the dark. Specific fears related to the assault may develop. For instance, someone assaulted in her bedroom may fear sleeping in bedrooms. For some victims, a fear may turn into a phobia.

Victims must often cope with outside influences and interactions with self and others. The victim may feel depressed and experience a general sense of loss. Former feelings of well-being, security, and control over one's life have been taken away from the victim by the rapist. The victim may deny that the rape has affected her and may assure

VICTIM IMPACT

everyone that she is fine. The victim may silence her feelings to avoid pain or in reaction to a belief that people are tired of hearing about the assault or her feelings. The victim may withdraw from social relationships or personal interactions with friends and relatives. The victim may spend her waking hours distracting herself from feeling or thinking. The victim may also change eating and sleeping patterns and experience heightened levels of anger.

It is common for a sexual assault to disrupt the victim's typical routine. Although a victim may continue to work or go to school, she may be unable to do more than what is essential. Others may work all the time or volunteer for every activity or assignment possible in order to block how they are feeling or to block memories of the assault. Some victims quit all activities and stay at home and only venture out if accompanied by someone else. Sexual assault is a life-changing experience.

Some changes a victim may experience:

- Personal sense of security and/or safety may be damaged.
- Increased distrust of existing relationships and/or hesitation to initiate new relationships.
- Sexual relationships may suffer (some victims report that they are unable to reestablish typical sexual patterns after the assault because of inhibited sexual response, feelings of discomfort, or flashbacks of the rape during intercourse).
- Self-imposed restrictions on life/activities that interfere or interrupt the lifestyle they had before the assault, as the world is now perceived as more threatening.
- Phobias or excessive fears such as fear of crowds, of being alone, of the dark, of sleeping.
- Specific fears related to the characteristics of the assailant, such as a mustache, curly hair, the smell of alcohol or cigarettes, type of clothing or car.
- Distrust of all men, strangers, or of everyone.

Victims may also experience physical responses to the trauma of a sexual assault. These responses may include:

- Sleeping all of the time
- Vivid dreams, recurrent nightmares, insomnia, sleeplessness
- Pain in the area(s) of the assault (mouth, throat, vagina or anus)
- Physiological reactions such as tension, headaches, fatigue, general feeling of soreness or localized pain in the chest, throat, arms or legs.
- Appetite disturbances such as nausea, vomiting, not eating, overeating

VICTIM IMPACT

Through the healing process, a victim may start to integrate the assault into her life so that the incident is no longer the central focus of each day. The victim may deal with any harmful effects of coping strategies adopted earlier. For example, if the victim self-medicated through the daily use of sleeping pills, she might be working to sleep or relax without those aids. Victims may be "triggered" by sensory stimuli or feelings that result in reliving the traumatic event. The victim may also experience "flashbacks" of visual memories (like watching a movie) of the event in her mind; and may feel the exact same level of fear or terror while reliving the event.

These symptoms represent what any sexual assault victim might experience in the recovery process. These symptoms have also been put into phases referred to as Rape Trauma Syndrome (RTS). However, RTS is not recognized as a separate diagnosis or category of symptoms from Post-Traumatic Stress Disorder (PTSD). RTS is neither a recommended defense in a courtroom nor is it officially recognized as a subcategory of PTSD in the DSM-IV. RTS can also constrict an advocate's understanding of the range of symptoms and experiences a victim of sexual assault may have. What is most important to know is that a victim's reactions to a sexual assault can vary dramatically and that there is no "right way" to react. A victim's reaction may be in stark contrast to what you believe a victim's response *should* be. Think of what your biases and stereotypes of victims are and where they likely came from. When a victim reacts in a way that is surprising to you or outside of what you think is typical, remember that there is no one reaction and that a range and inconsistency of emotions is often what is most consistent.

Post-Traumatic Stress Disorder (PTSD)²

Post-traumatic Stress Disorder (PTSD) involves a pattern of symptoms that some individuals develop after experiencing a traumatic event such as sexual assault. Symptoms of PTSD include repeated thoughts of the assault; memories and nightmares; avoidance of thoughts, feelings, and situations related to the assault; and increased arousal (e.g., difficulty sleeping and concentrating, jumpiness, irritability). One study that examined PTSD symptoms among women who were raped found that 94% of women experienced these symptoms during the two weeks immediately following the rape. Nine months later, about 30% of the women were still reporting this pattern of symptoms. The National Women's Study reported that almost 1/3 of all rape victims develop PTSD sometime during their lives and 11% of rape victims currently suffer from the disorder.³

PTSD is the most common diagnostic category used to describe symptoms arising from emotionally traumatic experiences. This disorder presumes that the person experienced a traumatic event involving actual or threatened death or injury to herself or others where she felt fear, helplessness or horror. Three symptom clusters, if they persist for more than a month after the traumatic event and cause clinically significant distress or impairment, make up the diagnostic criteria for PTSD.

² Adapted from David Baldwin's Trauma Information website: <http://www.traumapages.com>.

³ Kilpatrick, D.G., Edmunds, C., Seymour, A. "Rape in America: A report to the nation." Arlington, VA: National Victim Center & the Crime Victims Research and Treatment Center, 1992.

VICTIM IMPACT

The three main symptom clusters of PTSD are:

- **Intrusions**, such as flashbacks or nightmares, where the traumatic event is re-experienced.
- **Avoidance**, when the person tries to reduce exposure to people or things that might bring on the intrusive symptoms.
- **Hyperarousal**, meaning physiologic signs of increased arousal, such as hyper vigilance or increased startle response.

Prevalence rates of PTSD⁴

Adult Americans (lifetime)	7.8%
Men (lifetime)	5%
Gulf War Veterans	10%
Women (lifetime)	10.4%
Iraqi War Veterans	12-20%
American Vietnam Veterans	30.9%
Female rape victims	60%
Bosnian refugees	75%

Trauma symptoms are probably adaptive and originally evolved to help us recognize and avoid other dangerous situations quickly - before it was too late. Sometimes these symptoms resolve within a few days or weeks of a disturbing experience; not everyone who experiences a traumatic event will develop PTSD. When many symptoms persist for weeks or months or when they are extreme, professional help may be needed. However, if symptoms persist for several months without treatment and avoidance becomes the best available method to cope with the trauma, the chosen coping strategy (avoidance) can actually interfere with seeking professional help. Postponing needed intervention for a year or more and allowing avoidance defenses to develop, could make it much more difficult to process the trauma.

While PTSD is the "prototypical" traumatic disorder, some people - or some stressors - present variations on this theme. Depression, anxiety, and dissociation are three other disorders that may sometimes arise after traumatic experiences. Individual differences affect both the severity and the type of symptoms experienced. For example, almost everyone dissociates to some degree.

As you might expect, risk for PTSD increases with exposure to trauma. In other words, chronic or multiple traumatic experiences - like marital rape or ritual abuse - are likely to be more difficult to overcome than most single instances. There is also evidence

⁴ Statistics from National Center for PTSD: www.ncptsd.va.gov

VICTIM IMPACT

that early traumatic experiences (e.g., during childhood), especially if these are prolonged or repeated, may increase the risk of developing PTSD after traumatic exposure as an adult.

Dissociation⁵

Dissociation is the disconnection from full awareness of self, time and/or external circumstances. A complex neuropsychological process, dissociation exists along a continuum from normal everyday experiences to disorders that interfere with everyday functioning. Common examples of normal dissociation are highway hypnosis (a trance-like feeling that develops as the miles go by), "getting lost" in a book or a movie so that one loses a sense of passing time and surroundings, and daydreaming. Experiences like sudden loss of memory and blurry consciousness of time can occur in the aftermath of a sexual assault. More serious dissociative disorders are a commonly occurring defense against childhood sexual abuse.

The essential feature of dissociative disorders is a disturbance or alteration in the normally integrative functions of identity, memory, or consciousness. If the disturbance occurs primarily in memory, Dissociative Amnesia or Fugue may result. In these situations, the victim cannot recall important personal events. Dissociative Amnesia with acute loss of memory may result from wartime trauma, a severe accident, or rape. Dissociative Fugue is indicated by not only loss of memory, but also travel to a new location and the assumption of a new identity. Dissociative Identity Disorder (DID), formerly known as Multiple Personality Disorder, is an identity disturbance where the victim develops additional "personalities" for the purpose of coping. PTSD, although not officially a dissociative disorder, can be thought of as part of the dissociative spectrum.

Dramatic presentations in film and on television of people with dissociative disorders (especially DID) have proliferated in recent years, as more individuals with this coping pattern have been identified. Some presentations offer a distorted picture; reinforcing misconceptions and making this survival response seem bizarre and foreign. In fact, DID is not clearly observable most of the time, and most people with DID only selectively disclose their dissociation coping styles and/or their extensive trauma histories.

PTSD and Relationships

Trauma victims with PTSD often experience problems in their intimate and family relationships. PTSD involves symptoms that interfere with trust, emotional closeness, communication, responsible assertiveness, and effective problem solving:

- Loss of interest in social or sexual activities, and feeling distant from others, as well as feeling emotionally numb. Partners, friends, or family members may feel hurt, alienated, or discouraged, and then become angry or distant toward the victim.

⁵ Joan A. Turkus, M.D., The Spectrum of Dissociative Disorders: An Overview of Diagnosis and Treatment, access on 8/10/2012 at <http://www.fortea.us/english/psiquiatria/spectrum.htm>

VICTIM IMPACT

- Feeling irritable, on guard, easily startled, worried, or anxious may lead victims to be unable to relax, socialize, or be intimate without being tense or demanding. Significant others may feel pressured, tense, and controlled as a result.
- Difficulty falling or staying asleep and severe nightmares prevent both the victim and partner from sleeping restfully, and may make sleeping together difficult.
- Trauma memories, trauma reminders or flashbacks, and the attempt to avoid such memories or reminders, can make living with a victim feel like living in a war zone or living in constant threat of vague but terrible danger. Living with an individual who has PTSD does not automatically cause PTSD; but it can produce "vicarious" or "secondary" traumatization, which is almost like having PTSD.
- Reliving trauma memories, avoiding trauma reminders, and struggling with fear and anger greatly interferes with victims' abilities to concentrate, listen carefully, and make cooperative decisions - so problems often go unresolved for a long time. Significant others may come to feel that dialogue and teamwork are impossible.
- Victims of childhood sexual and physical abuse (and other factors leading to PTSD) often report feeling a lasting sense of terror, horror, vulnerability and betrayal that interferes with relationships.
- Feeling close, trusting, and emotionally or sexually intimate may seem a dangerous "letting down of my guard" because of past traumas - although the victim often actually feels a strong bond of love or friendship in current healthy relationships. Having been victimized and exposed to rage and violence, victims often struggle with intense anger and impulses that usually are suppressed by avoiding closeness or by adopting an attitude of criticism or dissatisfaction with loved ones and friends. Intimate relationships may have episodes of verbal or physical violence.
- Victims may be overly dependent upon or overprotective of partners, family members, friends, or support persons (such as health care providers or therapist).
- Alcohol abuse and substance addiction - as an attempt to cope with PTSD - can destroy intimacy or friendships.
- In the first weeks and months following the traumatic event, victims often feel an unexpected sense of anger, detachment, or anxiety in intimate, family, and friendship relationships. Most are able to resume their prior level of intimacy and involvement in relationships, but the 5–10% who develop PTSD often experience lasting problems with relatedness and intimacy.

MEDICAL RESPONSE AND ADVOCACY

Medical Response and Advocacy

How it Begins

The role of the advocate in general, and certainly within the context of medical response and care, is to provide victims with accurate information that will enable them to make informed choices. Moreover, advocates can assist victims in making choices that can preserve their future options for engaging the criminal justice system or accessing additional services and care. This chapter is intended to provide advocates with information regarding the rights, laws and routine procedures that are a part of the medical response to sexual assault. In addition to helping victims make informed decisions, advocates may also find themselves in a position of advocating on behalf of or in conjunction with victims in order to access their rights to particular components of the medical response to sexual assault.

In the medical response, advocates should be prepared to provide information to victims on:

- Patient rights to Emergency Contraception (EC)
- Generally, the purpose and process of collecting forensic evidence
- SAVE Fund and Crime Victims' Compensation

The Oregon SAVE Fund and Sexual Assault Victims' Rights to Medical Care

The Sexual Assault Victims Emergency Medical Response (SAVE) Fund was established in March 2004 to ensure that all victims of sexual assault in Oregon are reasonably afforded access to a medical exam and/or evidence collection. The Fund reimburses medical facilities and providers who conduct sexual assault medical and forensic exams, which have historically been paid for by Oregon law enforcement agencies. In June 2007 legislative changes were made to the SAVE Fund that eliminated the requirement for law enforcement authorization and reporting prior to the collection of the Sexual Assault Forensic Evidence (SAFE) Kit. Changes also included a requirement for medical facilities and providers to protect the identity of victims who elected to have a SAFE Kit collected without reporting the assault to law enforcement.

The 2007 changes to the SAVE Fund were designed to benefit victims of sexual assault as well as law enforcement and prosecutors. The window of opportunity to collect forensic evidence in the aftermath of a sexual assault is extremely limited. Valuable forensic evidence can be lost when victims who present to medical facilities are not afforded the option of evidence collection without immediate law enforcement involvement. By eliminating the requirement to report to law enforcement in order to collect a SAFE Kit, victims are given time to come forward while preserving their option of initiating a viable criminal justice system response at a later date. Likewise, law enforcement and prosecutors will have access to vital evidence pertaining to the assault should the victim initiate the criminal justice system response at a later time.

MEDICAL RESPONSE AND ADVOCACY

The SATF recommends that medical facilities:

- Offer all victims of sexual assault a medical exam, SAFE Kit collection, and STI and EC prophylaxis if they present within 84 hours post-assault, regardless of whether they choose to report the assault to law enforcement.
- Collect SAFE Kits and other evidence and maintain records in a manner that protects the identity of the victim (for victims who have not reported the assault).

The SAVE Fund requires medical facilities to provide non-reporting victims the following information in writing:

1. The SAFE Kit number
2. Date of the exam
3. Law enforcement agency who received the SAFE Kit and other evidence
4. Name and location of the medical facility where the exam was conducted
5. Notification of the six month (or 180 day) minimum storage of evidence by law enforcement

The SAVE Fund covers:

- A Complete Medical Assessment for victims who present to the medical facility within 3.5 days (or 84 hours) post assault, and whose assault occurred in Oregon. A complete medical assessment includes:

- Thorough medical exam with documentation
- SAFE Kit collection (evidence collection)
- STI Prophylaxis
- EC Prophylaxis

The SAVE Fund pays for all the elements of a Complete Medical Assessment and reimburses the hospital directly (the victim is not billed by the hospital for the Assessment). The maximum amount reimbursed to hospitals by the Fund for the Complete Assessment is \$380 or \$455 if the examination is conducted by a certified Sexual Assault Nurse Examiner (SANE). The Fund reimburses \$55 for EC and \$100 for STI prophylaxis.

- Partial Medical Assessment for victims who present to the medical facility within 7 days (or 168 hours) post-assault. A partial medical assessment can include:

- Thorough medical exam with documentation
- STI Prophylaxis
- EC Prophylaxis

The SAVE Fund pays for all the elements of a Partial Medical Assessment and reimburses the hospital directly (the victim is not billed by the hospital for the Assessment). The maximum amount reimbursed to hospitals by the Fund for this service is \$175 or \$250 if the examination is conducted by a certified SANE. The Fund reimburses \$55 for EC and \$100 for STI prophylaxis.

It is important for advocates to be clear that the ONLY distinction between the complete and partial medical assessments is whether the SAFE Kit is collected. The medical exam itself should always be conducted up to the same high standard of care and therefore

MEDICAL RESPONSE AND ADVOCACY

include an assault history, a head-to-toe examination and documentation of pain, soreness and/or injury. The examination, whether it is conducted in conjunction with SAFE Kit and other evidence collection, should be thoroughly documented on sexual assault forms and all necessary consents must be obtained prior to the exam and/or evidence collection.

The SAVE Fund does NOT cover the cost of treating injuries, which is defined as any procedures or supplies above and beyond what is required for a standard exam or SAFE Kit collection. The Fund also does NOT cover:

- HIV testing
- Follow-up appointments
- Laboratory testing (including blood alcohol testing)

SAVE Fund Eligible Victim & Provider

Victim eligibility is broadly defined as any person who either self-identifies or is identified by another as a victim of sexual assault. Sexual assault victims are eligible to access the Fund as long as:

- The assault occurred in Oregon; and
- The victim presents to the provider within the specified time frame (84 hours for a complete assessment or 168 hours for a partial assessment)

****** When a victim presents that was assaulted in another state, the advocate or the provider should help the victim obtain information regarding any funds available in the state where the assault occurred.

An eligible provider must be licensed in OR, WA, CA or ID and have the facilities and supplies necessary to conduct both a complete and partial medical assessment (to ensure that victims would not have to be referred for one or the other). Eligible providers are as follows:

- OR SANE or SANE-A
- RN acting under the supervision of an MD, DO or NP
- DO, MD or NP

Public and private health clinics and practitioners can be eligible providers so long as they are capable of conducting both a partial and complete exam. In the case of SAFE Kit and other evidence collection this will, for all practical purposes, require that the provider have an agreement with law enforcement to retrieve and store SAFE Kits and other evidence that is collected.

Emergency Contraception (EC) is a drug or device (approved by the Food and Drug Administration) used to prevent pregnancy after sexual intercourse. With the passage of HB 2700 (June 2007), Oregon hospitals are legally required to

- Provide the victim with unbiased, medically and factually accurate written and oral information about emergency contraception;
- Orally inform the victim of her option to be provided emergency contraception at the facility and

MEDICAL RESPONSE AND ADVOCACY

- If requested by the victim and if not medically contraindicated, provide the victim with emergency contraception immediately at the facility.

Consent for medical care, SAFE Kit and other evidence collection is critical. Medical providers should obtain consent prior to conducting an examination or collecting evidence. Victims have the right to decline all or portions of an exam or evidence collection at any time during the medical response. Unless medically necessary or by way of a court order, victims cannot be forced to consent to an exam or evidence collection.

- Minor Victims
 - Minors age fifteen (15) years and older can legally consent to medical services ,including a sexual assault exam and evidence collection, without parental consent or notification. (Note that this does not necessarily mean that a minor victim's parents won't find out about the assault.)
 - Minors at any age can consent to receive birth control information and services.
 - Minors age fourteen (14) years and older can consent to psychiatric treatment and chemical dependency services.
 - *Medical professionals cannot force minors to undergo a sexual assault exam or evidence collection even at the request of parents.*

Medical Advocacy Tips

- Sexual assault patients may be triaged at a lower priority than patients with life threatening injuries or illness. As a result, victims may have to wait for long periods of time to be seen. Ask the victim what would make the wait more comfortable (e.g., blanket, book, etc.).
- If the victim wants to have forensic evidence collected, her clothes may be taken as part of the SAFE Kit. Sometimes hospitals provide sweats and slippers and sometimes not—be familiar with your medical facilities and their resources.
- If the facility doesn't have clothes for sexual assault victims, consider bringing clothing items from your agency or suggesting that the victim bring a change of clothes.
- Medical facilities cannot refuse to medically treat sexual assault victims. Facilities should perform a medical screening exam and provide emergency care. They may refer a patient to another facility non-emergent medical care.
- Law enforcement officers should **NOT** be present during the medical exam and/or evidence collection. Sexual Assault Nurse Examiners and physicians are responsible for having policies and procedures that account for the chain of evidence to the point of retrieval (pick-up) by law enforcement.

The Sexual Assault Medical Forensic Exam

The sexual assault medical forensic exam can take anywhere from 2-6 hours to complete, depending on the nature of the assault, the evidence that must be collected, and medical and emotional needs of the victim. The sexual assault medical forensic exam includes these components:

- Crisis intervention (if necessary)
- Documenting the relevant medical history and the history of the assault

MEDICAL RESPONSE AND ADVOCACY

- Identification, treatment, and documentation of injuries
- Forensic evidence collection and packaging
- STI evaluation and prophylaxis (testing is not recommended)
- Pregnancy risk and prophylaxis (testing is recommended)
- Follow-up care, information and referral

SANes (or whomever is conducting the exam) will ask the following questions when obtaining a history of the assault:

- Date, time and location of the assault(s)
- Events leading up to and after the assault
- Identity of the assailant
- Relationship to the assailant
- Use of force or threats of force
- Which orifices were penetrated (mouth, anus or vagina)
- What the assailant used to commit the assault (penis, finger, mouth, object, etc.)
- Whether a condom was used
- Whether the assailant ejaculated
- Whether the assailant scratched or bit the victim
- Whether the victim scratched or bit the assailant
- Identification of physical injuries or pain
- What the victim did after the assault (changed clothes, urinated, showered, etc.)
- Whether the victim has recently engaged in consensual sexual activity

SANes will ask the following questions when obtaining a medical history:

- Use of medications including contraception
- If the victim has any allergies
- Date of last menstrual period
- History of medical attention (surgery, illness, etc.)

All of the information collected during the history of the assault and the medical history is potentially admissible in court. Additionally, any medical professional that worked with the victim can be asked to repeat, in court, under oath, comments made by the victim during the exam and history taking.

As with any part of the response to sexual assault victims, medical responders may be supportive but some may also be insensitive. To improve the consistency of a high quality response and medical care for victims, the use of a certified Sexual Assault Nurse Examiner (SANE) to perform sexual assault exams and evidence collection is encouraged as best practice in Oregon. SANes go through an extensive, rigorous training on sexual assault dynamics and medical response, including evidence collection, history taking, documentation, and charting. SANes are neutral parties whose primary goal is to provide medical care as needed, obtain evidence as indicated by the assault history and document what is seen or not seen during the exam. This training makes SANes more specifically

MEDICAL RESPONSE AND ADVOCACY

qualified to provide an appropriate, sensitive, and thorough response to sexual assault victims.

Evidence

The collection of evidence is primarily determined by the history of the assault provided by the victim. For example, if the victim indicates that the assailant licked or bit her breasts, then the SANE would swab the area of the breast indicated by the victim to obtain DNA evidence in the form of saliva from the assailant. Conversely, SANEs would not swab the victim's body unless the assault history given by the victim indicated the need.

The following is a list of the evidence that may be collected during a sexual assault medical forensic exam. The victim has a right to give or withhold consent for any portion of the medical forensic exam.

CLOTHING—This would include the clothing worn during the time of the assault as well as underclothing that the victim may have changed into following the assault. Feminine hygiene products (such as tampons and sanitary napkins) and shoes may also be collected. These items may be kept until the case is closed, which may take up to two years.

PHOTOGRAPHIC EVIDENCE– Photos may be taken of visible injuries. Please see the position paper included in the appendix regarding photographs of genitalia.

BODY SWABS– Body swabs may be collected anywhere the victim indicated potential contact with the assailant's bodily fluids.

TRACE EVIDENCE– This includes any unattached hairs, plant material, soil, fibers, paint and so forth, found on the victim's body or clothing.

HEAD HAIR COMBING/Plucking – Head hair is combed to collect foreign material (trace evidence) and any loose hair. In some cases 24-30 hairs are plucked. Sometimes dried saliva or semen can be found in the hair and obtained by cutting the hair.

FINGERNAIL SWABBINGS– Collected only if necessary (indicated by the assault history) or requested. Fingernail swabbings could potentially provide DNA evidence (skin from the assailant) or trace evidence (dirt, debris, etc.).

BLOOD– Blood may be collected in cases where drug-facilitated sexual assault is suspected or a blood alcohol screen is needed.

URINE — Urine is usually only collected in cases where drug-facilitated rape is suspected or when a pregnancy test is needed.

ORAL SWABS– Oral swabs are usually collected on all patients and in cases where oral sex was a part of the assault

MEDICAL RESPONSE AND ADVOCACY

PUBIC HAIR COMBINGS– If the victim has pubic hair, it is gently combed to lift any debris or pubic hair transferred from the assailant.

PUBIC HAIR PLUCKING— 24-30 Pubic hairs may be plucked under the following circumstances:

- If the assailant was a stranger or there were multiple assailants
- If the pubic combing produces pubic hair
- If the assailant is known to the victim but has never been in the location of the assault.

ANAL SWABS—Anal swabs would be collected if the victim indicated that she was assaulted anally in any way (penis, finger, object, tongue, etc.) or if the examination indicates there may have been or attempted penetration of the orifice. Swabs are collected from the anus (exterior) and possibly the rectum (interior).

VAGINAL SWABS– Vaginal swabs would be collected if the victim indicated that she was assaulted vaginally in any way. This would include collecting swabs from the exterior vaginal area and entrance to the vagina.

CERVICAL SWABS–Cervical swabs would be collected if the victim indicated that she was assaulted vaginally in any way, particularly if the perpetrator may have ejaculated inside of her. The cervix is the primary location from which semen is collected, especially in cases where the victim is being examined 1-3 days after the assault.

BUCCAL SWABS– A buccal swab is a swab of the inside of the cheek. Buccal swabs are obtained only in cases where oral assault has *not* occurred to serve as a DNA standard for the victim.

PENIS SWABS– Penis swabs are collected from male victims, and in some cases SANEs may be asked to swab the penis of the offender in order to collect any possible transfer evidence from the victim.

Drug-Facilitated Sexual Assault

A urine sample should be collected as soon as possible for any suspected case of drug-facilitated sexual assault. Marc LeBeau, Chief Toxicologist for the FBI, believes that urine screens can show positive for drug exposure up to four days later. Additionally, if the drugging occurred within the past 24 hours, LeBeau recommends that a blood specimen be taken as well. Advocates can help victims to understand the time-sensitive nature of having a drug screen completed, and may need to advocate on the victim's behalf (should she choose to do so) to have a test administered.

The drug most commonly used in drug-facilitated sexual assault (DFSA) cases is alcohol. Alcohol is often voluntarily consumed by the victim, although offenders are likely to encourage or pressure continued or excessive use by the victim. Alcohol can be a highly effective depressant, making the victim pliable, complacent and may even lead to

MEDICAL RESPONSE AND ADVOCACY

unconsciousness. **Drug screens are not a routine part of the sexual assault medical forensic exam, but advocates should encourage the test if appropriate under the circumstances and the victim wants the test done.**

Signs and symptoms of drug-facilitated sexual assault can include:

- Disorientation
- Confusion
- Memory loss or loss of time
- Drowsiness
- Impaired motor skills
- Sudden onset of feeling very drunk or high
- Too few drinks for the level of intoxication

CRIMINAL JUSTICE SYSTEM

The Criminal Justice System

The criminal justice system includes police officers who respond to and investigate reports including sexual assault, prosecutors, and courts, including judges and their staffs, who preside over criminal cases that have been filed by prosecutors. Community members serve as jurors, and a jury is usually the fact finder in a criminal trial.

The Purpose of the Criminal Justice System is to promote the safety of the people of Oregon by apprehending, convicting, controlling and managing individuals who have committed crimes against persons, property or the public welfare. It is a duty of the criminal justice system to thoroughly consider the risks that sex offenders pose in each community and the responsibility of the criminal justice system to address those risks.

In an effort to both re-define the criminal justice system response to sexual assault and improve its response to victims, individual responders, agencies and systems in many of Oregon's 36 counties have developed and implemented Sexual Assault Response Teams (SARTs). The purpose of a SART is to ensure an effective, consistent, comprehensive and collaborative response to sexual assault that prioritizes the needs of sexual assault victims and brings responsible parties to justice. A SART, with the complementary but distinct roles of individual members, has a unique opportunity to work collaboratively to ensure that victims are treated with sensitivity, dignity and respect. Existing SARTs have recognized the benefits of a collaborative multidisciplinary response to sexual assault for both the individual victims and the criminal justice system. Victims of sexual assault who are treated with respect, involved in the process, kept informed and, above all else, believed, are more likely to participate in the criminal justice system. Voluntary participation and engagement by the victim may increase the options of the criminal justice system. Oregon, as well as most other states in the nation, does not prosecute adult sexual assault cases without a "cooperative" victim/witness.

The four core disciplines represented on a SART are law enforcement, prosecution, advocacy and medical. Basic roles for each discipline include:

Advocacy

- Provide crisis intervention
- Provide information to the victim so she can make informed decisions
- Ensure that the victim's rights are honored
- Assist with logistics and the needs of the victim (food, housing, transportation, etc.)
- Accompany the victim to court

Sexual Assault Nurse Examiner (medical)

- Document and care for injury
- Collect evidence
- Collect patient history and history of the assault
- Treat for STIs and provide EC
- Crisis Intervention

CRIMINAL JUSTICE SYSTEM

- Information and Referral

Law Enforcement

- Establish the elements of the crime
- Gather and document evidence
- Find and arrest the perpetrator
- Conduct interviews with the offender, victim, and witnesses
- Document and make efforts to corroborate witness statements

Prosecution

- Determine whether to file charges
- Ensure that the evidence supports the charges
- Identify additional evidentiary needs
- Build rapport with the victim
- Prepare the victim for court

The Criminal Code — Oregon Revised Statutes (ORS)

A definition of sexual assault was provided in the earlier section of this manual called “Sexual Assault Dynamics.” The purpose of this definition is to provide a broad understanding of the scope and nature of sexual assault not limited by the definitions within the criminal code. The following information provides a summary of each of the ORS related to sexual assault crimes and corresponding definitions.

Sexual Intercourse: In Oregon, sexual intercourse is a legal term referring to penetration, no matter how slight, of a vagina by a penis. Emission is not required. Non-consensual sexual intercourse is prosecuted as rape.

Mental Defect: In Oregon, mental defect means a person suffers from mental “disease or defect,” rendering the person incapable of understanding the nature of the conduct of the offender.

Mental Incapacitation: In Oregon, mental incapacitation means a person is rendered incapable of appraising or controlling the conduct of the person at the time of the offense. Can be due to voluntary or involuntary intoxication.

Physical Helplessness: In Oregon, physical helplessness means that a person is unconscious or otherwise physically unable to communicate consent.

ORS 163.355 Rape in the third degree.

Sexual intercourse when the victim is under 16 years of age and the offender is more than three years older than the victim.

ORS 163.365 Rape in the second degree.

Sexual intercourse when the victim is under 14 years of age and the offender is more than three years older than the victim.

CRIMINAL JUSTICE SYSTEM

ORS 163.375 Rape in the first degree.

Sexual intercourse when the victim is:

- subjected to forcible compulsion;
- under 12 years of age;
- under 16 years of age and is the assailant's sibling, child or spouse's child; or
- unable to consent due to mental defect, mental incapacitation or physical helplessness.

Deviate Sexual Intercourse: In Oregon, deviate sexual intercourse is a legal term referring to contact between the genitals of a person and the mouth or anus of another. In ORS, unlawful deviate sexual intercourse is prosecuted as sodomy.

ORS 163.385 Sodomy in the third degree.

Deviate sexual intercourse when the victim is under 16 years of age and the offender is more than three years older than the victim.

ORS 163.395 Sodomy in the second degree.

Deviate sexual intercourse when the victim is under 14 years of age and the offender is more than three years older than the victim.

163.405 Sodomy in the first degree.

Deviate sexual intercourse when the victim is:

- subjected to forcible compulsion;
- under 12 years of age;
- under 16 years of age and is the assailant's sibling, child or spouse's child; or
- unable to consent due to mental defect, mental incapacitation or physical helplessness.

Unlawful Sexual Penetration: In Oregon, unlawful sexual penetration is a legal term referring to penetration of the vagina, anus or penis of another person with any object other than the penis or the mouth.

ORS 163.408 Unlawful sexual penetration in the second degree.

Unlawful sexual penetration when the victim is under 14 years of age except if there is penetration of the vagina with a hand or if offender is less than 3 years older than victim.

ORS 163.411 Unlawful sexual penetration in the first degree.

Unlawful sexual penetration when the victim is:

- subjected to forcible compulsion;
- under 12 years of age; or
- unable to consent due to mental defect, mental incapacitation or physical helplessness.

CRIMINAL JUSTICE SYSTEM

Sexual Abuse: In Oregon, sexual abuse encompasses many sexual assault crimes not otherwise covered under rape, sodomy, or unlawful sexual penetration.

Sexual Contact: In Oregon, sexual contact is a legal term referring to any touching of the sexual or other intimate parts of someone OR causing someone to touch the sexual or intimate parts of another for the purpose of sexual gratification.

ORS 163.415 Sexual abuse in the third degree.

Sexual contact when the victim:

- does not consent; or
- is unable to consent due to age (under 18 years of age) and the offender is more than three years older than the victim.

ORS 163.425 Sexual abuse in the second degree.

Sexual intercourse, deviate sexual intercourse, or unlawful sexual penetration without consent. If lack of consent is based only on age, the offender must be more than three years older than the victim.

ORS 163.427 Sexual abuse in the first degree.

Sexual Abuse when the victim is:

- under 14 years of age and the offender is more than three years older than the victim;
- subjected to forcible compulsion; or
- unable to consent due to mental defect, mental incapacitation or physical helplessness.
- Or, when a person under 18 years of age is intentionally caused to touch or contact the mouth, anus or sex organs of an animal for sexual gratification.

ORS 163.315 Incapacity to consent; effect of lack of resistance.

A person is considered incapable of consent if the person is:

- under 18 years of age;
- mentally defective;
- mentally incapacitated; or
- physically helpless.
- Lack of verbal or physical resistance does not by itself constitute consent.

Drug-Facilitated Sexual Assault (DFSA) Drug-Facilitated Sexual Assault occurs when a person uses force, coercion or deception to cause another person to take a drug in order to sexually assault the other person. In Oregon, DFSA statutes are classified under the Regulation of Controlled Substances section of the Oregon Revised Statutes.

ORS 475.908 Causing another person to ingest a controlled substance.

Knowingly or intentionally causing another person, without that person's consent, to consume a controlled substance with the intent of committing or facilitating a crime of

CRIMINAL JUSTICE SYSTEM

violence against the other person. Crime of violence includes, among other things, first degree rape, sodomy, and unlawful sexual penetration.

Mandatory Reporting

In Oregon there are specific instances in which sexual assault (rape, sexual abuse, etc.) must be reported to either law enforcement or the Department of Human Services (DHS). Protected populations, or populations who receive additional protections through the criminal code, include: children and adolescents (those who are 17 years and younger), people with cognitive or developmental disabilities, people with mental illness and seniors (those who are 65 years and above). The following is a summary of the mandatory reporting requirements as stated in the ORS. **Advocates are not listed among those who are mandated reporters of abuse for the populations listed below. However, DA-based advocates and law enforcement advocates in Oregon have been expected to follow agency procedure and report abuse in the following situations. It is important to note that law enforcement and medical professionals are among those who are mandatory reporters.**

****SEE APPENDIX for more information****

Child/Adolescent

Applicable Statutes:

ORS 419B.010 Duty of officials to report child abuse; exceptions; penalty.

ORS 419B.015 Report form and content; notice to law enforcement agencies and local office of Department of Human Services.

Summary:

Any public or private official who reasonably believes that a child has suffered abuse (including sexual assault) is obligated to make an oral report to the Department of Human Services or a local Law Enforcement Agency. Psychiatrists, psychologists, members of the clergy and attorneys may not be obligated to report in cases of privileged communication (ORS 40.225).

A minor child of 12 years of age or older may refuse to consent to the (physical) examination.

Elder

Applicable Statutes:

ORS 124.060 Duty of officials to report

ORS 124.065 Method of reporting; content; notice to law enforcement agency and to department

Summary:

Any public or private official who reasonably believes that a person 65 years of age or older has suffered abuse (including sexual assault) is obligated to make a report by telephone or otherwise, to the Department of Human Services or a local Law Enforcement Agency.

CRIMINAL JUSTICE SYSTEM

Mentally Ill or Developmentally Disabled

Applicable Statutes:

ORS 430.737 Mandatory reporting policy

ORS 430.743 Abuse report; content; action on report; notice to law enforcement agency and Department of Human Services

ORS 430.765 Duty of officials to report abuse; exceptions for privileged communications; exception for religious practice

Summary:

Any public or private official who reasonably believes an adult (who is mentally ill or developmentally disabled) has suffered abuse is obligated to make an oral report by telephone or otherwise, to the Department of Human Services or a local Law Enforcement Agency.

Deadly Weapon Injuries

Applicable Statutes:

ORS 146.710 Definition for ORS 146.710 to 146.780.

ORS 146.750 Injuries to be reported to law enforcement.

Summary:

Injury means a physical injury caused by a knife, gun, pistol or other deadly weapon. Any physician, intern or resident who reasonably suspects that a patient has had an injury inflicted upon them, by other than accidental means, from a deadly weapon is required to make an oral report by telephone or otherwise to law enforcement.

Sexual assault victims who have been injured with a deadly weapon should be informed if you are required to report to law enforcement. However, the reporter and/or the victim are not required to report the sexual assault — only the deadly weapon injury. Victims always have the right to refuse to provide information to law enforcement.

Oregon Rape Shield Law¹

Victims are entitled to certain protections during the prosecution of rape, sodomy, sexual penetration or sexual abuse (any degree) or an attempt to commit such crimes.

The following information is never admissible in court:

- Reputation or opinion evidence of victim's past sexual behavior (or sexual character);

¹ This section was prepared by Stephanie J. Tuttle, Assistant Attorney General, Oregon Department of Justice, September 2008, and reviewed for current accuracy by Jodie Bureta, Marion County Deputy District Attorney, in August 2012.

CRIMINAL JUSTICE SYSTEM

- Reputation or opinion evidence presented to show that the victim's manner of dress incited the crime or indicated consent;

The following information is generally not admissible in court:

- Specific instances of victim's past sexual behavior (sexual conduct), unless it:
 - relates to motive or bias of victim, is necessary to rebut or explain scientific or medical evidence offered by the state, or is otherwise constitutionally required to be admitted.
- Evidence of the victim's manner of dress, unless it
 - relates to motive or bias of victim, is necessary to rebut or explain scientific or medical evidence offered by the state, is necessary to establish the identity of the victim, or is otherwise constitutionally required to be admitted.
- In order to offer such evidence at trial, the defendant must advise the judge and prosecutor of his intent to offer evidence of sexual conduct 15 days before the trial, and include the specifics of what he intends to offer.
- Judge holds in camera hearing (in chambers, private) to hear evidence and arguments from attorneys. Only if the judge decides evidence is relevant for the above purposes and that its probative value outweighs danger of prejudice to victim can it be admitted at the trial.
- If the judge rules evidence admissible, state can appeal the decision to a higher court before trial.
- If the judge rules evidence inadmissible, defendant can appeal decision to a higher court after trial if he is found guilty.

GENERAL LEGAL DEFINITIONS GLOSSARY

ACCUSATORY INSTRUMENT

A document in which an accusation of crime is set forth, such as an indictment, information or complaint.

ACQUITTAL

A verdict of not guilty by the fact finder (jury or judge). A not guilty verdict means the fact finder was not convinced beyond reasonable doubt of the defendant's legal guilt and doesn't necessarily equate to a finding of innocence.

AFFIDAVIT

A voluntary statement reduced to writing and sworn to, or affirmed before, someone legally authorized to administer an oath or affirmation (such as a notary public).

APPEAL

Asking a higher court to review a decision of a lower (generally, trial) court or administrative agency. The state may not appeal from a verdict of acquittal in a criminal case because to do so would violate the defendant's constitutional right not to be put in jeopardy twice for the same offense.

CRIMINAL JUSTICE SYSTEM

ARRAIGNMENT

A defendant's first appearance before a judge after arrest. The defendant is charged with a specific crime or crimes and is read legal rights. Release on bail or personal promise to return (recognizance) is also often decided.

CITATION TO APPEAR

A legal paper requiring the named person to appear in court.

CIVIL COMPROMISE

An agreement between the victim/survivor and defendant and stated by which a criminal case without prosecution; e.g., restitution is made or the defendant agrees not to enter on the victim's premises again (in the case of a commercial establishment). Must be approved by the court.

CIVIL LAW

The body of law that governs rights and remedies between private individuals; the judgment is made mostly in terms of financial restitution.

COMMON LAW

Non-statutory, judge-made law. Appellate court decisions that create and explain principles of law.

COMPENSATORY DAMAGES

Money awarded to compensate victim/survivor for actual losses suffered (civil suit only).

COMPLAINANT

One who asks the court for legal redress by filing a complaint (i.e. the plaintiff in a civil suit). Also, the term often used for a private citizen who reported a crime.

COMPLAINING WITNESS

Victim in a criminal case.

COMPLAINT

In criminal law, a written accusation that the named person has committed an offense other than a felony and must appear to answer to the charge. In civil law, the written instrument by which the plaintiff invokes the jurisdiction of the court and sets out the reasons to support the claim.

CONTEMPT

A finding by a judge of a violation of, or failure to comply with, a court order.

CRIMINAL JUSTICE SYSTEM

COURT

Circuit courts in Oregon have jurisdiction over most criminal cases, as well as all civil cases. Some misdemeanor cases, traffic cases, and some juvenile cases may be handled by municipal (city) courts.

CRIME REPORT

Information of criminal activity that is prepared by police officers.

CRIMINAL LAW

The body of law that governs public wrongs (offenses against the state) and their punishment.

CUSTODY

Physical control of a person. In criminal law, detention of an individual by virtue of legal process or authority. In civil law, custody of a child means the control, care and maintenance of a child.

DAMAGES

The sum of money that the law awards or imposes as monetary compensation, recompense or satisfaction for an injury done or a wrong sustained as a consequence either of a breach of a contractual obligation or a tortious act.

DECREE

A judgment of a court; a final determination of the rights of the parties in certain kinds of civil suits (e.g. decree of dissolution of marriage).

DEFENDANT

In criminal law, the accused individual. In civil law, the person being sued.

DISMISSAL

Termination of a legal action. Can be voluntary by the initiating party (including the district attorney in a criminal case) before a decision on the merits. Can be involuntary by judge either before or after a decision on the merits. When a case is dismissed, the defendant is not held responsible. However, a case can be dismissed without prejudice, which allows the initiating party to file the case again. If it is dismissed with prejudice, the case cannot be refiled.

DISCRETION

Power to exercise judgment and establish policy within general rules and principles of law. May not be exercised arbitrarily. E.g., the prosecutor has discretion to decide which cases to prosecute, and the judge has discretion to decide what legal instructions to give the jury.

DISSOLUTION OF MARRIAGE

Divorce. Legal action ending marriage.

CRIMINAL JUSTICE SYSTEM

DISTRICT ATTORNEY see “Prosecutor”

DIVERSION

A disposition of a criminal defendant, either before or after adjudication of guilt, in which the court directs the defendant to participate in a work or educational program. Literally, the defendant is diverted from the criminal justice system. If s/he does not complete the diversion program, s/he is subject to prosecution or sentencing.

EX PARTE ORDER

An order made by the court upon request of one of the parties to a legal action without notice to the other.

FELONY

Crime of a more serious nature and with graver penalties than that designated as a misdemeanor with graver penalties. Misdemeanor cases are usually only punishable by up to one year in jail.

GRAND JURY

Body of citizens whose duty consists of determining whether probable cause that a crime has been committed exists, and whether a particular person should be indicted for it. It is an accusatory body; its function does not include a determination of guilt.

HEARING

A formal proceeding in court before a judge. Can be civil or criminal, and provides the opportunity to present (and dispute) issues of law or fact to a judge for a decision. (Proceedings before legislative and administrative bodies are also called hearings.)

IN CAMERA

In the judge’s chambers; in private; out of the hearing of the jury and spectators.

INDICTMENT

A written accusation that one or more persons have committed a crime, presented upon oath, by a grand jury. Grand jury indictments are used only in felony cases.

INFORMATION

A written accusation charging a named person with the commission of an offense. The district attorney can file an information in lieu of a grand jury indictment, but a preliminary hearing must then be held.

INJUNCTION

A court order to refrain from or to do a particular act.

JUDGMENT

Decision of a court. Final determination by the court of the rights of the parties upon matters submitted to it.

CRIMINAL JUSTICE SYSTEM

JURISDICTION

Authority of court to exercise power. If a court has not been granted jurisdiction by statute or constitution, it is without authority to act and any action taken by the court is void.

JURY (PETIT JURY)

Body of persons temporarily selected from the citizens of a particular district and vested with power to decide factual issues in a civil or criminal case.

MANDAMUS

"We command." A writ (order) issued by a higher court to a judge or public official, commanding her/him to perform a duty mandated by law, where the judge or official has refused or failed to carry out the mandatory duty.

MISDEMEANOR

Offenses less serious than felonies. Convictions can generally result in sentences for individuals of up to one year's incarceration, probation, a fine, or a combination of these. Many domestic violence cases are charged as Assault IV, a class A misdemeanor.

MODIFICATION

A change in an existing court order. Only a judge can modify an order made by another judge and only for reasons set forth in law. For example, a court order establishing custody of or support for a child can only be modified where circumstances have significantly changed since the initial order.

NEGLIGENCE

A lack of due care that causes injury (not an intentional act).

NOLO CONTENDERE (NO CONTEST)

Plea in criminal case that means guilt is neither admitted nor denied, but has the same effect as a guilty plea. Requires court consent.

ORDER

The judgment or conclusion of a court on any motion or proceeding by which affirmative relief is granted or denied.

ORDINANCE

Generally, a law enacted by a city.

PAROLE

When a person is released from prison conditionally, he or she is on parole. The person must adhere to certain conditions and report to an assigned parole officer. If the person violates any of the stated conditions, he or she can be returned to prison without a new trial, though a fact finding hearing is often required.

CRIMINAL JUSTICE SYSTEM

PETITIONER

One who files a petition initiating action asking the court to do something.

PLAINTIFF

Person who initiates lawsuit in a civil action.

PLEA

A defendant's answer to the crime charged. A defendant can plead guilty, not guilty or nolo contendere (no contest). The plea is made to a judge in court.

PLEA BARGAIN

Process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of case subject to court approval. A plea bargain usually involves the defendant pleading guilty to a lesser offense or to only some of the counts of a multi-count indictment in return for lighter sentence.

PRELIMINARY HEARING

Hearing before a judge to determine whether there is evidence to establish probable cause to believe that a crime has been committed by the defendant named (an alternative procedure to indictment by a grand jury). If there is sufficient evidence, the defendant is bound over to Circuit Court.

PRE-TRIAL CONFERENCE

A meeting between the judge and legal counsel for both parties, prior to the trial, at which time the district attorney informs the defendant of all the evidence against him. The defendant can decide to plead guilty at the time and he will not go to trial. If he still pleads not guilty, a trial will be set. Procedure is applicable to both felony and misdemeanor cases.

PROBABLE CAUSE

A reasonable belief that a crime has been committed.

PROBATION

A kind of sentence where a judge decides to keep tabs on a person either directly (bench probation) or through a probation officer (formal probation). Conditions of probation can include serving jail time, paying a fine, doing community service, participating in alcohol, drug or other counseling programs, staying away from certain people and places, etc. Violation of the terms of probation can result in incarceration.

PROSECUTOR

In criminal cases, the district attorney (representing the state) brings action against another for violation of the law.

PUNITIVE DAMAGES

Money awarded as punishment for outrageous conduct and to deter future transgressions. The state cannot be made to pay punitive damages. (Civil suit only.)

CRIMINAL JUSTICE SYSTEM

RECOGNIZANCE (RECOG)

Defendant's "promise to appear." Conditional release from jail until case is terminated. Frequently used in lieu of a defendant bailing out of jail and referred to as, "released on own recognizance, pending further court proceedings, with the promise to appear."

RESPONDENT

Person named in a petition to the court as the one who should be required to answer why, if at all, the petition should not be granted. Similar to a defendant.

RESTITUTION

Full, partial or nominal payment of certain damages, such as the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses and costs of psychological treatment or counseling.

RESTRAINING ORDER

An order signed by a judge that says that a person cannot do something (e.g. harass, hit, yell at or bother another person) or must leave or stay away from a certain place. The order must be given to the person before it is valid. If a person violates the restraining order, s/he can be arrested.

SENTENCE

The penalty the judge gives to a defendant after s/he pleads guilty or no contest or is found not guilty at trial. A sentence can include time in jail or prison, a fine, probation with certain conditions or a combination of all. The maximum length of jail time and amount of fine possible are set by law.

SERVICE OF PROCESS

Delivery of legal papers to the person named in them and required to answer them. Service requirements vary from personal service (preferred) to notice by posting in public place and publication in newspaper.

STATUTE

Law enacted by state legislature. Act of legislature declaring, commanding or prohibiting something.

STATUTE OF LIMITATIONS

Law establishing time within which a legal action must be initiated. Time varies for different wrongs and whether potential liability is civil or criminal.

TRIAL

An examination and determination in court of issues between parties. May be civil or criminal. Judge or jury may decide the facts. Judge always decides the issues of law.

CRIMINAL JUSTICE SYSTEM

TORT

An injury or wrong committed against a person or property of another for which the injured can sue for money damages and other relief.

VERDICT

Formal decision made by jury on issues submitted to it.

VIOLATION

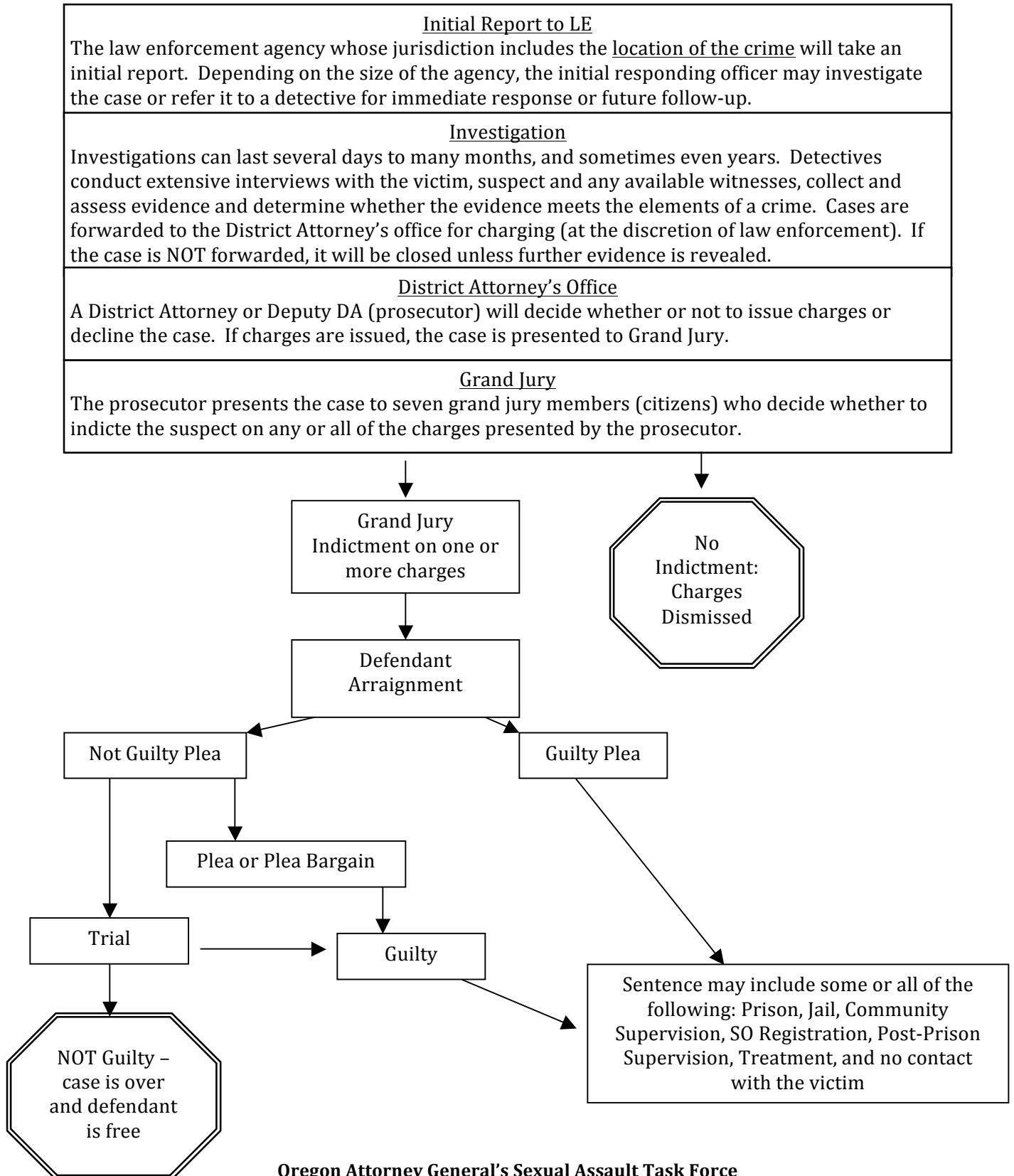
An offense is a violation if it is so designated in the statute. A violation is punishable only by a fine, forfeiture, fine and forfeiture or other civil penalty. Commission of a violation is not commission of a crime.

WARRANT

Written order from the court directing an officer to arrest a person or conduct a search.

CRIMINAL JUSTICE SYSTEM

Criminal Justice System Flow Chart



CRIME VICTIMS' RIGHTS

Crime Victims' Rights

A meaningful role for crime victims is at the heart of Oregon's crime victims' rights.

What Are "Crime Victims' Rights"?

Typically, to say that a crime victim has a legal right means that a crime victim has a *legal guarantee* that a right will be honored and a *legally enforceable claim* if the right is not honored. Crime victims generally have the same rights regardless of whether the act against the victim was committed by an adult or a juvenile.

Whether a right applies depends on how the specific law defines "victim" and on whether the law applies to the phase of the proceeding that is involved. Crime victims' rights law is currently undergoing a lot of change and scrutiny. If you have questions about whether or how a right might apply, you may want to contact an attorney. The National Crime Victim Law Institute (NCVLI, www.ncvli.org) in Portland, or the Oregon Crime Victim Law Center (OCVLC, www.ocvlc.org) might be resources for you.

To Whom Do the Rights Apply?

Who gets to exercise crime victims' rights? That depends on who is a "victim" for purposes of the right.

The Oregon constitution defines a crime victim as "any person determined by the prosecuting attorney or court to have suffered direct financial, psychological or physical harm as a result of a crime and, in the case of a victim who is a minor, the legal guardian of the minor." The highlights of this definition of a "constitutional victim" are that

- the *prosecuting attorney or court* determines that
- someone was *harmed*, and
- the harm was *directly* suffered.

There may be times when someone is listed as a victim on a police report but doesn't end up being a "constitutional victim" because the case is not prosecuted or adjudicated.

There may also be times when someone considers her- or himself a victim of a crime that is being prosecuted or adjudicated, e.g., a friend that was like a mother to a homicide victim, and the prosecuting attorney doesn't agree that the person was directly harmed. The friend may ask the court to find that she is a victim; if the

CRIME VICTIMS' RIGHTS

court determines that she is a victim in the case, she has the rights that other victims have.

The definition of “constitutional victim” and how that affects cases remains in transition. Unless you are sure that your client is a “constitutional victim,” you should check with NCVLI or OCVLC.

ORS 131.007 defines victim a bit more broadly: “[V]ictim’ means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse of corpse in any degree, a member of the immediate family of the decedent and in the case of a minor victim, the legal guardian of the minor.” The distinctions between this statutory definition, which covers much of the criminal code, and the constitution are:

- In the statute, there is no qualification that “victim” is determined by the prosecutor or the court.
- In the statute, there is no requirement that the harm be direct.
- The statute includes “social” in the type of harm to be considered.
- The statute includes homicide and abuse of a corpse as offenses that inform who is a victim.

Victim definitions having to do with restitution (ORS 137.103(4)), Crime Victims’ Compensation (ORS 147.005), parole (ORS 144.120 and OAR 255-05-0005(59)), and sex offender registration (OAR 257-070-0015) may be different. Also, conditions for victim eligibility are important when pursuing payment through the Sexual Assault Victim Emergency (SAVE) fund, for example. You should check the appropriate statutes if the definition of victim might affect your advocacy.

When do Crime Victims’ Rights Apply?

Crime victims’ rights cover all phases of a prosecution or juvenile adjudication. Many of the rights have to do with notice of what is going to happen in a case. A crime victim has a right to a support person throughout the criminal process. A crime victim has a right to information about a case. A crime victim has a right to be reasonably protected from the defendant, convicted person, alleged youth offender or youth offender throughout criminal proceedings. Crime victims’ rights establish what a crime victim may expect from the criminal and juvenile justice systems.

Not all victims’ rights apply in every case. Some of the rights apply for victims of particular crimes, for example, sexual assault, driving under the influence of intoxicants (DUI), or graffiti. Some rights apply in the adult criminal justice system and not in the juvenile justice system; some apply only in the juvenile justice system. Because most cases don’t go to trial, the rights related to trial, for example, will not

CRIME VICTIMS' RIGHTS

be exercised in most cases. When the rights do apply, they can ensure that a sexual assault victim gets an HIV test and referral to services, gets emergency contraception, or knows when an important hearing is going to take place.

Automatic Rights vs. Rights Upon Request

Most crime victims' rights require a crime victim to take some action. This action can include making a request for the right, applying for crime victims' compensation, initiating a court action, consenting to or asserting something in a case, choosing to waive a right, or making a recommendation.

Examples of crime victims' rights that require a crime victim to do something so that a right goes into effect:

- Right to crime victims' compensation for certain person crimes (if crime victim applies for the compensation)
- Right to a court order prohibiting distribution of sexually explicit information (upon request)
- Right to be informed in advance of "critical stage hearings" (upon request)
- Right to a copy of a court transcript (if requested and paid for)
- Right to information about the defendant, alleged youth offender, convicted person or youth offender (if information is requested)
- Right to have phone number and address withheld (upon request)
- Right to HIV testing (for victim and/or defendant) (upon request)
- Right to waive victim's right not to speak with a representative of the defendant or alleged youth offender (not to speak with defense counsel)
- Right to information in a DUII case (upon request)
- Right to consult with the district attorney on a plea in a violent felony case (upon request)
- Right to no public access coverage of sex offense proceedings (upon request)
- Right to notice of hearings before the (Juvenile) Psychiatric Security Review Board or State Board of Parole and Post-Prison Supervision (upon request)
- Right to request ongoing involvement in any court actions that happen after the conviction such as appeal, post-conviction or federal habeas proceedings
- Right to assert a claim of violation of crime victims' rights if your rights are not honored

The Crime Victims' Rights Section has developed a Rights Request form that allows for victims to request the rights that require such a request. This form may

CRIME VICTIMS' RIGHTS

be found on the Practitioners tab of the Crime Victims' Rights Section Web portal at www.doj.state.or.us/victims.

Examples of rights that do not require a crime victim to do something in order for a right to go into effect:

- Right to due dignity and respect
- Right to fair and impartial treatment
- Right to notice of constitutional rights as soon as practicable
- Right to reasonable protection from the defendant, et al.
- Right to a support person
- Right not to be contacted by the defendant/alleged youth offender
- Right not to have personal identifiers disclosed
- Right to have schedule considered for trial date
- Right to be contacted by a pre-sentence report preparer
- Right to appear at pretrial release and sentencing, and to be heard
- Right to receive prompt restitution
- Right to bring certain civil actions
- Right not to have graffiti removed by the offender
- Right to emergency contraception if victim of sexual assault

OREGON CRIME VICTIMS' RIGHTS LIST

For Practitioners

(With Case Law)

October 1, 2008

Introductory Remarks

This list of crime victims' rights is a synthesis of rights given to crime victims in the Oregon Constitution, Oregon statutes and other sources of law. Whether a right applies may depend on the definition of victim that applies to the right, whether a victim requested a right that required such a request, and whether the offense was committed by a juvenile or an adult. This list is a work in progress, subject to change, and is intended to inform Oregon practitioners. For more information about this list, crime victims' rights compliance, or victims' services, please contact the Crime Victims' Services Division of the Oregon Department of Justice at (503) 378-5348.

Foundational Rights

1. A crime victim has a right to justice, a right to a meaningful role in the criminal and juvenile justice systems, a right to due dignity and respect, and a right to fair and impartial treatment. A crime victim's rights shall be protected at each stage of the criminal justice system. Or Const Art 1 § 42(1). ORS 147.410.

CRIME VICTIMS' RIGHTS

Initial Notice of Rights

2. A crime victim shall be given notice about victims' rights in Oregon's constitution as soon as practicable. If exercise of any of the rights depends upon a victim making a request, the notice shall include the time period in which a victim is required to make the request. Or Const Art 1 § 42(1)(g). ORS 147.417. ORS 419C.273(1)(b).

Rights at Various Stages of the Criminal and Juvenile Justice Systems

3. The victim of a person crime who was at least 15 years old when the crime is committed may select a personal representative to accompany the victim to phases of the investigation and prosecution of the crime except for grand jury proceedings and certain child abuse assessments. The victim may not select a person who is a suspect in, or a party or witness to, the crime as a personal representative. ORS 147.425(2).
4. A crime victim may be eligible for compensation for a crime. Compensation may also be available in certain post-conviction proceedings. Additionally, victims of sexual assault, suspected child sexual abuse or child physical abuse may have the costs of certain medical assessments paid by the Oregon Department of Justice. § 2, Chapter 789, Oregon Laws 2003. ORS 147.015. ORS 147.390. (Compensable losses are listed in ORS 147.035. Emergency awards are described in ORS 147.055. See, too, about compensation for certain HIV testing below.) All law enforcement agencies in Oregon shall deliver cards to victims of crime stating the procedure to be followed in applying for crime victims' compensation. ORS 147.365.
5. A crime victim (or the district attorney) may request a court order prohibiting copying or distribution of sexually explicit information in a proceeding involving a sexual offense, the visual or audio recording of sexual conduct by a child, or invasion of person privacy. ORS 135.873(5). A crime victim (or the district attorney) may have, upon request, and unless the court finds good cause to do otherwise, a court protective order prohibiting copying or distribution of a visual or audio recording of the victim describing the victims' sexual victimization in a proceeding involving a sexual offense, the visual or audio recording of sexual conduct by a child, or invasion of person privacy. ORS 135.873(6). Notwithstanding a protective order entered under ORS 135.873(5) or (6), information or materials described may be copied or distributed for the purpose of providing discovery; submitting evidence to a grand jury, a court, a state agency, a local or federal agency for use in judicial or administrative proceedings; having the information or materials examined by an expert witness for the court, state or any party; giving copies of the information or materials to the parties'

CRIME VICTIMS' RIGHTS

- attorneys or agents; or sharing the information or materials with a state agency for use in carrying out duties imposed on the agency by statute. ORS 135.873(7). Upon request of the victim the court may order that the victim be provided with a copy of information or materials described in ORS 135.873(5) and (6). ORS 135.873(8). Applies to the Juvenile System via ORS 419C.270.
6. A crime victim has, upon specific request, the right to be informed in advance of any critical stage of the proceedings held in open court when the defendant or alleged youth offender will be present. A crime victim has the right to be present at any such stage of the proceedings. Or Const Art 1 § 42(1)(a). ORS 419C.273. In juvenile cases, a victim has the specific right to advance notice of a release hearing; a detention or shelter hearing; a hearing to review placement; and a dispositional hearing. ORS 419C.273(2). ORS 419C.142. ORS 419C.153. ORS 419C.173(2). ORS 419C.653. If a victim is not present at a critical stage of the proceeding, the court shall ask the district attorney or juvenile department whether the victim requested to be notified of critical stages of the proceedings. If the victim requested to be notified, the court shall ask the district attorney or juvenile department whether the victim was notified of the date, time and place of the hearing. ORS 419C.273(3). See ORS 419C.273(4) for definitions of "critical stage of the proceeding" in the juvenile system. See also ORS 40.385 (OEC Rule 615): Exclusion of witnesses rule does not authorize exclusion of the victim in a criminal case.
 7. A crime victim may have a copy of a transcript, audiotape or videotape of any court proceeding in open court, if one is otherwise prepared. Or Const Art 1 § 42. ORS 147.419. ORS 419A.256(1)(b).
 8. A public body shall provide to a victim any of the following information of which it is the custodian and that is about the defendant, alleged youth offender, convicted criminal, or youth offender: (a) the conviction and sentence; (b) criminal history; (c) imprisonment; and (d) future release from physical custody. Or Const Art 1 § 42. ORS 147.421.
 9. A crime victim has the right to be reasonably protected from the criminal defendant, convicted criminal, the alleged youth offender, or youth offender throughout the criminal justice process or juvenile delinquency proceeding. Or Const Art 1 § 43(1)(a).
 10. A crime victim has the right to have an address and phone number withheld from the defendant upon request unless good cause is otherwise shown. ORS 135.970(1). When a victim asks that her or his address and telephone

CRIME VICTIMS' RIGHTS

number not be disclosed to the defendant, the district attorney must promptly prepare, serve on the opposing party and submit to the court an appropriate order. UTCR 4.4040 (1). [Please note following right about victim's personal identifiers being withheld from defendant automatically.] A victim of domestic violence, sexual assault or stalking may have a substitute address designated when disclosure of the address may threaten the safety of the victim or the victim's child. ORS 192.820 – ORS 192.868.

11. Unless authorized by the trial court to disclose, a defendant's lawyer, or a representative of the lawyer, may not disclose to the defendant personal identifiers of a victim obtained under ORS 135.815(4)(a). . Unless authorized by the court to disclose the information, the attorney of a youth or youth offender, or an agent of the attorney, may not disclose to the youth or youth offender personal identifiers of a victim or witness ORS 419C.276 (1)(a). If a defendant is not represented by a lawyer, the district attorney shall disclose to the defendant all of the information described in ORS 135.815(1) except for the personal identifiers of the victim and any witnesses. ORS 135.815 (3)(a). There are circumstances under which a trial court will order the disclosure. ORS 135.815(3)(b). "Personal identifiers" means a person's address, telephone number, Social Security number and date of birth and the identifying number of a person's depository account at a financial institution or credit card account. ORS 135.815 (4)(a). ORS 419C.276(6)(b).
12. When a criminal act involves the transmission of body fluids, a victim may request HIV testing of the person charged or convicted of the offense, which, under certain circumstances, the court must order. If such an HIV test is positive, a victim shall be provided with counseling and referral for health care, testing and support services. Costs of this testing and counseling shall be paid through the Crime Victims' Compensation Program. ORS 135.139. HIV rights in the juvenile system: ORS 419C.475.
13. No district attorney or other law enforcement officer or investigator involved in the investigation or prosecution of crimes, or any employee thereof, shall require any complaining witness in a case involving the use of force, violence, duress, menace or threat of physical injury in the commission of any sex crime under ORS 163.305 to 163.575, to submit to a polygraph exam as a prerequisite to filing an accusatory pleading. ORS 163.705.

Release and Pre-Trial Rights

14. A crime victim has the right to be notified by the district attorney or juvenile department of the release hearing upon timely request. A crime victim has the right to appear personally at the release hearing and to reasonably

CRIME VICTIMS' RIGHTS

express any views relevant to the issues before the court or magistrate. Or Const Art 1 § 42. ORS 135.245(5)(B). ORS 419C.273 2(b); ORS 419C.097(2).

15. A victim has a right to be heard at a detention or shelter hearing. ORS 419C.273(2)(a)(A). A crime victim has the right to have decisions by the court regarding the release of a criminal defendant or alleged youth offender based, in part, on the principle of reasonable protection of the victim. Or Const Art 1 § 43. ORS 419C.100(2); 419C.145(1)(g); (4)(i); (5); 419C.176.
16. At the request of the victim, the prosecuting attorney may request that the court schedule a hearing to reconsider a release decision if: (a) the victim did not have notice or, or an opportunity to be heard at, a hearing in which the court released the defendant from custody or reduced the defendant's security amount and (b) the victim's request is made no later than seven days after the victim knew or reasonably should have known of the release decision that is to be reconsidered. "Release decisions" includes decisions made at arraignment and decisions made at juvenile hearings including detention and shelter hearings, hearings to review placements, and hearings to set or change conditions of release. ORS 147.508, ORS 419C.273 (4)(b)(A) to (C).
17. Any pretrial release order must prohibit any contact with the victim, unless specifically authorized by the court. If the defendant threatens or intimidates the victim, the district attorney shall notify the court and the defense attorney. If the defendant is not in custody and the court finds there is probable cause to believe the victim has been threatened or intimidated by the defendant, the court shall immediately issue an order to show cause why defendant's release status should not be revoked. ORS 135.250. ORS 135.970. ORS 419C.276(4) and (5).

(In the juvenile system) Any pre-adjudication release order must prohibit any contact with the victim, either directly or indirectly, unless specifically authorized by the court ORS 419C.276(4) "Contact" has the meaning given that term in ORS 163.730 (Stalking).
18. If a victim requests notice, the district attorney or juvenile department shall notify the victim of a hearing to amend the petition in advance of the hearing. ORS 419C.261.
19. When a youth offender is taken into custody, the disclosure of the youth's name, age, employment, and school status; the offense for which the youth offender was taken into custody; the name and age of the adult complaining party and the adult victim; the identity of the investigating and arresting

CRIME VICTIMS' RIGHTS

agency; and the time and place that the youth offender was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody, may be delayed if and only so long as there is a clear need for such delay in the course of a specific investigation in order to protect the victim. ORS 419A.255(6).

20. If contacted by the defense, a victim must be clearly informed by the defendant or alleged youth offender's attorney of the identity and capacity of the person contacting the victim, that the victim does not have to talk to the defendant or alleged youth offender's attorney, or provide other discovery (except subpoenas and examinations allowed defense counsel) unless the victim wishes, and that the victim may have a district attorney present during any interview. Or Const Art 1 § 42. ORS 135.970. ORS 419C.276 3(2); 3(3).

The Oregon Supreme Court has determined a subpoena *duces tecum* is improper where it requests pretrial production from a non-party victim. In *State v. Cartwright*, 85 P.3d 305 (Or. 2004), on appeal from his conviction for harassment and criminal trespass, defendant argued that the trial court erred in quashing the subpoenas *duces tecum* commanding production of audiotaped prior statements of witnesses. The court held that while defendant had the right to audiotapes at trial, he had no right to them prior to trial. In reaching this conclusion, the court explained that a subpoena *duces tecum* directed to a non-party cannot be used as a discovery device to command the pretrial production of evidence to be used at trial.

Oregon appellate courts have also concluded that an *in camera* examination of certain records and files held by the state is appropriate to determine whether those files or records contain exculpatory information to which the defendant is entitled. See *State ex rel. Dugan v. Titkin*, 837 P.2d 959 (Or. 1992) (issuing a writ of mandate and ordering the trial court to engage in an *in camera* review of confidential records concerning the child-victim to determine whether any portion of those records should be released to defendant); *State v. Leslie*, 850 P.2d 1134 (Or. Ct. App. 1993) (holding that the trial court's *in camera* examination of victim's personnel files, police officers involved in the altercation underlying the criminal charges against defendant, "was the appropriate procedure" to determine whether the files contained exculpatory material to which defendant would be entitled).

In *State v. Gallup*, 816 P.2d 669 (Or. 1991), defendant appealed her conviction for sexual abuse, arguing, *inter alia*, that genitalia of the two child-victims were tangible objects in the prosecutor's possession that were subject to discovery. The court explained that even if a child-victim's

CRIME VICTIMS' RIGHTS

genitalia was a tangible object within the meaning of the discovery statute, the district attorney has no custodial relationship to a victim that would provide the authority to compel an examination.

The right to refuse a pretrial discovery request is broad. In *State ex rel. Beach v. Norblad*, 781 P.2d 349 (Or. 1989), the widow of a deceased victim brought an original proceeding in mandamus to direct the trial court judge to vacate his order requiring her to permit defendant access to her home where a murder occurred. The Supreme Court explained that the trial court lacked the authority to issue the order to a non-party, and it issued an alternative writ of mandamus directing the trial court to either vacate the order or show cause why it had not done so.

21. In any prosecution arising from an automobile collision in which the defendant is alleged to have been DUII, the prosecuting attorney shall make available to a victim, upon request, reports and information disclosed to the defendant. ORS 135.857. Applies to Juvenile System via ORS 419C.270. If a DUII offense involves damage to property of a person other than the defendant, the victim of the property damage has a right to be present and to be heard at any hearing on a petition for a diversion agreement. ORS 813.222(1).
22. Jointly charged defendants shall be tried jointly unless the court concludes before trial that it is clearly inappropriate to do so and orders that a defendant be tried separately. In reaching its conclusion the court shall strongly consider the victim's interest in a joint trial. ORS 136.060.
23. If a victim of a violent felony makes a timely request, the district attorney shall consult the victim regarding plea discussions before making a final plea agreement. If a victim asks to be consulted, the judge shall ask the district attorney if the victim agrees or disagrees with the plea discussions and agreement and the victim's reasons for agreement or disagreement. Or Const Art 1 § 42. ORS 135.406. (OAR 213-003-001 lists "person felonies" in numerical statutory order.) The juvenile department must consult the victim before entering into a formal accountability agreement if the victim requests consultation in plea negotiations and the formal accountability agreement involves an alleged act that if committed by an adult would constitute a violent felony. ORS 419C.230(3). The district attorney or juvenile department must consult the victim regarding plea negotiations if the victim requested to be consulted, the petition alleges the youth committed an act that would constitute a violent felony if committed by an adult and the negotiations could lead to an amendment of the petition for purposes of obtaining an admission from the youth. ORS 419C.261(3).

CRIME VICTIMS' RIGHTS

Following the victim's exercise of his or her right to confer with the prosecutor, the prosecutor may not constitutionally allow a victim to prevent a plea agreement that would otherwise be offered, but the prosecutor may offer a plea agreement based on the victim's wishes where such an offer would not otherwise have been made. *See State v. Acker*, 27 P.3d 1071 (Or. Ct. App. 2001).

24. In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the district attorney shall consider, among other things, recommendations, if any, of the victim. ORS 135.886(2)(h).

Trial and Sentencing

25. When resetting any trial date or setting any court hearing requiring the presence of the victim, the court shall take the victim into consideration by asking the district attorney if the victim has been informed of the prospective date and if that date is convenient for the victim. ORS 136.145. Furthermore, an eligible employee may notify the prosecuting attorney if taking leave to attend a criminal proceeding would cause undue hardship to a covered employer. The prosecuting attorney shall then notify the court or hearing body. The court or hearing body must take the schedule of the employee into consideration when scheduling a criminal proceeding. Criminal proceeding is used as defined by ORS 131.005(7). ORS 659A.192(4). See also ORS 136.295(4) re: an extension of custody when a court fails to comply with this provision; and UTCR 4.040(2).
26. In a prosecution for rape, sodomy, unlawful sexual penetration, or sexual abuse, or in a prosecution for an attempt to commit one of these crimes, the following evidence is not admissible: Reputation or opinion evidence of the past sexual behavior of an alleged victim; or reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim incited the crime or indicated consent. In a prosecution for these crimes or attempt to commit one of these crimes, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also inadmissible unless admitted in accordance with the Oregon Evidence Code and is evidence that relates to the motive or bias of the alleged victim, is necessary to rebut or explain scientific, medical or testimonial evidence offered by the state, is necessary to establish the identity of the victim or is otherwise constitutionally required to be admitted. ORS 40.210. Oregon Evidence Code, Rule 412.

CRIME VICTIMS' RIGHTS

In *State v. Iverson*, 57 P.3d 953 (Or. Ct. App. 2002), the trial court prevented defendant from inquiring about whether an examining physician had asked whether the victim had been sexually assaulted, thereby providing an opportunity for her to report the abuse, which she did not do. The court of appeals concluded that this evidence was not protected by the Rape Shield law.

Evidence of a victim's venereal disease meets the definition of "past sexual behavior," and as such, the Rape Shield law prohibits the admission of such evidence. *State v. Cunningham*, 995 P.2d 561 (Or. Ct. App. 2000).

Exclusion of evidence prohibited by the Rape Shield law does not violate defendant's constitutional rights, *id.* at 1206, including a defendant's right to compulsory process. *See State v. Beeler*, 999 P.2d 497, 502 (Or. Ct. App. 1999) (stating, "the constitutional issues reduces to a weighing of the state's interest in excluding defendant's evidence against the value of that evidence to the defense." In *Anderson*, the court explained that a "[d]efendant's right to present a defense does not include a constitutional right to present irrelevant, prejudicial evidence." *Id.* at 1208.

In *State v. Beeler*, 999 P.2d 497 (Or. Ct. App. 1999), the court concluded that Rule 412 prohibited the admission of evidence that the victim had engaged in consensual sex with her boyfriend less than 24 hours following the sexual assault by defendant. *See also State v. Niles*, 817 P.2d 293 (Or. Ct. App. 1991) (holding that the trial court properly excluded evidence that the victim had consensual sex with two other men). *But see State v. Morgan*, 675 P.2d 513 (Or. Ct. App. 1984) (concluding that evidence of prior consensual sexual intercourse between defendant and victim was probative of her motive to make a false accusation of rape and therefore, was admissible under Rape Shield law).

Under Rule 412, evidence of prior sexual abuse is admissible if it is relevant to the motive or bias of the victim. *State v. Bender*, 986 P.2d 94 (Or. Ct. App. 1999). In *Bender*, the court upheld the trial court's decision to admit evidence of similar sexual abuse by child-victim's father, and the victim's report to CARES workers about that abuse, that she had a premonition that the abuse would occur, and that she called out her father's name upon waking up on the night of the assault by defendant. The court explained that evidence of the prior sexual abuse was relevant to defendant's theory that the child had not been sexually abused by defendant but rather had been having a nightmare about her father's prior abuse.

CRIME VICTIMS' RIGHTS

Evidence of prior treatment for a sexually transmitted disease is not admissible under the Rape Shield law. *State v. Gilliland*, 902 P.2d 616 (Or. Ct. App. 1995).

Evidence that a victim previously exchanged sex for drugs with other men in the past was prohibited by the Rape Shield law. *State v. Thompson*, 884 P.2d 574 (Or. Ct. App. 1995). The court explained: "There is no logical connection between the complainant's supposed history of having offered to trade sex for drugs and any motive to accuse the defendant in this case."

In *State v. Frankel*, 823 P.2d 394 (Or. 1991), under a version of the Rape Shield law that has since been amended, the court concluded that while a trial court must hold a hearing in chambers to determine the admissibility of evidence under the Rape Shield law, that hearing need not be closed to the public. The court's discussion of victim's privacy concerns remains relevant.

In *State v. Weeks*, 782 P.2d 430 (Or. Ct. App. 1989), the court concluded that evidence of the child-victim's sexual contact with other persons was not relevant to show a motive to falsely accuse defendant of sexual misconduct and, therefore, was inadmissible under the Rape Shield law.

In *State v. Wattenbarger*, 776 P.2d 1292 (Or. Ct. App. 1989), the court held that acts of sexual abuse perpetrated against the victim by five other individuals should be excluded under the Rape Shield law. The court also found that evidence of the victim's hostility towards defendant and evidence that another child who was in the same foster home as the victim had also made a report of sexual abuse were not protected under the Rape Shield law.

In *State v. Bender*, 755 P.2d 151 (Or. Ct. App. 1988), the court held that defendant was prohibited from introducing evidence of the victim's alleged sexual affairs because that evidence was not relevant to show bias or motive to falsely accuse and would constitute improper impeachment evidence.

In *State v. Morgan*, 675 P.2d 513 (Or. Ct. App. 1984), the court concluded that evidence of prior consensual sexual intercourse between defendant and the victim was probative as to her motive to make a false accusation of rape and therefore, was admissible under the Rape Shield law.

Rule 412, the Rape Shield law, was "intended to balance the interest of the victim of a sexual crime in protecting her private life from unwarranted public exposure and the defendant's interest in being able to present an adequate defense by offering relevant and probative evidence." *State v. Bass*, 683 P.2d 1040, 1041 (Or. Ct. App. 1984). The Rape Shield law is also

CRIME VICTIMS' RIGHTS

applicable where defendant raises an affirmative defense. *State v. Anderson*, 902 P.2d 1206 (Or. Ct. App. 1984).

In *State v. Reiter*, 672 P.2d 56 (Or. Ct. App. 1983), the court concluded that the Rape Shield law was inapplicable where defendant sought to impeach the victim as to a statement she made on direct examination.

27. At a victim's request, there shall be no public access coverage of sex offense proceedings in court. "Public access coverage" means coverage by television, photography or recording equipment in the possession of persons other than the court or the court's staff. UTCR 3.180(2)(d) and UTCR 3.180(6).
28. A victim of involuntary servitude or trafficking in persons may assert the defense of duress if prosecuted for conduct that constitutes services that the person was caused to provide. ORS 163.269.
29. The preparer of a pre-sentence investigation report shall make a reasonable effort to contact the victim and obtain a statement describing the effect of the defendant's offense on the victim. The preparer of the report shall include the statement of the victim in the pre-sentence report. ORS 137.530(2).

In *In the Conduct of Collins*, 775 P.2d 312, 315-16 (Or. 1989), the State Bar instituted a disciplinary proceeding against a district attorney based on his disclosure of a presentence report (PSR) to a volunteer crime victim's advocate working in his office, who in turn disclosed some of the information therein to the victim. The court noted that ORS 137.077 provides that the PSR is not a public record and, contrary to the Bar's finding, the court concluded that the statute gives no express prohibition against disclosure of the report's information to non-party victims. The court explicitly left open the issue of whether the Bar's trial panel finding that the prosecutor was prohibited from disclosing information in the PSR to anyone not designated in the statute would violate the policy set forth in the Crime Victims' Bill of Rights to permit meaningful participation by crime victims in the criminal justice decision making process. *Id.* at 316 n. 12.

30. At the time of sentencing, the victim has the right to appear personally or by counsel, and has the right to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim, and the need for restitution and compensatory fine. Or Const Art 1 § 42. ORS 137.013. A victim has a right to be heard at a dispositional hearing. ORS 419C.273(2)(a)(C).

CRIME VICTIMS' RIGHTS

Admission of victim impact evidence pursuant to the 1999 amendment to the Oregon Constitution granting victims the right to be heard at sentencing does not violate the *ex post facto* clauses of the federal and state constitutions. *State v. Guzek*, 86 P.3d 1106 (Or. 2004), *vacated on other grounds*, 126 S.Ct. 1226 (2006).

In *State v. Deck*, 735 P.2d 637 (Or. Ct. App. 1987), defendant argued, *inter alia*, that the trial court erred in allowing the victim to testify as a witness in aggravation, over his objection, about defendant's daughter's statements that she too had been abused by defendant. The court concluded that the rules of evidence on hearsay are applicable to the testimony of witnesses in a sentencing hearing where that testimony is to be used to aggravate punishment. Therefore, the court vacated the sentence and remanded for resentencing. The issue of whether the rules of evidence regarding hearsay are admissible when a victim is exercising the right of allocution rather than testifying as a witness in support of aggravation was not raised by the parties or addressed by the court.

Post-Sentencing and Post-Adjudication Rights

31. When a defendant is found guilty except for insanity or a young person is found responsible except for insanity, or is already under the jurisdiction of the Psychiatric Security Review Board or the Juvenile Psychiatric Security Review Board, and a victim desires notification, the Board shall make a reasonable effort to notify the victim of Board hearings, conditional release, discharge or escape. ORS 161.326. ORS 419C.529(5). See OAR 859-050-0005 re: written notice to victims.
32. The State Police shall establish a toll-free telephone number to give victims of sex offenses updates on prison status, release information, parole status and any other information authorized for release about the person who committed the crime against the victim. ORS 181.601. To access this system, the victim is provided a form by the district attorney. Once the form is completed by the victim, it is turned into any Oregon State Police office – a personal identification number is then assigned to the victim with information on the toll free number and what information can be accessed.
33. If a person is released on post-prison supervision or parole following conviction of a sex crime, the State Board of Parole and Post-Prison Supervision or supervisory authority shall include as a special condition of post-prison supervision a prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board, supervisory authority or supervising officer. ORS

CRIME VICTIMS' RIGHTS

- 144.102(3)(b)(G). If a person is released on parole after conviction of a sex crime, the Board shall include as a condition of parole a prohibition against any contact with the victim, directly or indirectly, unless approved by the victim, the person's treatment provider and the board or supervising officer. ORS 144.270(3)(b)(G).
34. If a person is released on probation, post-prison supervision or parole following conviction of a sex crime or an assault, and the victim was under 18 years of age, the court (probation) or the board or supervisory authority (parole or post-prison supervision), in the case if requested by the victim, shall include as a special condition of the person's probation or supervision that the person not reside within three miles of the victim unless certain exceptions apply. ORS 137.540.(4)(a). ORS 144.102(3)(c)(A). ORS 144.270(3)(c)(A). A victim may request imposition of this special condition at sentencing in person or through the prosecuting attorney. A victim's request may be included in the judgment document. ORS 137.540(4)(b). ORS 144.102(3)(c)(B). ORS 144.270(3)(c)(B).
35. If the Parole Board, the Department of Corrections or community corrections agency determines that a person under its supervision is a predatory sex offender, the agency supervising the person shall consider notifying any prior victim of the offender that the person is a predatory sex offender. ORS 181.586.
36. As soon as practicable after a youth offender files a petition for relief from a duty to report as a registered sex offender, the district attorney or juvenile department shall make a reasonable effort to notify the victim that the person has filed a petition seeking relief under this section and to inform the victim in advance of the hearing of the date, time and place of the hearing on the petition, if the victim so requests. ORS 181.823 (6), ORS 419C.273(1) and (4)(a) and (b)(K)
37. A victim has the right to receive prompt restitution from the convicted criminal or youth offender who caused the victim's loss or injury. Or Const Art 1 § 42. ORS 419C.450. When a person is convicted of a crime that resulted in pecuniary damages, the district attorney shall investigate and present to the court, prior to the time of sentencing, evidence of the nature and amount of such damages. If the court finds that a victim suffered pecuniary damages, the court shall: (a) Include in the judgment a requirement that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's pecuniary damages; or (b) Include in the judgment a requirement that the defendant pay the victim restitution, and that the specific amount of restitution will be established by

CRIME VICTIMS' RIGHTS

a supplemental judgment. In the supplemental judgment, the court shall establish a specific amount of restitution that equals the full amount of the victim's pecuniary damages as determined by the court. ORS 137.106(1). However, a court may order specific amount of restitution that is less than the full amount of the victim's economic damages if the victim consents. If the defendant is convicted of a person felony, a requirement that the defendant pay the victim restitution in a specific amount less than the full amount of the victim's economic damages may only be included in the judgment with the written consent of the victim. ORS 137.106(1)(b). If a youth offender will be present at a restitution hearing and the victim requests notice, the district attorney or juvenile department shall notify the victim of the hearing. ORS 419C.450(1)(e). Payment of restitution is a general condition of probation. ORS 137.540. The court may impose a special condition of probation that the probationer shall sell any assets of the probationer as specifically ordered by the court in order to pay restitution. ORS 137.540(2)(c). See also ORS 419C.450(1)(a) – It is the policy of the State of Oregon to encourage and promote the payment of restitution and other obligations by youth offenders as well as by adult offenders., ORS 419C.450(2) – Restitution for injury inflicted upon a person by the youth offender, for property taken, damaged or destroyed by the youth offender and for a reward offered by the victim or an organization authorized by the victim and paid for information leading to the apprehension of the youth offender, shall be required as a condition of probation., ORS 419C.236(2) re: restitution in juvenile formal accountability agreements; and ORS 163.577(5) and ORS 163.577(6) re: restitution in cases of failing to supervise a child.

In *State v. Carrillo*, 865 P.2d 379 (Or. Ct. App. 1993), defendant was convicted of rape and sodomy of a child under 12 years of age. The trial court ordered that defendant pay restitution to minor-victim's mother for counseling expenses. On appeal, the court concluded that victim's mother qualified as a "victim" for purposes of restitution, notwithstanding that she did not receive a "direct physical injury" as a result of defendant's conduct. The court explained, however, that the victim's mother was only entitled to restitution for "pecuniary damages" – damages that could be recovered in a civil action arising out of the facts or events of defendant's criminal activities – and the victim's mother would not be entitled to recover damages in a civil proceeding; therefore, it was error for trial court to order restitution for the victim's mother's counseling. See Note in *State v. Barkley*, below, regarding amendment of the definition of "pecuniary."

In *State v. Hart*, 699 P.2d 1113 (Or. 1985), defendant was convicted of second degree assault and ordered to pay restitution to Children Services Division for treatment of the victim's injuries caused by the assault. The supreme

CRIME VICTIMS' RIGHTS

court affirmed the award concluding that defendant was not entitled to jury trial on the issue of restitution, state's restitution statutes do not violate due process, and amount of restitution was not excessive.

38. Whenever the court imposes a fine for the commission of a crime for which the person injured has a civil remedy, the court may order that the defendant pay any portion of the fine. This section shall be liberally construed in favor of victims. Compensatory fines may be awarded in addition to restitution. ORS 137.101.

In *State v. Donahue*, 995 P.2d 1202 (Or. Ct. App. 2000), defendant appealed his conviction and sentence, arguing, *inter alia*, that the trial court erred in imposing a compensatory fine to cover the victim's scheduled counseling appointment. The court noted that while a pecuniary loss can include counseling costs, and it can also include predictable and easily measurable future treatment, the court concluded it was error to order the compensatory fine solely on a future scheduled appointment because the mere fact that the victim was scheduled for an appointment did not establish that she had or would incur the pecuniary cost.

In *State v. Barkley*, 46 P.2d 390 (Or. 1993), defendant was convicted of rape and sodomy, and pursuant to ORS 137.101, the court imposed a compensatory fine payable to the child-victim's mother to compensate her for wages lost while she accompanied the child-victim to court. The court first explained that a compensatory fine on behalf of the mother was not statutorily prohibited under ORS 137.103, notwithstanding that the child-victim's mother did not suffer direct physical injury. Further, the court explained, lost wages were the type of pecuniary loss that was permissible pursuant to ORS 137.101(1). The court, however, held that because there was no theory of civil liability under which the child-victim's mother could recover her lost wages from defendant, as required by ORS 137.101(1), the compensatory fine was improper. Note: Since the decision in this case, the definition of "victim" in ORS 137.106 has been amended; the term "pecuniary" has been changed to "economic" damages. See 2005 Oregon Laws ch. 564 (H.B. 2230) (amending ORS 137.106, and changing "pecuniary" to "economic" damages).

39. A victim of involuntary servitude or trafficking in persons may bring a civil action for damages whether or not criminal prosecution is pursued or regardless of the outcome of a criminal prosecution. SB 578. Nothing impairs the right of a person injured by unlawful sound or video recordings to sue and recover damages from the defendant in a civil action. ORS 164.866.

CRIME VICTIMS' RIGHTS

40. When a youth offender is found to be within the juvenile court's jurisdiction for defacing property with graffiti, the court may order the youth offender to perform personal service removing graffiti or if the victim does not agree to the personal service, community service removing graffiti at some other location. ORS 419C.461.
41. A victim has a right to be heard at a hearing to review the placement of the youth or youth offender. ORS 419C.273(2)(a).
42. At the hearing at the half-sentence point of someone under 18 years old at the time of the commission of the offense for which the person was sentenced to a term of imprisonment of at least 24 months, the person must prove by clear and convincing evidence that if conditionally released, the person would not be a threat to the safety of the victim or the victim's family. ORS 420A.203(3)(k), ORS 420A.203(4)(a)(B)(ii), 420A.203(4)(b)(I).
43. When a prosecuting attorney is served with a copy of a motion to set aside a conviction, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim by mailing a copy of them to the victim's last-known address. The court shall allow the victim to make a statement at the hearing. ORS 137.225.
44. The State Board of Parole and Post-Prison Supervision must attempt to notify a victim, if the victim requests to be notified and furnishes the board a current address, at least 30 days before all hearings by sending written notice to the victim's current address. Victims have the right to appear at any hearing or, in their discretion, to submit a written statement adequately and reasonably expressing any views concerning the crime and the person responsible. The victim shall be given access to the information that the board or division will rely upon and shall be given adequate time to rebut the information. The victim may present information or evidence at any hearing, subject to such reasonable rules as may be imposed by the offices conducting the hearing. ORS 144.120. OAR 255-030-0013.

This statutory provision will not support a defendant's request to admit victim's statements. *See Meriweather v. Board of Parole*, 775 P.2d 340 (Or. Ct. App. 1989) (rejecting defendant's argument that the Parole Board erred in refusing to consider a tape of a conversation between the victim and a private investigator where defendant's basis for such admission was ORS 144.120(7)).

CRIME VICTIMS' RIGHTS

- The 30 day notice requirement was not immaterial even though victim appeared and testified at the case. The Board's limiting of victim's testimony to three minutes, even if the victim was actually allowed to speak for a longer period of time, is inconsistent with ORS 144.120(7). An ancillary right that springs from the right to be heard is the right to a statement by the decision maker of the reasons for the decision reached. *Edens, et al. v. Oregon Board of Parole*, Marion County Case Nos. 07C22594 & 07C22595.
45. If a victim so requests, the State Board of Parole and Post-Prison Supervision or the Department of Corrections, as the case may be, shall notify the victim of release of a convicted person from a Department of Corrections institution on parole or post-prison supervision. ORS 144.260(3). A victim has the right, upon timely request, to be notified by the Board of any hearing before the Board that may result in the revocation of the parolee's parole or in a revocation sanction for a post-prison supervision violation; to appear personally at the hearing; and, if present, to reasonably express any views relevant to the issues before the Board. ORS 144.108(5)(a). ORS 144.343(9)(a).
46. The petitioner in a post-conviction release proceeding shall not compel a victim to testify either at hearing, deposition or otherwise without a court order allowing a subpoena. A court may not allow a subpoena unless the petitioner demonstrates good cause that the victim has information material to the post-conviction release proceeding, the information is favorable to the petitioner and the information is other than that admitted at trial. The court may allow a victim to appear by telephone or other communication device approved by the court. ORS 138.625.
47. Prior to a youth offender's release or discharge from a youth correction facility, the Oregon Youth Authority shall notify the victim, if the victim requests. ORS 420A.122(1)(c).
48. A victim has the right, upon timely request, to be notified by the district attorney of any hearing before the court that may result in the revocation of the defendant's probation; to appear personally at the hearing; and if present, to reasonably express any views relevant to the issues before the court. ORS 137.545(11)(a).
49. Upon agreement of a youth offender, the youth offender's parent or guardian and the victim of the youth offender's conduct, the court may order a youth offender to perform personal service for the victim as a condition of probation. Contact with a victim to determine whether the victim is willing to agree to such personal service shall be by a person to be designated by the

CRIME VICTIMS' RIGHTS

court and may NOT be by the youth offender. Personal service performed pursuant to the order shall constitute full or partial satisfaction of any restitution ordered, as provided by agreement prior to the making of the order. ORS 419C.465.

50. An early disposition program for first-time offenders who have committed a nonperson offense and for persons charged with probation violations must provide victim notification and appearance. ORS 135.943.
51. A district attorney who receives notice of an application for a juvenile court expunction shall notify the victim of the acts that resulted in the disposition that is the subject of the application and shall mail a copy of the application to the victim's last known address. When a district attorney receives notice of a hearing for expunction of a juvenile court record, the district attorney shall mail notice of the hearing to the victim's last-known address if the victim so requests. ORS 419A.262(10)(B)(b); (13)(b).
52. A victim has the right, upon request, to reasonable, accurate and timely notice from the Department of Justice when an appeal, post-conviction or federal habeas proceeding is started; to attend and be heard at certain public hearings related to the proceedings; to consult with the state and receive other details of the case and their participation by contacting the Department of Justice; and to be informed by the Department of Justice of the outcome of the proceedings. This right must be requested prior to conviction. (HB3634 - 2010) Chapter 89, Oregon Laws 2010.

Victims of crime have rights in legal proceedings after conviction and sentencing. In the criminal justice system, a defendant has multiple opportunities to challenge a conviction and/or sentence through legal actions called an appeal, a post-conviction proceeding, or a federal habeas corpus proceeding.

In each of these legal proceedings, the State of Oregon is represented by attorneys in the Department of Justice. These attorneys do not represent the individual crime victim. A victim may always consult or hire an attorney to help exercise these rights.

For victims who wish to stay informed or involved in their case through these processes, the Department of Justice, Crime Victims' Services Division, Crime Victims' Rights Section has a Victims' Advocate who is available to keep you informed about the case as it proceeds through these legal phases. You may

CRIME VICTIMS' RIGHTS

contact this advocate by calling the Crime Victims' Services Division at 503-378-5348.

Crime Victims' Rights in Appeals, Post-Conviction and Federal Habeas Cases:

- The right to be notified of these rights by the District Attorney;
- The right to reasonable, accurate and timely notice from the Department of Justice if an appeal, a petition for post-conviction relief or a federal court action is filed;
- The right to notice from the Psychiatric Security Review Board if a hearing is scheduled;
- The right to attend any public hearing related to these proceedings;
- The right to be reasonably protected from the offender if the offender is present during any of the proceedings;
- The right to have your schedule taken into account in scheduling these proceedings;
- The right to inspect, in advance of the proceeding, any public record on which the disposition of the petition will be based;
- The right to be heard, either orally or in writing, at certain hearings;
- The right to consult with state's attorney on the case; and
- The right to be informed by the state of the outcome of the proceeding.

A victim may have other rights that apply after conviction or juvenile disposition. Please contact the juvenile department, Board of Parole and Post-Prison Supervision or Psychiatric Security Review Board to learn more about these rights.

(For further information about all of these rights please see the Department of Justice, Crime Victims' Services Division information at www.doj.state.or.us/victims.)

Civil Legal Rights for Crime

53. Whenever any peace officer has reason to believe that a family or household member has been abused, or that an elderly person or a person with disabilities has been abused, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. ORS 133.055(3).
54. A family abuse victim has the right to receive an instruction brochure, a petition, order and related forms from the clerk of the circuit court explaining the rights set forth in Oregon Family Abuse Prevention Act provisions. These rights include certain mandatory relief for up to one year

CRIME VICTIMS' RIGHTS

and allowing a petitioner to provide a mailing or contact address instead of a residential address. ORS 107.718.

Prior to issuing a restraining order under the Family Abuse Prevention Act, the court must find: "that the petitioner 'has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition'[:]; and that 'there is an immediate and present danger of further abuse to the petitioner.'" *In the Matter of the Marriage of Strother*, 883 P.2d 249, 252 (Or. Ct. App. 1995). Once a restraining order is issued following a hearing provided for in ORS 107.718(6), it is an appealable order. *Id.*

55. When any court enters a decree, order or modification of a decree or order under certain family and assistance payment law, the court shall allow any party to the decree or order to include in the decree or order a waiver of personal service in a subsequent contempt proceeding in order to maintain the confidentiality of a residential address. ORS 107.835.
56. There shall be no public access coverage of abuse, restraining and stalking order proceedings. Public access coverage means coverage by television, photography or recording equipment in the possession of persons other than the court or the court's staff. UTCR 3.180(2)(c) and UTCR 3.180(6).
57. A hospital providing care to a female sexual assault victim shall give the victim unbiased, medically and factually accurate information about emergency contraception; tell the victim her option to be provided emergency contraception at the hospital; and, if requested by the victim and not medically contraindicated, give the victim emergency contraception immediately at the hospital. ORS 435.254.
58. A victim of domestic violence, sexual assault or stalking may not be disqualified from receiving unemployment benefits if the individual has no reasonable available alternatives to leaving work to protect the individual or minor child from further domestic violence, sexual assault or stalking at a workplace or elsewhere. ORS 657.176(12).
59. A covered employer shall allow an eligible employee to take leave from employment to attend a criminal proceeding. ORS 659A.192.
60. A covered employer shall allow an eligible employee who is a victim of domestic violence, sexual assault, or stalking, or the parent of such a victim, to take reasonable leave from employment to get law enforcement or legal help, to get medical treatment or counseling, to access victim services, to move, or to make a home safer. ORS 659A.885.

CRIME VICTIMS' RIGHTS

61. A victim of domestic violence, sexual assault, or stalking, may terminate a rental agreement with a 14 day notice within 90 days of the crime, and has the right to have locks changed by the owner of rental property. ORS 90.453. ORS 90.459.
62. The Violence Against Women and Justice Department Reauthorization Act of 2005 protects qualified public housing and Section 8 tenants and family members of tenants who are victims of domestic violence, dating violence, or stalking from being evicted or terminated from housing assistance based on acts of such violence against them. 42 USC § 1437d (2005); 42 USC § 1437f (2006).
63. A victim of domestic violence may have a right, in some Oregon Housing Authorities, to a housing preference.
64. A person at risk for family abuse, elder abuse or abuse of people with disabilities has the right to go on a payment plan rather than have basic phone service disconnected for unpaid bills. ORS 759.690 – Note Following; Chapter 204, Oregon Laws 2005.
65. Any protection order issued by the court of one state or Indian tribe, after reasonable notice was given to the person against whom the order was made sufficient to protect due process rights, shall be accorded full faith and credit by the court of another state or tribe and enforced as if it were the order of the enforcing state or tribe. 18 USC § 2265.
66. The Department of Homeland Security may not release information about certain victims of domestic violence and their children without the victim's consent. VAWA, 18 USC § 384.
67. Oregon residents who are victims of domestic violence or are at risk of becoming victims may be eligible for Temporary Assistance to Domestic Violence Survivors (TA/DVS) emergency monetary grants through the Oregon Department of Human Services. Applicants must have children or be pregnant to qualify. Emergency monetary relief order under the Family Abuse Prevention Act does not affect eligibility for a TA/DVS grant. *See* OAR 461-135-1210 et seq.
68. Qualified victims of crime who are immigrants or certain family members of immigrants who are crime victims, may petition U.S. Citizenship and Immigration Services for: lawful permanent residency, readjustment of status, cancellation of a deportation order, a U visa, or a T visa. 8 USC § 1110

CRIME VICTIMS' RIGHTS

et seq.; 8 CFR 1240.65;(d)(1); INA 101(a)(15)(U); INA 101(a)(15)(T). See also 8 USCA § 1367(a)(1).

69. The Department of Homeland Security may not make unfavorable immigration decisions based solely upon information provided by a spouse, parent, or other family member who resides in the same household as the immigrant, who is abusive toward the immigrant or the immigrant's child. 8 USCA § 1367(a)(1).

70. Victims of crime who are immigrants may access emergency medical care and police assistance, may have the perpetrators of the crimes against them prosecuted, and may obtain community based services necessary to protect life and safety. H.R. REP. NO. 104-725 (1996); 61 Fed. Reg. 45,985 (Aug. 30, 1996); 63 Fed. Reg. 41,662 (Aug. 4, 1998); 62 Fed. Reg. 61,344, 61,346 (Nov. 17, 1997); 8 USC § 1642(d).

Who is Responsible for Honoring Crime Victims' Rights?

Many of the laws establishing crime victims' rights identify who is responsible for honoring the rights. For example, "A crime victim has the right to be notified *by the district attorney* of the release hearing upon timely request." Or, "When resetting any trial date or setting any court hearing requiring the presence of the victim, *the court shall* take the victim into consideration . . ." Many other crime victims' rights don't identify who is responsible for honoring the right. For example, "A crime victim has, upon specific request, the right, to be informed in advance of any critical stage of the proceedings held in open court . . ." Who will inform the victim in advance? The constitution does not say. And even when the law identifies *who* is responsible, it does not usually indicate *how* that will happen. So, for example, in the above referenced statute, the court shall take the victim into consideration. But how will the court do this? The court will probably take the victim into consideration based on information from the district attorney's office or juvenile department.

When Crime Victim's Rights Aren't Honored

Most of Oregon crime victims' rights became legally enforceable for the first time in June 2008. In the 2009 legislative session, new statutes were passed that define a judicial process by which a victim or victim's attorney may file a claim that a victim's right was not honored through a motion with the court. (Claim of Violation of Crime Victims' Right(s) - UTCR forms 4.100.2a - adult; 4.100.2b - juvenile delinquency). The process is defined in ORS 147.515 through 147.575. There are specific timelines attached to these statutes so it is important that if any crime victim's right has been violated, a motion is filed quickly. Currently a victim must file

CRIME VICTIMS' RIGHTS

a claim within 30 days of when the victim knew or should have known of a possible violation of a right.

The statute also allows for a non-judicial process to be developed by the Attorney General and implemented by the Oregon Department of Justice. Claims of violations of crime victims' rights through a non-judicial process (not handled by a court) can be made by contacting the Crime Victims' Services Division at 503-378-5348. There are no timelines attached to these claims.

In addition to an enforcement action, a crime victim might consider any of these approaches:

- Let the county Victim Assistance Program (VAP) or Juvenile Department (JD) involved with the case know that the crime victim wants to exercise the right and if she or he has any trouble with a person or agency not honoring a right.
- Bring the right to the attention of the person or agency responsible for honoring the right before the right needs to be exercised. If the right is not honored, ask the person who failed to honor the right to honor it or raise a concern about failure to honor the right with that person's supervisor or the head of the agency.
- A crime victim may file a grievance with an agency if she or he remains dissatisfied with the agency response to concerns raised about a right.

In federal criminal cases, the Crime Victims' Rights Act (CVRA) may apply. In 2004, Congress passed and the president signed the "Scott Campbell, Stephanie Roper, Wendy Preston, Lourarna Gillis, and Nila Lynn Crime Victims' Rights Act". The CVRA provides 8 rights to crime victims and explicitly provides for trial-level standing and expedited appellate review when a right is denied at the trial court. The CVRA is codified at 18 U.S.C. sec. 3771. Notably, Title 18 is the criminal code of the United States Code. Thus, the CVRA resides side-by-side with the majority of other provisions governing federal criminal processes. Since passage of the CVRA there has been a flood of litigation on the meaning of the rights contained therein. While the scope of the CVRA's impact on the federal criminal justice system is not yet known, it is clear that with the passage of the CVRA, the modern federal approach has woven crime victims' rights into the basic fabric of our federal criminal justice system, making the victim an integral participant in that system.

Importance of Victim Advocacy

Victim advocates in Oregon have a critical and creative role in honoring crime victims' rights given the criminal and juvenile justice systems' uneven response to honoring the rights and the dramatic change in the legal landscape due to the recent passage of constitutional amendments making the rights enforceable. Advocates are well positioned to help victims request their rights and to help them

CRIME VICTIMS' RIGHTS

navigate the criminal and juvenile justice systems. They are a logical choice as the communication center for the information that needs to go to and from a victim and other responders. As this communication and broader advocacy hub, advocates need to be familiar with the language of victims' rights, the specific rights that inform their advocacy and the possible ways to have rights enforced or otherwise honored.

A strong and consistent role for victims in the adult criminal and juvenile justice systems will transform the adversarial system in ways as significant as the changes brought by the Miranda decision. A process that gives crime victims a respectful and meaningful role will change how the justice system functions from first contact with victims by law enforcement, to defense attorney and prosecutor roles, to courtroom design, to considerations of victim safety. Where the transformation will lead and how well crime victims will navigate it, will be greatly defined by victim advocates.

Crime Victims' Rights Resources

Materials and other resources are being developed in and for Oregon, and in other jurisdictions throughout the world. Many resources for Oregon and elsewhere are available at the Victims' Rights Section Web site, www.doj.state.or.us/victims. If you are aware of resources that would strengthen this Web portal, please contact the Crime Victims' Services Division at 503-378-5348.

SEX OFFENDER REGISTRATION AND NOTIFICATION IN OREGON

Sex Offender Registration and Notification in Oregon¹

Oregon Revised Statutes 181.595 and 181.596 require lifetime sex offender registration for persons who are:

- convicted in Oregon of certain registerable offenses; or
- found guilty except for insanity of one of those offenses; or
- found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a felony sex crime; or
- paroled to or otherwise placed in this state after having been convicted of a sex crime in another state; or
- adjudicated in juvenile court in this or another state for an act that if committed in this state would constitute a felony sex crime.

Offenders who are in the above categories are required to report in person to a law enforcement agency in the county in which they reside no later than ten days after discharge or release from jail, prison or other corrections detention facility; no later than ten days after release or placement on probation; or no later than ten days after parole or discharge to this state from another state.

ORS 181.597 requires sex offenders to report and be registered if they have moved to Oregon or will be working in Oregon more than 14 days in a calendar year, or if attending school in Oregon. This applies to offenders who were convicted in another jurisdiction of a crime that would constitute a sex crime in Oregon, were adjudicated in a juvenile court in another jurisdiction for an act that would constitute a felony sex crime in Oregon, or if they were required to register as a sex offender in another state for having committed a sex crime in that state. Offenders in these categories are required to report in person to a local law enforcement agency in Oregon no later than ten days after arriving in Oregon; no later than ten days after their 14th day of employment in Oregon in a calendar year; no later than ten days after their first day of school attendance; and no later than ten days after any change in employment or school enrollment.

In addition to the above reporting requirements, all Oregon residents registered as a sex offender must report to a law enforcement agency within ten days of any change of residence and within ten days of their birthday. The home address provided must represent where they actually reside.

¹ Information provided by the Oregon State Police Sex Offender Registration and Notification Unit, 2012.

SEX OFFENDER REGISTRATION AND NOTIFICATION IN OREGON

Offenders who plan to move out of Oregon must report their new address, within 10 days of moving out of Oregon, to an Oregon law enforcement agency in the county where they last registered residing. Federal law requires offenders to contact the appropriate agency in the state to which they move within three days of arrival.

Relief from Registration

Adult: ORS 181.820 provides for relief from registration for certain sex offenders. Petitions may be filed in the circuit court in the county where the registrant was convicted no earlier than ten years from the end of supervision for the sex crime, for Oregon convictions; and file in the circuit court in the county where the registrant resides no earlier than ten years from the end of supervision for the sex crime, for persons with convictions from other United States courts. The offender must not have been designated as a predatory sex offender, and must have been convicted of only one sex crime of level C felony or below.

Juvenile: Beginning January 1, 2012, persons who were adjudicated in Oregon as juvenile sex offenders may petition for relief from registration no earlier than 30 days prior to the end of juvenile court wardship for Class C felony adjudications, and no sooner than two years after the end of their juvenile court supervision for Class A and B felony adjudications, by filing a petition in the juvenile court in the county where they were adjudicated. Persons who were adjudicated outside of Oregon for a crime that equates to an Oregon Class C felony can petition the juvenile court in the Oregon county in which they reside if: A) they are no longer under supervision, immediately upon moving into Oregon – registration is not required for six months while relief is sought; B) currently registering in Oregon, at any time; or C) if under supervision in Oregon, no earlier than 30 days prior to the end of juvenile court wardship. Persons who were adjudicated outside of Oregon for a crime that equates to an Oregon Class A or B felony must also wait until two years from the end of juvenile court supervision before petitioning the juvenile court in the county where they reside.

Additonal Relief from Registration (ORS 181.830-833)

- Anyone currently registering for certain crimes is eligible to apply for relief from registration if:
 1. The act was consensual between the victim and the offender but due to the victim being under 18 years of age, the offender was found guilty; and
 2. The victim was at least 14 years of age but less than 18 years of age at the time of the crime; and
 3. The offender was less than 5 years older than the victim at the time of the crime; and
 4. Each conviction or adjudication involved the same victim.
- Anyone convicted of certain crimes after January 1, 2008, if the court determines the above circumstances exist and the sentencing order states the offender is not required to register as a sex offender.

SEX OFFENDER REGISTRATION AND NOTIFICATION IN OREGON

Predatory Sex Offenders and Notification:

An agency can determine an offender to be predatory if the offender exhibits characteristics showing a tendency to victimize or injure others and has been convicted of Rape, Sodomy, Unlawful Sexual Penetration, or Sexual Abuse in any degree or any attempts to commit those crimes. The Oregon Department of Corrections approved risk assessment scale must be used for determination of a predatory sex offender. For offenders under Supervision, the supervising agency may notify anyone the agency deems appropriate that the offender is predatory. For offenders off of supervision, law enforcement may conduct community notification if the offender was designated as predatory, if notification was conducted while under supervision and if the offender was under a high level of supervision just prior to termination of supervision. If the offender meets these criteria, the Sex Offender Registration Unit prepares a bulletin, which is forwarded to the law enforcement agency with jurisdiction.

Public Release of Sex Offender Information:

The Oregon State Police has a sex offender information telephone line, 503-378-3720 extension 4429, through which the public may obtain information about specific offenders or information on offenders who live within a specific area. For offenders who are on supervision for their sex crimes, the Oregon State Police will refer the caller to the supervising agency for information about the offender. A law enforcement agency may release any information necessary to protect the public for offenders who are not on supervision; victim information will not be released.

Registerable Sex Crimes (Oregon):

- Rape I, II and III
- Unlawful Sexual Penetration I and II
- Incest with a child victim
- Encouraging child abuse I, II and III
- Paying to view a child's sexually explicit conduct
- Compelling prostitution
- Burglary with intent to commit a sex crime I and II
- Sexual misconduct (offender less than 18)
- Public indecency (with prior sex crime conviction)
- Sexual Assault of an animal
- Contributing to the delinquency of a minor
- Sodomy I, II and III
- Sexual Abuse I, II and III
- Using a child (sexually explicit)
- Transporting child pornography
- Possession of materials depicting sexually explicit conduct
- Promoting prostitution
- Contributing to the sexual delinquency of a minor
- Kidnapping I and II
- Sexual Misconduct
- Private indecency (with prior sex crime conviction)

SEX OFFENDER REGISTRATION AND NOTIFICATION IN OREGON

Non-Registerable Sex Crimes (Oregon):

- Prostitution
- Furnish Obscene Material
- Distributing Obscene Material

Oregon State Police — Sex Offender Registration Section

The Oregon State Police, Sex Offender Registration Section manages sex offender registration and notification in Oregon. The public may access information on a specific sex offender or sex offenders in a specific area by contacting the sex offender registration information line at **503-378-3725 x 44429**. You will be asked to leave your name, mailing address, and the city, zip code information you want. Most requests are processed within 2-3 days; however, it can take up to two weeks.

The public may also access Predatory sex offender information at <http://sexoffenders.oregon.gov> or by accessing the Oregon State Police home page at www.oregon.gov/OSP. The public web site is located under Most Popular Sites – Predatory Sex Offender Public Site. Oregon predatory sex offender information may also be accessed through the National Sex Offender Public Registry at www.nsopr.org. Some counties maintain a public web site that lists high risk, predatory offenders currently under supervision by Community Corrections. Contact your local Community Corrections office for additional information.

SEXUAL OFFENDERS

Sexual Offenders

The terms “rapist” and “sex offender” often conjure the image of a violent, greasy-haired criminal who drives a panel van and looks for women walking alone at night. We see risk reduction efforts (inaccurately called *rape prevention*) that support this notion by focusing on improving lighting in public places, physical self-defense for women, home security systems and discouraging women from walking alone at night.

Although this description may be compelling and provide women (and society) with a sense that they have the ability to avoid being raped or sexually assaulted, it is by and large an inaccurate picture. The fact is that sexual offenders are far more likely to be someone known, and even trusted, by the victim. Over 75% of completed forcible rapes are committed by offenders who are known by the victim.¹ Moreover, sexual offenders are people who look like everyone else – they are school teachers, counselors, laborers, priests, doctors, lawyers, police officers, artists, taxi drivers, college students, parents and so on.

Prevalence and Acceptance of this Incorrect Stereotype

If the dangerous and dirty stranger rapist is not an accurate depiction, then why is it such a commonly held stereotype? Perhaps the following combination of explanations can help us to understand why we continue to focus on “stranger danger”:

- A sense of safety – Women, as well as the larger society, are comforted by the notion that we can readily identify and therefore avoid coming into contact with sexual offenders. If we know who to look for and what places or activities to avoid, we will be safe.
- Popular culture and the media – The incidents of rape and sexual assault most often highlighted in the media are the stranger cases where high levels of violence and/or weapons are used. As a result, sexual assaults not including high levels of violence are often discounted by society at large and even victims themselves.
- Sexism and gender roles – History, socio-cultural values, religion, and individual beliefs continue to reflect rigid gender roles, particularly within the context of sex and sexuality. Gender roles tell us that women are the gatekeepers of sex while men are sexual aggressors. As a result, women who are sexually active or who engage in sexualized behavior are often accused of provoking the assault. Sexism enables society to hold women responsible for “provoking an assault” and forgives men for their “inability to control their sexual urges.”

¹ D. Lisak and P. Miller, “Repeat Rape and Multiple Offending Among Undetected Rapists.” *Violence and Victims*, Vol. 17, No. 1 (2002): 73-84.

SEXUAL OFFENDERS

- Incarcerated sexual offenders – The vast bulk of research that has been conducted on sexual offenders has been completed on incarcerated offenders. Because the focus of our socio-cultural attention, which is also reflected within the criminal justice system, has been on stranger sexual assault, stranger rapists are more likely to be prosecuted and convicted and therefore are probably overrepresented in the research sample.

It is important to remember that while stranger rape constitutes a minority of the incidents of rape and sexual assault, it does exist. The problem that we have to overcome in order to better serve victims and hold offenders accountable is to expand our understanding of rape and sexual assault. It is critical to recognize the truth in numbers; over 75% of rapes and sexual assaults are committed by someone known to the victim, when no weapon is involved and no physical injury is inflicted on the victim.²

Detected (Incarcerated) vs. Undetected Sexual Offenders

Between 1991 and 1999 Dr. David Lisak conducted pioneering research on undetected rapists -- offenders who self-reported committing assaults that would meet the legal definition of rape but were never identified or prosecuted by the criminal justice system. Approximately 1,881 men were surveyed and of those men, 122 self-reported committing rape. Dr. Lisak's research, in conjunction with other research on sexual offenders, identified a number of common characteristics among *incarcerated* and *undetected* rapists including:³

- High rate of serial or repeat sexual offending
- Hypermasculinity or rigid definitions of gender roles for men and women
- A high level of anger and disrespect toward women
- A lack of empathy

The World Report on Violence and Health supports Dr. Lisak's findings and identifies the following factors that increase men's risk of committing rape:

- Individual – coercive sexual fantasies and hostility toward women; and
- Societal – norms that support male superiority and male sexual entitlement.

Research has also identified similar patterns of offending by both incarcerated and undetected rapists:

- Planning and premeditation before the assault
- Using normal social settings and the "con" approach (getting to know someone, appearing genuine and sincere) to establish trust and rapport preceding the assault
- Controlling the victim with instrumental violence (only as much violence as necessary to control the victim; for example, physical presence and/or verbal threats)

² Over 80% of victims reported that no weapon was used in Kilpatrick, Edmunds, and Seymour, 1992. More than 70% of victims sustained no physical injuries in L.A. Greenfeld, "Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault." Bureau of Justice Statistics, February 1997.

³ D. Lisak and P. Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists." *Violence and Victims*, Vol. 17, No. 1 (2002): 73-84.

SEXUAL OFFENDERS

- Use of alcohol and other drugs to lessen inhibitions (by both the victim and the offender)

Finally, research on both incarcerated and undetected rapists has shown that those who commit sexual offenses often engage in *crossover* offending – to offend against children, adolescents and adults as well as commit other person crimes like domestic violence and child abuse. For instance, in Lisak's study, 122 men who self-reported completing forcible rape admitted committing:

- 439 rapes and attempted rapes;
- 365 acts of child sexual abuse;
- 91 acts of child physical abuse; and
- 264 acts of domestic violence.

Ten Things You Should Know About Sex Offenders and Treatment⁴

1. Over 95% of convicted sex offenders eventually return to the community. Treatment improves the chance for successful reintegration.
2. Most sexual offenders assault victims whom they know. Children are most likely to be assaulted by members of their family followed by acquaintances (e.g., neighbors, family friends); adults are most likely to be assaulted by a current or former husband, a cohabitating partner or a date.
3. Sexual perpetrators represent an extremely diverse group of offenders in educational, income, and racial background, as well as personality and coping skills. Assessment results often uncover unique patterns of deficits and strengths. Treatment and supervision must be tailored to the unique characteristics and needs of the offender.
4. Treatment has a substantially better chance of working if the offender takes responsibility for his past and future actions.
5. Fewer than 5 percent of sex offenders suffer from a psychotic mental illness. Current sexual offender treatment uses cognitive-behavioral techniques to teach the offender to control his thoughts and behaviors to prevent future offending.
6. Many treatment providers use a relapse prevention approach that assumes the escalation prior to the offense is relatively unique to, and consistent for, each offender. This pattern of escalation (often called a crime cycle) can be used to monitor the offender's level of risk at any point in time. This allows the offender and sometimes those treating and monitoring him to take action, when necessary, to

⁴ From the Association for the Treatment of Sexual Abusers. Accessed at <http://www.atsa.com/ten-things-you-should-know-about-sex-offenders-and-treatment> on 8/10/2012.

SEXUAL OFFENDERS

prevent new offenses when re-offense risk is high.

7. Sex offenders vary widely in their risk to re-offend. Estimates suggest that 40%-45% of untreated sexual offenders will sexually re-offend in their lifetime. These rates are considerably lower than rates of re-offense for other types of violent offenders.
8. Research has shown that well-designed sex offender treatment can reduce the recidivism of sexual offenders.
9. Lifestyle circumstances can affect the chances of new offenses. Stable housing and employment, healthy social and leisure activities, a vigilant and pro-social support system, and ongoing treatment are all important to ensure success.
10. Despite its effectiveness, treatment is only one component of an effective strategy to protect the community from sex offenders. Monitoring and support by community corrections agents, other professionals, the offender's social support system, and the entire community play a crucial role.

Summary

Rape and sexual violence do not occur in a vacuum, and sexual offenders are not “boogey men.” Rather, one fundamental component of improving our socio-cultural response to rape and sexual violence is to recognize both the prevalence of sexual violence and an individual’s capacity for sexual offending. As long as we maintain a narrow image/belief about who can and cannot be a sexual offender, we are positioned to dismiss, question and disregard the experiences of those who have been victimized.

CIVIL LEGAL REMEDIES

Civil Justice System

An individual who has been harmed by the wrongful actions of another individual, corporation, or organization may choose to bring a civil lawsuit against the other party. The civil court system is distinct from the criminal court system in many ways. A fundamental difference is that the plaintiff (the one filing the suit) has the sole authority to make all decisions related to his or her lawsuit in the civil court system. The attorney works for the plaintiff and is required to carry out her or his decisions. The criminal justice system, on the other hand, relies on the discretion of the prosecutor to make all decisions relating to the criminal case, including the determination of whether a criminal case will be pursued.

A second fundamental difference between the civil and criminal justice systems is the **burden of proof** required in order to achieve a decision. A criminal case requires that the evidence presented by the prosecutor demonstrate **beyond a reasonable doubt** that the defendant (perpetrator) committed the crime. A civil case usually requires that the attorney on behalf of the plaintiff prove that a **preponderance of evidence** exists which demonstrates the defendant's culpability. "Preponderance of evidence" means that a judge or jury believes that the plaintiff has demonstrated its case with more (or better) supportive evidence than the defendant. Doubt is not considered in civil cases. In Oregon, the same judges hear both criminal and civil cases in the same courts.

Criminal Justice System

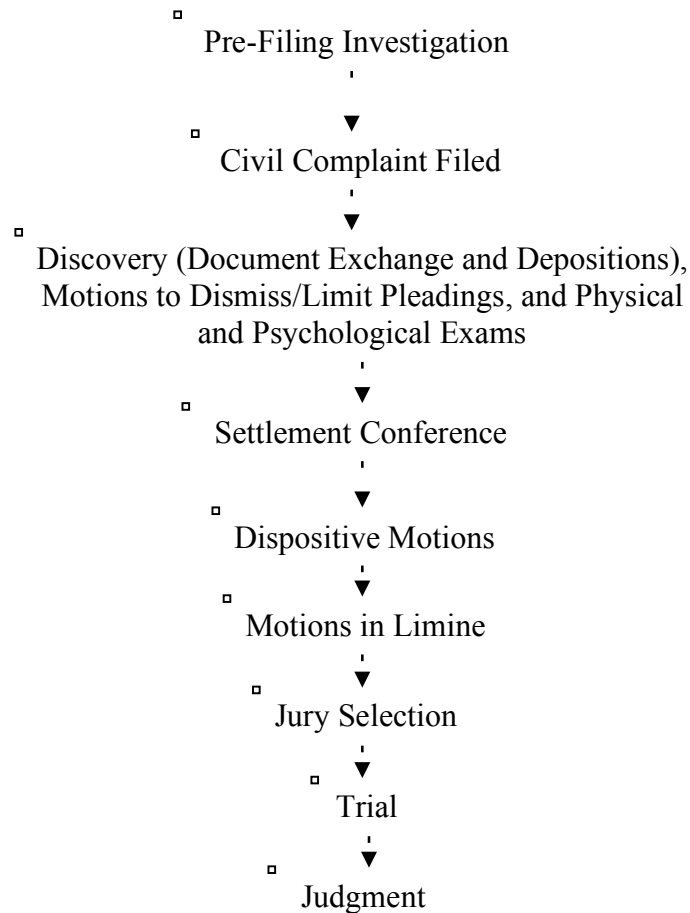
- ◆ Crime: Public wrong – threat to public order
- ◆ Wrong defined by Legislature – statute
- ◆ Goal: Punish, deter and rehabilitate
- ◆ Means: Loss of freedom, money and life
- ◆ Actors: Prosecutor (state) and Defense Attorney or court appointed attorney
- ◆ Victim: Witness only – has no control over details of the criminal case (e.g. charges, plea bargaining, sentencing), but has certain constitutional and statutory rights to participate and be heard.
- ◆ Burden of Proof: Beyond a reasonable doubt

Civil Justice System

- ◆ Crime: Private wrong – threat to individual
- ◆ Wrong defined by Judges and Legislature
- ◆ Goal: Compensate and deter
- ◆ Means: Loss of money, stop/prevent further long/threat (injunction)
- ◆ Actors: Plaintiff's attorney and Defense attorney
- ◆ Victim: Plaintiff and witness – has control over all aspects of the suit
- ◆ Burden of Proof: Preponderance of evidence (more probable than not)

CIVIL LEGAL REMEDIES

TYPICAL CIVIL JUSTICE PROCESS



CIVIL LEGAL REMEDIES

Civil Remedies

To protect citizens, the criminal and civil justice systems have designed protective orders that are issued by a judge when there is reason to believe an individual may be at risk of harm from another. Although there may be criminal actions also be taking place, these protective orders are part of the civil remedies available to victims of sexual assault. In Oregon, protective orders may be Family Abuse Prevention Act ("FAPA") Restraining Orders, Stalking Protective Orders, or Elderly Persons or Persons with Disabilities Abuse Prevention Act (EPPDAPA) Protective Orders .

Stalking Protective Orders—A Guide for Advocates

Information provided by the Legal Aide Services of Oregon, Oregon Law Center November 2003. Related Statutes: ORS 30.866 and ORS 163.730-163.755

What is a Stalking Order?

A stalking order is a protective order issued by a Court to prohibit a stalker from doing things like following or contacting the victim, or a member of the victim's immediate family or household.

Who can get a Stalking Order?

No qualifying relationship is required. A Petitioner (the person asking for protection) can get a stalking order against anyone who has stalked (the respondent) him or her, or against anyone who has stalked a member of his or her immediate family or household. (For example, a parent could request a stalking order on behalf of a child.)

What Justifies the Issuance of a Stalking Order?

Two instances of stalking are required. The stalking behavior must have taken place within the last two years.

Stalking is:

- Intentional, knowing, or reckless repeated and unwanted contact that alarms or coerces the Petitioner or a member of Petitioner's immediate household or family; *when*
- It is objectively reasonable for the Petitioner to feel alarmed or coerced; *and*
- The contacts cause reasonable fear regarding the Petitioner's (or immediate household or family member's) physical safety. *Petitioner's fear must be actual and reasonable.*
- Petitioner must show that *anyone* in Petitioner's shoes would feel alarmed or coerced by the stalker's contact.
- Petitioner must show that the stalker's contact has actually caused reasonable fear for the *physical safety* of Petitioner or a member of Petitioner's household or family.

CIVIL LEGAL REMEDIES

Examples of Stalking Behavior Might be:

- Following;
- Waiting outside home, school, job or property;
- Committing a crime (including sexual assault, domestic violence, and others) against victim, pets, or property;
- Causing or threatening to cause injury;
- Sending threatening letters or e-mails, telephoning, interfering with other relationships; and
- Other types of behavior that create actual and reasonable fear for petitioner's physical safety.
- Any speech-based communication (letter, phone, e-mail, etc.) is protected by the First Amendment and so must rise to the level of an actual threat in order to qualify as stalking.

Certain Limitations:

- Conduct protected by labor laws is not stalking
- A person in the custody of law enforcement or corrections cannot obtain a stalking order
- Conduct within the scope of law enforcement or corrections officers' official duty is not stalking

What can a Stalking Order do?

A stalking order can prohibit the stalker from:

- Coming into the visual or physical presence of the protected person;
- Following the protected person;
- Waiting outside the home, school, place of work, etc. of the protected person or of a member of that person's family or household;
- Sending or making written or electronic communication to the protected person;
- Speaking with the protected person by any means;
- Committing a crime against the protected person or property of that person;
- Communicating with third parties with the intent of affecting relationships of the protected person;
- Delivering any object to the protected person directly or through a third party;
- Contacting the protected person in other ways;
- In some circumstances, the Court may order a mental health evaluation of Respondent;
- In some circumstances, monetary damages may be ordered, and attorney fees paid.

Eligibility of Minors

- A parent or guardian may request a stalking order on behalf of a minor child or dependant
- A petitioner may get a stalking order against a stalker who is under the age of 18

CIVIL LEGAL REMEDIES

How Long do Stalking Orders last?

Once final, a stalking protective order is permanent unless otherwise ordered by a Judge. (The Court retains equitable authority to dismiss or modify).

How to Obtain a Stalking Order

A Petitioner may obtain a Stalking Protective Order in one of two ways: by requesting a Police Citation or by submitting a Civil Petition to the Court. Each process is outlined briefly below.

Police Citation Procedure

Complaint

- Petitioner requests stalking complaint from law enforcement.
- Petitioner should fill out complaint in detail. (List dates if possible, explain fear, explain how the stalker knew contact was unwanted.)
- Petitioner presents complaint to law enforcement.

Citation

- A police officer initiates a citation if, based on the complaint and interviews, there is probable cause to believe stalking has occurred.
- A citation is **not** a stalking order.
- A citation requires the stalker to appear in Court within 3 judicial days of service of the complaint for a hearing regarding whether the Court should issue a temporary or permanent stalking protective order.
- The police officer writes the date and time of hearing on the citation when serving it on the stalker.
- The police officer must give the Petitioner a copy of the hearing notice. If the Petitioner does not appear at the hearing, the order will be dismissed.

First Hearing

- Petitioner and Respondent are each required to appear. (Petitioner may request permission to appear by telephone.)
- The Petitioner should bring witnesses, if possible. Petitioner should make sure the police officer will be at the hearing.
- If the Court finds “probable cause” that stalking has occurred, the Court will enter a temporary order.
- If a temporary order is entered, the Court will set a date for a 2nd hearing regarding whether the Court should issue a permanent order.
- The first hearing is usually shorter than the 2nd hearing.
- If Respondent is not in Court for the hearing as ordered, a warrant should be issued for his or her arrest.

CIVIL LEGAL REMEDIES

Second Hearing

- If the Court finds by a “preponderance of the evidence” that stalking has occurred, the Court may issue a permanent stalking protective order or a time limited order.
- The “preponderance of the evidence” standard that must be met by Petitioner is higher than the standard at the 1st hearing.
- Petitioner will need to ensure the appearance of the police officer and others as witnesses. Subpoenas may be necessary.
- Petitioner should bring other evidence as appropriate (photos of injuries, letters sent by stalker, etc.).

Service

- If the Respondent is not at the 1st or 2nd hearing, s/he must be served with any resulting orders or hearing notices.
- In some counties, service may be provided by the sheriff for free.

Civil Petition Procedure

In many counties, self-help paperwork for this procedure is not available at the Courthouse and this type of proceeding may require an attorney’s help. In other counties, this paperwork is available at the courthouse, and a process similar to the FAPA process is in place.

Petition

- Petitioner fills out and signs petition for stalking protective order. If the Court does not make the forms available, a Petitioner may still use this route to get a stalking order, but will need the assistance of an attorney.
- The Petitioner should fill out the form in detail. (List dates if possible, explain fear, explain how the stalker knew contact was unwanted.)
- The petition may set out a claim for money damages (if so, a waive-able filing and service fee may be charged). It is best to seek the assistance of an attorney if damages are claimed.
- Petitioner files petition with court clerk at appropriate time.

Ex Parte Hearing

- Petitioner goes to brief hearing with Judge.
- Petitioner may ask to speak to the Judge by telephone instead of in person.
- The stalker does not get notice of this hearing and is usually not present.
- The Judge signs the temporary stalking order if there is “probable cause” to believe that stalking has occurred.
- The Judge sets a hearing date for both parties to come back to Court to determine whether to grant a permanent order.

CIVIL LEGAL REMEDIES

Contested Hearing

- The Court will hear from both the Petitioner and the Respondent.
- If the Court finds by a “preponderance of the evidence” that stalking has occurred, the Court may enter a permanent stalking protective order or a time limited order.
- The “preponderance of the evidence” standard that must be met by Petitioner is higher than the standard at the 1st hearing.
- The Petitioner should bring any witnesses and other evidence (photos of injuries, letters sent by stalker, etc.). Subpoenas may be necessary to ensure witness appearance.
- If the Respondent fails to appear at this hearing as required, the Court may issue a warrant for the Respondent’s arrest.

Service

The temporary and final orders must be served on the Respondent before they can be enforced. Service is provided by the Sheriff for free (if no monetary damages are sought).

Enforcement

Violation of a stalking protective order is cause for mandatory arrest of the Respondent. The first violation is a Class A Misdemeanor; any subsequent violation is a Class C Felony.

Federal Gun Laws

If the Respondent has been married to or co-habited with the Petitioner, or is the co-parent of Petitioner’s child, the Respondent is prohibited from using or possessing firearms or ammunition while a final stalking order is in effect.

Stalking is a Crime - Activity that forms the basis of a stalking protective order may be grounds for prosecution by the district attorney.

Family Abuse Prevention Act (FAPA) Restraining Orders — A Guide for Advocates

Information provided by the Legal Aide Services of Oregon, Oregon Law Center
November 2003. Related Statutes: ORS 107.700-107.732

What is a FAPA Restraining Order?

A FAPA Restraining Order is a protective order issued by a Court to prohibit an abuser from intimidating, molesting, or menacing Petitioner (the protected person) and any children in Petitioner’s custody.

Who Can Get a FAPA Restraining Order?

A qualifying relationship between Petitioner and Respondent (the abuser) is required.

CIVIL LEGAL REMEDIES

Petitioner may only get a Restraining Order against a “family or household member” who has committed abuse.

Petitioner can get a Restraining Order against:

- A spouse or former spouse;
- An adult related by blood, marriage, or adoption;
- A partner (of the same or opposite sex) who is living or has lived with Petitioner;
- A person (of the same or opposite sex) who has had a sexually intimate relationship with Petitioner within the past two years; or
- The other parent of Petitioner’s child(ren).

What Justifies the Issuance of a FAPA Order?

Only one instance of abuse is required – within the last six months, the abuser must have abused Petitioner in any of the following ways:

- **Physical Injury** - Attempting to cause or intentionally, knowingly, or recklessly causing physical injury;
- **Fear of Physical Injury** - Intentionally, knowingly, or recklessly placing Petitioner in fear of imminent bodily injury; or
- **Forced Sexual Relations** - Causing Petitioner to have involuntary sexual relations by using force or threat of force.

The abuse must have taken place with the last 180 days (six months).

- Any time the abuser spent in jail or lived more than 100 miles away from Petitioner does not count against the 180 day time period.
- Abuse that took place before the 180 day period is relevant to the Court, but is not qualifying abuse by itself.

The Petitioner must be in imminent danger of further abuse.

- Petitioner must tell the Court why she or he fears further abuse in the very near future.

What Can a Restraining Order do?

A Restraining Order can:

- Require that the abuser stay away from and not molest, intimidate, interfere with or menace Petitioner or children in Petitioner’s custody;
- Require that the abuser move out of Petitioner’s home (if Petitioner is married to the abuser or on the title or lease to the home);
- Allow the person who is leaving the home the right to a 20 minute police stand by to retrieve essential personal items for the person and any children in the person’s custody;
- Require that the abuser stay away from Petitioner’s home, job, school, or other places;
- Prohibit Respondent from calling, writing, or contacting Petitioner;

CIVIL LEGAL REMEDIES

- Give Petitioner (or the abuser if Petitioner requests) temporary custody of joint children;
- Give appropriate visitations to the parent who does not have custody;
- Order things to help protect Petitioner, like that the abuser not have guns, or that the abuser give emergency monetary assistance.

Eligibility of Minors

A Petitioner under 18 may get a Restraining Order IF the abuser is over 18 AND:

- Petitioner is or was married to the abuser; or
- Petitioner has been in a sexually intimate relationship with the abuser.
 - A Petitioner may not get a Restraining Order against an abuser who is under the age of 18.

What Procedure is Used to Get a Restraining Order?

Petition:

- Petitioner fills out and signs Petition for Restraining Order to Prevent Abuse.
- Petitioner files Petition with Court clerk at appropriate time.
- Petitioner may use a contact address instead of a residential address to keep the residential address confidential.

Ex Parte Hearing:

- Petitioner goes to brief hearing with Judge. (The Petitioner may ask to speak to the Judge by telephone, if there are health, safety or other good reasons not to appear in person.)
- Judge reads Petition and may ask questions of Petitioner.
- The abuser does not get advance notice of this hearing and is usually not present.
- The Judge signs or denies the Restraining Order.

Service:

- The Petition for Restraining Order and the signed Restraining Order must be served on the abuser.
- Service is provided by the Sheriff for free.

Thirty Days to File a Request for Hearing:

- The abuser has 30 days from the date of service to contest the Restraining Order by requesting a hearing.
- If custody or parenting time is contested, the hearing must be held within 5 days of the hearing request. Otherwise, the hearing must be held within 21 days.

Contested Hearing:

- The Court will hear testimony from both sides of the case.
- Petitioner may request a continuance of the hearing date in order to consult with an attorney, but the Court is not required to give a continuance.
- Petitioner should bring any witnesses and other evidence (photos of injuries, etc.).

CIVIL LEGAL REMEDIES

- If Petitioner does not appear at the hearing (in person or by telephone with permission), the Order will be dismissed.

Final Order Issued:

- The Court will make a decision after hearing evidence from both sides. The Court must uphold the Order if Petitioner proves the case by a preponderance of the evidence.

How Long Does a Restraining Order Last?

- Once final, a Restraining Order lasts for one year from the date of issuance, unless it is dismissed by Petitioner before that date. Once final, a Restraining Order may be modified by either party, but only as to custody and parenting time provisions.
- A Restraining Order may be renewed if Petitioner submits a request for renewal before the expiration of the initial order, and if the Court finds that Petitioner reasonably fears further abuse if the order is not renewed. No further acts of abuse are required.

Safety Concerns

The Petitioner should let the Court know of any special safety concerns about the Respondent (for example, mis-use of guns or weapons, mental health issues, etc.). Petitioner may ask the Court to specifically address the special safety concerns.

Enforcement

- Violation of a restraining order is cause for mandatory arrest of the Respondent.
- The Petitioner cannot violate the restraining order; only the Respondent can violate the order.
- A violation of a restraining order is punishable by contempt of court and can be referred to the district attorney's office for prosecution.

Federal Gun Laws

- If the Respondent has been married to the Petitioner, is the co-parent of Petitioner's child, or has cohabited with Petitioner, the Respondent is prohibited by federal law from using or possessing firearms or ammunition while subject to a restraining order that has been upheld after a contested hearing.
- If the order is subject to federal gun laws, it is helpful if a Court attaches a 'Brady Certificate' to the order after a contested hearing.
- For more information, consult www.oregonlawhelp.org.

Elderly Persons or Persons with Disabilities Abuse Prevention Act (EPPDAPA) Protective Orders – A Guide for Advocates

Information provided by the Legal Aide Services of Oregon, Oregon Law Center
November 2003. Related Statutes: ORS 124.005 - 124-040

CIVIL LEGAL REMEDIES

What is an EPPDAPA Protection Order?

An EPPDAPA protection order is an order issued by a Court to prohibit an abuser from intimidating, molesting, interfering with or menacing an elderly person or a person with disabilities.*

**An EPPDAPA protection order may also protect against financial abuse by prohibiting the mailing of sweepstakes promotions in some circumstances. The following information does not address remedies available for sweepstakes abuse.*

Who can get an EPPDAPA Protection Order?

An elderly person or a person with a disability

- An “elderly person” is anyone who is 65 or older and NOT a long-term care facility resident.
- A “person with a disability” is anyone who would qualify for social security disability benefits because of a physical or mental disability.
- No qualifying relationship is required. There need be no specific relationship between the protected person and the abuser (the Respondent).
- A Petitioner may get an EPPDAPA order against *anyone* who has committed abuse as defined by the Act.

Other people may help apply for an order

- Witnesses to the abuse or adult protective services workers may help apply for an order.
- A guardian (or guardian ad litem) may apply for an order on behalf of an elderly or disabled person. The protected person may object to an order filed by a guardian.

What Justifies the Issuance of an EPPDAPA Protection Order?

Only one instance of abuse is required - the abuse must have taken place within the last 180 days (six months). The Court must find that the elderly person or person with a disability is in immediate danger of further abuse by the abuse which includes

Physical Injury

- Physical pain or injury caused by other than accidental means;
- Neglect that leads to physical harm through withholding services;
- Abandonment, desertion or neglect by a caregiver or other person owing care duties.

Threats of other Abusive Conduct

- Derogatory or inappropriate names, phrases, or profanity, ridicule, harassment, coercion, threats, cursing, intimidation, or
- Inappropriate sexual comments or conduct of such nature as to threaten significant physical or emotional harm to the elderly person or person with a disability.

The abuse must have taken place with the last 180 days (six months).

- Any time the abuser spent in jail or lived more than 100 miles away from the person to be protected does not count against the 180 day time period.

CIVIL LEGAL REMEDIES

- Abuse that took place before the 180 day period is relevant to the Court's consideration, but is not qualifying abuse by itself.

What Can an EPPDAPA Protective Order do?

An EPPDAPA Protective Order can:

- Require that the abuser stay away from and not molest, intimidate, interfere with or menace the Petitioner;
- Require that the abuser move out of Petitioner's home (if the Petitioner is married to the abuser; if the home is in the sole name of the Petitioner; or if the Petitioner jointly owns or rents the home with the abuser);
- Require that the abuser stay away from any premises the Court feels necessary to prevent further abuse; and
- Order other things to help protect the safety and welfare of Petitioner, for example, requiring that the abuser return Petitioner's medication, or that the abuser give Petitioner emergency monetary assistance.

EPPDAPA Orders and Minors

If a minor with a disability seeks to qualify for an EPPDAPA order, or if the order will be against an abuser who is a minor, it is likely that a Guardian ad Litem will need to be appointed for the minor. It is best to seek the advice of an attorney in this circumstance.

How Long Do EPPDAPA Orders last?

- An EPPDAPA protective order lasts for one year from the date of issuance, unless earlier modified by either party or dismissed by the Court or by Petitioner.
- An EPPDAPA protective order may be renewed if Petitioner submits a request for renewal before the expiration of the initial order, for good cause shown.
- No further acts of abuse are required.

What Procedure is Used to Get an EPPDAPA Protective Order

Petition:

- Petitioner fills out and signs Petition for EPPDAPA Order to Prevent Abuse.
- Petition is filed with Court clerk at the appropriate time.

Ex Parte Hearing:

- Petitioner goes to a brief hearing with the Judge. It is possible in some circumstances for the Petitioner to speak to the Judge by telephone instead of in person.
- The Judge reads the Petition and may ask questions of the Petitioner.
- The abuser does not get advance notice of this hearing and is usually not present.
- The Judge signs the order or dismisses the petition if s/he does not think the order is justified.

Service:

- The Petition and the signed EPPDAPA protective order must be served on the abuser.

CIVIL LEGAL REMEDIES

- The order is not enforceable until it has been served.
- Service is provided by the Sheriff for free.

Thirty Days to File a Request for Hearing:

- The abuser has 30 days from the date of service to request a hearing to object to the order.
- The hearing must be held within 21 days of the request. Information about the time and date of the hearing will be mailed to both parties.
- If no hearing is requested within 30 days of service, the order becomes final and will last for one year from the date of issuance.

Contested Hearing:

- The Court will hear testimony from the Petitioner (or an Adult Protective Services worker, witness to the abuse, or guardian, and from the Respondent.
- The Petitioner may request a new hearing date in order to consult with an attorney, but the Court is not required to give a continuance.
- The Petitioner should bring any witnesses and other evidence (photos of injuries, etc.).
- If there is no appearance by the Petitioner (or by an Adult protective Services worker or witness or guardian) at the hearing, the order will be dismissed.

Final Order Issued:

- The Court will make a decision about the order after hearing from both sides.
- The Court must uphold the order if Petitioner proves by a preponderance of the evidence that the statutory requirements have been met.

Violations of the Order:

- If the temporary or final order is violated, mandatory arrest provisions apply.

Other Relief Available for Victims

- A victim may be entitled to request a landlord to change the locks on a home (at Petitioner's expense) if necessary for safety.
- A victim may be entitled to a release from a rental agreement if moving will protect safety.
- A victim may qualify for temporary assistance for domestic violence survivors (TA-DVS) from the state.
- Contact an attorney for more information.

CIVIL LEGAL REMEDIES

Additional Civil Legal Protections for Victims of Sexual Assault¹

Housing Protection

If you have been a victim of sexual assault, there are certain housing protections available. Sex discrimination in housing is illegal. When a landlord learns that a tenant is a victim of domestic or sexual violence, the landlord sometimes reacts by discriminating against the victim. In some cases this type of action against domestic or sexual violence victims is illegal sex discrimination. If you have experienced any of the items below or you think your landlord has otherwise discriminated against you, you may have rights under state and federal laws. You may wish to contact an attorney to investigate your possible rights.

Examples of landlord actions that might be sex discrimination:

- Your abusive partner lives with you, and your landlord evicts you or takes away your housing voucher because of the abuser's actions.
- Your landlord learns that you are in an abusive relationship, makes comments about women who have been abused and then evicts you, or denies your rental application.
- Your landlord learns that you are in an abusive relationship or that you have experienced sexual assault, and then treats you differently from male tenants by imposing different rules on you as a condition of renting.
- A landlord learns from a prior landlord or review of public records that you were in an abusive relationship or filed for a protective order, and then denies your application because of this history.

Changing your Locks for Safety

If you (or a child living with you) have been the victim of domestic violence, sexual assault or stalking, you have the right to have your locks changed promptly. Your landlord must promptly change your locks or give you permission to change your locks if you:

- Notify your landlord that you (or a child living with you) are a victim of domestic violence, sexual assault or stalking and that you want your locks changed.
- This notice can be verbal, but written notice is always best.
- You do not need to provide proof that the violence occurred.

If your landlord refuses or takes too long to change your locks:

- You can change the locks without the landlord's permission.
- You must provide a copy of the new key to the landlord.

Who pays?

- You are responsible for the cost of changing your locks.
- The landlord should not insist you pay for the lock change before changing the locks.

¹ Information provided by the Legal Aide Services of Oregon, Oregon Law Center (www.oregonlawhelp.com) February 2004.

CIVIL LEGAL REMEDIES

- Note: If the abuser is on the rental agreement with you and you want to change the locks to keep the abuser out:
 - You must have a FAPA restraining order that specifically orders the abuser to move out of the unit.
 - The landlord should not allow the abuser into the unit without your permission unless court ordered.
 - The abuser is jointly responsible for the rent until the date the abuser was excluded from the unit.

Breaking Your Lease Early

If you (or a child living with you) have been the victim of domestic violence, sexual assault or stalking within the past 90 days, you have the right to be released from your lease or rental agreement with a 14-day notice, so you can move quickly.

How to end your lease with a 14-day notice:

- Make a request to your landlord in writing. Provide verification of the abuse by giving your landlord one of the following:
- A copy of a court protective order (Restraining or Stalking Order or other court order);
- A copy of a police report showing that you or a child living with you has been the victim of domestic violence, sexual assault or stalking;
- A statement from a law enforcement officer stating you have reported an act of domestic violence, sexual assault or stalking.
- You will not be responsible for rent or damage occurring past your release date.
- Remaining tenants will continue to be responsible for rent.
- You will not be charged for terminating your lease early (like a lease buy-out fee).

If you are the only person on the lease:

- You can end your tenancy and you are responsible for rent only up to the termination date.

If there are other people on the lease:

- You will not be responsible for rent or damage occurring past your release date.
- Remaining tenants will continue to be responsible for rent.

If you are worried about losing your Section 8 or other housing benefits because of a sexual assault, there may be steps you can take to protect your benefits. You may want to contact a lawyer for assistance.

Employment Protection

- If you feel you are being treated differently by your employer because you have been a victim of sexual assault, you may want to contact a lawyer about your options.

CIVIL LEGAL REMEDIES

- If you are unsafe at work, ask your employer to take steps to help keep you safe. For example, you could ask for a different work assignment, a change of shift, better security lights, or other safety measures. If the assailant is a co-worker, the employer could discipline the assailant or order the assailant not to have contact with you.
- In many circumstances you and your family members are entitled to take time off work to attend criminal proceedings against the perpetrator. Ask for more information.
- If safety concerns force you to leave work, you may still get unemployment compensation benefits, if any reasonable person using ordinary common sense would have quit.

Unemployment Benefits for Victims of Domestic Violence, Sexual Assault or Stalking

Oregon law provides unemployment benefits to certain victims of domestic violence, sexual assault, or stalking if they are forced to leave a job in order to protect their safety or the safety of their children. You may be eligible for unemployment benefits if:

- You've had to quit an Oregon job because you have been a victim of domestic violence, sexual assault or stalking; and
- You believe you and/or your child were in danger of further harm if you continued to work at your job; and
- You reasonably believed that leaving your job would protect you or your child from further violence.

How do you apply for benefits?

- Apply for unemployment compensation benefits at your local employment office or make an application on-line at www.oregon.gov/employ.
- Be sure to explain why continuing to work put you in danger of further harm and how leaving your job was your safest choice.
- If you are denied benefits, request a hearing within 20 days of your denial decision.
- For more information, call the Public Benefits Hotline (1-800-520-5292) or your local Legal Aid Services Office for possible advice or representation. Go to www.oregonlawhelp.org for a directory of legal aid programs.

Time off from Work for Victims of Domestic Violence, Sexual Assault or Stalking

Information provided by the Legal Aide Services of Oregon, Oregon Law Center July 2007.

Oregon law allows employees who are victims of domestic violence, sexual assault, or stalking to take reasonable time off from work to take steps to protect themselves, their children or their dependents.

You may be eligible for reasonable time off from work if:

- You or your child (or your dependent if you are a guardian) has been

Oregon Attorney General's Sexual Assault Task Force

Advocacy Manual 2012

Page 112

CIVIL LEGAL REMEDIES

- a victim of domestic violence, sexual assault or stalking, **and**
- You have worked for more than 25 hours per week at your job for at least the last six months, **and**
- Your employer has six or more employees.

Time off must be used for one of these reasons:

- To get law enforcement or legal help (such as talking with a police officer, applying for a restraining order, or meeting with an attorney) for you or your child.
- To get medical treatment for you or your child or to heal from injuries caused by domestic violence, sexual assault, or stalking.
- To get counseling for you or your child because of domestic violence, sexual assault, or stalking.
- To get services from a victim services program for you or your child.
- To move or to take steps to make your home safer.

How do you ask for time off?

You must give written notice to your employer before you need to take time off, unless it is not possible to do so. If you cannot give notice ahead of time, you must give written notice as soon as you can. Your employer can require that you provide proof that you or your child is a victim and that you are taking time off for one of the allowed reasons.

Some examples of proof include the following:

- Copy of a police report,
- Copy of a restraining order, or
- A letter from an attorney or counselor stating that you or your child were getting help or services or were relocating.
- Your employer must keep the fact that you have requested leave and any information you provide confidential

Is the time off from work paid?

- Your employer does **not** have to give you leave with pay.
- You may use vacation leave or leave that is like vacation leave if you have it available.

What can I do if my employer will not let me take time off?

- You can ask an attorney for help.
- You can file a complaint with the Bureau of Labor and Industries (BOLI); you should do this as soon as possible, but must do so within one year of being denied leave. You may contact BOLI at 971-673-0761 or www.oregon.gov/boli.
- You can file a court case; you must do this within one year of being denied leave.
- If you are a public employee, you must send a legal notice (called a tort claims notice) within six months of the denial of leave (an attorney should help you with this).

CIVIL LEGAL REMEDIES

Can I take time off to attend criminal proceedings?

- Oregon law also lets certain crime victims take time off from work to go to criminal proceedings.
 - For more information about this and other crime victims' rights, go to: www.oregoncrimevictimsrights.org/
 - If you would like to speak with someone at a victims' assistance programs, go to: www.doj.state.or.us/crimev/doccva16983.doc for a list of programs by county.
-

Immigration Protection

- If you are undocumented and have been a victim of sexual assault, sex trafficking, rape, or other sex crime you and your children may qualify for a special Visa to remain in the U.S.
 - If you are undocumented, seeking legal status, and have been the victim of sexual assault by a spouse (or former spouse within 2 yrs) or parent who is a U.S. Citizen or lawful permanent resident, you may qualify to 'self-petition' the government for lawful residency without the assailant knowing. You may also qualify for suspension of deportation proceedings.
-

Family Law Proceedings

- If the other parent of your child is found to have abused you, either by sexually assaulting you, physically injuring you, or threatening you with injury, then the law presumes that it is not in the best interests of the child to be placed in the joint or sole custody of the abuser.
 - When ordering parenting time, the judge may consider your safety needs. If you have been assaulted by the other parent of your child and you need protection in parenting time arrangements, you may want to ask for a safety-focused parenting plan in your divorce or custody order.
 - You may ask permission to move more than 60 miles further away from the other parent without giving advance notice.
 - If you have children and are afraid of the other parent or of someone else, you may ask to keep certain information about your home telephone, place of employment, driver's license, etc. out of the public record for safety reasons.
 - You may use a contact address in place of a residential address in any family law proceeding.
-

Pursuing Child Support Safely

If you think that asking for child support may cause you or your child to be harmed, you deserve protection. There are two ways that the Child Support Program may be able to help you get child support AND still keep you and your child safe.

CIVIL LEGAL REMEDIES

Address of Record - Low Level of Protection:

- When the Child Support Program sends mail to the other parent or person in your case, it may show your home address.
- If you do not want the other parent to get mail showing your home address, you can use another address. This is called an "Address of Record."
- The Child Support Program will use your Address of Record for any legal mail they send you. They will also list the Address of Record on legal paperwork they send to the other parent.
- If you want to use an Address of Record, you must fill out the appropriate form. This form is in the [Division of Child Support's Client Safety Packet](#).
- The Address of Record should NOT be your home address OR the address where you get your child support or cash assistance checks.
- You do not need to have a reason to use an Address of Record – anyone can have one. Be sure to choose an address where you can easily and reliably receive your mail, and be sure to update the Address of Record if you move.

Claim of Risk – Medium Level of Protection

- Legal papers contain information about you such as addresses, phone numbers, employer names, addresses, and phone numbers, driver's license numbers, and social security numbers. This information could be used to help the other parent or another person find you.
- If you think that making this information available could put you or your child in danger, you may ask that it be kept confidential. If you want this information to be kept confidential, you must fill out the Claim of Risk form. This form is in the [Division of Child Support's Client Safety Packet](#).
- Even if you file a Claim of Risk form, you must have an Address of Record that will be made available to the other parent.
- *Sometimes It Is NOT SAFE to Pursue Child Support.*
- When it is not safe to pursue child support at all, even with protection of information as described above, you may wish not to start a child support case, or to stop enforcing an order that already exists.

Good Cause – High Level of Protection

- If you receive cash assistance or Oregon Health Plan assistance from the state, the law says you must help the Division of Child Support to get a support order against the other parent unless it would not be safe for you or your child.
- If getting child support from the other parent could cause you or your child harm, you may claim "Good Cause," and ask the Child Support Program not to pursue your case. If you claim "Good Cause," the Child Support Program must not pursue your case.
- To claim "Good Cause," you may tell your benefits worker, if you have one, or you may fill out the "Good Cause" form. Please visit www.oregonlawhelp.org for more information.

CIVIL LEGAL REMEDIES

Administrative Benefits

You may apply for social security benefits if the assault caused you debilitating physical or psychological damage.

- Temporary Assistance to Domestic Violence Survivors (TA-DVS): There is limited assistance available through the Department of Human Services to victims of domestic violence who have children, are low-income, and who need financial help to stay safe. If you have been assaulted by a family member or former partner, ask about these benefits.
- Call the Public Benefits Hotline (1-800-520-5292) or your local Legal Aid office. Go to www.oregonlawhelp.org for a directory of legal aid programs.

ADOLESCENT SEXUAL ASSAULT

Adolescent Victims

Overview

Studies consistently show that adolescents are the highest risk age group for sexual assault victimization. That fact demands that sexual assault victims' advocates acquire the knowledge, comfort and skills necessary to work with adolescents. The following section provides information about adolescent development, risk factors, barriers to reporting and accessing services, and advocacy tips for working with adolescent victims of sexual assault.

Definition

The Task Force defines "sexual assault" as any nonconsensual sexual act. A sexual act is nonconsensual if it is inflicted upon a person unable to grant consent OR is unwanted and compelled through the use of physical force, manipulation, coercion, threats, or intimidation. Sexual assault of adolescents is any act of forced or coerced sexual conduct by perpetrators over 14 years of age against victims over 14 years of age.

Adolescent Sexual Assault

Juveniles are more likely than adults to be victims of violent crime.¹ Although adolescents represent only 14% of the population, they represent 32% of reported victims of violent crime. These acts of violent victimization include sexual assault and abuse of adolescents. Rates of sexual assault among adolescents remain staggering on their own: 40% of sexual abuse cases, 35% of physical abuse cases, and 25% of all abuse and neglect cases reported in a given year.²

Gender, Race, Class and other Cultural Considerations

Girls and young women aged 12-21 represent the highest-risk age group for sexual assault in the United States. The reasons for their victimization are numerous and varied. Adolescents in general are, and are perceived by perpetrators as, more vulnerable, accessible, and lacking in credibility than other age groups. American social, cultural and legal norms for adolescent rights and protection are not clear and support for their self-determination is often non-existent. Exacerbated by issues of race, ethnicity, gender, socioeconomic status, previous victimization and homelessness, many adolescents experience particularly elevated rates of risk for repeated, chronic victimization. Some risk factors are situational or individual, such as intoxication or experiencing a car breakdown while out with friends. The disenfranchisement, oppression, and stereotyping of adolescents in general, as well as their other identities, can be more difficult to recognize and change.

¹ Juvenile Offenders and Victims: 2006 National Report. National Center for Juvenile Justice, 2006.

² Wordes, M. and M. Nunez. "Our Vulnerable Teenagers: Their Victimization, Its Consequences, and Directions for Prevention and Intervention." National Centers for Victims of Crime, May 2002.

ADOLESCENT SEXUAL ASSAULT

Girls and young women are most at risk for sexual victimization. The best research reports that girls are seven times more likely to be raped than boys. Additionally, in keeping with the victim selection criteria detailed in the Sexual Assault Dynamics chapter and the oppression framework developed throughout this manual, girls and young women do not experience victimization as a homogenous group. For example, reported rape and violent victimization rates are highest for African American girls. Violent victimization rates are highest for African American girls between ages 12-15. Rates of rape, sexual assault, and simple and aggravated assaults are higher in general for African American and American Indian youth.³ Gay, lesbian, bisexual, transgender and questioning youth report elevated rates of sexual harassment and violence; one of the results is the highest rate of suicide and attempted suicide rates among LGBTIQ youth.⁴

Victimization during childhood and adolescence significantly increases the risk of future and repeated victimizations. Women who have been raped before age 18 are more likely to report rape as adults. 80% of adolescents reporting violent victimization report multiple experiences of violent victimization.⁵

Adolescent Development

The trauma of sexual assault affects adolescent victims in many ways similar to adult victims. Adolescent developmental needs demand that adolescent victims also receive knowledgeable support that understands their unique needs and experiences as victims of sexual assault or abuse. Sensitive, competent support includes addressing issues related to race, gender, culture, sexual identity, and class, as well as the support needs of youth. Legal requirements and ethical considerations regarding confidentiality and mandatory reporting differ for adult and adolescent victims and will be discussed later in this section.

Adolescent development is characterized by specific themes and characteristics that are often broken down into three stages:

Early adolescence: peer groups are established, adolescents explore gender roles and identity, and boys and girls tend to hang-out together in groups.

Middle adolescence: peer groups support the search for identity by establishing their own dress code, communication style, and code of conduct. Dating usually begins during this stage.

³ *Ibid.*

⁴ Hershberger, S. L & D'Augelli, A. R. Issues in Counseling Lesbian, Gay & Bisexual Adolescents in R. M. Perez, K. A. DeBord, & K. J. Bieschke (eds) *Handbook of Counseling and Psychotherapy with Lesbian, Gay and Bisexual Clients*, 2000: 225-247.

⁵ Wordes, 2002.

ADOLESCENT SEXUAL ASSAULT

Late adolescence: individual identity established, increased maturity, closer family ties, longer-term relationships.

Adolescent Victim Impact and Interventions

The adolescent worldview may focus on specific types of thinking and ways of relating to oneself and peers. An adolescent may have both concrete and abstract thinking, vacillating from absolutes (“Life will always be like this”) to broad generalizations (“What did I do to deserve this?”). A sexual assault may develop or exacerbate a poor self-esteem or body image. Adolescents may become involved with risky behavior in order to cope. This may include a change in peer group or isolation from a formerly supportive peer group. The impact on adolescent victims can surely be as varied as adult victims, but specific areas of impact are important to be aware of when working with adolescent victims.

Advocating for Adolescents

Adolescents have specific needs from an advocate: age-appropriate materials, information about minor consent and victim rights, help dealing with parents/family, mandatory reporting, and realistic limits to confidentiality. As a victim advocate, you should:

- Be flexible
- Be prepared
- Mobilize resources
- Provide options
- Promote safety
- Support choices

Special Considerations for Adolescent Victims

- Need for immediate safety (physical and emotional)
- Need for nurturing and acceptance
- Re-establish sense of control
- Creative processing/releasing of trauma feelings (art, poetry, journaling, music)
- Parent/family involvement or social services if abuse is within family structure
- Informational materials that are age-appropriate
- Accessible services: by age, race, language, ability, gender, sexual orientation, homelessness, etc.
- Meet adolescents where they are: make yourself accessible and recognize that they may be more comfortable in a familiar space as opposed to an office
- Cultural considerations and an understanding of intersecting identities and oppressions
- Patterns of Victimization: many adolescents who are victimized early in youth are re-victimized and/or commit offenses themselves

Advocacy Tips

What you should know cold:

ADOLESCENT SEXUAL ASSAULT

- Victim rights laws
- Mandatory reporting
- Minor consent laws
- Confidentiality
- Crime Victims Compensation
- Protection orders not available in Oregon for adolescents representing themselves
- Community specific resources – therapists and other service providers who specialize in working with adolescents, medical services and familiarity with the systems working with youth

What you should be able to find out:

- Dates/Times/Locations—Criminal Justice System
- Specific parameters of the law, including:
 - Criminal Statutes
 - Differences of the juvenile system if offender is also juvenile
 - Sex Offender Registration
 - Statute of Limitations for adolescent victims
- Out-of-Area Resources—social services, transportation, adolescent-specific services, support groups, etc.

Risk Factors & Reporting

Risk Factors & Areas of Vulnerability

- Substance Abuse
- Running Away/Homelessness
- Poor academic performance
- Eating Disorders
- Self-injury/Self-Harm
- Delinquency
- Prior victimization
- Suicide
- Family violence
- Socioeconomic status

Reporting

Of any age group, adolescents are least likely to report their victimization. Victims may not recognize their experience as sexual assault/rape. If they do, victims are likely to minimize the experiences, accept blame or responsibility for the assault, and be protective of the offender. Because many have been assaulted by adults and/or disbelieved and unsupported by adults, adolescents are not only unwilling to report to law enforcement but

ADOLESCENT SEXUAL ASSAULT

are usually reluctant and suspicious of accepting any support or services from advocates. Adolescent victims disclose to peers more often than anyone else.

Why don't adolescents report?

- Shock, shame, stigma
- Lack of understanding that what they experienced was a crime
- Fear no one will believe them
- Fear of being blamed or punished
- Previous victimization
- Guilt, self-blame
- Fear of retaliation
- Fear that offender will be punished
- Mistrust of adults
- Belief that nothing will be done
- Lack of knowledge of or access to services
- Perceived and real limits of confidentiality

Mandatory Reporting and Confidentiality

Confidentiality issues regarding adolescents are more complex than when working with adult victims/survivors. The first point to remember is that non-profit advocates are the only professionals working with adolescents who are exempted by Oregon law from mandatory child abuse reporting requirements. While this allows non-profit advocates to provide support and safety planning to victims who would otherwise refuse to seek such services, it also demands that those advocates always retain an awareness of what would best protect and serve a victim's needs.

Non-profit agencies should develop reporting rules to guide advocates about the circumstances that should override an adolescent's refusal to report – age, proximity of offender, and likelihood of re-victimization should all be considered when agencies and advocates develop guidelines for reporting.

Advocates, both non-profit and system-based, have an obligation to inform victims of their duties to report under specific circumstances. Advocates also have an obligation to inform victims when they have to report and to assist victims in dealing with the ramifications of reporting.

See the Position Paper entitled "Mandatory Abuse Reporting and Confidentiality: Considerations for Advocates" in the appendix for more detailed information.

Adolescent Rights & Minor Consent Laws

- Any age can consent to receive birth control information and services
- 14+ can consent to psychiatric and chemical dependency treatment
- 15+ can consent to medical treatment – including a sexual assault medical and/or forensic exam

Oregon Attorney General's Sexual Assault Task Force

Advocacy Manual 2012

Page 121

ADOLESCENT SEXUAL ASSAULT

- 15+ are entitled to a personal representative
- 18 – Oregon age of consent for sexual intercourse. Statutory definitions of sexual assault against adolescents include an explicit defense for defendants within three years, or 36 months, of age of victim

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Overview

The following chapter focuses specifically on providing advocacy for LGBTIQ survivors of sexual violence. LGBTIQ is an acronym that references Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer/Questioning. This acronym is used as a way to include many different members of a large, diverse, marginalized, underserved and sometimes invisible community that may or may not self-identify with one or more of these terms. Being LGBTIQ may be part of a person's identity, but it is important to recognize and respect that the degree to which a person identifies with being part of the LGBTIQ community will vary greatly from person to person. Just like race, religion, culture and other aspects of identity, gender and sexual orientation are aspects of, but not the entirety of, an individual's identity. *Being human should be the starting place for any interaction.*

Note that LGBTIQ is an “umbrella” term and is seldom used as a personal label. For example, a woman who primarily has romantic relationships with women might refer to herself as “lesbian” or as “queer,” but most likely not “LGBTIQ;” instead, she may identify as being part of the LGBTIQ community. Each individual self-identifies differently, and for this reason, it is important to give people space to let you know how they identify before applying labels to them that may or may not fit with their own experience. If you are not sure, ask the person how s/he¹ identifies, keeping in mind that s/he may choose not to self-disclose due to a variety of reasons, including fear of discrimination or privacy concerns.

Sexual violence is a form of oppression that can be used by people from outside or within the LGBTIQ community. Like all sexual violence, the purpose is to exercise control, dominance and hatred. LGBTIQ individuals who are victims of sexual assault typically encounter multiple barriers when trying to access services. LGBTIQ individuals who have already endured discrimination and oppression due to their sexual orientation and/or gender identity or expression may find disclosure more difficult. Traditionally, sexual assault services have focused on male perpetrator-female victim sexual violence, largely overlooking the experiences of many LGBTIQ survivors. It is important for advocates to acquire knowledge, skills and comfort in order to work with victims of same-sex sexual assault as well as for LGBTIQ survivors who are victims of opposite-sex sexual assault.

The following chapter will briefly address the prevalence of sexual violence against LGBTIQ individuals, basic definitions applicable to the LGBTIQ community, myths vs. facts, barriers within the legal and medical systems, and effective advocacy tips. It will also cover considerations for programs to address in regard to: working with domestic violence shelters, creating culturally competent client forms, working towards competency and accessing appropriate resources.

¹ The SATF recognizes that current English grammar does not allow for gender pronouns outside of the male/female or she/he binary. However, we know that individual gender identities and pronouns are fluid and often represent much more diverse terminology than our written or spoken language acknowledges. In our “Definitions” section, we will explore the issue of pronouns and identities in greater detail. When working with survivors, we recommend that advocates ask them how they identify and use the language they use to describe themselves.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Prevalence of Sexual Violence Against LGBTIQ Individuals

Violence targeted at people because of their actual or perceived sexual orientation and/or gender identity or expression may include hate mail, threats, physical assault, battery, sexual assault, rape, torture, attempted murder and murder. According to the FBI, in 2006 hate crimes against people perceived to be LGBTIQ increased 2% to comprise a total of 16% of all hate crimes. Hate crimes perpetrated against the LGBTIQ community are the third most common type of hate crime after those based on race and religion.² The data does not distinguish between sexual violence and other types of hate crime, so the exact prevalence of sexually-based hate crimes is unknown.

It's important that research is conducted that demonstrates the scope of this problem, because hate crimes against LGBTIQ individuals include sexual violence. Unfortunately, a large portion of research about same-sex sexual violence is focused on sexual assault within prisons and does not fully represent the scope of sexual violence against LGBTIQ communities.

Recent research has started to paint a picture of the prevalence of sexual violence against gay and lesbian individuals, however it has largely excluded transgendered individuals. Studies have shown that about 28% of gay men have been the victim of nonconsensual sexual acts in their lifetimes. Of those assaults, about 96% of the perpetrators were male. For lesbian women, numbers have been more inconsistent. Research reports sexual violence against lesbian women as occurring in a range as low as 5% percent and as high as 57%.³

Definitions⁴

In order to better serve LGBTIQ survivors of sexual assault, advocates should understand basic terms commonly used or associated with this community and, most importantly, how to invite the survivor to self identify in a comfortable manner.

Asexual: May be heterosexual or homosexual while typically having no sexual desire for persons of any gender. Asexual individuals may engage in purely emotional romantic relationships. Terms specifically associated with purely emotional/romantic relationships can include:

² "Incidents and Offenses: Hate Crimes Statistics, 2006," FBI Uniform Crime Report. Released November 2007.

³ Research and Advocacy Digest: Linking Advocates and Researchers, Volume 6, #1. December 2003. Washington State Coalition of Sexual Assault Programs.

⁴ Adapted by Sexual Assault Support Services, Eugene, OR, for their Advocacy Handbook from materials from the Northwest Network and the Survivor Project. Also, from The Gender Center's Training Manual: Definitions and terms are from GLAAD, AGREEA (The Association for Gender Research, Education, Academia & Action), HRC, and WPATH (World Professional Association of Transgender Health).

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

aromantic: no romantic attraction towards anyone of any gender.

biromantic: romantic attraction towards person(s) of male or female gender.

heteroromantic: romantic attraction towards person(s) of a different gender from one's own.

homoromantic: romantic attraction towards person(s) of the same gender.

panromantic: romantic attraction towards person(s) of any gender or lack of gender.

transromantic: romantic attraction towards person(s) of variant or ambiguous gender.

polyromantic: romantic attraction towards person(s) of more than one gender or sex but do not wish to identify as biromantic because it implies that there are only two binary genders or sexes.

Biocentrism: This is the assumption that people whose sex assigned at birth matches their gender identity throughout their lives are more "real" and /or more "normal" than those whose assigned sex is incongruent with their gender identity. This comes up when, for instance, women's shelters may be uncomfortable serving transsexual/ transgendered with the fear that non-trans gendered (cis-gendered) clients would be uncomfortable. Underlying this is a biocentric attitude that trans women and men aren't "real" women or "real" men.

Biphobia: The specific irrational fear, aversion to, and/or hatred of people who are bisexual, often targeted at them from both heterosexual and sexual/gender minority communities. The systematic oppression of bisexual people specifically because they are bisexual.

Bisexual: A person who identifies as having primary romantic, emotional, and/or sexual attractions and connections with people of the same gender and/or the "opposite" gender. (Presumes the existence of a gender binary.)

Cisgender: A neologism⁵ that means "someone who is comfortable in the gender assigned at birth." "Cisgender" is used to contrast "transgender" on the gender spectrum. An adjective used in the context of gender issues and counseling to refer to a class of gender identities formed by a match between an individual's gender identity and the behavior or role considered appropriate for one's sex.

Cissexism: The belief that transsexual genders are less legitimate than, and mere imitations of, cissexual genders. Cissexism is most typically enacted through one or both of the following processes: trans-assimilation (viewing or portraying transsexuals as merely imitating, emulating or impersonating cisgendered individuals), or trans-exclusion (refusing to acknowledge and respect a transsexual's identifying gender or denying the

⁵ A neologism is a newly coined word that may be in the process of entering common use, but has not yet been accepted into mainstream language. Neologisms are often directly attributable to a specific person, publication, period, or event. (Wikipedia definition)

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

person access to spaces, organizations, or events designated for that gender).

Female Affirmed: Also known as Transwoman or MtF. A trans individual who is transitioning or has transitioned from male to female.

Gay: Sometimes refers to a male identified person who identifies as having primary romantic, emotional, and/or sexual attractions and connections with other male-identified people. “Gay” is also a term used by people of all genders to describe having primary romantic, emotional, and/or sexual attractions and connections with people of their own gender.

Gender Confirming Therapies : *Cross Gender Hormonal Therapy*, often erroneously referred to as hormone *replacement therapy*, is where the exogenous hormones are chemically suppressed and gender confirming hormones are administered by injection or taken orally to bring about physiological changes and psychological comfort. *Gender Confirming Surgeries*, Also referred as sex reassignment surgery (SRS) or genital reassignment surgery (GRS), “top surgery,” or “bottom surgery.” These are some examples of surgical intervention desired by some (but not all) transsexuals to bring their physical self into alignment with their gender self.

Gender & Sex: These terms are often mistakenly conflated. One is not a synonym for the other. Gender refers to one’s psyche or internal sense of “self,” and sex refers to one’s physiological self or, more simply put, one’s “body”.

Gender Assignment: The assignment to newborns at birth of the label, social roles, norms and expectations of being “male” or “female.” Gender assignment simply refers to the presumption of one’s status as male or female based solely on the person’s external genitalia at birth.

Gender Binary: The idea that human gender exists in two mutually exclusive forms: “masculine” and “feminine.” The term also describes the system in which a society divides people into male and female gender roles, gender identities and attributes.

Gender Expression/Presentation: How people choose to express their gender and/or influence others’ perception of their gender.

Gender Identity: A person’s innate or internal sense of “self;” how a person sees and self-defines his or her own gender.

Gender: Gender refers to a psychosocial construct that is flexible and fluid throughout one’s lifetime and is often informed by contemporary social or cultural values; a person’s internal sense of self.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Genderqueer: The term "genderqueer" began to be commonly used at the turn of the twenty-first century by individuals who felt that their gender identities and/or gender expressions did not correspond to the gender assigned to them at birth but who did not want to transition to the "opposite" gender. Characterizing themselves as neither female nor male, but as both, or as somewhere in between, genderqueers challenge binary constructions of gender and traditional images of transgender people.

Hate Crime or Bias Crime: Hate activity is a negative action directed at any broad category of people with hurtful intentions. These activities can include, but are not limited to: verbal harassment, threats, destruction of property, physical attack, sexual assault, rape, stalking, and murder. Bias crimes are hate actions that have been declared illegal by federal, state or local laws.

Heterosexism: A system of social norms and structures that privilege heterosexually-identified people. Heterosexism perpetuates institutionalized homophobia. It promotes the belief that heterosexuality is inherently better than, morally superior to, and more natural than all other sexual orientations, that heterosexuality is the norm, and that those who are not heterosexual are wrong, sick, or unacceptable. Heterosexism perpetuates and reinforces denial of the existence of LGBTIQ communities and individuals, assumes that all people are heterosexual unless proven otherwise, and upholds heterosexist language, laws, and social norms. Like racism, sexism and other forms of oppression, heterosexism awards power and privilege to members of the dominant group (heterosexuals and/or those perceived to be heterosexual) and denies power and privilege to members of the subordinate group (LGBTIQ individuals).

Heterosexual: A person who identifies as having primary romantic, emotional and/or sexual attractions and connections with people of the "opposite" gender. (Presumes the existence of a gender binary.)

Heterosexual Privilege: The institutionalized assignment of unearned privileges to heterosexual or "straight" people simply because they are part of a dominant culture.

Hir/Ze: Neologisms; gender neutral pronouns that may be used in place of him/her and he/she.

Homophobia: The irrational fear, aversion to, and hatred of people who are lesbian/gay/bisexual/queer. Often includes the irrational fear of one's own feelings toward other members of one's own gender, and the irrational fear of behavior that is outside of the boundaries of traditional gender roles. Homophobia is used to reinforce and perpetuate both sexism and heterosexism. It can take the form of ignoring or invalidating the existence of sexual and gender minorities, stereotyping, tokenism, and violence and hate crimes ranging from verbal harassment to assault, rape, stalking, and murder.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Intersex: Individuals whose bodies are not stereotypically male or female. This could involve internal reproductive organs, ambiguous or atypical external genitalia or a mixture of chromosomes. In these individuals, some biological traits can usually be attributed to males and some traits can usually be attributed to females. While actual numbers cannot be fully assessed, about 1 in 1500 to 1 in 2000 people are thought to be born intersex.⁶

Lesbian: Woman-identified person who identifies as having primary romantic, affectional, emotional, and/or sexual attractions and connections with other female-identified people.

LGBTIQ: This umbrella acronym refers to people and diverse communities who identify as lesbian, gay, bisexual, transgender, intersex, queer, and/or questioning. Individuals may identify with only one of the categories, or with several (e.g. trans, lesbian, and queer). Note: The letters may occur in any order, and this acronym changes often, as perceptions of who is “included” in the community continually shifts and potentially expands. Also, this is not a monolithic community; there may be mistrust, violence, hatred, etc., toward others in the LGBTIQ community. For example, someone who identifies as lesbian or gay may distrust or dislike someone who identifies as bisexual.

Male Affirmed: Also known as FtM or transman; a trans individual who is transitioning or has transitioned from female to male.

Queer: Originally a derogatory term used to demean, intimidate, dehumanize and attack lesbian and gay people. In more recent years in the United States, this term has been reclaimed by many LGBTIQ people who use it as an inclusive and positive term that encompasses all of their communities. While some LGBTIQ individuals prefer the use of this term, others find it offensive in certain contexts, or in any context. Don’t assume that an LGBTIQ survivor you may be working with is comfortable with the use of this, or any other term in this list, without asking.

Questioning: This term is used to describe those who are questioning their sexual orientation or gender identity. The term is not a reinforcement of the concept of choice of sexual orientation, but is more a reflection of the difficulties many people experience in exploring, coming to terms with and asserting their sexual orientation in light of our homophobic, biphobic and transphobic culture.

Sex: A biological status usually inferred from such traits as chromosomes, hormone levels, genitalia, and other physical characteristics.

Sexual Identity: An innate sense of self as well as a psycho-social construction (differs from sexual orientation).

⁶ “FAQs: How Common is Intersex?” Intersex Society of North America. Accessed at www.isna.org/faq/frequency on 8/7/2012.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Sexual Orientation: A continuum describing a person's predisposition toward a range of romantic and sexual feelings and behaviors. Sexual Orientation is a primary pattern of romantic, affectional, emotional, and/or sexual attractions and connections with others, usually referring to having a primary attraction toward people of the same gender, of a different gender, or of all genders. It is not necessarily absolute, and may be fluid and change over the course of a lifetime.

Sexual Orientation: (legal definition in Oregon) The Oregon Equality Act of 2008 defines "sexual orientation" as "an individual's actual, or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth." ORS 174.100(6).

Trans: A person whose self-identification challenges traditional notions of gender. People whose gender identity and gender assignment do not match, but who may not seek medical intervention to change characteristics of physical sex. Preferred gender identity is expressed using clothing, name, and other cues to influence gender attribution (what others assume that person's gender to be when observing that person). Also often used synonymously with transgender.

Transgender: An umbrella term that may include people who are transsexual, transgendered, genderqueer, those identifying as a gender that is neither man/boy nor woman/girl, or who feel that their identity does not fit into the traditional binary gender system.

Transitioning: The process that transgendered or transsexual people may go through in adapting their gender presentations and/or physical attributes to better match their gender identities.

Trans-Misogyny : Sexism that specifically targets those on the trans female/trans feminine spectrums. It arises out of a synergetic interaction between oppositional and traditional sexism. It accounts for why MtF-spectrum trans people tend to be more regularly demonized and ridiculed than their FtM-spectrum counterparts, and why trans women face certain forms of sexualization and misogyny that are rarely (if ever) applied to cisgendered women.

Transphobia: The systematic oppression of trans people because they do not fit societal expectations of how men and women are supposed to act and look. The irrational fear and hatred of those who are trans, often targeted at them from both heterosexual and sexual minority communities. Transphobia can take the form of ignoring or invalidating the existence of trans people, stereotyping, and hate crimes ranging from verbal harassment to assault, rape, and murder.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Transsexual: A person whose gender identity does not match his/her socially ascribed gender assignment. Transsexual people may or may not choose to obtain medical intervention to bring their physical attributes more into congruence with their gender identities. In referring to transsexual people, “non-op” indicates a person having decided against surgeries or who feels s/he can live in his/her gender identity without altering his/her body surgically, “pre-op” indicates a person who has not yet had any intended surgery, “mid-op” indicates a person having completed some intended surgeries and “post-op” indicates a person having completed all intended surgery.

Sexual Assault within LGBTIQ Communities and Against LGBTIQ Individuals⁷

Same Sex/Same Gender Violence

As with heterosexual people, LGBTIQ individuals may experience sexual violence perpetrated by strangers, acquaintances, within a dating relationship, or between partners. Same sex/same gender violence occurs in all economic, racial, ethnic, and age groups; it is not limited to certain groups or types of people.

When sexual violence occurs between same sex/same gender partners, survivors often experience resistance from within their sexual and/or gender minority communities, such as disbelief, unwillingness to admit the problem, lack of support, and blaming the survivor for “airing the community’s dirty laundry,” thus giving a homophobic world one more reason to shame and repress the community. Same sex/same gender violence may threaten the vision of utopia or the sense of solidarity within LGBTIQ communities.

Thus, survivors of same sex/same gender sexual assault are in “double jeopardy.” They may risk losing support from heterosexual family, friends and others if they come out as LGBTIQ, and they may risk losing support/alienation from the LGBTIQ community if they come out as survivors.

Hate crimes and Sexual Assault of LGBTIQ persons

LGBTIQ people are targets for hate crimes, verbal harassment, hate mail, acts of violence including assault, sexual violence, and murder. According to the FBI, in 2007 16.6% of single-bias crimes reported had resulted from sexual orientation bias. Approximately ten percent of hate crimes against gay men and lesbians include sexual assault.⁸

Violence against sexual minorities is believed to be on the rise. In 1998, violence against sexual minorities increased while the numbers decreased for other minority

⁷ Advocacy Handbook, Sexual Assault Support Services: Eugene, Oregon. 2008.

⁸ Comstock, Violence Against Lesbians and Gay Men, 1991.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

groups.⁹ Greater violence is often reported in June, which generally coincides with LGBTIQ Pride activities.

According to the Survivor Project in Portland, Oregon, trans women are 2000% more likely to be murdered than gay men; as many as 50% of trans people die as a result of murder or suicide.

Myths & Facts¹⁰

Myths and misconceptions exist about LGBTIQ individuals and LGBTIQ sexual assault just as they do for other victims. Some specific myths related to LGBTIQ people and victimization are addressed below.

MYTH: LGBTIQ people make up a small segment of society.

FACT: A commonly accepted statistic is that one in ten people are LGBTIQ. In December of 2007, The Williams Institute reported that there are 8.8 million LGB people living in the U.S.

MYTH: Parents cause their children to be LGBTIQ.

FACT: Research suggests no relationship between parenting and sexual orientation.

MYTH: Sexual violence and abuse are primarily issues affecting heterosexual people.

FACT: LGBTIQ people are at increased risk to be sexually assaulted relative to heterosexuals. They experience violence within their relationships and are also targeted for violence by members of the dominant community because of homophobia, biphobia, and transphobia.

MYTH: LGBTIQ people can be “cured.”

FACT: Just like heterosexuals, LGBTIQ people are normal and do not have a genetic defect or disease; there is nothing to be “cured.”

MYTH: Sexual abuse may be a factor that causes people to become LGBTIQ.

FACT: Sexual assault and abuse do not “cause” someone to become LGBTIQ. Sexual orientation and gender identity are important and valid parts of a survivor’s identity, not side effects of abuse. In fact, they are often a source of pride and strength.

MYTH: Sexual assault can’t happen between two men or two women.

FACT: Sexual assault can happen between people of any sexual orientation and gender identity/expression. Other myths include the assumption that two men are “just fighting” and “being men” or that women don’t assault or violate each because it’s “just a cat fight.” There is also an assumption that the physically larger person is always the

⁹ National Coalition of Anti-Violence Projects, 1998.

¹⁰ Adapted from, “Lesbian, Gay Bisexual, and Transgendered Survivors” by Danielle Tillman. Published by CALCASA.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

offender. Although most sex offenders are men, women do sexually assault other women and offenders come in all shapes and sizes.

Barriers to Reporting faced by LGBTIQ survivors of sexual assault

In Oregon, 90% of all sexual assaults go unreported.¹¹ Sexual assault survivors frequently find it difficult to report their assault. Survivors who identify as LGBTIQ, like all survivors, often feel fear, self-blame, anger, shame and/or shock after an assault. All of these feelings exacerbate the challenges of participating in the civil or criminal justice systems. However, LGBTIQ survivors face many additional barriers.

Reporting a sexual assault perpetrated by someone of the same gender can “out” a survivor to family, friends, coworkers, etc. For people who were not already out, this can lead to a multitude of complications related to employment, housing, education, immigration, financial safety, personal safety, privacy and personal relationships. Survivors may also fear that reporting their sexual assault will reinforce negative stereotypes about their community.

If an LGBTIQ survivor has not “come out” to family and friends or an employer, this adds additional stress in deciding whether to report the assault. Coming out can be an experience of re-victimization.

By coming out, the LGBTIQ survivor may lose:

- Family of origin
- Job/career/opportunities
- Support system
- Children
- Safety
- Housing
- Faith community

When an LGBTIQ survivor *does* report an assault, the survivor’s sexual orientation and/or gender identity/expression may become more of the focus of the investigation than the assault itself. Because LGBTIQ survivors have so many additional barriers to reaching out to traditional responders, such as law enforcement, health care providers and social service agencies, it is very important that sexual assault victim advocates be able to provide culturally-specific and culturally competent services to support LGBTIQ survivors.

Legal, Medical and Logistical Concerns:

- LGBTIQ families may not be legally entitled to all of the legal rights and remedies granted to heterosexual married couples on matters such as child custody, child and spousal support rights or certain other family law protections.

¹¹ *Rape in OR: One in Six, 2003.*

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

- Abusive relationships that involve children can become difficult to navigate legally, and some victims will choose to stay with an abusive partner rather than risk losing children.
- LGBTIQ immigrant survivors have few of the rights and privileges conferred to immigrants in heterosexual relationships, such as the inability to petition for a same-sex partner restraining order and immigration relief for victims of same-sex intimate partner violence.
- Going to the hospital after an assault can be threatening to an LGBTIQ survivor. Medical personnel are often not well trained in how to respond to a LGBTIQ victim of sexual assault. There may be differences in types of exams given, questions asked, possible medical risks, and medication/treatment offered. Transgender and intersex individuals may have additional worries about physical examinations of their bodies by medical responders unfamiliar with these identities.
- Transgender and intersex individuals are at particular risk for undesired outing and inappropriate care. For example, a female-to-male transgendered individual may not be assessed for a need for emergency contraception. There may be additional barriers if a LGBTIQ person's appearance or identity (social or legal name) is inconsistent with the person's sex or medical file.
- LGBTIQ survivors may have privacy concerns related to how information in their medical files may be used in the future and need legal advice regarding how to protect their records from being released without their consent.
- The collection of forensic evidence is made additionally difficult if examiners have little cultural competence with regard to LGBTIQ communities, and fear of pain or judgment can prevent survivors from seeking critical help.

Other legal concerns that LGBTIQ individuals have may be related to property, trusts and estates, taxes, visiting rights, fair housing, health insurance, making medical decisions for partners, etc.

Seeking Help

Many LGBTIQ people have experienced homophobia, biphobia, transphobia, and/or heterosexism when seeking services from programs that are supposed to be there to provide support and safety. Therefore, accessing service providers may feel like an additional source of stress or an opportunity for more traumatization. There may be a host of other barriers that cause LGBTIQ people to feel like seeking services isn't an option. They often feel that they cannot rely on the police, the court system, hospitals, service providers, etc., and face the fear of additional homophobia, biphobia, transphobia and violence.

LGBTIQ survivors, particularly those in rural areas, may find it more difficult to build support networks where they can be completely safe and open. This isolation, in addition to being painful, can interfere with the survivor's opportunities for coping and healing.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Supportive and informed advocates and counselors, a solid support network, and appropriate resources are important for all survivors dealing with sexual assault. Agencies can assist by doing outreach in LGBTIQ communities, keeping updated resource lists, including lists of LGBTIQ legal resources, and providing referrals to state and national contacts. If LGBTIQ survivors are not safe within their own town or city, it may be possible to build long distance support networks.

Advocates are encouraged to become trained in order to be more culturally responsive to LGBTIQ survivors. A bad first impression of a local agency could cause the survivor to isolate even more and view the agency as unsafe and likely not to return. Additionally, survivors who have experienced an unsupportive response are likely to share their experience with others in their community in order to help protect others from similar traumatization. This can lead to an entire community of survivors who are unable to access the support and advocacy they deserve. Each advocate has the ability to mitigate trauma and remove barriers for survivors through a culturally-aware response to the victims they serve.

Effective Advocacy

Some FAQ's and General "Best Practice" Tips:

1). Should I use the word "Queer"?

Though historically a negative term, many members of LGBTIQ communities have reclaimed the word "queer" and use it as an all-inclusive way to describe themselves and their community (see definitions list for more info). There are many reasons for this, including the power of reclaiming and taking ownership over a term that was once used as an insult and the desire to find one word that encompasses a large and diverse community.

As with all labels, it is most important to refer to people in the ways they refer to themselves. Some people are still very uncomfortable with the term queer and would not wish to be referred to in this way. Others embrace the label and want to see the term promoted. Advocates and other service providers should ask a person how s/he prefers to be referred to. Many advocates and service providers are unsure about whether it is appropriate to use this term when referring to someone else. Though a difficult question to answer, here are some ideas:

- It is always best to err on the side of caution. Don't use it if you're not sure.
- Know your audience. Will the person(s) with whom you are speaking recognize this as a positive or negative term? Even if you use the word with good intentions, if your audience isn't familiar with the context, it may be interpreted as derogatory.
- If you wish to use this word, you might take time to explain the context if it is not understood.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

2). How do I interrupt homophobia, biphobia and transphobia?

When talking with sexual assault survivors as well as their family and friends and other service providers, there are many ways an advocate may witness homophobia, biphobia, and transphobia. There are also times when people may not intend to be discriminatory, but they aren't sure how to approach what is unfamiliar.

The following are scenarios representing homophobia, biphobia and transphobia:

- A heterosexual survivor was assaulted by someone of the same sex or gender and is focused on not being gay and/or using derogatory language/name calling.
- A survivor's friends or family are "victim blaming" by focusing unjustly on the survivor's sexual orientation or gender identity or expression as playing a part in the assault.
- A survivor is describing his or her own experience but makes homophobic, biphobic, or transphobic remarks or references in the course of conversation.
- Another service provider asks inappropriate questions, makes fun of, refuses to address a survivor by appropriate pronouns, refuses to provide services, or generally treats a LGBTIQ survivor poorly because of the person's identity.
- An advocate is avoiding conversations, because s/he doesn't know how to talk about some aspect of an LGBTIQ person's identity, anatomy, or experience.

Each of the above scenarios would be handled individually based on the situation and the relationship you have with the person(s) involved. However, **the ideal outcome is that the person you are interrupting leaves the conversation with new information, does not feel ashamed, and is a potential future ally. If the person who is impacted is present, it is equally, if not more, important that she/he feel safe and respected.**

Gauge your audience. Humor, "I" statements, and finding common ground to relate upon are all good places to start. Sometimes a brief reminder is needed. Other times, a more in-depth conversation is necessary. It just depends on the situation. Here's just one example of a way to interrupt: "I can tell that you're really upset about what happened to you, and I want to focus on ways I can support you. I also want to be careful with the ways other people are talked about."

3). If the sexual assault occurred in the context of a relationship, what if I end up talking with the abuser? How will I know the difference?

It could be very hard to tell. Assessment can be difficult and is a complicated issue in which we recommend staff training. There may be times when the abuser will strategically try to seek services first.

Abuse tactics may look different. Power dynamics often associated with being raised male and being raised female do not necessarily play out the same way they do in a heterosexual relationship. The constant theme in any abusive relationship is one person having more power and control over another. In this way, serving LGBTIQ people is the same as serving anybody else. However, more thorough assessments can help to gain a

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

broader perspective on the relationship. These assessments explore how both people respond and behave in multiple situations in order to gain an overall picture of whose life is getting “bigger” and whose life is getting “smaller.”

4). How should I respond when someone calls and I’m not sure if s/he’s LGBTIQ?

Initially, it is a good practice for advocates answering a call to use gender-neutral pronouns and not to assume the gender of the caller or the offender until the caller has identified the pronouns specifically. No matter who the caller is, always use the language and pronouns the caller uses to refer to him/herself and don’t make assumptions about *any* caller’s identity. Not everybody is heterosexual or identifies with the gender and/or sex assigned at birth. Because LGBTIQ survivors often have had homophobic, biphobic and/or transphobic experiences in the past, they may be reluctant to indicate their own genders or the genders of their abuser. For example, a caller may refer to the person who assaulted or abused them as “they” or “this person” (as in “they’ve been getting more violent recently” or “this person is scaring me”). An appropriate response is to mirror the same language back (“are they in the house with you right now?” or “what sorts of things has this person been doing that are scaring you?”).

Also, when referring to survivors, only use labels they have used themselves. If you are unsure how they identify and it is relevant to the work you are doing together, ***ask, don’t assume***. If you don’t need to know, don’t worry about it and just treat the person as you would any other survivor. If this information is needed, an appropriate way to ask someone how s/he identifies is to ask just that: “Can you tell me how you identify so I can try to find the best services available for you?” Before you ask someone about his/her identity, ask yourself if you are asking because you are curious or because knowing will help you serve the survivor most competently and effectively. Refrain from asking questions that are inspired by your curiosity.

5). I’m not sure if my program is the best resource for LGBTIQ survivors.

LGBTIQ people will have many of the same needs as other survivors. Respond to LGBTIQ persons just like you would other survivors in order to gauge their needs. As with any underserved population, there may be specific resources they need or dynamics at play that require you to give specific attention to their needs as LGBTIQ individuals. If you think that you or your program isn’t prepared, ask for training in working with this population. A good way to advocate for the culturally-specific needs of LGBTIQ people is to get to know your community and what LGBTIQ-friendly resources are available. Prepare ahead of time so that when an LGBTIQ person calls, you are ready with appropriate referrals. Make sure to have a list of legal, counseling and other resources for LGBTIQ survivors. If local options are limited, learn about resources in other communities and have a list of those resources available so LGBTIQ persons don’t fall through the cracks and, as a result, don’t receive appropriate support and services.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

6). I'm not familiar with a lot of the language used by LGBTIQ people and how I should to refer to a LGBTIQ survivor.

If you're talking with an LGBTIQ person and you don't use the right language, get confused with pronouns, or aren't familiar with something that comes up, apologize, acknowledge that you're still learning and ask respectful questions to get the information you need to help. An example of this would be "can you tell me how you prefer to be referred to?" or "I'm not familiar with the term that you used. Would you mind explaining it to me so that I can be better informed?" Most people would prefer that you acknowledge mistakes and ask questions than avoid them out of fear or embarrassment.

7). Are there things I *shouldn't* ask about?

As with any survivor, recognize the difference between *necessary* questions and questions you don't really need to ask. An example of this would be a transgender person's anatomy or surgery status. That is *not* appropriate to ask about unless you will be advocating for the person at a medical appointment and it would be relevant to procedures. If this is the case, it would be appropriate to acknowledge the delicate nature of the subject, to explain why you are addressing it, and instead of asking for the person to give this information to you, ask if s/he is prepared to address this with medical staff.

Another example would be asking an LGBTIQ person when s/he "knew" (that s/he was gay, lesbian, bisexual, transgender, etc.). Since nobody asks heterosexual people when they knew they were heterosexual, the same courtesy should be extended to LGBTIQ persons.

Also, recognize that it's not an LGBTIQ person's responsibility to educate you on LGBTIQ issues. Attend trainings, read books, and talk to other professionals to learn more.

8). Is it likely that LGBTIQ survivors in shelter will "come on to" or end up dating other shelter residents?

Most heterosexual people are not attracted to every person of the "opposite" sex that they meet. The same is true for LGBTIQ people. It's possible for people of any sexual orientation or gender identity/expression to start relationships while in a shelter and your shelter should have a general policy that addresses this issue.

The nature of diverse groups of people living in a communal environment requires programs to expect the unexpected. For this reason, it is always advisable to try to think ahead and to plan accordingly. It is up to each program to determine for itself what the program's policies will be and how they will be enforced. However, programs should be mindful that ALL policies be fair and consistent for all program participants, regardless of their sexual orientations or gender identities.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

9). Can I get more information and training on best practices when working with LGBTIQ survivors?

Yes. Contact the Sexual Assault Task Force for a list of trainers who may be available to come to your program or community or for a listing of upcoming conferences and training opportunities around the state and beyond.

Special Considerations for Advocates

Intersecting identities

When working with LGBTIQ survivors of sexual violence, or survivors from any marginalized community (people of color, people with disabilities, immigrants, etc.), it is important to acknowledge the intersections of identity, corresponding oppressions and sexual violence. The World Health Organization recognizes the centrality of oppression to sexual violence when it states that “sexual violence is a common and serious public health problem affecting millions of people each year throughout the world. It is driven by many factors operating in a range of social, cultural and economic contexts. At the heart of sexual violence directed against women is gender inequality.”¹²

The SATF recognizes that perpetrators target victims whom they perceive to be vulnerable, accessible and/or lacking in credibility (for more information see the Sexual Assault Dynamics chapter). Unfortunately, because LGBTIQ individuals experience homophobia, biphobia, and/or transphobia and other societal biases, perpetrators may perceive victims from these communities to be more vulnerable, accessible and lacking in credibility. Because we live in a world in which LGBTIQ individuals are often marginalized, oppressed and suffer great inequality, they may become more likely targets of sexual violence.

In addition to the LGBTIQ identity, a survivor may also identify strongly with a religious, cultural, ethnic, or other community. These cultural norms may be a stronger influence in shaping the needs of a LGBTIQ client than the client’s sexual orientation or gender identity/expression. Do not assume that because someone identifies as LGBTIQ that this identification is the most important part of the person’s identity. For example, for a survivor who is a person of color and identifies as LGBTIQ, it may be more important to work with a staff member or volunteer who is a person of color than with someone who is LGBTIQ.

Also, while some people who have transitioned from one gender to another may identify as transgender, transsexual, queer, etc., others may not identify with this larger culture at all; they may identify only with the gender into which they have transitioned.

¹² Etienne G. Krug. *World Report on Violence and Health*. Vol. 1. World Health Organization, 2002.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Legal Issues

Advocates provide information about options related to legal issues for LGBTIQ survivors. Keep in mind that legal needs and resources may vary for LGBTIQ survivors of sexual assault. One clear example is the sex crimes laws under the Oregon Revised Statutes (ORS). Currently, to be able to charge the crime of Rape there must be “sexual intercourse.” The ORS defines sexual intercourse as the penetration of a vagina by a penis. This definition excludes sexual assault that is perpetrated by someone of the same sex as the survivor.

Likewise, the crime of Sodomy must include “deviate sexual intercourse,” which refers to contact between the genitals of a person and the mouth or anus of another. This term would likely encompass the sexual assault of a victim of the same sex as their perpetrator; however, it also stipulates the act as “deviate,” which is defined broadly as “deviation or departure from an accepted norm or standard of behavior.” When a LGBTIQ person comes forward about a same-sex sexual assault, s/he may face this type of discriminatory language about same-sex sexual acts in the law.

Other crimes that may apply to same-sex sexual assault are the charges of Unlawful Sexual Penetration and Sexual Abuse, which are discussed in detail in the Criminal Justice Chapter of this Advocate Manual.

As advocates, you can encourage the survivor to consult with the prosecutor or law enforcement officer(s) in order to explain the Oregon criminal law. This may help survivors understand why the sexual assault they experienced may not be charged as “Rape.” Remember that outside of the legal system a survivor may choose to identify the assault that s/he experienced any number of ways and advocates should not judge that.

Discrimination and Equality under the Law

Under the Oregon Constitution, the law must be applied equally to gay, straight, and bisexual people. Gender identity is not included in this law. If homosexuality or bisexuality is an issue or potential issue in any legal matter with which a survivor is concerned, you may assist the survivor in seeking legal assistance. If the survivor does not have a lawyer, he or she may call the Oregon State Bar Lawyer Referral Service at (503)684-3763 or (800)452-7636 for a referral to a private attorney, though there is no guarantee that a lawyer here will have specific knowledge related to LGBTIQ legal issues. The survivor may also contact the Oregon Gay and Lesbian Law Association at PO Box 876, Portland OR 97207, info@ogalla.org, or the National Crime Victim Law Institute at 10015 SW Terwilliger Blvd., Portland OR 97217, ncvli@lclark.edu.

Domestic Partnership in Oregon

As of February 2008, gay and lesbian couples are permitted to register as “domestic partners” (DP) under the Oregon Family Fairness Act. Registering a domestic partnership grants the partners the certain rights and protections (and obligations) that are not extended to unregistered DPs. Once registered, the parties to the registered domestic partnership (or “RDP”) are entitled to any privilege, immunity, right, benefit or

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

responsibility that the state of Oregon provides or imposes on the parties to a marriage. These benefits and burdens are imposed to the same degree as for married couples. It is very important to note that partners in a RDP do not get any benefits married people get under federal law. It is also important to note that in most states, Oregon's RDP will not be recognized, and couples that are registered will be treated as if they have no legal relationship to one another. It is unclear whether states that currently have domestic partnerships, civil unions or marriages for same-sex couples will recognize Oregon's RDP. Recognition of a trans survivor's gender and marital status will also vary from state to state. Advocates can help survivors determine their rights as they relate to relocation.

Some examples of Oregon's state-conferred benefits include:

- Availability of spousal support after dissolution of a registered domestic partnership
- Ability to file joint Oregon tax returns (though you still must file federal separately)
- Availability of tenancy by entirety
- Right to inherit without a will
- Dissolution procedures similar to divorce
- Spousal privilege in legal proceedings
- Hospital visitation
- Right to your partner's medical information
- Standing for "wrongful death" suits
- Upon death of a partner, the right to obtain personal effects, make burial arrangements, receive an autopsy report and have "personal representative" priority.
- Right to workers' compensation benefits if partner is disabled or killed on the job

It is important for advocates to have an awareness of these issues because advocates may need to advocate for the legal rights of the survivors and partners with whom they are working. For example, the partner of an LGBTIQ survivor might encounter certain legal obstacles if the partnership is not registered (or even if it is), such as difficulty visiting the survivor in the hospital if the survivor is hospitalized for assault-related injuries. Or if a survivor is sexually assaulted and killed in the workplace, an advocate can advocate for a surviving partner to apply for worker's compensation benefits, sue for wrongful death, etc.

Child Custody

Custody and parenting time can be complicated for LGBTIQ survivors. It may not be socially accepted in a particular community or with a particular judge for someone to leave a heterosexual relationship and enter into a same-sex relationship and retain custody of the child. There are also complicated issues around how the child entered into the world and the legal relationship of the non-biological parent. This can be an issue if a non-biological parent is being sexually assaulted in an intimate partner relationship, and the victim is reluctant to leave because it may place the survivor's custodial rights at risk. Make a referral to an attorney versed in these issues if the LGBTIQ survivor expresses concern about custody issues.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Considerations for the Medical Response

As an advocate, you may respond to the hospital or advocate for a survivor in a medical setting. For that reason, it is important to have a general understanding of what specific medical needs and considerations an LGBTIQ person may have and how it may vary from your more general response.

It is imperative that the Sexual Assault Nurse Examiner (SANE) or other medical personnel caring for a survivor of sexual violence from the LGBTIQ community understand the unique needs of these populations when providing post-assault services. Appropriate, sensitive, and effective nursing care requires the SANE/medical personnel to be knowledgeable about specific issues of identity, infection, pregnancy risk, medical care and safety.

Advocates can effectively advocate for LGBTIQ survivors in the medical setting by taking the following into consideration:

- Advocates can communicate the importance of utilizing appropriate pronouns to the SANE/medical personnel. With the victim's consent, you may be able to have a conversation with the SANE/medical personnel or support the victim in her/his disclosure to the SANE/medical personnel. The SANE/medical personnel should be aware that some people live their social and "legal" lives with different names. When in doubt, responders should ask the individual how s/he prefers to be addressed.
- Many individuals in the LGBTIQ community have complex relationships with their bodies. When working with transgender survivors, regardless of whether they have had surgery or not, it is likely they may be quite sensitive about their bodies. When taking a medical or post-assault history, it is important to be very sensitive as to the choice of language used when asking survivors about their body, any surgeries, or any specific sexual acts that may have been experienced during an assault.
- It is necessary that the SANE/medical personnel address specific infection risks among LGBTIQ survivors of sexual assault. For some members of these communities, infecting an individual with HIV may be a weapon of power and control over another individual. In addition, there are many myths about ways in which STIs are transmitted. For example, it is often incorrectly assumed that lesbians are at decreased risk of HIV infection, which may mean that medical providers may fail to discuss the risk and possible need for prophylaxis. Survivors themselves may minimize their personal risk of infection, and it is imperative that the SANE is knowledgeable about transmission, testing, and treatment for sexually transmitted infections. If the medical responder is not knowledgeable, it may be up to the advocate to work to ensure that a survivor's medical needs are met.
- Pregnancy prophylaxis in the form of emergency contraception should always be addressed when appropriate. Assumptions are often made based on perceived or real gender identity and misconceptions may exist regarding risk of pregnancy and assumptions as to whether the risk is a concern. Remember, a person's sexual and/or gender identity may not give you all the information you need to assess risks

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

for pregnancy or infection. It is your job as an advocate to identify respectful ways to initiate conversations about different risks regardless of your perception of the person's gender or the gender of the perpetrator.

- It is critical that the SANE/medical personnel preserve confidentiality throughout the post-assault exam. It is particularly important for the SANE to describe confidentiality policies when working with the LGBTIQ community, as an individual may have had to come out in order to receive post-assault services. For some individuals this fear may have resulted in a delay in seeking treatment.
- For others, gender issues may impact the survivor's ability to obtain access to shelter services. Discuss privacy implications of obtaining a SAFE exam with LGBTIQ survivors and make a referral to an attorney if necessary.
- Rates of depression and suicide are higher among LGBTIQ youth than youth in the general population¹³ and may warrant the need for additional medical follow-up services.

All of these factors result in safety and discharge planning that is often more complex within the LGBTIQ community. Thus, it is essential that when providing post-assault services that the SANE/medical personnel work closely with an advocate and be aware of appropriate resources within the community.

Survivors and Shelter

Shelter may be a necessary option for some LGBTIQ sexual assault survivors to consider. When determining whether shelter is an appropriate resource for LGBTIQ survivors, there are additional considerations for advocates to discuss. Advocates should also be prepared with appropriate ways to discuss shelter life with survivors. There are countless ways a shelter can be made more comfortable for LGBTIQ survivors. Sexual assault advocates need to know how their local shelters address the following issues before making a referral.

Some questions to consider:

- 1) Does your local shelter serve non-female identified survivors? If not, what equitable and appropriate alternatives are available?
- 2) How do shelter staff interrupt homophobic, biphobic, and transphobic remarks, actions, and behaviors?
- 3) Does the shelter have LGBTIQ-inclusive anti-discrimination policies, and how are they enforced?

¹³ In 2005, the Massachusetts Department of Elementary and Secondary Education conducted a "Youth Risk Behavior Survey" reported that LGBTIQ teen have suicide rates that are nearly double that of their peers. Similarly, San Francisco State University's Family Acceptance Project reported that "young adults whose families were highly rejective [sic] of their identity during adolescence were more than eight times as likely to have attempted suicide at least once, compared with those who received no or low levels of family rejection during adolescence." Unfortunately, the CDC's statistics on youth suicide do not ask questions about sexual orientation, so there is still need for comprehensive surveys and responses to address this issue.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

4) How are advocates in your community (including shelter staff) trained to address questions about sexual orientation and gender identity/expression? How do you think this would be handled in a communal living environment?

5) Is the shelter's physical space set up to appropriately accommodate all people? Are there gender-neutral bathrooms? What are the sleeping accommodations? How would all residents feel about shared spaces and is shelter prepared to address issues that may come up? Discuss with all residents as part of your intake process that you are an LGBTIQ-friendly shelter.

6) Is the shelter prepared with gender-neutral language and paperwork?

7) Are support groups safe and inclusive spaces for LGBTIQ survivors? Is pronoun neutrality utilized and is the gender of the abuser varied and/or not assumed in examples and conversations?

8) Are you prepared to discuss what each survivor would like your role to be in advocating for her/him with shelter programs? Does the survivor intend to "out" her/himself? Does the survivor want you to "out" her/him when discussing the situation with shelter advocates?

When discussing whether shelter is an appropriate referral, it is important to recognize that our own individual perceptions of sexual orientation and gender identities may be very different from other people's definitions and/or expressions. It is also important to recognize the class privilege involved in transitioning into another gender or even in being "out" as LGBTIQ. If these issues have not yet been addressed in your community, please contact the Sexual Assault Task Force for support with ways to begin this conversation.

Considerations when conducting intakes

First, consider the reasons for asking intake questions. Make sure your intake questions are necessary in order to provide appropriate services. Reevaluate your intake processes regularly.

- Do not assume anything about gender, relationships, or sexual orientation of any survivor/caller.
- Use gender-neutral pronouns for survivor and perpetrator until the survivor specifies.
- Provide options for survivors to select their gender identity. Make sure your forms have "female," "male," "transgender," or "Gender: ____" to give people the option to select their gender.
- Allow survivors to self-identify.
- If the survivor needs referrals/resources, have some to make. A survivor may be looking for culturally-specific referrals, resources, and ideas. Be prepared ahead of time with resource lists, staff training, and accessible resources. Talk with LGBTIQ survivors about any concerns they have related to privacy, housing, employment, immigration, education, public benefits, custody, physical safety and/or financial security.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

- Be aware of the civil legal remedies available to victims of sexual assault and how they may differ for LGBTIQ victims. Make appropriate legal referrals if a victim expresses concerns in any of these areas.
- Use terms that are more inclusive, such as “partner,” for everyone you serve.

Sample questions for screening:

- “What’s the name of the person who harmed you?”
- “What’s your relationship to the person who harmed you?”

Training & Competency

Training Opportunities

The Sexual Assault Task Force offers opportunities for training on issues related to LGBTIQ survivors and sexual assault that are part of existing training programs or can be scheduled by request from a specific agency or community. The Sexual Assault Task Force also holds an annual Advocate Training for advocates across the state, which offers a session on responding to LGBTIQ survivors of sexual assault. We can also provide referrals to trainers and consultants in your community. Contact the Sexual Assault Task Force for more information about training opportunities and referrals.

In addition to the Sexual Assault Task Force, the Oregon Coalition Against Domestic and Sexual Violence (OCADSV) provides advanced LGBTIQ-specific training for programs and community partners. Please contact the OCADSV Program Coordinator for Underserved Communities for more information.

Cultural Competency

Steps to making your agency a safe place

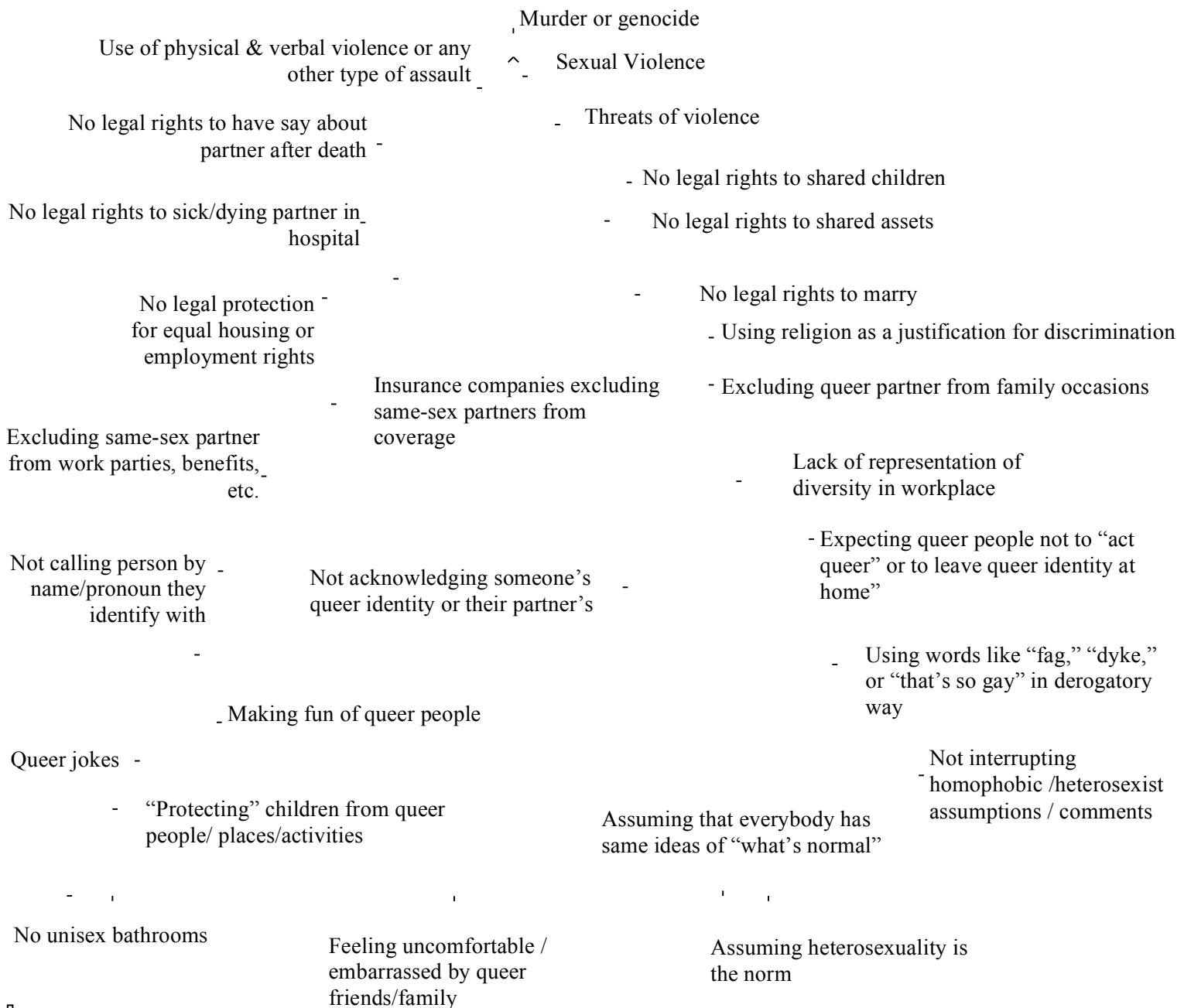
- Put information into your agency’s brochure about current confidentiality policies and other general practices. The limits to advocate confidentiality should be stated clearly to each survivor seeking services.
- Make sure that your brochures, materials, and services (including support groups, trainings, and other public outreach) use language that is inclusive of LGBTIQ survivors.
- Don’t ask questions about “marital status” on the phone or on forms. Don’t make assumptions about sex, sexual orientation, or gender. Don’t ask questions about sex, which would require revealing private information about the body. If you need to know, ask about gender instead.
- Know about and be able to refer clients to resources for LGBTIQ communities, including safe counselors, lawyers, and doctors.
- Recruit LGBTIQ staff, volunteers and board members.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

- Make it clear that oppression targeting LGBTIQ people will not be tolerated at your agency. Interrupt comments that target LGBTIQ people. Make this policy clear in volunteer interviews, volunteer trainings and support group intake interviews.
- Celebrate LGBTIQ culture in your agency through books, posters, magazines, photographs, etc.
- Find out about LGBTIQ events in your community (and/or other nearby communities) and participate through tabling, speaking out about sexual assault, marching in parades, or just by being a visible presence there in support.
- Develop an information packet for LGBTIQ survivors.
- Gender-neutral language, an accepting and supportive attitude, and training and self-awareness on the part of staff and volunteers can help LGBTIQ survivors feel that your agency is a safe place to disclose their sexual orientation or gender identity and to get support around the sexual assault.
- Put a rainbow or safe zone sticker on your front door or in the entryway of your building. Include triangles or other safe zone symbols on brochures.
- Include a commitment to combating homophobia, biphobia, intersex oppression and transphobia in your mission statement or outreach materials.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Queer Oppression Pyramid



This image represents the escalation of oppressions that queer individuals may experience. This is neither an exhaustive list of forms of oppressions nor is it meant to rank severity of oppressions.

Created by Melissa Adams for Bradley Angle House, 2007.

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

State and National Resources

Oregon Resources

Survivor Project

Survivor Project is an organization dedicated specifically to the needs of trans and intersex survivors. www.survivorproject.org (online resources only)

Resources PDX

Resources PDX was created in order to serve the needs of individuals in Portland who have trouble finding medical and other professionals who are educated about the unique challenges trans/gender/queer individuals face. www.resourcespdx.org

Basic Rights Oregon

Basic Rights Oregon is dedicated to ending discrimination based on sexual orientation in our state. In the spirit of fundamental fairness and equality, Basic Rights Oregon will build and mobilize a broad coalition of citizens to ensure democratic freedoms for all Oregonians. <http://www.basicrights.org/>

The Sexual Minority Youth Resource Center

SMYRC, in Portland, is a non-profit agency that provides a safe drop-in recreation center for lesbian, gay, bisexual, transsexual, transgender and questioning youth under age 24 and their allies and friends. They also host various support groups for LGBT youth, such as [Personal Deity Proxy \(PDP\)](http://www.smyrc.org/), [Trans Youth Group](http://www.smyrc.org/) and [Windfire](http://www.smyrc.org/). <http://www.smyrc.org/>

The Gender Center

The Gender Center works to create a safe and accepting society for gender and sexual minorities through outreach, education, supportive resources and anti-violence advocacy. 541-870-5202 and information@thegendercenter.org or www.thegendercenter.org

The Oregon Coalition Against Domestic and Sexual Violence (OCADSV) is a non-profit organization that was founded in 1978. OCADSV is a feminist organization made up of programs across the state of Oregon that serve survivors of domestic and sexual violence. <http://www.ocadsv.org/>

Sexual Assault Support Services (SASS)

Sexual Assault Support Services of Lane County is a non-profit organization providing community education, outreach, advocacy and support to survivors of sexual violence and their families. Engaging Change is a project of Sexual Assault Support Services dedicated to preventing sexual violence and promoting safe, healthy, consensual sex in the LGBTIQ community. Engaging Change works to decrease sexual violence occurring in LGBTIQ communities, provides presentations and trainings to prevent and improve the response to sexual violence affecting LGBTIQ people, fosters open discussion about safe and healthy LGBTIQ sex and relationships, supports and enhances community involvement in sexual violence prevention in LGBTIQ communities, provides culturally competent advocacy,

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

support groups and other services to LGBTIQ survivors, enhances community awareness and changing systems to prevent LGBTIQ sexual violence and promotes culturally competent policies for serving LGBTIQ survivors of sexual violence in the community. www.sass-lane.org or 541-343-SASS (7277) or 1(800)788-4727

National Resources

The Deaf Queer Resource Center

The Deaf Queer Resource Center (DQRC) is a national nonprofit internet resource center devoted to providing up-to-date information by, for and about the Deaf Queer community. <http://www.deafqueer.org/about.html>

Gay and Lesbian Alliance Against Defamation

GLAAD's mission is to promote fair and accurate representation of gay people in the media. <http://www.glaad.org/>

The Gay and Lesbian Education Network (GLSEN)

GLSEN strives to assure that each member of every school community is valued and respected, regardless of sexual orientation. They welcome as members any and all individuals, regardless of sexual orientation or occupation, who share this philosophy. <http://www.glsen.org/>

The Human Rights Campaign

The Human Rights Campaign (HRC) is committed to creating an America where lesbian and gay people are ensured of their basic equal rights -- and can be open, honest and safe at home, at work and in the community. <http://www.hrc.org/>

LLEGÓ, The National Latina/o Lesbian, Gay, Bisexual & Transgender Organization, is the national nonprofit organization representing Lesbian, Gay, Bisexual and Transgender (LBGT) Latinas/os. LLEGÓ's purpose is the organization of LBGT Latina/o communities from grassroots to national levels through mobilization and networking in a culturally sensitive environment in order to overcome social, health and political barriers faced due to sexual orientation and ethnicity status. Also publishes La Guia: A Directory for LBGT Latinos/as. <http://www.llego.org/>

OUTPROUD!

OUTPROUD is the national coalition for LBGT youth. Their page has a wide range of resources available for youth and educators. <http://www.outproud.org/>

Parent, Family and Friends of Lesbians and Gays (PFLAG)

Parents, Families and Friends of Lesbians and Gays promotes the health and well-being of gay, lesbian, bisexual and transgendered persons, their families and friends through: support, to cope with an adverse society; education, to enlighten an ill-informed public; and advocacy, to end discrimination and to secure equal civil rights. Parents, Families and

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

Friends of Lesbians and Gays provides opportunity for dialogue about sexual orientation and gender identity, and acts to create a society that is healthy and respectful of human diversity. <http://www.pflag.org>

Intersex Society of North America

INSA offers peer support, education, advocacy, as well as written and video materials. <http://www.isna.org>

Organization Intersex International. A peer and academic driven resource. www.intersexualite.org

National Transgender Advocacy Coalition

A trans advocacy site that has information pertaining to the legal rights of transgendered people. <http://www.3dcom.com/tg/ntac/>

Love Makes a Family

Love Makes a Family works for social change to create a supportive environment within our communities and to provide a public voice for all families, especially those subjected to social, economic, and legal discrimination due to sexual orientation or gender identity/expression. <http://www.teleport.com/~lmfamily/>

Northwest Network

The Network provides support and advocacy for LBGT folks of all genders who are surviving abuse. <http://www.nwnetwork.org/> or (206) 568-7777.

National Coalition of Anti-Violence Programs

The National Coalition of Anti-Violence Programs (NCAVP) addresses the pervasive problem of violence committed against and within the lesbian, gay, bisexual, transgender (LGBT) and HIV-affected communities. NCAVP is a coalition of programs that document and advocate for victims of anti-LGBT and anti-HIV/AIDS violence/harassment, domestic violence, sexual assault, police misconduct and other forms of victimization. <http://www.ncavp.org/> or (212) 714-1184.

National Gay and Lesbian Task Force

The National Gay and Lesbian Task Force builds the grassroots power of the lesbian, gay, bisexual and transgender (LGBT) community by training activists, equipping state and local organizations with the skills needed to organize broad-based campaigns to defeat anti-LGBT referenda and advance pro-LGBT legislation, and building the organizational capacity of our movement. Washington, DC office phone: 202.393.5177, fax: 202.393.2241. Website: www.thetaskforce.org

Gay Men's Domestic Violence Project

The Gay Men's Domestic Violence Project is a grassroots, non-profit organization founded by a gay male survivor of domestic violence and developed through the strength,

LGBTIQ SURVIVORS OF SEXUAL ASSAULT

contributions and participation of the community. Hotline: 800-832-1901
Office: 617-354-6056, Web: <http://www.gmdvp.org/>.

The Williams Institute-UCLA School of Law

The Williams Institute advances critical thought in the field of sexual orientation law and policy. They serve as a source of current statistics and census information.

<http://www.law.ucla.edu/williamsinstitute/home.html>

Pride Institute

Exclusively for LBGTIQ community members. Trainings, webinar presentations, cultural diversity presentations. mental health, chemical dependency care. Sexual wellness programs: sexual abuse and assault, sex or HIV related anxiety and much more. 1-800-547-7433 www.pride-institute.com

NATIVE AMERICAN VICTIMS OF SEXUAL ASSAULT

Native American Victims of Sexual Assault

As mentioned in the chapter on Sexual Assault Dynamics, sex offenders purposefully select victims who are accessible, vulnerable, and who they believe are lacking in credibility. Native Americans have been and continue to be a marginalized and underserved population in the U.S. It is therefore no surprise that Native American women are victimized at a much higher rate than their Caucasian female counterparts. According to a recent study by Amnesty International, "... American Indian and Alaska Native victims of sexual violence find access to legal redress, adequate medical attention and reparations difficult, if not impossible."¹

Prevalence/Incidence Nationwide²

- American Indian and Alaskan Native women are significantly more likely (34%) to report that they were raped than White women (18%).³
- At least 70% of the violent victimizations experienced by Native Americans are committed by person **not** of the same race.⁴
- Native Americans are raped at a rate more than double that of rapes reported by all races on an annual average. (All races: 2 per 1,000; Native American: 35 per 1,000)⁵
- Over 1 in 3 American Indian and Alaskan Native women will be raped during their lives.⁶
- American Indian women more often experience sexual assault accompanied by other overt forms of violence. For example, when asked whether aggressors physically hit them during the assault, over 90% of female Native American victims responded affirmatively as compared to 74% of the general population.⁷

Barriers Faced by Native Victims

Native American victims of sexual assault face many barriers accessing services. Many of these barriers are related to the deeply entrenched, historic and ongoing racial oppression and systemic marginalization faced by Native Americans; mistrust of the federal/state government and the criminal justice system; inadequate investigations or failures of law enforcement and tribal governments to respond to sexual assaults on Native land; lack of promised governmental resources; and the remote locations of and abject poverty faced by many Native communities. Additionally, the agencies and organizations

¹ Amnesty International, "Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA" 24 April 2007.

² *The following data was created by Sarah Deer, Staff Attorney for the Tribal Law and Policy Institute.*

³ Tjaden, Patricia and Nancy Thoennes. "Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence against Women Survey." *Research in Brief*. Washington DC: National Institute of Justice, Center for Disease Control and Prevention, 1998.

⁴ *American Indians & Crime Report*, US Dept of Justice, BJS, Feb. 1999.

⁵ *Ibid.*

⁶ Tjaden, Patricia and Nancy Thoennes. *Full Report of the Prevalence, Incidence and Consequences of Violence Against Women*. Washington DC: National Institute of Justice, 2000.

⁷ Ronet Bachman, Address at the US Dept. of Justice Federal-Tribal Working Group on Sexual Assault. July 12, 2004.

NATIVE AMERICAN VICTIMS OF SEXUAL ASSAULT

that provide services to victims of sexual assault may also face barriers due to the complex issues surrounding jurisdiction, funding, lack of confidentiality in small communities and cultural differences.

Jurisdiction

There are unique criminal justice system and jurisdictional challenges faced by law enforcement in terms of investigation. The following laws have impacted how tribal governments address sexual assault:

- Major Crimes Act (1885)—part of this act allowed federal government to exercise authority over crimes such as rape, however it did not strip tribal government for all jurisdiction and some cases were retained concurrently.
- Public Law 280 (1953)—passed federal government jurisdiction to state government. Neither state nor tribal governments consented to this arrangement and furthermore tribal and state governments were not provided resources to enforce crimes.
- Oliphant v. Suquamish (1978)—eliminated tribal criminal jurisdiction over anyone who is not a member of a federally recognized tribe. If a non-Indian comes into a reservation and rapes a Native American woman, the tribe has no jurisdiction to punish the offender. Since the Oliphant decision, tribal law enforcement and victim advocates report a large increase in the number of non-Indian criminals attracted to Indian country because of the gap in jurisdiction.⁸

Barriers to Reporting⁹

Victim Blaming and Prejudice

Victim blaming is something that most, if not all, victims of sexual assault face. However, Native victims are confronted with the addition of racist stereotypes, ignorant attitudes concerning the resources available to Native Americans and a lack of culturally specific providers. These barriers have a chilling effect on the willingness of Native victims to report and/or seek help and services in the aftermath of a sexual assault.

Conflict of Values

Best practices for sexual assault response, prevention and education are primarily, if not exclusively, based on dominant, mainstream U.S. culture. Expecting Native victims to report, respond, process and participate in a system that does not take into consideration the importance and value of the cultures and traditions held by Native Americans is a deterrent to reporting and accessing services for Native victims.

⁸ Fletcher, Matthew. *Sawlawgezewog: "The Indian Problem" and the Lost Art of Survival*, 2003.

⁹ Sherry L. Hamby, *Sexual Victimization in Indian Country: Barriers and Resources for Native Women Seeking Help*, (VAWnet National Electronic Network on Violence Against Women, a project of the National Resource Center on Domestic Violence, May 2004).

NATIVE AMERICAN VICTIMS OF SEXUAL ASSAULT

Resources

The United States Civil Rights Commission issued a report in February 2003 that strongly criticized the lack of resources allocated to tribal governments. This report notes that the federal government spends more per capita for health care in federal prisons than for health care on reservations. Lack of resources can contribute to barriers in developing strong anti-rape laws and procedures.

Oregon's Nine Federally Recognized Tribes

Burns Paiute Tribe

HC-71 100 Pasigo Street

Burns, OR 97720

Phone: (541) 573-2088

Fax: (541) 573-2323

<http://www.burnspaiutensn.gov/>

Health Services Manager: Twila Teeman

Confederated Tribes of Grand Ronde

9615 Grand Ronde Road

Grand Ronde, OR 97347

Phone: (503) 879-5211

Fax: (503) 879-5964

<http://www.grandronde.org>

Confederated Tribes of Coos, Lower Umpqua & Siuslaw

1245 Fulton Avenue

Coos Bay, OR 97420

Phone: (541) 888-9577

Fax: (541) 888-2853

<http://www.ctclusi.org>

Klamath Tribes

P.O. BOX 436

Chiloquin, OR 97624

Phone: (541) 783-2219 or 1-800-524-9787

Fax: (541) 783-2029

<http://www.klamathtribes.org>

Coquille Indian Tribe

3050 Tremont Street

P.O. Box 783

North Bend, OR 97459

Phone: (541) 756-0904

Fax: (541) 756-0847

<http://www.coquilletribe.org>

Confederated Tribes of Siletz

P.O. BOX 549

Siletz, OR 97380

Phone: (541) 444-2532

Fax: (541) 444-2307

<http://ctsi.nsn.us>

Health Director: Judy Muschamp

Cow Creek Band of Umpqua Indians

2371 NE Stephens Street Suite 100

Roseburg, OR 97470

Phone: (541) 672-9405

Fax: (541) 673-0432

<http://www.cowcreek.com>

Confederated Tribes of Warm Springs

P.O. BOX C

Warm Springs, OR 97761

Phone: (541) 553-1161

Fax: (541) 553-1924

Warm Springs, OR 97761**Phone:** (541)

553-1161**Fax:** (541) 553-1924 or (541)

553-1268

<http://www.warmsprings.com>

Confederated Tribes of Umatilla

P.O. BOX 638

Pendleton, OR 97801

Phone: (541) 276-3165

Fax: (541) 276-3095

<http://www.umatilla.nsn.us>

PEOPLE WITH DISABILITIES

Overview

Studies consistently demonstrate that people with disabilities are victimized more often than people who do not have a disability. It is important for advocates and other service providers to understand that there is a wide diversity of disabilities and variety of obstacles faced by people with disabilities. The following section provides definitions of different types of disabilities, specific forms of abuse, barriers experienced by people with disabilities, and advocacy tips for working with people with disabilities.

Types of Disabilities¹

Autism:

Autism is a developmental disability that can significantly affect verbal and nonverbal communication and social interaction. It is generally evident before age three and can adversely affect a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

Communication Impairment:

Communication impairment exists when the capacity to use expressive and/or receptive language is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: speech, such as articulation and/or voice; conveying, understanding, or using spoken, written, or symbolic language. The term may include a person with impaired articulation, stuttering, language impairment, or voice impairment if such impairment adversely affects the person's daily life.

Developmental Delay:

Developmental delay is present when the learning capacity of a young child (3-9 years old) is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: receptive and/or expressive language; cognitive abilities; physical functioning; social, emotional, or adaptive functioning; and/or self-help skills.

Developmental Disability:

A developmental disability is a severe, chronic disability of an individual 5 years of age or older that is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before the individual attains age 22; is likely to continue indefinitely; results in substantial functional limitations in three or more of the following areas of major life activity:

- self-care;
- receptive and expressive language;

¹ Adapted by Elizabeth McNeff, Portland State University Regional Research Institute, from the Federal Statutory Definitions of Disability: www.icdr.us/documents/definitions.htm.

PEOPLE WITH DISABILITIES

- learning;
- mobility;
- self-direction;
- capacity for independent living; and
- economic self-sufficiency; and
- reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is of lifelong or extended duration and is individually planned and coordinated.

Emotional Disability:

A person with emotional disability exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.

Health Impairment:

Health impairment refers to a chronic or acute health problem such that the physiological capacity to function is significantly limited or impaired and results in one or more of the following: limited strength, vitality or alertness, including a heightened alertness to environmental stimuli resulting in limited alertness with respect to the educational environment. The term shall include health impairments due to asthma, attention deficit disorder or attention deficit with hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, if such health impairment adversely affects a person's daily life.

Intellectual Disability:

An intellectual disability is present when one's permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include people with mental retardation.

Neurological Impairment:

In cases of neurological impairment, the capacity of the nervous system is limited or impaired with difficulties exhibited in one or more of the following areas: the use of memory, the control and use of cognitive functioning, sensory and motor skills, speech, language, organizational skills, information processing, affect, social skills, or basic life functions. The term includes people who have received a traumatic brain injury.

PEOPLE WITH DISABILITIES

Physical Disability:

The physical capacity to move, coordinate actions, or perform physical activities is significantly limited, impaired, or delayed and is exhibited by difficulties in one or more of the following areas: physical and motor tasks; independent movement; performing basic life functions. The term shall include severe orthopedic impairments or disability caused by congenital anomaly, cerebral palsy, amputations, and fractures if such impairment adversely affects a person's daily life.

Sensory Impairment:

The term shall include the following:

Hearing - The capacity to hear, with amplification, is limited, impaired, or absent and results in one or more of the following: reduced performance in hearing acuity tasks; difficulty with oral communication; and/or difficulty in understanding auditorally-presented information in the education environment. The term includes people who are deaf and people who are hard-of-hearing.

Vision - The capacity to see, after correction, is limited, impaired, or absent and results in one or more of the following: reduced performance in visual acuity tasks; difficulty with written communication; and/or difficulty with understanding information presented visually in the education environment. The term includes people who are blind and people with limited vision.

Specific Learning Disability:

A specific learning disability refers to a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific Forms of Abuse²

People with disabilities experience the same types of abuse that non-disabled people experience, including physical, sexual, emotional/verbal, and financial abuse. However, people with disabilities often experience additional forms of abuse—some of which can be life threatening and may include:

- Medication manipulation (over-medicating or under-medicating someone).
- Destroying or withholding assistive devices (such as communication devices or mobility equipment).
- Threatening to have the person institutionalized.

² From L. Powers and A. Arthur, "Violence & Abuse Against People with Disabilities" (paper presentation for the Regional Research Institute—Portland State University, Portland, Oregon, 2005).

PEOPLE WITH DISABILITIES

- Threatening to have the person's children taken away (threats to report the person as an incompetent parent).
- Verbal abuse that targets the disability ("No one else will ever love you because you use a wheelchair!").
- Neglect: Does not show for scheduled care or refuses to assist with essential care tasks such as eating, drinking, and hygiene tasks.
- Steals valuables, medication, or money; forges checks or takes credit cards
- Sexually abuses person (such as inappropriate touch while assisting with intimate care).
- The use of physical force or acts of violence.
- Refusing to provide needed care or withholding assistive devices.
- Abandoning a person who needs assistance.
- Threatening, intimidating or humiliating a person.
- Stealing property, medication or money including taking checks or credit cards without permission.
- Sexual assault or exploitation.
- Forcing a person to remain in his or her room without contact with others.
- Tying a person to his or her bed or chair.

Specific Barriers

People with disabilities face many of the same barriers that people without disabilities face. However, there are some specific barriers that they may face, including:

- Lack of accessible resources
 - Physical, cognitive, attitudinal, programmatic
 - Most abuse resources not for men
 - Don't know whom to call
- Systems (legal, medical, advocacy, etc.) do not always have policies and trained personnel in place to respond respectfully and appropriately to people with disabilities.
- Lack of coordinated response by agencies such as law enforcement, domestic violence agencies, independent living centers, etc.
- Fear of losing independence if abuse is reported, such as being institutionalized.
- Fear of losing custody of children.
- Abusive person is a family member who provides assistance or support.
 - Fear of backlash.
 - Fear of consequences of calling police or mandatory reporting.

Additionally, they may face barriers due to misconceptions and stereotypes about people with disabilities.

PEOPLE WITH DISABILITIES

Misconceptions and Stereotypes:

Belief that people with disabilities:

- Live a low quality of life
- Live in poverty
- Are unhealthy
- Are angry
- Are asexual, overly-sexual, or have no sexual orientation
- Are “faking” the disability (visible or hidden disabilities)
- Are less intelligent
- Are child-like or dependent
- Are dangerous/violent (usually associated with mental health disabilities)

Advocacy Tips

Given the diversity of disabilities, it is hard to specify any “one” way to work with people with disabilities. However, there are a few tips that can be useful to keep in mind:

- Talk privately to the person who may be experiencing the abuse. This means ensuring that personal assistants, guardians, drivers, spouses, and family members are not present during the screening unless the person wants someone present to support him or her. (Sometimes it’s the person who seems most concerned or loving who is actually the abuser, and it’s important that person isn’t present during the screening.)
- Tell the person if you are a mandated reporter before beginning the screening process.
- Understand that it is often difficult, scary, and embarrassing for people to share details about abuse. Be patient and relaxed in your approach.
- Pause during the screening procedures to ask how the person is doing and how he/she is feeling.
- Explain the reporting procedures or legal steps that will be taken if the person discloses abuse.
- After the screening process, offer the person information about appropriate community resources such as support groups, crisis hotline numbers, domestic violence shelter information, information about independent living resources, etc.
- If action has to be taken, address the concerns/needs of the person (e.g. emergency personal assistance, need for shelter, equipment replacement, etc).
- Participate in an adult protection response team.

PEOPLE WITH DISABILITIES

Resources

ARC of Oregon

Advocates for the rights and full community participation of all children and adults with intellectual and developmental disabilities. Guardianship, Advocacy and Planning Services (GAPS) program provides guardianship, health care representation and advocacy.
P: 503-241-2755

Disability Rights Oregon

Provides legal advocacy for people with disabilities.
P: 503-243-2081 or 1-800-452-1694
TTY: 503-323-9161 or 1-800-556-5351
www.disabilityrightsoregon.org

Eastern Oregon Developmental Disability Resources

www.eoddr.com

Office of Investigations & Training, DHS

Investigates reports of abuse of people with developmental disabilities and mental illnesses.

P: 503-945-9495 or 1-866-406-4287

Community Developmental Disability Programs

www.oregon.gov/DHS/dd/county/county_programs.shtml
County services for seniors and people with disabilities
www.oregon.gov/DHS/spwpd/offices.shtml

SEXUAL HARASSMENT

Sexual Harassment

Sexual harassment is defined by the U.S. Equal Employment Opportunity Commission as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made a term or condition of employment or academic advancement (explicitly or implicitly)
- Submission or rejection to such conduct is used as a basis for employment or academic advancement decisions, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or learning environment; or creating an intimidating, hostile or offensive work, academic, or living environment¹

Comments or behaviors that belittle, harass, or intimidate someone based on their sex can also constitute sexual harassment so long as they are gender-based or targeted and repeated and unwanted. Sexual harassment is a form of sex discrimination that is prohibited in places of employment under Title VII of the Civil Rights Act of 1964 and is prohibited in schools, colleges and university settings under Title IX of the Education Act of 1972. Protection against sexual harassment is also provided under ORS Chapter 659. Oregon's statutes mirror Federal law.

Two forms of sexual harassment claims (under Title VII, Title IX and ORS 659) have been recognized by the court:

1. **“Quid pro quo”** claims involve harassment in which a supervisory employee demands sexual favors in exchange for job benefits over which that supervisor has some control or influence.
2. **“Hostile work environment”** claims involve unwelcome sexual and/or sexist behavior that creates a hostile or abusive work/school environment or that has the effect of unreasonably interfering with an individual's work or school performance.

**What two people do that is truly mutual is usually permissible so long as it does not interfere with their work or create a hostile, offensive or intimidating environment for others.*

Sexual Harassment—Intervention Options

Internal-informal responses to sexual harassment by a supervisor/co-worker or instructor/professor are responses that take place within the work or school environment and are not a part of an official complaint procedure. Internal-informal responses may include:

¹ “Facts About sexual Harassment,” The U.S. Equal Employment Opportunity Commission: June 27, 2002. Accessed August 22, 2008, <http://www.eeoc.gov/facts/fs-sex.html>.

SEXUAL HARASSMENT

- Confront the harasser in a letter—clearly identify the harassing behaviors and state that they must stop. List your actions (consequences) should the behavior continue. This approach may work with harassers who don't want to take the risk of a formal complaint. You will also have documentation of your effort.
- Confront the harasser face to face — this approach may work when men are harassing because of their ignorance of appropriate behavior in the workplace. When confronted, they are likely to stop, especially with increasing awareness about sexual harassment. This can be done alone, with another person or with a supervisor. *If the person being harassed does not feel safe or comfortable confronting the harasser face to face, it should not be done.*
- Start a journal—document time, place, what happened, who was present, and how you felt. Journals can sometimes be used during court cases.
- Ask other women about harassment—find out if other employees or students have experienced inappropriate comments or unwanted touching. Find out whether other women have left the job or classroom due to sexual harassment.
- Creative documentation—be aware of who might have seen or heard the harassment and keep good notes. Keep copies of any email, letters, or voicemail that might be relevant.
- Check your personnel file—know in advance what is and is not in your file.
- Meet with your supervisor (or supervisor's supervisor) informally—let him or her know that you are concerned about the behavior and that you would like to resolve it informally (without initiating the formal employee grievance procedure).

Internal-formal responses to sexual harassment take place within the work or school environment via the company/school's official sexual harassment or grievance policy or procedure. Not all employers are required to have a grievance procedure. Find out what is available in your situation. For example, if you are in a union and the union has a procedure, you may also choose to use the union procedure.

- **Grievance procedure**—initiate the grievance procedure by the process as written in the policy. Be sure to document every step of the procedure. Clarify the agreed upon timeline for intervention/action. When possible, enlist the support and assistance of co-workers who have experienced harassment by the same person and/or witnessed the harassment.

External-informal responses may include using a lawyer to write an official letter outlining the problem, stating the desired relief and indicating that the victim does not want to initiate a lawsuit while still demanding that the behaviors stop.

External-formal responses to sexual harassment include all actions outside of the workplace or school and may include law enforcement, court or government involvement in the situation.

- The **Equal Employment Opportunity Commission (EEOC)** is an independent federal agency originally created by Congress in 1964 to enforce Title VII of the Civil Rights Act of 1964. The Commission has authority to establish equal employment

SEXUAL HARASSMENT

policy and to approve litigation. The EEOC General Counsel is responsible for conducting litigation. The EEOC has the authority to respond in cases where the employer has 15 or more employees. To file a deferral discrimination lawsuit, a complaint must first be filed with the EEOC.

- The **Oregon Bureau of Labor and Industries (BOLI)** protects the rights of workers and citizens to ensure equal, non-discriminatory treatment; encourages and enforces compliance with state laws relating to wages, hours, terms and conditions of employment; and advocates policies that balance the demands of the workplace and employers with the protections of workers and their families. Oregonians who feel they have been discriminated against can call the Bureau of Labor and Industries or visit the website for information and for help filing a complaint. BOLI has the authority to enforce ORS 659 only when the employer has 15 or more employees. Generally complaints must be filed with BOLI within 1 year of the violation.
- **Breach of Contract**—Many universities, social service and professional groups make an institutional promise to their employees that implies or is clearly a contract. A suit filed against an employer under breach of contract does not have to show any of the harms required under tort law—only that the promise was not kept.
- **Tort Claims and Civil Wrongs**—Applicable tort claims that could be applicable in sexual harassment include:
 - Assault
 - Battery
 - Words or acts causing mental or emotional disturbanceA lawyer can help to file a civil suit/tort claim. Results of a successful claim could include orders prohibiting harmful action and awards of money to the claimant.
- **Licensing Complaint**—If the harasser is licensed through a professional organization or the state, there are options to make an official complaint to his or her licensing board (i.e. therapists, nurses, doctors, etc.).

Additional Remedies

In some cases of sexual harassment, additional remedies may be available depending on the types of incidents of sexual harassment and the consequences of those incidents.

- Criminal Case—if the harassment culminated in a sexual assault, the victim has the option of reporting the incident to law enforcement and pursuing a criminal investigation and prosecution.
- Unemployment Claims—if the victim was fired or quit due to the sexual harassment he or she may qualify for unemployment.
- Worker's Compensation—if the victim lost wages due to the sexual harassment he or she may be entitled to worker's compensation.

SEXUAL HARASSMENT

Title IX Sex Discrimination

Title IX is the portion of the Education Act of 1972 that prohibits sex discrimination in educational institutions that receive any federal funds (from elementary school through college). Title IX states that: “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.” This includes admissions, financial aid, academic advising, housing, athletics, recreational services, college residential life programs, health services, counseling and psychological services, Registrar’s office, classroom assignments, grading and discipline. Additionally, Title IX prohibits discrimination based on sex in employment and recruitment consideration or selection under any education program or activity. Exceptions to Title IX include sororities and fraternities.

Advocating for Victims of Sexual Harassment

As in cases of sexual assault, victims of sexual harassment find it to be humiliating, embarrassing, and frightening. Similarly, sexual harassment can have serious emotional and economic consequences. Supporting, validating and normalizing the experiences of sexual harassment victims is important to their healing and recovery. Again, just like with sexual assault, experiencing sexual harassment may be a traumatic event.

Keep in mind, when working with victims of sexual harassment, that the **victim’s choices should define the strategy**. Before you begin suggesting options for a victim of sexual harassment, find out what her hope is for the final outcome. What does she want to see happen? It is okay, however, to let victims know that doing nothing will most likely result in the situation staying the same or getting worse — the harasser is not likely to stop without being made to do so.

Here are a few things to consider when working with victims of sexual harassment:

- **The most common choice for victims is to ignore the harassment and hope it will go away.** Because harassment of any type is usually embarrassing to victims, they may not want anyone else to know about being targeted. There may be feelings of shame and doubt and of self-questioning such as, “why me” and “what did I do?”
- **It is important to put sexual harassment in the context of the rest of the workplace or school environment.** Many victims of harassment may label harassing incidents as “personality problems,” saying things to themselves like, “he’s just a jerk.” When victims recognize their experiences as sexual harassment, many look for choices about what to do next.
- **Women who can afford to or have some power over the situation often quit, transfer or leave their jobs.** The U.S. Dept. of Commerce estimates that in the business arena alone, sexual harassment costs companies over a billion dollars a year in lost productivity and increased employee hiring and training costs.

SEXUAL HARASSMENT

- **Many of those who experience sexual harassment and stay do so because they believe they have to stay.** Often the reasons are economic; people who can least afford to quit are the most targeted victims of sexual harassment. A change in job can also mean a change in status; the victim may lose her place in the career path she has carved for herself. Sometimes women who experience sexual harassment feel that it is the harasser who should be the one to leave. Regardless of the motivation - economic, positional, and personal - people who stay are motivated to remain and the advocacy should be directed at supporting that choice.
- **Victims may not report because of fear of worsening the situation in the workplace or school setting.** Victims who attempt to “hang-in-there” and stay in a place, regardless of the harassment, want the sexual harassment to stop and go away without causing any hard feelings or negative consequences. The fear is that by bringing it out into the open or complaining about it, the harassment will get worse. They could have fear for their job security, fears of reprisal and recrimination and/or fear of ostracism by peers and managers alike.
- **Many victims of sexual harassment do not know their reporting options.** Some places have policies, but many do not. Of those that do, many are policies on paper only - reporting is not encouraged or may be actively discouraged. If there is no person designated to take complaints, victims of sexual harassment usually talk with the most sympathetic person they can find within the organization whether or not that person has any power to make the harassment stop.

Victim Impact

Job Performance Symptoms:

- Avoidance tactics take time and attention that otherwise would be spent on work-related items.
- Victim’s feelings of increased helplessness and hopelessness about the situation impact morale and productivity.
- Sick and leave time increases as the victim becomes exhausted and weary from the constant high tension and stress at work.
- Performance suffers as fear of failure and/or ridicule become part of the context of doing the job.

Depressive Symptoms

- Depressive symptoms appear both at home and in the workplace, which may include the victim withdrawing from normal social activities, crying easier and/or more often, and experiencing fatigue.

Behavioral Symptoms

- The victim may exhibit signs of high stress and anxiety, which may include "panic attacks."

SEXUAL HARASSMENT

- The victim may also exhibit changes in eating, sleeping and social patterns.
- It is common for victims to experience sleep disturbances and nightmares.

Perceptive Symptoms

- The person experiencing sexual harassment may experience a change in viewpoint. For example, she may see the working world as an unwelcome, hostile place to be.
- Issues around trust and safety develop, which may cause current relationships to suffer and future relationships more difficult to initiate.
- Victims may struggle with issues of shame that they could not stop the harassment, and/or that they were powerless in a way never experienced before.

Long-term Effects

- The person who has experienced sexual harassment, especially prolonged and physical violence, may now view the world differently. For example, a victim may view the workplace as unsafe and as a place where victimization can occur.
- Often, the victim will avoid the type of job in which she or he experienced the harassment.
- Some victims experience lower levels of trust, lessening of social contacts in the workplace, and a different attitude toward presenting themselves to new employees and supervisors.
- The long-term effects also include problems with self-esteem in relation to people and job responsibilities.

Conclusion

Sexual harassment and sex discrimination are prohibited by federal and state law. However, victims may still find it difficult to come forward. In some workplaces, victim blaming, fear of retaliation and economic consequences continue to have a deterring effect on reporting. There may be harsh consequences for those victims who do come forward and demand that the harassing behavior stop; victims may find it difficult to find employment elsewhere, and co-workers, friends and family may choose to support the harasser over the victim. Additionally, if the victim works with family and friends and chooses to make a claim, the victim's loved ones may lose their jobs or face other discrimination if the employer retaliates against them. Advocates can play a vital role in supporting victims of sexual harassment by providing them with the necessary information to make decisions about if, when, and how to utilize their various intervention options. Victims of sexual harassment can and do find formal and legal relief and prevail over harassers.

SEXUAL HARASSMENT

Resources

Victim Rights Law Center (VRLC)

520 SW Yamhill, Suite 200
Portland, OR 97204
Phone: 503-274-5477
Fax: 503-295-6679
<http://www.victimrights.org/>

Oregon Law Center (OLC)

Portland Administrative Office
921 SW Washington, Suite 516
Portland, OR 97205
(503) 295-2760
<http://www.oregonlawcenter.org/>
*other offices located throughout the state

Oregon Bureau of Labor and Industries (BOLI)

800 NE Oregon St., Suite 1045
Portland 97232
Phone: 971-673-0761
Fax: 971-673-0762
TTY: 971-673-0766
www.oregon.gov/boli

U.S. Equal Employment Opportunity Commission (EEOC)

1801 L Street, N.W.
Washington, D.C. 20507
Phone: (202) 663-4900
TTY: (202) 663-4494
<http://www.eeoc.gov/>

SEXUAL VIOLENCE PREVENTION

Moving Upstream

Three sisters go to the river to collect water for the day for the tribe. As they are walking back, one sister stops and says, "Listen!" All at once they hear screaming and crying coming from the river. All of the sisters take off running to the river. When they get there, they see these babies coming down the river, floating, screaming, drowning, and dying. The first sister jumps in right away, and she grabs as many babies as she can and brings them to the shore. She looks at her second sister and says, "Help me!" So the second sister jumps into the river, and the first sister looks at her and says, "What are you doing?" The second sister says, "I am teaching them how to swim." Then they look at the third sister and they scream, "Help us!" And the third sister takes off running. They scream, "Where are you going?" And she says, "Up the river to see where these babies are coming from and why."

So the first sister represents the immediate crisis response, from our family, our community, law enforcement, and so on. The second sister represents survival and healing for those victims. The third sister is looking at the root, why these babies are coming down this river, who is throwing them in, and what we can do to prevent it? That could be educating and supporting men so that they don't keep throwing the babies in the river, or changing the culture so that it doesn't seem okay to throw the babies in the river, or working with children who have witnessed violence so that they do not repeat the generational cycle. So, if we work in tandem as the first sister, second sister, and third sister, that's how we will create change and stop those babies from coming down the river.¹

I. Introduction

There is undoubtedly a strong need for services and support for survivors of sexual violence, the first and second sisters' work. Advocates are trained to respond to sexual violence after an incident has occurred and to help survivors rebuild their lives. This focus is essential to supporting survivors, particularly given the victimization and revictimization to which many or even most survivors are subjected. But it can also lead to feelings of hopelessness that the problem will never end. Unless we shift some of our focus and efforts to stopping violence before it occurs, we will never see an end to the need.

For this chapter, we will focus on the work of the third sister, preventing the babies from being thrown into the river. We will begin by introducing prevention, and situating it

¹ The "Three Sisters" story is transcribed and slightly adapted from the telling by Lisa Brunner from the Sacred Spirits First Nations Coalition's "Three Sisters" story, recorded by Oregon Coalition Against Domestic and Sexual Violence in 2012 and located at www.youtube.com/ocadsv.

SEXUAL VIOLENCE PREVENTION

within the other services many programs provide, such as victim response, public awareness, community education and risk reduction.²

The chapter will define oppression and discuss **why anti-oppression work is central to all aspects of prevention**. The greatest portion of the chapter will then introduce an array of tools and theoretical considerations that will be useful to advocates and programs who want to learn more about prevention and/or are considering undertaking prevention work. These tools and concepts include:

- **The Public Health Approach and Health Equity:** looking at sexual violence as a health risk and highlighting the importance of assuring equal access to the resources people need to live a healthy life; and
- **Implementing Prevention:** determining when we intervene (primary, secondary and tertiary prevention); who the intervention is targeting (e.g., using a universal vs. specific population focus); and what is the focus of the intervention, using the Socio-Ecological Model.
- **Prevention Strategies.** The tools we've included to help start thinking about how to do this work include: the Spectrum of Prevention, the Nine Principles of Effective Prevention Programs, as well as Risk and Protective factors for first time perpetration of sexual violence. Finally, we have included a guide to recognizing and working within the stages of a community's readiness to engage in prevention.

The movement to end sexual violence has spent years educating communities about what sexual violence is and educating women about how to protect themselves and to reduce their risk of being sexually assaulted. But we still have not stopped sexual violence from occurring in the first place. How do we stop sexual violence? Where do we start?

II. Public Awareness, Risk Reduction and Prevention

Much of the work that has been done in the movement to end sexual violence falls under public awareness and risk reduction and does not address the social, economic and political conditions that allow the violence to occur, as prevention does.

- a. **Public Awareness** strategies raise awareness of the scope and impact of sexual violence and how to respond when sexual violence occurs. Public awareness includes defining sexual violence, providing statistics on the incidence and prevalence of

² Risk reduction efforts are those that help victims and others recognize situations in which perpetrators may be more likely to act and to consider whether that information is useful in creating safety plans, always keeping in mind that only a perpetrator is fully capable of preventing an assault from taking place.

SEXUAL VIOLENCE PREVENTION

sexual violence, reviewing laws that relate to sexual violence, discussing the impact of sexual violence (usually on victims), and providing information about how to support survivors and where to go for help.

Examples of public awareness efforts include:

- outreach through public service announcements, billboards, other media efforts, information booths, flyers and brochures; and
- community education through one-time presentations to schools, community groups and other service providers.

- b. **Risk Reduction** strategies focus on teaching individuals to reduce their risk of becoming victims by taking steps such as self-defense classes or paying attention to factors that may increase a person's risk of being victimized (such as alcohol or drugs). Because it focuses almost entirely on the victim, risk reduction programming in the absence of a comprehensive prevention effort runs a very real risk of becoming victim blaming, because it seems to communicate that women (and men) are responsible for ensuring that others do not make a choice to be violent. This is not the intent of risk reduction, but its impact can be very harmful if it is not placed in the context of putting responsibility for ending sexual violence squarely on those who might make the choice to be violent. To truly reduce risk, we believe, we would focus on holding perpetrators accountable for their actions, since the potential perpetrator is the only one who can prevent sexual violence from occurring.
- c. **Prevention** strategies focus on *changing the underlying conditions that allow sexual violence to occur* in the first place. Prevention efforts seek to change knowledge, attitudes, behaviors, social norms, and structural conditions that support sexual violence. These efforts are comprehensive (focused at multiple levels)³ and work to create lasting change (sustainable).

Examples of prevention activities include:

- efforts that engage youth and strengthen developmental assets;
- community-wide attention to policies and practices that may condone violence;
- initiatives that promote the status of women and girls and focus on the issues of male sexual entitlement and violence; and
- community engagement that seeks to change norms about the acceptability of sexual violence.

Prevention does not preclude public awareness and risk reduction. Rather, it encompasses and builds upon these efforts. Moreover, it is perfectly reasonable and responsible to provide information about victim services when engaging in

³ A graphic representation of the Ecological Model and discussion of its meaning and use begin in Section VI, below.

SEXUAL VIOLENCE PREVENTION

prevention efforts, as any audience will almost always include survivors who may need support and services. Similarly, it is very valuable to incorporate prevention messages into victim services and public awareness efforts in order to increase the efficacy of our work.

However, it is critical to remember that public awareness and risk reduction are not prevention. Research has shown that information is necessary, but information alone is not sufficient to bring about changes in individual attitudes and behaviors, and cultural and societal norms. Prevention efforts include strategies that address the underlying conditions that condone, support, and lead to the occurrence of sexual violence.

III. Anti-Oppression Framework

Prevention efforts are enhanced when they take place where oppressions intersect. Oppression can be defined as:

... a systemic social phenomenon that involves ideological domination, institutional control, and the infiltration of the oppressing group's ideology and culture on the oppressed group. The result is the exploitation of one social group by another for its own benefit, real or imagined.⁴

As discussed in the earlier chapter on Sexual Assault Dynamics, oppression is the result of power and prejudice. Certain groups are given power in our society (males, white people, upper class people, etc.), and when that power is combined with prejudiced biases, the results is oppression of other groups. Sexism, racism, classism, heterosexism, and other forms of oppression all result from this foundation, and the various forms of oppression often work together to further marginalize oppressed people and groups and reinforce each form of oppression.

The Oregon Sexual Assault Task Force believes that oppression lies at the core of sexual violence. Oppression is the driving force behind sexual violence, creating an environment in which it is likely to occur and in which individuals believe sexual violence is a viable behavioral option. In other words, we state that oppression is the primary root cause of sexual violence.

In this context, sexual violence can be seen as a manifestation of oppression, rooted in and resulting from the power that society confers to men over women, power that increases if the women are of color, perceived as lesbian or transgendered, have physical or

⁴ School of Americas Watch, "Definitions," http://www.soaw.org/index.php?option=com_content&view=article&id=629.

SEXUAL VIOLENCE PREVENTION

developmental disabilities, or lack housing or documentation of legal residency. It is essential, therefore, that practitioners approach sexual violence prevention work from an anti-oppression framework. Key elements of an anti-oppression framework include:

- Understanding one's personal biases and how they may affect one's work and one's relationships with others.
- Earnest commitment to understanding and working at the intersections of identities and oppressions, including but not limited to: racism, sexism, transphobia, homophobia, ableism, ageism, anti-Semitism and other religious oppression.
- Dedication to working on oppression in all of its forms in our public and private lives, as well as understanding our own roles as people in positions of power or privileged status.
- Attention to the process as well as the outcome.
- Inclusivity, accessibility, equity, and commitment to social justice.
- Attention to perspectives that undermine concepts of community accountability and reinforce continuing oppressive dynamics.

This framework is a valuable tool for prevention efforts because it seeks to openly and intentionally address oppression, and therefore increases our ability to change the social and cultural norms that increase the likelihood that sexual violence will occur.

IV. Public Health Approach⁵ and Health Equity

- a. **Public Health Approach:** While much of the work responding to sexual violence occurs within a public safety framework that regards the violence as a safety risk, prevention work uses a public health approach. Public health is ultimately concerned with the health of a population rather than the health of a single individual. This is generally referred to as a population-based approach and is one of the principles that distinguish public health from other approaches to health-related issues (e.g., the traditional medical model focused on the individual). Based on this principle, a public health oriented prevention strategy demonstrates benefits for the largest group of people possible, because the problem is widespread and typically affects the entire population in some way, directly or indirectly. Using the public health approach for preventing sexual violence makes sense, as sexual violence is endemic and affects not only victims, but also everyone around them, including communities and society at large.

The public health approach also depends upon collective action. It is a community-oriented approach that takes the onus from victims and advocates and encourages

⁵ Centers for Disease Control and Prevention, Sexual Violence Prevention: Beginning the Dialogue, (Atlanta, GA: Centers for Disease Control and Prevention, 2004).

SEXUAL VIOLENCE PREVENTION

the entire community (adults and youth) to prevent sexual violence. Prevention efforts move beyond teaching individuals (primarily women) how to reduce their risk and instead focus on those who are most able to keep sexual violence from occurring in the first place. Efforts focus on changing the behavior of those individuals who choose to commit sexual violence (primarily men) and changing community, institutional, and cultural/societal norms that condone, support, and lead to the occurrence of sexual violence. It is only when individuals, communities, institutions, and society collectively decide to take action that sexual violence will end.

- b. **Health Equity:**⁶ Because oppression shapes our world, it also affects individual access to the resources necessary for long, quality lives. These resources are called social determinants of health and include food supply, housing, education, health care, and other essential resources. When differences in health status among groups are created due to some groups having less access to social determinants of health, this creates health disparities. The public health approach, working with an anti-oppression framework, seeks to eliminate these disparities and promote health equity, in which all people can attain their optimal health and no one is prevented from achieving this due to socially determined circumstances. When we consider how sexism limits women's and girls' options and access, sexual violence clearly emerges as a health equity issue. Violence against women is one of the costliest health hazards to our society. According to the National Violence Against Women Survey, victims of intimate partner violence lose nearly eight million days of paid work annually, at a cost of nearly \$900 million in lost productivity.⁷

V. Categories of Prevention

Prevention efforts fall into three categories: WHEN an intervention occurs, WHO is the target of the intervention, and WHAT is the focus of the intervention.

- a. WHEN do we intervene?
Interventions are often clustered into three prevention categories based on when the intervention occurs.

Primary Prevention is defined as focusing efforts on the root causes of sexual violence in order to stop it before it occurs. Primary efforts prevent initial perpetration or victimization by addressing the attitudes, behaviors, and conditions that condone, support and lead to sexual violence.

⁶ L.K. Brennan Ramirez, E.A. Baker, and M. Metzler, Promoting Health Equity: A Resource to Help Communities Address Social Determinants of Health, (Atlanta, GA: Centers for Disease Control and Prevention, 2008).

⁷ "Costs of Intimate Partner Violence Against Women in the United States," (Centers for Disease Control and Prevention, 2003).

SEXUAL VIOLENCE PREVENTION

Secondary Prevention is defined as immediate responses that take place after sexual violence has occurred. Secondary efforts deal with the short-term consequences of sexual violence.

Tertiary Prevention is defined as long-term responses after sexual violence has occurred. Tertiary efforts deal with the lasting consequences of sexual violence and sex offender treatment.

The Prevention Institute⁸ conceptualizes the three levels of prevention as upfront (primary), in the thick (secondary), and in the aftermath (tertiary). We believe that our ultimate goal is primary prevention, since we want to prevent sexual violence from ever taking place. Therefore, our major focus in this chapter is on primary prevention.

b. WHO is the intervention targeting?

Prevention strategies are often developed based upon the group for whom the intervention is intended. Using this type of differentiation, sexual violence interventions can again be divided into three categories:

Universal Interventions are aimed at groups or the general population regardless of each individual's risk for sexual violence perpetration or victimization. Groups can be defined geographically (e.g., entire school or community) or by characteristics (e.g., ethnicity, age, gender).

Selected Interventions are aimed at those who are thought to have a heightened risk for sexual violence perpetration, such as men and boys. Some versions of this categorization include risk of victimization, but as we discussed earlier, we believe that prevention best focuses on potential perpetrators, since they are the only ones who can truly prevent sexual violence.

Indicated Interventions are aimed at those who have already perpetrated sexual violence or those who have been victimized. Indicated interventions include treatment and service provision. This is often not considered primary prevention, since it is more focused on preventing subsequent perpetration or victimization. However, absence of treatment and service within a community perpetuates violence-supporting realities (e.g. gender inequity) and undermines primary prevention efforts.

⁸ www.preventioninstitute.org

SEXUAL VIOLENCE PREVENTION

c. WHAT is the focus of the intervention?

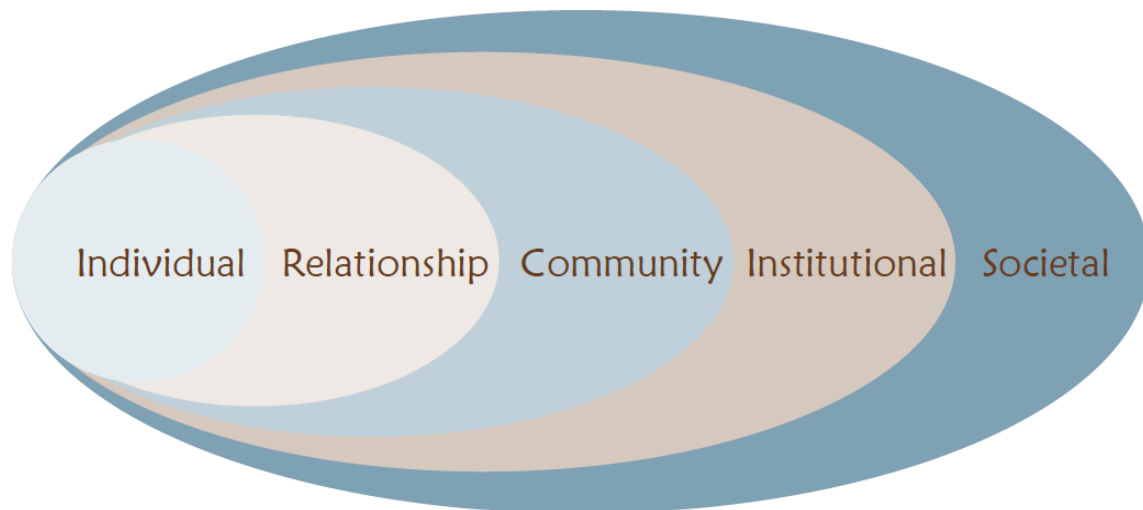
To prevent sexual violence we seek to understand what circumstances and factors influence its occurrence. There are many different theoretical models that attempt to describe the root causes of sexual violence (e.g., biological, psychological, cultural, and also grassroots/ feminist/power-based models). Each of these models contributes to a better understanding of sexual violence and helps experts build programs that sustain protective factors and minimize modifiable risk factors. Several models are presented in the following section.

VI. Prevention Theoretical and Practical Tools

a. The Socio-Ecological Model

The US Centers for Disease Control and Prevention, Oregon Public Health Division, and the Oregon Sexual Assault Task Force all promote the use of an ecological model as part of the framework for our discussion because it allows us to attend to risk and protective factors from multiple domains. Such a model offers a framework for understanding the complex interplay of individual, relationship, social, political, cultural, and environmental factors (Dahlberg & Krug, 2002) that influence sexual violence and also provides potential key points for prevention and intervention (Powell, Mercy, Crosby, Dahlberg, and Simon, 1999).

Oregon's Recommendations to Prevent Sexual Violence in Oregon: A Plan of Action uses the five-level ecological model presented below.⁹



⁹ Oregon Department of Human Services and the Oregon Attorney General's Sexual Assault Task Force, "Recommendations to Prevent Sexual Violence in Oregon: A Plan of Action," (2006).

SEXUAL VIOLENCE PREVENTION

Individual Factors — this level identifies biological and personal history factors that influence how individuals behave and that may increase or decrease their likelihood of becoming a perpetrator of sexual violence. Examples of these factors include (but are not limited to): gender, age, education, history of child abuse or neglect, income, psychological or personality disorders, substance abuse, and a history of behaving aggressively.

Relationship Factors — this level includes family, friends, intimate partners, mentors, peers, and other significant relationships that may increase or decrease an individual's risk of becoming a perpetrator of sexual violence. Examples of these factors include: having friends who engage in and encourage (or discourage) violence, and living in a home where there is or is not mutual respect for all household members.

Community Factors — this level contains community contexts in which social relationships occur, such as sports facilities, community centers, parks, and neighborhoods and examines the characteristics of these settings, which may increase or decrease the risk for sexual violence. Examples of these factors include: population density, employment trends, and crime rates.

Institutional Factors — this level looks at the institutional processes and contexts that support or challenge norms that may lead to or prevent sexual violence. Examples of these factors include: school no-tolerance policies for violent or sexually harassing behaviors, group home rules requiring staff training on recognizing and addressing inappropriate behaviors, press education and guidelines for reporting on sexual violence, and gender and economic equity initiatives by housing, financial and legal institutions.

Societal Factors — this level explores broad societal factors that foster a climate in which violence may be encouraged or inhibited. Examples of these factors include: availability of weapons, social and cultural norms that endorse or reject violence, and social norms that support or deny male dominance over women and children.

The ecological model supports a comprehensive public health approach that not only addresses an individual's risk factors, but also the norms, beliefs, and social and economic systems that create the conditions for sexual violence to occur.

b. Roots of Change

Another way to look at comprehensive prevention efforts is to use a tree as an example. Trees are often used to illustrate the interconnectedness of individuals (leaves) and the interplay of communities (branches) with the larger society (the entire tree itself). Expanding upon this we can see that the tree is supported and fed

SEXUAL VIOLENCE PREVENTION

by its roots, which grow deep into the soil (norms). Often we don't think about the soil that nurtures our societies—the norms, values and beliefs that support our ways of thinking and living—because they are “beneath the surface” and easily go unnoticed and unrecognized.

Other surrounding elements—the air, the sunshine, the other trees nearby—also factor into the health of the tree. In today's global community, it is particularly salient that we recognize the impact that world events have on our “local climate.” Just as a disease can be spread from tree to tree, what happens in the world around us has an impact on our own community. Prevention efforts focus on all levels of the environment, from the individual, to the community, to the societal, to the global.

Trees also provide a useful way of conceptualizing prevention because they often symbolize connectedness, strength and resilience, and they can help in visualizing a comprehensive, strengths-based approach to preventing sexual violence. We nurture growth and cultivate the surrounding soil in order for healthy trees and forests to thrive. Developing individual and community strengths and promoting healthy norms, values and beliefs is essential for prevention work.

c. **Risk and Protective Factors, and Sexual Health Promotion**

Risk Factors: Risk factors have been defined as elements that predict an increased probability of a person acting violently or conditions, influences, experiences or occurrences that increases the chances that a particular event (victimization) or behavior (perpetration) will occur.¹⁰

Simply being perceived as a woman increases an individual's risk of being sexually victimized, while simply identifying as a man increases an individual's risk of committing sexual violence. Additionally, there are other factors that are known to increase or decrease an individual's risk of either being victimized or of perpetrating sexual violence.¹¹ Potential risk factors for victimization are not discussed here because primary prevention seeks to identify and address the social conditions which support the use of violence against individuals. Advocates working for the primary prevention of sexual violence know that potential perpetrators are the only ones who can prevent sexual violence.

¹⁰ J. Hall, T. Simon, J. Mercy, R. Loeber, D. Farrington, R. Lee, “Centers for Disease Control and Prevention's Expert Panel on Protective Factors for Youth Violence Perpetration: Background and Overview.” American Journal of Preventative Medicine (2012), 43(2S1):S1–S7
http://www.ncdsv.org/images/AJPM_CDC'sExpertPanelOnProtectiveFactorsForYouthViolencePerpetration_2012.pdf

¹¹ It is important to remember that risk factors are not the same as root causes. In other words, while a risk factor may make sexual violence more likely to occur, it does not cause the behavior to occur in the first place.

SEXUAL VIOLENCE PREVENTION

Discussions of risk factors for victimization, therefore, distract from a primary prevention focus because attention is placed on avoiding assaults. As noted in Section IIb above, **risk reduction does not prevent sexual violence** because:

- Risk reduction strategies focus on individual behaviors and not comprehensive social, behavioral, and policy changes. Even if an individual escapes an act of sexual violence through the use of a risk reduction strategy, the strategy does nothing to stop a perpetrator from seeking new victims or consider changing attitudes and behaviors.
- Many commonly identified risk factors, such as gender identity, age, or socioeconomic status, are markers that cannot be changed by potential victims. Rather, they point to larger issues of oppression and intersectionality, a reality better addressed by comprehensive primary prevention strategies.
- Perpetrators target individuals because they perceive them as accessible, vulnerable and lacking in credibility, but that perception varies depending on circumstance, the perpetrator's status in relation to the intended victim, and the immediate circumstances of an act of sexual violence. Primary prevention does not require that individuals guard against ever being vulnerable, but requires us to build a culture where vulnerability does not result in the acceptance of sexual violence.

Because sexual violence is a choice, considering factors that increase the risk for perpetration can guide primary prevention efforts. The Virginia Sexual and Domestic Violence Action Alliance notes that “[r]isk factors do not necessarily directly cause Sexual or Intimate Partner Violence (SV/IPV), but their presence increases the chance of perpetration. Risk factors can be characteristics of an individual or conditions present in the environment.”¹² Below, we have listed risk factors that increase men’s proclivity for committing sexual violence.¹³

¹² Guidelines for Primary Prevention of Sexual and Intimate Partner Violence

<http://www.vsdvalliance.org/secPublications/Prevention%20Guidelines%202009%5B1%5D.pdf>

¹³ Oregon Department of Human Services and the Oregon Attorney General’s Sexual Assault Task Force, Recommendations to Prevent Sexual Violence in Oregon: A Plan of Action, (2006).

SEXUAL VIOLENCE PREVENTION

Individual factors ¹⁴

- attitudes and beliefs supportive of sexual violence
- coercive sexual fantasies (which are generally encouraged by access to pornography)
- more likely to consider victims responsible for the rape
- less knowledgeable about the impact of rape on victims
- hostility towards women
- impulsive and antisocial tendencies
- exaggerated sense of masculinity
- preference for impersonal sex
- having many sexual partners
- inclination to assert personal interests at the expense of others
- alcohol and drug use
- witnessed family violence as a child

Relationship factors

- associate with sexually aggressive and delinquent peers¹⁵
- family environment characterized by physical violence and few resources
- strongly patriarchal relationship or family environment
- emotionally unsupportive family environment
- family honor considered more important than the health and safety of the victim

Community factors

- lack of institutional support, intervention and enforcement of laws by police and judicial system
- general tolerance of sexual assault within the community
- victim blaming within the community
- weak community sanctions against perpetrators of sexual violence

Societal factors

- societal norms supportive of sexual violence
- societal norms supportive of male superiority and sexual entitlement

¹⁴ We do not present these risk factors to enforce stereotyping about particular groups of men or to justify anyone's actions. These are contributing factors, not the root causes. For example, although research indicates that perpetrators of sexual violence are more likely to have been sexually abused as a child than the general population, the relationship between having a history of sexual abuse as a child and then committing sexual violence later in life is not causal. In other words, having a history of sexual abuse as a child does not cause someone to commit sexual violence later in life. Therefore we do not include having a history of sexual abuse as a child in this list of risk factors for perpetration of sexual violence.

¹⁵ This risk factor is actually more closely associated with the actor's belief that one's peers have sexually aggressive and delinquent attitudes and behaviors.

SEXUAL VIOLENCE PREVENTION

- weak laws and policies related to sexual violence
- weak laws and policies related to gender equality
- high levels of crime and other forms of violence

Protective Factors: In contrast to risk factors, protective factors include attributes, characteristics, or elements that decrease the likelihood that violence will be perpetrated. The Virginia Sexual and Domestic Violence Action Alliance defines protective factors as “conditions or characteristics that decrease the likelihood of Sexual or Intimate Partner Violence (SV/IPV) perpetration, while also facilitating a broad range of related positive outcomes.” The Action Alliance adds, “[a] single protective factor does not necessarily directly prevent SV/IPV, but the presence of multiple protective factors decreases the chance of perpetration. Protective factors can be characteristics of an individual or conditions present in the environment. Protective factors can be used to help focus prevention efforts.”¹⁶ Protective factors that may affect adolescent sexual behavior (selected list):¹⁷

Individual factors

- high educational aspirations and plans for the future
- greater internal locus of control
- greater perceived male responsibility for pregnancy prevention
- older age of first voluntary sex
- discussing sexual risks with partner

Relationship factors

- Positive peer norms or support for condom or contraceptive use
- higher quality of family interactions, connectedness and relationship satisfaction
- greater parental supervision and monitoring
- parental acceptance and support of contraceptive use if sexually active
- significant parent/child communication about sex and condoms or contraception, especially before youth initiates sex

d. Making the Connection Between Sexual Violence and Other Issues

Sexual violence shares many of the same risk factors as other health issues and forms of violence, such as teen pregnancy, HIV/STIs, drug, alcohol and tobacco use, juvenile delinquency, child abuse, and intimate partner violence. For example:

¹⁶ Guidelines for Primary Prevention of Sexual and Intimate Partner Violence

<http://www.vsdvalliance.org/secPublications/Prevention%20Guidelines%202009%5B1%5D.pdf>

¹⁷ D. Kirby, G. Lepore, and J. Ryan, “Executive Summary: Sexual Risk and Protective Factors” (Washington, DC: The National Campaign to Prevent Teen Pregnancy, 2005).

SEXUAL VIOLENCE PREVENTION

- consuming alcohol or drugs (teen pregnancy, HIV/STIs)
- having previously been raped or sexually abused (teen pregnancy, HIV/STIs, drug, alcohol and tobacco use, intimate partner violence)
- having many sexual partners (teen pregnancy, HIV/STIs)
- involvement in sex work (teen pregnancy, HIV/STIs, drug and alcohol abuse, intimate partner violence)
- poverty (teen pregnancy, HIV/STIs, drug, alcohol and tobacco use, child abuse, intimate partner violence)
- impulsive and antisocial tendencies (juvenile delinquency)
- exaggerated sense of masculinity (intimate partner violence)
- inclination to assert personal interests at the expense of others (intimate partner violence)
- witnessed family violence as a child (intimate partner violence)

Additionally, many of these issues are themselves risk factors for perpetrating sexual violence (e.g., alcohol and drug use). Conversely, being a victim of sexual violence is a risk factor for many of these other issues (e.g., teen pregnancy or using alcohol and drugs as coping mechanisms).

Because research has tended to focus on identifying risk (and thus helping to focus scarce resources on populations at highest risk), less evidence exists about protective factors. For example, in its 2010 publication, *Preventing Intimate Partner and Sexual Violence Against Women*, the World Health Organization devoted 10 pages to detailing risk factors, and only one paragraph summarizing what is known about protective factors. The “Key Messages” about Risk and Protective Factors include only risk factors.¹⁸ Current work is underway by both researchers and practitioners to focus on and promote protective factors. The following section on sexual health promotion is an example of this work.

Knowing how sexual violence prevention is aligned with other kinds of prevention may help advocates and programs identify key community partnerships that could be developed as part of their prevention work. A comprehensive prevention approach necessitates involving a wide array of community partners, as it is outside the scope of many agencies to address all of the underlying risk factors. By partnering with others who are addressing common issues, we can expand the scope and effectiveness of our efforts.

e. Sexual Health Promotion

To promote protective factors, we can start by knowing what attitudes, beliefs,

¹⁸ http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf

SEXUAL VIOLENCE PREVENTION

behaviors, and norms we want to increase. Sexual violence prevention advocates can easily articulate what we are against, but how well do we articulate what we are for? More and more prevention movements, such as teen pregnancy prevention and HIV/STD prevention, are moving towards promoting sexual health. Recently, sexual violence prevention experts have begun framing sexual violence prevention with the context of sexual health promotion. In this context, freedom from sexual violence is seen as one of many rights that all people have to live sexually healthy lives. Other rights include the right to medically accurate, comprehensive sexuality education; the right to be respected; the right to sexual autonomy and privacy; the right to sexual health care; and many more. When we work towards comprehensive sexual health promotion, we work towards the elimination of sexual violence.

“Our ultimate goal, which has broader implications than exclusively sexual violence prevention, is for people to view sexuality as an important piece of their own humanity, and thus an important piece of others’ humanity.”

--Brad Perry, former Prevention Coordinator for the Virginia Sexual and Domestic Violence Action Alliance

VII. Strategies for Effective Prevention

We are most effective when we focus our efforts on strategies and tactics that create the outcomes we are working for. As noted above, focusing efforts on risk-reduction for women will never end sexual violence: the only person who can truly stop sexual violence from occurring is the person who chooses to commit sexual violence (the perpetrator).

The onus for ending sexual violence is best placed on those most able to create the desired outcomes. We hold perpetrators accountable for their actions. Primary prevention is most effective when we hold accountable individuals, communities, institutions and societies who perpetuate norms, values and beliefs that condone, support and lead to violence and other oppressive behaviors.

Because this is a relatively new field, there are few proven strategies for preventing sexual violence. However, there are some promising practices and tools that can be helpful for developing prevention strategies that fit with your target community.

a. Spectrum of Prevention¹⁹

Complementary to the Ecological Model, the Spectrum of Prevention reflects a

¹⁹ E.G. Krug, L.L. Dahlberg, J.A. Mercy, A.B. Zwi, and R. Lozano, ed., World Report on Violence and Health (Geneva, Switzerland: World Health Organization, 2002). L. Cohen and S. Swift, “The Spectrum of Prevention: Developing a Comprehensive Approach to Injury Prevention” Injury Prevention 5 (1999): 203-207.

SEXUAL VIOLENCE PREVENTION

framework for thinking about preventive approaches that can be used at each level, from individual to societal. One strategy or approach will not eliminate complex social problems such as sexual violence. Prevention efforts best take place simultaneously on all levels of the Spectrum. The Spectrum can help individuals, groups, and organizations develop a comprehensive violence prevention continuum based upon their existing efforts. Many programs focus primarily on the lower levels of the Spectrum, because that is more familiar and comfortable, and it may be easier to see success in implementing these activities. But by focusing on all levels, we are more likely to create the kind of community norms change we seek and thus more likely to have a deep and lasting impact.

The Spectrum is comprised of six interrelated action levels.

Level of Spectrum	Definition of Level
1. Strengthening Individual Knowledge and Skills	Enhancing an individual's knowledge and capacity around healthy relationships and sexuality
2. Promoting Community Education	Reaching groups of people with information and resources to promote health and safety.
3. Educating Providers	Informing providers who will transmit skills and knowledge to others.
4. Fostering Coalitions and Networks	Bringing together groups and individuals for broader goals and greater impact.
5. Changing Organizational Practices	Adopting regulations and shaping norms to improve health and safety.
6. Influencing Policy and Legislation	Developing strategies to change laws and policies to influence outcomes.

b. Nine Principles of Effective Prevention Programs: "At a Glance"²⁰

We have talked significantly about developing effective prevention approaches, and

²⁰ M. Nation et al., "What works in prevention: Principles of Effective Prevention Programs." American Psychologist 58 (2003): 449-456.

SEXUAL VIOLENCE PREVENTION

noted that there are few “proven” strategies. However, “What Works in Prevention” can point to key components or principles that all effective programs seem to include.

1. **Comprehensive:** Strategies are most effective when they include multiple components and affect multiple settings to address a wide range of risk and protective factors of the target problem.
2. **Varied Teaching Methods:** Strategies best include multiple teaching methods, including some type of active, skills-based component.
3. **Sufficient Dosage:** Participants need to be exposed to enough of the activity for it to have an effect.
4. **Theory Driven:** Preventive strategies with a scientific justification or logical rationale are more likely to meet their goals.
5. **Positive Relationships:** Fostering strong, stable, positive relationships between children/youth and adults, youth and youth, and adults and adults significantly enhances program effectiveness.
6. **Appropriately Timed:** Program activities best happen at a time (developmentally) that can have maximal impact in a participant’s life.
7. **Socio-Culturally Relevant:** Programs that are tailored to fit within cultural beliefs and practices of specific groups as well as local community norms are not only more respectful, but more effective.
8. **Outcome Evaluation:** A systematic outcome evaluation is necessary to determine whether a program or strategy worked.
9. **Well-Trained Staff:** Programs need to be implemented by staff members who are sensitive, competent, and have received sufficient training, support, and supervision.

c. Stages & Strategies of Community Readiness²¹

In order to determine where to focus your efforts, it is important that your message

²¹ Adapted from R. Edwards et al., “Community Readiness: Research to Practice,” *Journal of Community Psychology* 28 (2000): 291-307.

SEXUAL VIOLENCE PREVENTION

and strategy fit with the particular audience's readiness to receive certain information. You may even want to use different messages and strategies for specific communities. A "community" refers to the place where individuals experience culture and society. This can include specific geographic and social contexts in which activities occur.

The larger a "community" is, the more heterogeneous "shared contexts" become. It can therefore be beneficial to break down a "community" into its smallest contexts, such as a specific school, church, neighborhood, etc. Determine what the shared beliefs and values are for each community and design your message/strategy to fit with its specific needs. For example, it can be very productive to acknowledge and address the fact that even talking about sexual violence can be taboo in certain communities.

"Community Readiness: Research to Practice"²² describes nine stages with corresponding strategies for engagement. While you or your organization may have an idea of what stage a particular community is in, it can be useful to interview key members of the community to get their perspectives (four to five is usually sufficient).

Pre-Awareness

Community members or leaders don't generally recognize sexual violence as a problem. Behaviors and attitudes that perpetuate or condone sexual violence may be unknowingly encouraged due to larger influences from the media, dominant culture, and generational models of oppression and historical trauma. "It's just the way things are."

Goal: To raise awareness of sexual violence.

Strategies:

- One-on-one visits with community leaders and members.
- Visit existing and established small groups to inform them about sexual violence.
- Make one-on-one phone calls to known and potential supporters.
- Develop a media strategy to raise awareness about sexual violence.

Community Impact: Community begins to recognize that sexual violence is a problem.

Denial

Sexual violence may be recognized as a problem in general, but not within the local community. If there is some idea that there is a problem, there is a feeling that nothing needs to be or can be done locally or that it is isolated within one part of the community.

²² Edwards, R. W., Jumper-Thurman, P., Plested, B. A., Oetting, E. R. and Swanson, L. (2000), Community readiness: Research to practice. J. Community Psychol., 28: 291-307.

SEXUAL VIOLENCE PREVENTION

“It’s not our problem.” “It’s just those people who do that.” “We can’t do anything about it.”

Goal: To raise awareness that sexual violence exists in the community, and to prepare the community for prevention efforts.

Strategies:

- Continue one-on-one visits and encourage those with whom you’ve talked to assist with efforts.
- Discuss and review local incidents of sexual violence.
- Approach and engage local education/health outreach programs to assist in efforts to increase awareness with flyers, posters, brochures, etc.
- Present information to community groups.
- Develop a media strategy to raise awareness about sexual violence in the local community.

Community Impact: Community members recognize that sexual violence affects their community, and something can be done to prevent it.

Vague Awareness

There is some idea within the general community that sexual violence is a problem and that something can be done about it, but there is no sense of responsibility or capacity for doing anything. Information or beliefs about why and how sexual violence occurs may be incorrect. The community climate is not supportive or motivating.

Goal: To raise awareness that the community can do something about sexual violence.

Strategies:

- Present information at local community events and to unrelated community groups.
- Post flyers, posters, and billboards, and use social media outlets such as Facebook, Twitter, and blogs to provide prevention and awareness messaging.
- Begin to initiate your own events (lectures, community meetings, etc.) to present information on sexual violence.
- Conduct informal local surveys/interviews with community people by phone or door-to-door.
- Publish newspaper editorials and articles with general information, but relate information to the local community.
- Develop a media strategy to raise awareness about what the community can do to address sexual violence.

Community Impact: The community recognizes that it can do something itself to

Oregon Attorney General’s Sexual Assault Task Force

Advocacy Manual 2012

Page 185

SEXUAL VIOLENCE PREVENTION

change the culture that supports sexual violence.

Preplanning

Community members or leaders recognize that sexual violence does occur locally and that something can be done about it. There are identifiable leaders and partners and discussion of the problem is occurring, but no planning has taken place and efforts are not focused or detailed. The community climate is supportive of the value and capacity for addressing sexual violence.

Goal: To develop concrete ideas about how to prevent sexual violence.

Strategies:

- Introduce information about sexual violence through presentations and the media.
- Visit and develop support for prevention from community leaders.
- Review existing efforts in the community (curriculum, programs, activities, etc.) to determine who the target audience is and how successful the efforts have been.
- Conduct local focus groups to discuss the issues relating to sexual violence prevention and to develop strategies.
- Develop a media strategy to provide community members with concrete ideas about how to prevent sexual violence.

Community Impact: The community begins to think about prevention in a strategic way, and broadens its capacity to take on this issue.

Preparation

The community is engaged in planning and focusing efforts to prevent sexual violence. General information about how and why to address sexual violence is known, but specific information about the community and local context of sexual violence is not available. There is active leadership and participation and the community offers some resources and support for efforts.

Goal: To gather existing information about sexual violence to help plan specific strategies.

Strategies:

- Conduct community surveys.
- Sponsor a community event to initiate the effort.
- Present in-depth information about the prevalence and incidence of sexual violence.
- Determine and publicize information about the costs of sexual violence to the

SEXUAL VIOLENCE PREVENTION

community (e.g., health care, mental health care and other services for victims; incarceration and treatment of offenders; etc.).

- Conduct public forums to develop strategies for preventing sexual violence.
- Utilize key leaders and influential community members to speak to groups and to participate in local media efforts.

Community Impact: The community is prepared to take specific steps to prevent sexual violence, and there is general understanding throughout the community of the importance of this issue.

Initiation

The community has information that justifies specific strategies for addressing sexual violence in the local community. The strategy has been started but is still seen as “new” and needs to be evaluated. There is strong, supportive leadership for the strategy, and community members are interested and involved to some degree. Few or no problems or limitations have occurred yet to curb enthusiasm. There is little or no active resistance within the community.

Goal: To provide community specific information about how to comprehensively prevent sexual violence.

Strategies:

- Conduct in-service training for professionals and para-professionals.
- Plan publicity efforts associated with start-up of programs or activities.
- Attend meetings with allies and interested parties to provide updates on progress of the effort.
- Conduct consumer interviews to identify service gaps and improve existing services.
- Begin library or internet search for resources and/or funding to support efforts.

Community Impact: The community is taking active steps to engage in ending sexual violence.

Stabilization

Prevention activities, programs, and efforts are stable and supported by administrators and community decision-makers. Limitations may be known, but there is little recognition of the need for change or expansion. Little or no in-depth evaluation of efforts may be available. Routine tracking of the prevalence of sexual violence may be occurring. The community generally supports the current strategy.

SEXUAL VIOLENCE PREVENTION

Goal: To stabilize efforts/programs.

Strategies:

- Plan community events to maintain support for efforts.
- Conduct training for community professionals and leaders.
- Introduce program evaluation through training with relevant staff and partners.
- Conduct regular meetings with allies and interested parties to review progress and modify strategies.
- Hold special recognition events for local supporters and/or volunteers.
- Prepare and submit newspaper articles detailing efforts, progress and future plans.
- Begin networking with service providers and community systems.

Community Impact: Leaders of these efforts are clearly identified and recognized for taking this on. General awareness of existing resources and community-wide support for existing efforts.

Confirmation/Expansion

Standard prevention efforts are occurring and authorities and community decision-makers support expanding or improving efforts. Community members are comfortable accessing services and participating in efforts. Initial efforts have been evaluated and planning for or implementation of new efforts is underway. Resources to support ongoing and new prevention efforts are actively sought. Data about the extent of sexual violence and risk/causal factors is being collected. Increased knowledge and demand for programs creates a community climate that is generally supportive of efforts.

Goal: To expand and enhance current efforts.

Strategies:

- Formalize relationships with Letters of Agreement and Memoranda of Understanding.
- Prepare a community risk assessment profile.
- Publish a localized Program Services Directory.
- Maintain a comprehensive database of service providers.
- Develop a local speaker's bureau.
- Initiate policy change through support of local city officials.
- Develop a media strategy to provide information on specific data and trends related to sexual violence in the local community.

Community Impact: Community leaders know what is working and show support through policy change and other forms of support for existing efforts.

SEXUAL VIOLENCE PREVENTION

Sustainability

Knowledge of prevalence, risk factors and causes of sexual violence is detailed. Efforts across the social ecological model (individual, relationship, community, institutional, societal) are occurring, and activities target both the general population and high-risk groups. Staff is highly trained. Community leaders are supportive of efforts and community members are highly involved and hold programs accountable. Evaluation is used to determine effectiveness of activities and modifications occur when desired outcomes do not result.

Goal: To maintain momentum and continue growth.

Strategies:

- Engage the local business community, and solicit financial support from them.
- Diversify funding resources.
- Continue more advanced training of professionals and para-professionals.
- Continue re-assessment of strategies to prevent sexual violence and the progress made.
- Implement external evaluation and use feedback for program modification.
- Track outcome data for use with future grant requests.
- Continue progress reports for the benefit of community leaders and local sponsorship.

Community Impact: Efforts are deeply entrenched in the community and well-supported by community leaders and the community at large. Solid relationships with community institutions are in place and unlikely to be affected by turnover or minor program setbacks.

The strategies described for the various stages of community readiness, above, need not be applied in the order or in the exact fashion presented. The “Nine Principles of Prevention” remind us that efforts must be culturally relevant, and so variables may well change for different communities.

VIII. Conclusion

Preventing sexual violence begins with the recognition that conditions within our society and communities perpetuate this type of violence. The beliefs we share, the mainstream gender roles we reinforce, and the myths we validate all contribute to a climate in which intimate sexual violence is permitted and condoned. Challenging the systems, norms and beliefs that enable people to wield power and control over others is among the most promising of approaches in preventing sexual violence before it occurs. Efforts of this nature foster a culture in which everyone takes action to reduce the factors that contribute

SEXUAL VIOLENCE PREVENTION

to sexual violence.

The concepts and tools presented here provide a framework for prevention and are useful for prevention program planning and implementation. It is important that prevention efforts be thoughtful and well planned in order to be the most effective. For additional information and assistance with prevention planning, implementation and evaluation you can contact the Sexual Assault Task Force.

References

V. Chavez, S. Chehimi, and L. Cohen, eds., *Prevention is Primary: Strategies for Community Well-Being*, 2nd ed., (San Francisco: Jossey Bass and American Public Health Association, 2010).

L. Dahlberg and E. Krug, "Violence — A Global Public Health Problem," in E.G. Krug, L.L. Dahlberg, J.A. Mercy, A.B. Zwi, & R. Lozano, eds., *World Report on Violence and Health*, (Geneva, Switzerland: World Health Organization, 2002) 3-21.

K. Powell, J. Mercy, A. Crosby, L. Dahlberg, and T. Simon, "Public Health Models of Violence and Violence Prevention," *Encyclopedia of Violence, Peace, and Conflict* 3 (1999): 175-187.

SUSTAINABLE ADVOCACY

Sustainable Advocacy¹

Working with survivors of sexual assault can be both rewarding and painful. As advocates, we are privileged to witness and support the powerful transformation from victim to survivor. We are also exposed to the traumatic consequences of human cruelty on a daily basis and must take special care of ourselves and each other in order to stay healthy and effective in our work. This is especially true if we have experienced violence or abuse in our own lives. Sustainable advocacy requires individual and organizational attention.

Secondary Trauma

Supporting sexual assault survivors, as well as survivors of other violent crimes, can lead to stress and can trigger unresolved trauma for advocates. This is an important issue to monitor; an advocate who is negatively impacted by her work may not be an effective advocate for survivors. The following is a “self-test” for advocates to determine the impact of working with victims of trauma on themselves and to decide how they are coping with their own feelings and experiences.

PROFESSIONAL QUALITY OF LIFE

Compassion Satisfaction and Fatigue Subscales – Revision III²

Helping others puts you in direct contact with other people’s lives. As you probably have experienced, your compassion for those you help has both positive and negative aspects. These questions examine your experiences, both positive and negative, as a helper. Consider each of the following questions about you and your current situation. Write in the number that honestly reflects how frequently you have experienced these characteristics ***in the last 30 days***.

0=Never 1=Rarely 2=A Few Times 3=Somewhat Often 4=Often 5=Very Often

- _____ 1. I am happy.
- _____ 2. I am preoccupied with more than one person I help.
- _____ 3. I get satisfaction from being able to help people.
- _____ 4. I feel connected to others.
- _____ 5. I jump or am startled by unexpected sounds.
- _____ 6. I feel invigorated after working with those I help.
- _____ 7. I find it difficult to separate my personal life from my life as a helper.
- _____ 8. I am losing sleep over a person I help's traumatic experiences.
- _____ 9. I think that I might have been "infected" by the traumatic stress of those I help.
- _____ 10. I feel trapped by my work as a helper.
- _____ 11. Because of my helping, I feel "on edge" about various things.
- _____ 12. I like my work as a helper.

¹ This Chapter was prepared by Elaine Walters, Trauma Healing Project, 2008.

² © B. Hudnall Stamm, 2003. *Professional Quality of Life: Compassion Fatigue and Satisfaction Subscales, R-III (Pro-QOL)*. <http://www.isu.edu/~bhstamm>. This test may be freely copied as long as (a) author is credited, (b) no changes are made, and (c) it is not sold. <http://www.isu.edu/~bhstamm>

SUSTAINABLE ADVOCACY

- _____ 13. I feel depressed as a result of my work as a helper.
- _____ 14. I feel as though I am experiencing the trauma of someone I have helped.
- _____ 15. I have beliefs that sustain me.
- _____ 16. I am pleased with how I am able to keep up with helping techniques and protocols.
- _____ 17. I am the person I always wanted to be.
- _____ 18. My work makes me feel satisfied.
- _____ 19. Because of my work as a helper, I feel exhausted.
- _____ 20. I have happy thoughts and feelings about those I help and how I could help them.
- _____ 21. I feel overwhelmed by the amount of work or the size of my caseload I have to deal with.
- _____ 22. I believe I can make a difference through my work.
- _____ 23. I avoid certain activities or situations because they remind me of frightening experiences of the people I help.
- _____ 24. I plan to be a helper for a long time.
- _____ 25. As a result of my helping, I have intrusive, frightening thoughts.
- _____ 26. I feel "bogged down" by the system.
- _____ 27. I have thoughts that I am a "success" as a helper.
- _____ 28. I can't recall important parts of my work with trauma victims.
- _____ 29. I am an unduly sensitive person.
- _____ 30. I am happy that I chose to do this work.

Self-scoring directions:

1. Be certain you respond to all items.
2. On some items the scores need to be reversed. Next to your response write the reverse of that score. (i.e. 0=0, 1=5, 2=4, 3=3) Reverse the scores on these 5 items: 1, 4, 15, 17 and 29. 0 is not reversed as its value is always null.
3. Mark the items for scoring:
 - Put an **x** by the following 10 items: 3, 6, 12, 16, 18, 20, 22, 24, 27, 30
 - Put a **ü** by the following 10 items: 1, 4, 8, 10, 15, 17, 19, 21, 26, 29
 - Put a **O** (circle) by the following 10 items: 2, 5, 7, 9, 11, 13, 14, 23, 25, 28
4. Add the numbers you wrote next to the items for each set of items:

SUSTAINABLE ADVOCACY

Your potential for Compassion Satisfaction (x):

The average score is 37. About 25% of people score higher than 41 and about 25% of people score below 32. If you are in the higher range, you probably derive a good deal of professional satisfaction from your position. If your scores are below 32, you may either find problems with your job, or there may be some other reason—for example, you might derive your satisfaction from activities other than your job.

Your risk for Burnout (ü):

The average score on the burnout scale is 23. About 25% of people score above 28 and about 25% of people score below 19. If your score is below 19, this probably reflects positive feelings about your ability to be effective in your work. If you score above 28, you may wish to think about what at work makes you feel like you are not effective in your position. Your score may reflect your mood; perhaps you were having a “bad day” or are in need of some time off. If the high score persists or if it is reflective of other worries, it may be a cause for concern.

Your risk for Compassion Fatigue (O):

The average score on this scale is 13. About 25% of people score below 8 and about 25% of people score above 17. If your score is above 17, you may want to take some time to think about what at work may be difficult for you or if there is some other reason for the elevated score. While higher scores do not mean that you do have a problem, they are an indication that you may want to examine how you feel about your work and your work environment. You may wish to discuss this with your supervisor, a colleague, or a health care professional.

Debriefing for Advocates³

What is Debriefing?

Debriefing is an essential skill for advocates. Debriefing is a unique form of communication that has been developed by people involved in direct service work – crisis and outreach workers, counselors, advocates and others – to support and educate one another and to help provide the best possible services to clients. Debriefing may sometimes appear to be just talking, but it is much more than that. Debriefing is a process in which advocates share important information, sharpen and hone their communication and advocacy skills, demonstrate their accountability to clients, and provide one another with validation and emotional support.

³ Developed by Maria Paladino for Sexual Assault Support Services, 2002.

SUSTAINABLE ADVOCACY

Why Debrief?

I. Professional Self-Care

Many people involved in direct service work find that outreach, crisis intervention, and advocacy are the most *rewarding* work they have ever done, but this work can also be stressful, emotionally draining, and frustrating. ***Dominant North American culture teaches us that we should be strong, self-reliant, have control over our emotions, and should not need support from others.*** Survivors struggle with these damaging cultural beliefs – and overcome them – each time they make the choice to pick up the phone or drop by an advocacy program and seek support from a trained volunteer or advocate.

Advocates also struggle with these deeply ingrained social expectations. ***Learning to overcome the social mandate of silence around sexual assault and our emotions is an elemental part of our work as advocates, and as with all anti-oppression work, we must begin with ourselves.*** Advocates receive extensive training to deal with the large volume of crisis work we handle, but we are not robots, and we are not able to be a reliable source of support and strength for our clients on a long term basis if we do not receive support for ourselves.

II. Protecting Client Confidentiality

Debriefing is an important way to protect confidentiality. Absolute confidentiality must be maintained in working with survivors of sexual and domestic violence, who need and deserve nothing less. Advocates do not discuss client issues at home or with partners, friends and family members. Not being able to talk about the emotionally charged events of our work day can feel isolating. Debriefing with other professionals in a safe setting is a way to release the emotions that build up around our work and avoid taking it home.

III. Becoming A Better Advocate

Debriefing is an essential way to improve advocacy skills. Learning from one another through debriefing is one of the most effective ways to enhance our skills and build a strong team. During debriefing:

- Advocates practice their communication and active listening skills.
- Advocates have the opportunity to learn from one another's experiences.
- Advocates exchange ideas about resources available and beneficial skills and techniques to use when dealing with a particular issue or type of case. Clients receive better services when an entire team of skilled advocates pools their knowledge in support of the case.
- Advocates have the opportunity to receive respectful feedback about their advocacy skills and approach and to give constructive feedback to their team members.

SUSTAINABLE ADVOCACY

- Advocates become aware of and work to change any unwanted judgments and biases they may hold that create a barrier to providing effective advocacy to all survivors.
- Advocates express their feelings and are validated by others who do the same work, allowing an opportunity to release stress and reduce the effects of burnout.
- Advocates share strategies for self-care.

By doing all of the above, advocates learn to trust and support one another and maintain a strong, cohesive team.

WHEN TO DEBRIEF

Advocates debrief every day. Every contact with a client should be debriefed immediately afterward. If it is impossible to debrief immediately following the contact, do so at the next possible opportunity. While in training, it is helpful to try to debrief each contact with more than one person. No matter how much experience you have, it is still important to debrief regularly.

HOW TO DEBRIEF

Debriefing one-on-one with another advocate and debriefing as a team are both important. If the contact was a limited or one-time contact, using the client's name can be avoided.

When working on an ongoing advocacy case, it may be important to pass on necessary information to other staff members and relief workers who might also provide support. Team debriefing is a way to pass on valuable information, support the whole team, and honor the work that we all do. **There are two areas to be covered during debriefing.**

I. Educational Debriefing

This type of debriefing includes discussion about the “nuts and bolts” of the advocacy contact:

- **Describe what happened.** What did you observe and experience? What were the client's needs, and how did you assess them? What actions did you take? What resources, strategies, agencies or individuals were helpful or not helpful? What did you learn during the experience? This is an opportunity to pass on important client information and share any new information or techniques you have learned.
- **Ask for feedback.** It may be helpful to pose a specific question and ask team members to discuss in turn how they have handled a similar situation; for example, “The client's partner/friends/family were present and were pressuring the client to follow their wishes (e.g., report the incident, move out of her apartment). What have you found is an effective way to deal with that?” “The client is a homeless single adult with disabilities, and I referred him to the following places for shelter; are there any referrals that I missed?” This is an opportunity to learn from the

SUSTAINABLE ADVOCACY

experiences of other advocates, and the client benefits through accessing the shared knowledge and resources of the whole team.

II. Emotional Debriefing

This type of debriefing will address how the advocate feels, and/or strong emotions, attitudes or beliefs that came up for her during an advocacy contact. Try to be clear about when you are moving into the emotional part of debriefing, and state that you are doing so. This is a time to talk in more depth about how you felt emotionally about your interaction with the client. It is also a time to learn more about yourself, the way you process experiences, and the views you hold. There are probably few experiences more powerful and validating than emotional debriefing with another advocate who understands the work and the feelings that can surface.

During emotional debriefing, talk about the emotions you experienced from the time that you became aware of them, all the way through the contact. Were there specific events that triggered your feelings in an especially powerful way? How did you cope with the feelings at the time? How did you feel after the contact was over, and how did you deal with those feelings? How might your feelings have affected your interaction with the client and others? How are you feeling now? Emotional debriefing is a good time for advocates to request and share self-care tips, validation, empathy and encouragement.

During debriefing, use active listening skills, provide emotional support, and respect the process and one another. Do not be judgmental of yourself or others. As long as we continue to work on our own issues, holding ourselves and each other accountable individually and as a team, there is no room for judgment.

What if I Don't Want/Need to Debrief?

You may be tempted to minimize debriefing or to only debrief when you feel you “need” to. Some people involved in direct service work may feel the emotional need to debrief more or less frequently than others.

It's important to remember that advocacy staff and volunteers come together from diverse backgrounds and circumstances, experience varying degrees of privilege and oppression in their personal and professional lives and bring with them different needs for support. Remember that many of us are survivors ourselves and each of us may experience different aspects of the work as either triggering or empowering. It's difficult to overcome the cultural mandates that tell us that seeking support means weakness. Failure to debrief brings these damaging beliefs into our workplace and perpetuates them.

For team members whose work focuses on providing outreach and advocacy to oppressed groups or to clients who have little access to other resources or support, advocacy can be particularly challenging and draining and support from the team may be more crucial for them than for advocates who serve more privileged clients. No advocate deserves to feel stigmatized for wanting support.

SUSTAINABLE ADVOCACY

Debriefing in a professional setting also protects our clients' confidentiality by reducing the risk that an advocate's unresolved feelings will surface later, causing inappropriate debriefing with friends or family. Take these issues into account and make it a point to **DEBRIEF REGULARLY**.

CONCLUSION

Caring for ourselves and each other in this work is not a luxury; it is our responsibility. It is vitally important that we make time for personal connection, share experiences and information, debrief stressful situations and trauma stories, and set and keep high standards for health and well-being in our organizations and lives. By sustaining ourselves, we can provide better services and support to survivors, and we can keep doing this important work.



Oregon Sexual Assault Task Force

GENITAL PHOTOGRAPHY AS AN ADJUNCT TO THE SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONⁱ

This position paper reflects the views of the Medical Forensic Subcommittee and was approved by the Steering Committee of the Attorney General's Sexual Assault Task Force Advisory Committee on June 5, 2012.

Abstract

Photo-documentation of genital injuries presents both benefits and potential untoward consequences. In consideration of these consequences, The Medical Forensic Subcommittee of the Oregon Attorney General's Sexual Assault Task Force believes that except in cases of peer review, quality assurance programs, or medical documentation, genital photography is not appropriate, and it is furthermore inappropriate for said photographs to be presented in the criminal justice system.

.....

During a sexual assault forensic examination (SAFE), medical providers are charged with both treating the medical needs of the patient and collecting forensic evidence of the sexual assault. This includes forensic history documentation, a thorough physical examination, and documentation of injuries. In all cases, injuries are documented in the medical chart and on a trauma body-gram. In some cases, injuries are also photo-documented. Although photo-documentation of non-genital and, specifically, genital injuries is the standard of care for pediatric sexual assault forensic examinations, this adjunct is not consistently used in all examinations of adolescents and adults. Photo-documentation of genital injuries presents both benefits and potential untoward consequences.

Benefits of genital injury photography include improved injury identification and documentation (Ledray 2001), specifically when a colposcope is used in the examination. The colposcope is able to magnify injury up to 30 times greater than what can be visualized with unaided visual examination (White and Du Mont, 2008). Thus, the practitioner is able to document "more types and a greater number of anogenital injuries" (Id., 2008) when a colposcope is used during the examination.

An additional benefit of genital injury photography is the potential elimination of the need for repeated examinations because “photographs or digital images can be shown to experts or consultants” (Sawyer Sommers, et al., 2005). Similarly, this can also extend to an educational application, when sexual assault nurse examiners (SANEs) or other trained medical professionals use photographs to increase their exposure to the various genital injury that results during a sexual assault. Finally, quality assurance programs can also benefit from this type of injury documentation during case reviews and chart auditing.

While the aforementioned benefits exist with genital injury photography, it is critical that potential consequences be acknowledged. Although physically non-invasive, clearly genital photography can be perceived as very invasive by both the patient and the examiner.

Additionally, from a criminal justice perspective, genital photography presents a number of issues. First, there is a possibility that these very sensitive pictures are shown in court, and viewed by the jury and the alleged perpetrator, potentially re-victimizing the patient. Also, if the record is not sealed, there is potential for others to have access to these photographs. Second, White and Du Mont concluded that genital injuries alone are not related to positive criminal justice outcomes” (2009). Finally, the significance of the presence or absence of genital injury can unintentionally work to continue to place a disproportionate emphasis on physical injury to prove non-consent.

Finally, if genital photography is to be included in the sexual assault examination, protocols must be in place to ensure proper photographic procedure, evidence storage and release to law enforcement, in addition to maintenance of victim privacy. The State of Oregon Medical Guideline for Sexual Assault Evaluation (2008) recommends that ano-genital photographs should always be stored according to the institution’s policies, and released only for ongoing medical care, or by patient request following a signed release, or for legal proceedings under a HIPPA-compliant subpoena. The patient and provider should be aware that there remains a risk that these sensitive photos be used in criminal justice proceedings and informed consent must be provided.

Consistency among providers and between patients is key to quality forensic evidence collection. Each community must develop their protocols, with these issues in mind, while referring to the State of Oregon Medical Guideline for Sexual Assault Evaluation: photography guidelines, to mitigate any potential untoward consequences. Thus, the Medical Forensic Subcommittee of the Attorney General’s Sexual Assault Task Force recognizes the utility of ano-genital photographs, and therefore recommends ano-genital photography for quality assurance processes, including peer review, and for medical documentation. **Given the aforementioned potential consequences of this nature of photography, the Oregon Attorney General’s Sexual Assault Task Force strongly recommends that, except in very rare circumstances, ano-genital photographs not be used in a criminal justice setting.**

References

Ledray, L. Violence Against Women Online Resources-Evidence Collection and Care of the Sexual Assault Survivor The SANE-SART Response. August 2001. Accessible at www.mincava.umn.edu/documents/commissioned/2forensicevidence/2forensicevidence.pdf. Accessed February 15, 2010.

Oregon Attorney General's Sexual Assault Task Force, Medical Forensic Subcommittee; State of Oregon Revised Sexual Assault Medical Guidelines For Older Adolescents and Adults (≥15 years). 2010. Accessible at <http://oregonsatf.org/wp-content/uploads/2011/02/Revised-Medical-Forensic-Guidelines-2010.pdf>. Accessed June 5, 2012.

Sawyer Sommers, M., Fisher, B., Karjane, H. Using colposcopy in the rape exam: Health care, forensic and criminal justice issues (2005) *Journal of Forensic Nursing* 1 (1), pp. 28-35.

White, D., Du Mont J. Visualizing sexual assault: An exploration of the use of optical technologies in the medico-legal context (2009) *Social Science and Medicine*, 68 (1), pp. 1-8.

ⁱ Please contact the Attorney General's Sexual Assault Task Force for permission to reproduce this document in full or in part:
3625 River Rd. N., Suite 275, Keizer OR 97303 | Phone: (503) 990-6541 | Fax: (503) 990-6547
Email: taskforce@oregonsatf.org | Web: www.oregonsatf.org



Oregon Sexual Assault Task Force

MANDATORY ABUSE REPORTING AND CONFIDENTIALITY: CONSIDERATIONS FOR ADVOCATESⁱ

This position paper reflects the views of the Victim Response Subcommittee and was approved by the Steering Committee of the Oregon Attorney General's Sexual Assault Task Force Advisory Committee on June 5, 2012.

Table of Contents

I.	Confidentiality Language	2
II.	Clarification Regarding Abuse Reporting	3
III.	Why it is Best Practice for Advocates to Maintain Confidentiality	3
IV.	Who is Mandated to Report in Oregon?	4
V.	Why are They Mandated to Report?	5
VI.	When are They Mandated to Report?	6
VII.	Policies and Procedures Regarding Reporting	6
VIII.	Lack of Advocate Privilege	9
IX.	Community Collaborations and Referrals	9
X.	Conclusion	10
	Appendix - Release of Information Forms	11-14

Confidentiality is a primary concern for survivors of sexual violence. For this reason, advocates have promoted provisions in the Violence Against Women Act (VAWA) and the Family Violence Prevention and Services Act (FVPSA) that are more protective of victim privacy. These provisions may affect how agencies handle reporting abuse.

The Victim Response Subcommittee of the Oregon Attorney General's Sexual Assault Task Force has developed this paper to clarify the role of advocates in Oregon regarding the reporting of child, elder, and vulnerable adult abuse. The goal of providing this information is to ensure that every survivor of sexual assault receives a competent response from advocates that protects the survivor and the survivor's personal information.

I. Confidentiality Language

VAWA 2005 Requirements: The 2005 Reauthorization of the Violence Against Women Act (VAWA) required that "anyone receiving VAWA funds (sub-grantees) **shall** protect the confidentiality and privacy of people receiving services. VAWA prohibits sub-grantees from disclosing any personally identifying information or individual information collected in connection with services without the informed, written, reasonably time-limited consent of the person. If release is compelled by statutory or court mandate, subgrantees are required to make reasonable attempts to provide notice to the affected survivors and take necessary steps to protect the privacy and safety of the persons affected by the release." (42 U.S.C.A. §13925, emphasis added.) Since then, this language has also been included in the Federal Family Violence Prevention and Services Act (FVPSA) legislation. (42 U.S.C.A. §10401-10421.)

Which Oregon funding adopts VAWA 2005 and FVPSA confidentiality provisions?

1. All funding administered by Oregon State Department of Justice, Crime Victim Services Division (DOJ/CVSD) has confidentiality requirements that mirror VAWA 2005.
2. All funding administered by Oregon Department of Human Services (DHS) has confidentiality requirements that mirror FVPSA.
3. All federal VAWA and FVPSA grant awards include these confidentiality requirements.

With these federal and state funding mandates, agencies can only release information about someone with whom they have worked as follows:

1. When there is a state mandate to report (such as the laws requiring reports of child abuse, elder abuse, and abuse of people with disabilities). Advocates in Oregon are NOT mandatory reporters of child abuse, elder abuse or abuse of people with disabilities, unless they fall into one of the exceptions outlined in Section II, below.
2. When there is a court mandate (an order from a judge).
3. When the person working with the agency signs a release of information. The person has to be well-informed about the consequences of the release before she or he can sign it. The release also has to be in writing, reasonably time-limited, and must clearly define the specific information that can be released, for what purpose, and to whom it may be released.

II. Clarification Regarding Abuse Reporting

In the past, many agencies adopted policies directing staff to make child abuse reports. These policies are in conflict with state and federal funding mandates.

Exceptions:

- A. If a sexual or domestic violence agency employs staff or volunteers who are mandatory reporters of child abuse because of their licensure or employment elsewhere, those individuals are still mandatory reporters when working or volunteering for that agency.
- B. If an agency employs someone who is defined as a mandatory reporter because of his or her employment serving an elderly or disabled person and, in the course of that employment, he or she finds out about abuse, this person would also be mandated to report.
- C. Advocates within DA-based victim assistance programs are considered mandatory reporters of child abuse. They are also mandated to report abuse of the elderly or of people with disabilities if they learn of such abuse in their official capacity. The District Attorney (DA) and all the prosecutors in a DA's office are mandatory reporters under statute. Many District Attorneys believe that because they are deemed to know what their employees know, the mandatory reporting responsibility is imputed to all DA staff.¹ This includes the advocates in the DA-based victim assistance program. It is important for all advocates to know if they have limitations regarding confidentiality so they can communicate this to the survivors they are serving. DA-based advocates should have working relationships with community-based advocates so that, if a survivor wishes, DA-based advocates can connect survivors with community-based advocates who can offer a higher level of confidentiality.

III. Why it is Best Practice for Advocates to Maintain Confidentiality

1. Accessibility of service: Survivors may not seek services if they are fearful that mandatory reports may be made. Advocates of sexual and domestic violence agencies who are not mandatory reporters can serve a unique role in survivors' lives. Because survivors can access services at these agencies without fear of having a report made, all survivors have a place to seek support, advocacy and healing. This can be especially important for teenage survivors of abuse.

¹ In addition to abuse reporting, DA-based advocates have responsibilities to disclose information based upon the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963). While these disclosures involve issues other than abuse reporting, it is important that DA-based advocates are clear on their responsibilities and disclose this to the survivors they serve. If you are a DA-based advocate and are not clear on your *Brady* responsibilities, talk with your District Attorney.

2. More effective safety planning: Survivors may be more willing to share important information about their situation during discussions about safety if they feel that the information will not be shared, especially if they are concerned about reports to welfare agencies or law enforcement.
3. Privacy rights: Just the fact that someone has sought the support of a sexual assault or domestic violence agency identifies that person as survivor. This is not required information in any mandatory report and is therefore an unauthorized violation of confidentiality, even for a mandated reporter.
4. Empower the survivor: The goal of advocacy is to empower people to make their own decisions. Reporting without a survivor's consent can undermine the sense of autonomy that would help keep her or him safer.
5. Preservation of trust: Survivors can be at a very vulnerable place in their lives when they seek support from a sexual assault or domestic violence agency. It is vital for their healing that the survivor be able to re-establish a sense of trust in the world. Reporting without a survivor's consent can lead to a feeling of re-victimization and can sabotage the healing process.
6. Survivor safety: Disclosure to authorities and the subsequent intervention can expose the survivor to increased risks, including the risk of violence from an abusive person. Survivors themselves are the best people to assess the risks and benefits of reporting.
7. Recognition of the risks of system involvement, especially for some survivors from marginalized communities: Individuals and families of color are often disproportionately impacted by child welfare or legal involvement. For example, reporting could lead to deportation if a victim is undocumented. It could also have long-term negative impacts on child custody, especially for people, like those from the LGBTQI communities, who can already face bias in custody matters.

IV. Who is Mandated to Report in Oregon?

To reiterate, as a professional group, domestic and sexual violence advocates in Oregon are not mandatory reporters of child, elder, or adult abuse. However, there may be individuals who are mandatory reporters due to some other aspect of their professional lives. The definition for who is mandated to report varies depending on the type of abuse.

Children:

A child is defined as an unmarried person who is under 18 years of age.

Mandatory reporters of child abuse include any "public or private official," which is defined as "any physician (including any intern or resident), dentist, school employee, licensed practical nurse or registered nurse, employee of the Department of Human Services, State Commission on Children and Families, Child Care Division of the Employment Department, Oregon Youth Authority, a county health department, a community mental health and developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program, peace officer, psychologist, member of the clergy, licensed clinical social worker, optometrist, chiropractor, certified provider of foster care (or an employee thereof), attorney, naturopathic physician, licensed

professional counselor, licensed marriage and family therapist, firefighter or emergency medical technician, court-appointed special advocate, registered or certified child care provider, member of the Legislative Assembly and pharmacist.” ORS 419B.005 (3).

Elders and Individuals with Disabilities:

An elder is defined as any person 65 or older. An individual with disabilities for whom a mandatory report is required is defined as any person who is 18 years of age or older, with a mental illness or developmental disability, and who receives services from a community program or facility.

For older adults, mandatory reporters include any “public or private official,” which is defined as “Physician, naturopathic physician, osteopathic physician, chiropractor, physician assistant or podiatric physician and surgeon, including any intern or resident; Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide or employee of an in-home health service; Employee of the Department of Human Services or community developmental disabilities program; Employee of the Oregon Health Authority, county health department or community mental health program; Peace officer; Member of the clergy; Regulated social worker; Physical, speech or occupational therapist; Senior center employee; Information and referral or outreach worker; Licensed professional counselor or licensed marriage and family therapist; Any public official who comes in contact with elderly persons in the performance of the official’s official duties; Firefighter or emergency medical services provider; Psychologist; Provider of adult foster care or an employee of the provider; Audiologist; Speech-language pathologist.” ORS 124.050 (9).

For individuals with disabilities, mandatory reporters include any “Public or private official,” which is defined as “Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatric physician and surgeon, including any intern or resident; Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of an in-home health service; Employee of the Department of Human Services or Oregon Health Authority, county health department, community mental health program or community developmental disabilities program or private agency contracting with a public body to provide any community mental health service; Peace officer; Member of the clergy; Regulated social worker; Physical, speech or occupational therapist; Information and referral, outreach or crisis worker; Attorney; Licensed professional counselor or licensed marriage and family therapist; Any public official who comes in contact with adults in the performance of the official’s duties; or Firefighter or emergency medical services provider.” ORS 430.735 (12).

V. Why are They Mandated to Report?

The Legislative Assembly found that for the purpose of facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection of the child by stabilizing the family and improving parental capacity, it is necessary and in the public

interest to require mandatory reports and investigations of abuse of children and to encourage voluntary reports. ORS 419B.007.

The Legislative Assembly found that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons. ORS 124.055.

The Legislative Assembly found that for the purpose of preventing abuse and safeguarding and enhancing the welfare of adults with mental illness or developmental disabilities, it is necessary and in the public interest to require mandatory reports and thorough and unbiased investigations of adults with mental illness or developmental disabilities who are allegedly abused. ORS 430.737.

VI. When are They Mandated to Report? ²

Child:

If a person is a mandatory child abuse reporter, the law requires that person to report child abuse when there is reasonable cause to believe that a child he or she has come in contact with has suffered abuse or that a person he or she has come in contact with has abused a child. ORS 419B.010. The legal definition of child abuse in Oregon is found in Oregon Revised Statutes 419B.005.

Elders and Individual with Disabilities:

If a person is a mandatory reporter of elder abuse, the law requires that person to report if there is reasonable cause to believe that any person 65 years of age or older with whom the reporter (while acting in an official capacity) comes in contact has suffered abuse, or that any person with whom the reporter (while acting in an official capacity) comes in contact has abused a person 65 or older. ORS 124.060.

If a person is a mandatory reporter of abuse of an adult with disabilities, the law requires that person to report if there is reasonable cause to believe that any adult with whom that person comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the reporter comes in contact while acting in an official capacity has abused an adult shall report or cause a report to be made. ORS 430.765.

VII. Policies and Procedures Regarding Reporting

Agencies serving domestic and sexual violence survivors should consider how their programs are structured. Programs that have supervisors who are mandatory reporters

² There are circumstances in which a mandated reporter may not be required to report abuse when they receive information in the course of privileged communication. Mandated reporters need to determine if and when this exception applies to them.

may have to report abuse that comes to the attention of the people they supervise. Agencies should develop policies to address this possibility.

Agencies should develop policies describing how situations that could warrant a mandated report will be handled, remembering that the federal funding requires that if release is compelled, the agencies must make reasonable attempts to notify the affected people and take steps to protect their privacy and safety.

Recommended practices could include:

1. Any mandatory reporter will disclose their mandate to report.
 - a. Disclosure should take place at the beginning of any initial contact, when services are being described and the survivor's rights are being explained.
 - b. The survivor will be offered the services of someone who is not a mandatory reporter, either someone within the agency if that is an option, or someone at another agency who can support the survivor with the issues the survivor wants addressed.
 - c. If a survivor seems to be about to disclose information that must be reported, the mandatory reporter will interrupt the disclosure and explain her or his role as a mandatory reporter again.
 - d. Advocates are responsible for ensuring that survivors clearly understand the consequences of sharing information that a mandatory reporter has a duty to report.
 - e. The mandatory reporter will provide full information so the survivor can make informed decisions about what to share and what not to share.
2. If there is a requirement to report, policies should include:
 - a. Direction to the advocate to first offer the victim the opportunity to self-report with advocate support.
 - b. Whom to consult with about situations that could warrant a report – a program or staff supervisor or attorney, for example.
 - c. To whom to report – local Child Welfare office, local office of the Department of Human Services or law enforcement agency.
 - d. How to report – phone call.
 - e. When to report – immediately.
 - f. Safety - The advocate must make reasonable attempts to notify the adult survivor of the required disclosure and take steps necessary to protect the privacy and safety of the person affected by the report. If possible, advocates should actively engage in safety planning with the victim. Ideally these things would be done before the report is made.
 - g. What information must, by law, be disclosed when reporting child abuse:
 - i. Names and addresses of child and parents of child or other person responsible for care of the child;
 - ii. The child's age;
 - iii. Nature and extent of abuse (including evidence of previous abuse);
 - iv. Explanation given for abuse; and

- v. Any other information the reporter believes might be helpful in establishing that abuse occurred and the identity of the perpetrator.
- h. What information must, by law, be disclosed when reporting abuse of the elderly:
 - i. Names and addresses of the elderly person and any persons responsible for the care of the elderly person;
 - ii. Nature and extent of the abuse (including any evidence of previous abuse);
 - iii. Explanation given for the abuse; and
 - iv. Any other information the reporter believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.
- i. What information must, by law, be disclosed when reporting abuse of individuals with disabilities:
 - i. The name, age and present location of the allegedly abused adult;
 - ii. The names and addresses of persons responsible for the adult's care;
 - iii. The nature and extent of the alleged abuse, including any evidence of previous abuse;
 - iv. Any information that led the person making the report to suspect that abuse has occurred plus any other information that the person believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator; and
 - v. The date of the incident.
- j. What information may NOT be disclosed
 - i. Nothing may be reported beyond what is required by law; otherwise, it is a violation of confidentiality.
- k. How to talk to survivors about safety regarding mandatory reporting.
 - Inform the survivor prior to your conversation that you are a mandatory reporter.
 - Inform the survivor when a report must be made. Provide the survivor with an opportunity to self-report or report with the support of advocates from your agency.
 - Protect your relationship with the survivor. A survivor may feel betrayed or angry that the report must be made. Discuss this emotional response immediately; assuring the survivor that you will continue to do what you can as her or his advocate. Offer the option to work with a different advocate if the survivor no longer wants to work with you.
 - A survivor's relationship with an advocate may become even more important once abuse is reported to the system. Define how you will maintain a relationship with the survivor.
 - SAFETY PLAN WITH THE SURVIVOR. Explore risks the survivor may face because of the mandatory report. For example, find out where the perpetrator is now, when and where the perpetrator will be interviewed, what relevant threats the perpetrator has made in past, etc.

3. Agencies should discuss self-reporting as an option. It would be important for advocates to follow whatever procedures the law allows and have been outlined by their agency for discussing and supporting self-reports. Some useful steps may include:
 - Debrief the situation with a supervisor or co-worker, as appropriate, to plan the conversation.
 - Build on the relationship of trust that has been created.
 - Outline possible benefits and risks of reporting.
 - Carefully describe child welfare or adult protective services goals and procedures.
 - Commit to ongoing support and assistance in navigating the system.
 - If reporting and there is a DV/SA advocate co-located at the local office, discuss co-advocacy services.

It is important to recognize that self-reporting may not be a safe option for all survivors.

4. Individuals or agencies can report abuse with the freely given and informed consent of the person they are supporting. This must be written and reasonably time limited. The National Network to End Domestic Violence has created recommended examples of release of information forms in Spanish and English. They are attached as appendices to this document.
5. When making a report to Child Welfare, it can be helpful to discuss engaging a counselor for the child or children. Independent corroboration by a professional, if possible, can be helpful in ongoing legal proceedings, including custody litigation.

VIII. Lack of Advocate Privilege

In Oregon, advocates do not have client privilege. This means that communications between an advocate and a client are not protected. If ordered by the court, advocates must testify or reveal facts about their communication with their clients, and clients cannot prevent advocates from doing so. Advocates in Oregon can and should engage in practices that strive to protect the confidentiality of the survivors they serve, recognizing that the advocate could be court mandated to testify regarding their contacts and communications with a survivor.

National consultants on VAWA advise programs to attempt to quash or vacate a subpoena before providing survivor information at trial. Unfortunately, without privilege, it is difficult to quash or vacate a subpoena. Because of the varying legal issues involved, victim services programs are encouraged to talk with their legal counsel regarding such issues as quashing or vacating a subpoena, requesting a protective order, identifying appropriate record keeping practices and identifying when an advocate is legally obligated to provide information (pre-trial vs. trial), under what circumstances (subpoena vs. court order), and what type of information (oral testimony vs. records). After consultation, programs should develop protocols to address these issues in their agencies.

IX. Community Collaborations and Referrals

1. Multi-Disciplinary Teams (MDTs), Sexual Assault Response Teams (SARTs) and DV Councils are collaborative bodies that may review case-specific information. These groups should have confidentiality agreements and/or Memoranda of Understanding (MOUs) in place among the team members. These documents are often signed by attendees at each meeting. These agreements help to ensure that nothing said in the meeting is used or repeated outside that meeting.³

Signing this confidentiality agreement does not mean that advocates are released from their contractual confidentiality requirements. Advocates in these meetings, even if a confidentiality agreement has been signed by all the attendees, may not share any personally identifying information about a survivor, including whether they are working with a particular survivor, unless that survivor has signed a release of information form.

2. When making referrals to community partners or considering co-advocacy services on behalf of a survivor, it is important for advocates to inform the survivor whether the community partner is a mandatory reporter.

X. Conclusion

Confidentiality is a core principle of victim services. It enhances safety and preserves the dignity of survivors. Control over their account of their own experience, and who hears it, empowers victims. Survivors may be reluctant to disclose for many legitimate reasons, including fear of humiliation or rejection, fear of the impact on children and family, and fear of retaliation.

Disclosure of information shared in confidence could: put the victim and her or his children at risk, cause an escalation of the abuse, be used against the victim in court, undermine the survivor's trust in the system, affect a survivor's employment or education, harm a victim's health, or affect a survivor's relationships with family, friends and the community.

Without an assurance of confidentiality, survivors may not seek assistance or may not disclose the true nature of their situation, which could compromise safety planning.

Federal funding requirements reflect recognition by public policy makers of the importance of maintaining confidentiality for victims of abuse.

³ DA-based advocates must understand their *Brady* obligations in these circumstances and must disclose these obligations. See Footnote 1.

APPENDIX⁴

Client Limited Release of Information Form – English
Client Limited Release of Information Form – Spanish

⁴ The attached forms are intended as a template for programs to use in creating Limited Release of Information Forms for their clients and can be adapted to fit the needs of the program. They are a product of the National Network to End Domestic Violence and credit should be given as follows: “Created for adaptation by Julie Kunce Field, J.D. and NNEDV”. In adapting the form for their use, if programs have concerns about specific language or terminology used in the Spanish form they are encouraged to contact NNEDV for assistance in order to maintain the legal integrity of the form. Visit <http://nnedv.org/tools/template/38-instructions> for additional information about adapting the forms for program use.

[APPROPRIATE AGENCY LETTERHEAD]

READ FIRST: Before you decide whether or not to let [Program/Agency Name] share some of your confidential information with another agency or person, an advocate at [Program/Agency Name] will discuss with you all alternatives and any potential risks and benefits that could result from sharing your confidential information. If you decide you want [Program/Agency Name] to release some of your confidential information, you can use this form to choose what is shared, how it's shared, with whom, and for how long.

I understand that [Program/Agency Name] has an obligation to keep my personal information, identifying information, and my records confidential. I also understand that I can choose to allow [Program/Agency Name] to release some of my personal information to certain individuals or agencies.

I, _____, authorize [Program/Agency Name] to share the following specific information with:
name

Who I want to have my information:	Name:
	Specific Office at Agency:
	Phone Number:

The information may be shared: ☐ in person ☐ by phone ☐ by fax ☐ by mail ☐ by e-mail

☐ I understand that electronic mail (e-mail) is not confidential and can be intercepted and read by other people.

What info about me will be shared:	(List as specifically as possible, for example: name, dates of service, any documents).
Why I want my info shared: (purpose)	(List as specifically as possible, for example: to receive benefits).

Please Note: there is a risk that a limited release of information can potentially open up access by others to all of your confidential information held by [Program/Agency Name].

I understand:

- ☐ That I do not have to sign a release form. I do not have to allow [Program/Agency Name] to share my information. Signing a release form is completely voluntary. That this release is limited to what I write above. If I would like [Program/Agency Name] to release information about me in the future, I will need to sign another written, time-limited release.
- ☐ That releasing information about me could give another agency or person information about my location and would confirm that I have been receiving services from [Program/Agency Name].
- ☐ That [Program/Agency Name] and I may not be able to control what happens to my information once it has been released to the above person or agency, and that the agency or person getting my information may be required by law or practice to share it with others.

Expiration should meet the needs of the victim, which is typically no more than 15-30 days, but may be shorter or longer.

This release expires on _____
Date Time

I understand that this release is valid when I sign it and that I may withdraw my consent to this release at any time either orally or in writing.

Date: _____

Signed: _____

Time: _____ **Witness:** _____

Reaffirmation and Extension (if additional time is necessary to meet the purpose of this release)

I confirm that this release is still valid, and I would like to extend the release until _____
New Date New Time

[PAPEL CON MEMBRETE APROPIADO DE LA AGENCIA]

■ **Lea Primero:** Antes de que usted decida si desea que [Programa/Nombre de Agencia] comparta información confidencial con otra agencia o persona, un abogado de [Programa/Nombre de Agencia] discutirá con usted todas las alternativas y cualquier riesgo y ventajas potenciales que podrían resultar por compartir su información confidencial. Si usted decide que si desea que [Programa/Nombre de Agencia] comparta alguna información personal confidencial, usted puede utilizar este formulario para elegir lo qué se comparte, cómo se comparte, con quien, y por cuánto tiempo

Entiendo que [Programa/Nombre de Agencia] tiene la obligación de mantener confidencial mi información personal, información de identificación personal, y mis expedientes. También entiendo que puedo permitir que el [Programa/Nombre de Agencia] comparta algo de mi información personal con ciertos individuos o agencias.

Yo, _____, autorizo a [Programa/Nombre de Agencia] que comparta la siguiente información específica con:

A quien deseo que tenga mi información:	Nombre: Oficina específica dentro de la Agencia: Numero de Teléfono:
--	--

La información puede ser compartida:

- ☐ en persona ☐ por teléfono ☐ por fax ☐ por correo ☐ por correo electrónico
☐ *Entiendo que el correo electrónico (E-mail) no es confidencial y puede ser interceptado y leído por otras personas.*

Qué información sobre mí será compartida:	(Anoté lo más detalladamente posible, por ejemplo: nombre, fechas del servicio, cualquier documento).
Porqué deseo compartir mi información: (propósito)	(Anoté lo más detalladamente posible, por ejemplo: para recibir beneficios del estado).

Por favor tome nota: existe el riesgo de que un lanzamiento limitado de su información potencialmente podría abrirle el acceso a otros a toda su información confidencial guardada por [Programa/Nombre de Agencia].

Yo entiendo:

- ☐ Que no tengo que firmar un formulario del lanzamiento. No tengo que permitir que [Programa/Nombre de Agencia] comparta mi información. El firmar un formulario de divulgación es totalmente voluntario. Que esta autorización está limitada a lo que he escrito arriba. Si quisiera que [Programa/Nombre de Agencia] divulgue mi información en el futuro, necesitaré firmar otra autorización por tiempo limitado y por escrito.
- ☐ Que al divulgar información sobre mí podría darle información a otra agencia o persona sobre mi ubicación y podría confirmar que he estado recibiendo servicios de [Programa/Nombre de Agencia].
- ☐ Que [Programa/Nombre de Agencia] y yo tal vez no podremos controlar lo qué suceda con mi información una vez haya sido divulgada a la persona o a agencia antedicha, y que la agencia o persona que obtenga mi información se le pueda requerir por ley o práctica compartirla con otros.

La expiración debe considerar las necesidades de la víctima, que es típicamente no más de 15-30 días, pero puede ser más o

Esta autorización se vence el _____

Fecha

Hora

Entiendo que este formulario es válido cuando lo firmo y puedo retirar mi consentimiento a este en cualquier momento, en forma oral o escrita.

Fecha: _____

Firma: _____

Hora: _____

Testigo: .

Reafirmación y extensión (si tiempo adicional es necesario para resolver el propósito de ésta divulgación)

Confirmo que esta autorización sigue siendo válida, y quisiera extender la autorización hasta _____

ⁱ Please contact the Oregon Attorney General's Sexual Assault Task Force for permission to reproduce this document in full or in part (with the exception of the appendices):

3625 River Rd. N., Suite 275, Keizer OR 97303 | Phone: (503) 990-6541 | Fax: (503) 990-6547

Email: taskforce@oregonsatf.org | Web: www.oregonsatf.org