

# Statewide Sexual Assault Advocate Training Manual



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### Introduction

The Statewide Sexual Assault Advocate Training Manual is intended for use as a general resource for advocates and other helping professionals. The manual provides information and guidance designed to support effective advocacy for victims and survivors of sexual assault. The manual also contains current information on Oregon-specific laws, rights and remedies related to sexual assault.

**Please note:** *This Manual is a practice guide aimed at service providers. It's not intended for distribution to victims and survivors, whose needs would be better met by materials that speak directly to them.*

### Some Notes about Language

- The Statewide Sexual Assault Advocate Training Manual uses the term “victim” to denote an individual who has been targeted by a sexual abuser. “Victim,” rather than “survivor,” is used purposefully to convey the always unwanted and sometimes criminal nature of sexual assault. While its use is intended to signify the strength and resiliency of victims, the term “survivor” can create a distance from the abhorrent nature of sexual assault and remove the offender from our awareness. Most people who are sexually assaulted do survive, but the experience of being assaulted is not an aspect of a person’s strength or a choice made by the targeted person. When the term “survivor” is used in the Manual it is meant to acknowledge and refer to the healing and recovery process of victims.
- The manual includes language to refer to *people who sexually abuse, sexual abusers, perpetrators, and individuals* in lieu of *offender(s)* to 1) address sexual offense specific behavior, and 2) expand the definition of people who have caused harm to include adjudicated and non-adjudicated sexual abusers. The term “offender” is only used as it applies to individuals who have been adjudicated for a sex offense.
- In all their communications with victims, advocates must remember that sexual assault is an experience, NOT an identity; no one should be defined by their victimization.
- The manual does not make frequent use of pronouns, but when they are employed “she” or “they” is used to denote a victim of sexual assault and “he” to denote a perpetrator. Sexual assault can be perpetrated by, and can target, all genders. Research indicates that the majority of victims are women and the perpetrator a man. This is documented in victim surveys, disclosures and reports to advocates, medical facilities, and law enforcement agencies.<sup>1</sup>

### A Contextual Analysis

Understanding that sexual assault is an act of violence chosen by the individual who committed the sexual offense - and a violation of the victim’s human rights - is an essential foundation for proper victim response. But sexual assault does not take place

## Introduction

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in a vacuum. Truly effective advocacy is rooted in an analysis of the broader context in which sexual violence occurs.

As mentioned above, the majority of victims and perpetrators of sexual assault are women and men respectively. Moreover, nearly all girls and women experience some form of sexual assault and/or sexual harassment throughout their lifetimes, while most men and boys do not. Sexual violence, along with domestic violence and other forms of gendered violence, is a manifestation of oppression.

In this context, oppression is defined as systematic social forces that justify, normalize, and support the marginalization and mistreatment of people who hold certain social identities, such as race, class, ethnicity, immigration status, and gender, for the purpose of exploiting them in ways that benefit the dominant group. Taking into consideration historic and ongoing social inequalities along gender lines, sexual violence serves as a powerful mechanism to maintain superior or dominant status by men over women — sexism. Sexual violence is also used to oppress individuals who don't conform to dominant gender roles that define what is "appropriate" for men and for women. Dominant gender roles, in part, enforce men's entitlement to sex, as well as to power and control. That sexual violence is considered a "women's issue" and not one that most men identify with personally<sup>2</sup> further demonstrates this analysis.

It is important to note that identity is multifaceted, and each individual experiences oppression uniquely based on how those facets (race, gender, ethnicity, socioeconomic status, age, ability, sexual orientation, national origin, 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 recognition that oppression is the root cause of a much broader range of impacts they may be experiencing in their lives.

**Please note:** This analysis is in no way intended to minimize the real harm and trauma suffered by boys and men. 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). But 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).

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<sup>1</sup> 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.

<sup>2</sup> Rus Ervin Funk, "Reaching Men: Strategies for Preventing Sexist Attitudes, Behaviors, and Violence," Indianapolis, IN: JIST Life (2006).

### Trauma and Trauma-Informed Care

Sexual assault is a destabilizing and terrifying experience that can result in trauma, which is a deep and often prolonged distress that can overwhelm a person's usual coping skills.<sup>1</sup> A deep understanding of trauma and how it impacts victims is foundational to providing effective and trauma-informed advocacy. In addition to the information below, please refer to the Victim Impact section of the manual for further reference. Always keep in mind that each individual's response will vary based on multiple and often interacting life factors.

#### **Impact of trauma on the brain**

*The Central Nervous System is designed to help us survive* and has the ability to rapidly assess whether a person or a situation is safe, dangerous, or life-threatening. Sexual assault can activate this system, setting into motion the key survival responses wired in the brainstem, the most primitive part of the brain and the first part to develop. These survival responses are to **fight**, to **flee**, to **freeze**, or to **feign death**. These responses are primitive, automatic and inborn; within fractions of a second, the body prepares to protect itself against a real or perceived threat.

*When survival mode kicks in, the “thinking brain” is mostly off-line.* The prefrontal cortex is responsible for higher-order decision-making, analysis and planning – but when the survival responses are triggered, the “survival brain,” is in charge, as the prefrontal cortex would get in the way of the necessary immediate response. Depending on which survival response is implemented, different neurochemical reactions will occur. For example, adrenaline is involved in fight or flight to help the body get in motion. If the “feigning death” response is implemented, the brain directs muscles to go limp and pain receptors to shut down through the release of hormones and other neurochemical changes.

*It is important to note that different brains will react differently* to trauma based on a number of factors, and victims are unable to consciously choose how to respond when survival mode is in play. For example, if the body's fear circuitry reads escape as impossible, the body may become literally paralyzed with fear, unable to move or to cry out. Unfortunately, erroneous but powerful cultural beliefs about consent still exist; whether the assault was unwanted and nonconsensual is assessed based on the degree to which they fought the assailant (i.e. no fight = consent). This is a gross misunderstanding of how the brain works.

#### **More about the Neurobiology of Sexual Violence**

Below are more details about brain functions and hormonal changes that impact the human body during trauma, and the implications for survivors of sexual violence.

##### **1. Limbic System**

The limbic system includes the hippocampus, amygdala, thalamus, hypothalamus, and the cingulate gyrus. The limbic system and its cortical structures are the area of the brain

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<sup>1</sup> <https://traumainformedoregon.org/resources/trauma/>

where we experience emotion and reaction. When experiencing trauma, this area of the brain can react on its own accord. Trauma also influences the autonomic nervous system and effects memory storage.

### **2. *Amygdala***

The amygdala has two-way connections with the thalamus, hypothalamus, and hippocampus. It creates intense sensations of anger, anxiety, and fear and the expression of these emotions. Activation of the amygdala can affect parasympathetic control and sympathetic activation as well as reflex potential.

### **3. *Hypothalamus***

The hypothalamus is responsible for producing the hormones that control mood, body temperature, thirst and hunger. It uses the pituitary gland and influences endocrine function, autonomic processes, and metabolism. It can trigger the sympathetic nervous system (SNS) which releases a corticotrophin-releasing hormone. The SNS affects the adrenal glands which go on to release epinephrine and norepinephrine.

### **4. *Thalamus***

The thalamus is involved in motor signal relay. It controls sensory input (visual, auditory, and somatosensory). Immediately following a traumatic event the relay of sensory information is disrupted. This can influence memory and its storage capabilities and can cause the survivor to experience “strange or odd” sensations during and immediately following an assault.

### **5. *Hippocampus***

The hippocampus plays a vital role in the creation of memories, the consolidation of information and spatial navigation. When trauma is experienced, the hippocampus and amygdala inform and influence one another instantaneously, thus affecting the hormone production of the amygdala and the memory creation/storage of the hippocampus.

### **6. *Hypothalamic-Pituitary-Adrenal (HPA) Axis***

While a detailed account of the endocrinology of trauma response is beyond the scope of this manual, it's important to be aware that hormones may influence survivors' behavior during and following an assault. The HPA system controls reactions to stress and is responsible for bringing the body back into balance. Several chemicals/hormones are released during or following a traumatic event, including: catecholamines (epinephrine and norepinephrine); corticosteroids (glucocorticoids, cortisol); opioids; and oxytocin. Their purpose is to prevent pain, dull awareness of danger and fear, inhibit memory consolidation, promote a feeling of well-being, and shore up the body's immune system.

However, as the body's re-balancing proceeds, the hormones involved can produce behaviors that can seem out of place or inconsistent with the traumatic events that produce them, such as seeming calm or disinterested, giggling or cracking jokes, or seeming overly sympathetic to the perpetrator. Understanding the hormonal response to trauma can also be helpful when working with law enforcement officers at the scene or hospital. Advocates can help officers make sense of why the survivor doesn't appear “appropriately” distraught,

seems apathetic when making a report, or responds with humor and understanding when describing the perpetrator or the events. Further, advocates can reinforce the fact that a survivor's inability to remember all or parts of an assault in a cohesive and chronological order is normal for someone experiencing trauma, helping to reframe an officer's interpretation of impaired memory as an indication that the survivor is hiding something or making up the assault. For a more detailed description of trauma and memory please see Dr. Jim Hopper's video on Neurobiology & Sexual Assault: [https://www.youtube.com/watch?v=dwTQ\\_U3p5Wc](https://www.youtube.com/watch?v=dwTQ_U3p5Wc).

### **Other Impacts of Trauma**

Below is a listing of some common reactions to a traumatic event. Advocates can support survivors by helping them to understand that ***this wide range of reactions is completely normal*** following a sexual assault, and by creating safe spaces for them to discuss what they are experiencing.

#### ***Physical/Behavioral Reactions***

Sleep disturbances, appetite disturbances, fatigue, inability to rest, angry outbursts, withdrawal or isolation, rapid heartbeat, nausea or upset stomach, aches and pains, increased susceptibility to illness, dizziness, increased irritability, panic attacks, "spacing out" or dissociation, insomnia, startles easily, muscle tension.

#### ***Emotional Reactions***

Shock, disbelief, fear, anxiety, grief, guilt, shame, denial, minimization, depression, anger, panic, apprehension, despair, hopelessness, emotional detachment, increased need for control, emotional numbing, mood swings, emotional outbursts, feeling overwhelmed, diminished interest in activities, hyper-arousal, re-experiencing trauma, spontaneous crying, exaggerated startle response, sensitive to the reactions of others, disorientation.

#### ***Emotional Dysregulation***

Trauma can impact a survivor's ability to regulate their emotions. As a result, victims may have strong emotional responses that are poorly modulated, not expressed in a positive way, or are not in keeping with the conventionally accepted range of emotional responses in our society. This may present as a survivor being aggressive or hostile toward others, or displaying marked mood swings. The survivor may be perceived as having an emotional response that is extreme for the situation. Unfortunately, this can result in victims being denied services by providers who are unaware of this normal trauma response.

#### ***Psychological/Cognitive Reactions***

Difficulty concentrating, slowed thinking, difficulty making decisions, confusion, blaming self or others, poor attention span, mental rigidity, disorientation, uncertainty, memory difficulties, difficulty with problem solving, nightmares, flashbacks (triggered by sights, smells, sounds), intrusive thoughts or images, information, thoughts, emotions, behaviors and physical feelings may appear disconnected, may have vague or "choppy" recollection of traumatic experience, memories are stored as impressions, feelings and images.

### ***Historical, Persistent and Complex Trauma***

Victims who are also members of marginalized and/or historically oppressed populations may have additional needs following sexual assault. The trauma impacts of sexual violence may be significantly compounded by prior and/or persistent trauma resulting from racism, discrimination, and a host of socio-economic disparities. Frequent exposure to instances of racism, discrimination, and other adverse events results in the chronic activation of the stress response system. These toxic levels of stress can overwhelm and compromise children's developing systems, persist into adulthood, and lead to poor health outcomes and chronic disease.<sup>2</sup>

Beyond exposure to instances of racism, discrimination, and microaggressions, many people who experience sexual violence carry the deep impacts of historical trauma. Historical trauma is the collective emotional and psychological injury both over the lifespan and across generations resulting from cataclysmic and traumatic historical events within a family, community, or country. This concept was originally developed by First Nations and Aboriginal people in Canada to describe the devastating trauma of genocide, destruction of culture, and forcible removal from community and family experienced by Native people.<sup>3</sup>

These trauma effects, which can be physical/biological, social, emotional, psychological and spiritual, are trans-generational, especially when a group's oppressed societal condition is ongoing. Historical trauma is a potent contributor to the complex trauma response that follows sexual violence and affects other populations of victims. In addition to Native Americans, African-Americans, for example, have long and multigenerational histories of enslavement, rape, forced sterilization, forced breeding, and forced prostitution. Jewish descendants of the Holocaust, and many immigrants who come to the United States from war-torn countries also carry the impact of historical trauma.

Marginalized/historically oppressed individuals may also experience additional stressors in the context of sexual assault, such as poor response or mistreatment based on their race, ethnicity, immigrant status, age, gender identity, socio-economic status, physical or mental ability, language, national origin, etc.

***As advocates, we can pay attention*** to the population groups or communities with which victims identify and offer connections to culturally-specific services or providers when available. If such resources and supports are not available, it is important to acknowledge that and to discuss with the survivor what natural supports they might find helpful. More importantly, we can increase our awareness of our own privilege in the role of advocate as we work together with the survivor. Trauma-informed advocacy includes acting with awareness of inherent power differentials so that we can strive to minimize them through working collaboratively. The advocate's ability to recognize and discuss complex trauma impacts can be validating to survivors and may help them give voice to what they are experiencing.

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<sup>2</sup> <http://researchlablog.org/post/140822617459/could-toxic-stress-explain-racial-health>

<sup>3</sup> <http://sharingculture.info/what-is-historical-trauma.html>

### Trauma-Informed Care

The groundbreaking work of Judith Herman (*Trauma and Recovery*) and Dr. Sandra Bloom (the Sanctuary Model) has long informed the work of the domestic and sexual violence advocacy community. These concepts have been researched and validated, and have increasingly found a home in the larger social services arena. Trauma-informed Care (TIC) is a strength-based framework grounded in an understanding of, and responsiveness to, the impact of trauma. TIC emphasizes physical, psychological, and emotional safety for both providers and survivors of trauma to rebuild a sense of control and empowerment.<sup>4</sup>

### Principles of Trauma-Informed Care

The concept of Trauma Informed Care emerged from a group of therapists at Community Connections in Washington D.C.<sup>5</sup> Its principles were fully developed by a group of researchers from the nine-site, five-year “Women, Co-Occurring Disorders and Violence Study.”<sup>6</sup> From this work emerged 10 core principles that characterize trauma-informed services.

#### Trauma-Informed Services:

1. Recognize that violence and victimization impact human development and coping strategies.
2. Identify recovery from trauma as the primary goal.
3. Employ an empowerment model.
4. Strive to maximize victims’ choices and control over their recovery.
5. Are based in collaborative relationship with the victim.
6. Create an atmosphere that is respectful of victims’ needs for safety, dignity and acceptance.
7. Emphasize victims’ strengths, highlighting adaptation over symptoms and resilience over pathology.
8. Aim to minimize re-traumatization.
9. Strive toward cultural competence and understanding each survivor in the context of their life experiences and cultural background.
10. Actively seek victim input and involvement in designing and evaluating services.

The National Center for Trauma-Informed Care (NCTIC), part of the Substance Abuse and Mental Health Services Administration (SAMHSA), asserts that TIC principles extend beyond direct client services provision. Ideally, trauma awareness should extend to families, staff, and others involved with the program or system, and should be fully integrated into policies, procedures, and practices in all levels of the organization.

**Trauma-Informed Advocacy** aims at promoting movement in four areas<sup>7</sup> over the course of working together with victims.

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<sup>4</sup> Hopper et al (2010)

<sup>5</sup> Harris, M., & Fallot, R. (2001)

<sup>6</sup> Elliot, Bjelajac, Fallot, Markoff, & Reed (2005)

<sup>7</sup> D. Freeman in Harris & Fallot (2001)

1. **Power and Control:** Moves decision-making from the advocate to the survivor. Initial focus on problems and symptoms shifts toward emphasis on strengths and skill-building.
2. **Authority and Responsibility:** Moves from an initial emphasis on system interventions to recognition of the survivor as expert.
3. **Goals:** Moves from crisis stabilization to goal-setting, growth and change.
4. **Language:** Moves from clinical jargon to everyday language.

### **How Can Advocates Foster These Shifts?**

- Understand that victims may have valid reasons to feel uncomfortable answering questions.
- Ask only for needed information, and explain why it's needed.
- Clearly communicate that the survivor has the right to not answer.
- Understand that the victim's trust must be earned.
- Work in partnership with the survivor to create safety plans for times of crisis.
- Provide support in identifying if, when, and where to access trauma-specific interventions.
- Help victims to recognize their own strengths.
- Support skill-building and everyday problem solving.
- Share what we know about how trauma may impact people.

Advocates should understand and respect that survivors are experts on their own lives. Our role is not to direct them, but to encourage and support them in identifying their own goals and making their own decisions. Through our own consistency, reliability and follow-through, we can help to re-instill the survivor's ability to trust in others when trust has been shaken or lost. Effective trauma-informed advocacy springs from authenticity, transparency, and a willingness to partner with survivors to ensure that their voice, and their choices, define and drive the help and services they receive.

Trauma-informed care and services have been central principles of advocacy work since the beginning of the sexual assault and domestic violence movement. Attention to these principles in many helping professions has increased in recent years, and many resources for learning more about it are now available. Some approaches are specific to a population, such as children, individuals, families, people with mental illness, etc. Others address systems or organizations or aim to assist with developing supports among co-workers and colleagues. These approaches are not necessarily specific to working with people who have experienced sexual violence, but they all address the experience of trauma and may be of interest to advocates. Following are some of the notable models:

- Addiction and Trauma Recovery Integration Model (ATRIUM)
- Essence of Being Real
- Risking Connection®
- Sanctuary Model®
- Seeking Safety
- Trauma, Addiction, Mental Health, and Recovery (TAMAR)

- Trauma Affect Regulation: Guide for Education and Therapy (TARGET)
- Trauma Recovery and Empowerment Model (TREM, M-TREM, Teen-TREM, TREM in Spanish)

### **Putting it All Together: Integrating Trauma-Informed Services in Advocacy Work**

Below are a few examples of situations you may face as an advocate, along with helpful tips about how TIC can be integrated through language, body cues, and creating shared space.

#### **■ Direct Service**

**Effective advocacy requires understanding the trauma impacts** of experiencing sexual violence. Trauma may show up or be expressed by survivors in any number of ways, and trauma-informed advocates must remember that these responses to trauma are always at play for the survivor. This sometimes presents challenges for advocates. It may take more time, patience, flexibility and sensitivity to support survivors as they process feelings, examine options and decisions, or make safety plans.

- **When communication or forward movement stalls**, advocates can help survivors to feel supported and understood as well as remain engaged in naming and processing their experience. Some helpful lines could include “It sounds like you may be feeling \_\_\_\_\_ right now, would you like to talk about that?” or “This is a lot to take in; should we take a break?”
- **Practicing trauma-informed advocacy goes beyond verbal communication**; it also entails learning to recognize heightened emotional states and matching them with an appropriate response. This includes using body language that is welcoming and non-threatening, adapting our tone of voice, staying attuned to how we share physical space, the model we present when we talk about or interact with others, and providing information in a sensitive manner.
- **The environment in which we provide advocacy services** is another important aspect of trauma-informed practice. Is your meeting place cluttered and potentially unsettling? Are you engaging in a sensitive conversation in a public area that might feel unsafe for someone who has recently experienced a traumatic event? These elements and others can shape trauma survivors’ experiences of your contact with them; they may trigger stressful thoughts or feelings, or they may introduce a sense of calm and safety. Meeting in a space with comfortable furniture, warm colors, quiet surroundings, gentle background music, and minimal clutter or distractions can support a sense of safety and trust for someone whose trauma is recent. It can also provide a soothing and calm atmosphere that promotes clarity as the survivor makes decisions about their safety and goals.

### **Community Partners**

**Multiple disciplines may be involved in responding** to an incident of sexual violence, including law enforcement, medical professionals, child welfare professionals, or other social service providers. Each responder serves a different purpose and role and may have

a distinct lens through which they view the situation. These different and sometimes non-aligned perspectives can sometimes challenge providing a truly comprehensive and collaborative response.

**The principles of TIC can be a useful concept** when working with this diverse array of helping professionals. It's helpful to remember that these responders, as a rule, have good intentions, aim to be assistive to the survivor, and often themselves have extensive training on trauma and trauma-informed care. In working together, advocates may sometimes experience concern about whether the best interests of the survivor are being served. When these potential conflicts or challenging situations arise, it may be helpful to reference what we know about trauma and to key in on the survivor's likely experience of the interventions in question. Some helpful conversation-starters could include: "I'm wondering if all of these questions may be difficult for the survivor right now; they may not be feeling very open and trusting based on what's just happened." or "That sounds like it could be an indication of trauma; let's see if we can move to a quieter place to have this conversation." or "I really think that trauma could be playing in right now; the survivor seems to be acting pretty normally given what they've just been through."

### **Within the Agency and Shared Environment**

**Given the high levels of exposure to others' traumatic experiences**, it's not hard to understand that advocates are themselves impacted. In fact, some of the very same qualities that make for a good advocate – openness and the ability to listen deeply – increase our vulnerability to what is known as vicarious trauma. Even the most seasoned and capable advocates experience vicarious trauma. Further, we know that many advocates enter the field because they are survivors of sexual violence or relatable experiences, and can be reminded of their own trauma as they support others.

**Consequently, as we incorporate TIC principles into our work with survivors**, we should also apply them in our relationships and communications with co-workers. Just as with survivors, noticing signs of heightened emotional states allows us to match what we see with an appropriate response. It's okay to kindly say, "You're not seeming like your usual self right now; is something going on?" or "You had a tough call-out last night; how are you doing?" or "Is there something you need that might help you get through this hard time?"

### **Trauma-Informed Prevention**

The Attorney General's Sexual Assault Task Force (AGSATF) defines primary prevention of sexual violence as "approaches that seek to eliminate the root causes of sexual violence and to stop sexual violence from ever occurring." As we strive to create models of primary prevention in all communities, we carry the awareness that sexual violence is already actively occurring for people within those communities, and that they are acutely affected. Our work to eliminate the root causes of sexual violence cannot and should not be isolated from the realities faced by those victims, or from the important work of the people and programs that support them.

## Trauma and Trauma-Informed Care

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Trauma-informed prevention programs, therefore, build upon existing and trusted advocacy services, community partnerships, school partnerships, and counseling programs to create support systems and networks for those who experience violence. This involves promoting the creation of trauma-informed environments, in which there is program-wide awareness of and intentionality around the impact of our environments, interactions, and approaches when working with people likely to be experiencing trauma. Staff must be trained to build a thorough understanding of trauma, how it may show up in the people we work with – including co-workers and colleagues - and the skills, responses and interventions that are effective in supporting rather than re-traumatizing victims.

Trauma-informed prevention also extends to our work with partners and the network of services in the community that victims may access for support. Sharing what we know about trauma-informed environments and approaches can help to ensure that survivors will find safe spaces throughout the response system, and that re-traumatization will become less likely following a sexual violence experience.

On a societal level, it is the work of primary prevention programs to promote protective factors that serve to reduce and eliminate violence, and to counter the attitudes, norms, and behaviors that serve to reinforce and perpetuate it. This includes both formal and informal prevention education that reaches both potential victims and potential perpetrators – all of whom have been affected by the social norms that perpetuate violence. By providing information and shared definitions in safe spaces, we can help people to acknowledge and address their experiences and understand the influences on their relationship practices. When people come to understand how to make healthier choices, we can stop violence before it happens.

# Sexual Assault Dynamics

## Overview

**Most of society agrees that sexual assault is a threat to public safety**, yet the debate about what exactly it is seems far from over. Shaped by history, culture and popular culture, religion and individual beliefs, and influenced by the context in which it occurs, universal agreement about what constitutes rape and sexual violence is elusive. An examination of sexual assault dynamics is foundational to understanding our individual, systemic, and societal responses, and to developing a functional definition of what does - and does not - constitute rape and sexual assault.

**Extensive study has taken place around the question of why sexual assault occurs**, and why it is so prevalent. Historical context is important here. Rape was originally a property crime in the U.S. and Europe. If a woman was raped and an assailant was identified, the assailant had to pay restitution to the male relative 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 still be seen in current law 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, every state still had laws on the books that exempted from prosecution any sexual assault perpetrator who was married to the victim. This illustrates a quite recent legal reflection of the status of women in society and of the historical understanding of marriage as a property contract that effectively 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 discussed publicly.

**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 the individual who committed the sexual offense or the broader societal context in which sexual assault occurs. A focus on the victim is rooted in the belief that if they had not made a particular choice, engaged in a particular activity, or acted in a particular way they would not have been sexually assaulted. In short, this is a belief that the victim is responsible, even in part, for the assault. The message is clear: we can avoid being assaulted ourselves if we avoid making the same bad choices that victims have made.

**Meanwhile, people who commit sexual offenses continue committing acts of sexual assault with little fear of consequence.** For some, there is little or no afterthought; for others, sexual assault feeds their sexual fantasies. Many of perpetrate sexual abuse and assault never experience consequences of any kind, but victims will *always* suffer consequences of sexual assault. Victims experience financial impacts (reduced productivity, missed time at work, job loss); health impacts (stress-induced illness, substance abuse, depression); and social impacts (broken relationships, fear, trauma, changed worldview, loss of hope).

## Defining Sexual Assault

**Sexual assault is any nonconsensual sexual act;** that is, a sexual act inflicted upon a person

unable to grant consent OR compelled through use of physical force, manipulation, coercion, threats, or intimidation. Sexual assault is often characterized by a complete lack of care or concern for the victim on the part of the perpetrator as to non-verbal and/or verbal cues signaling lack of consent. The perpetrator makes a choice to continue the progression of sexual activity or sexual behaviors without the enthusiastic consent of the other person. Thinking errors based on entitlement, gender roles, and a host of other socio-cultural factors are used to justify the choice to sexually assault and may also set the stage for the credibility of the victim's account to be questioned afterwards.

### **Sexual Abusers**

**Who are sexual abusers and what characterizes them?** This is a straightforward question with complex answers. Individuals who commit a sexual offense 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 they rape, and why did they rape me?

**Rape and sexual assault have long been considered a crime of power and control.** But while power and control can be a motivation for committing sexual offenses, the motivations for rape and sexual assault are more complex than power and control alone. Perpetrators of sexual assault are motivated by many different things. Sexual gratification can be one component of the motivation, or we would expect to see the need for power and control to manifest in another way.

**Motivations for offending can also include:**

- **Entitlement** — a sense of entitlement to control another person, to get sexual gratification, to have what they want when they want it, or to assert that their needs and wants are more important than someone else's.
- **Arousal** — arousal to children, pain, fear/terror, shame and humiliation, or dominance.
- **Sexism and gender roles** — a belief that women/their victim are inherently inferior to men/themselves, should have subordinate status, and should be consigned to the specific work, roles and functions most commonly associated with caretaking and serving men's needs. Gender roles can also be a factor when an individual's gender identity or expression does not reflect dominant ideals and characteristics of femininity or masculinity.

This is by no means an exhaustive list of what may motivate sexual abusers; 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 a sexual offense.

In looking further at the question of “why me?” it's important to keep in mind that sexual abusers choose their victims not based on what the general populations considers sexually arousing, but on their ability to successfully commit the assault without consequences, further discussed below. This can be seen in the fact that an astounding 83% of women with a disability will be sexually assaulted in their lifetime,<sup>8</sup> as compared to 25% of college

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<sup>8</sup> Stimpson, L. & Best, M. Courage “Above All: Sexual Assault Against Women with Disabilities.” DisAbleD Women's Network: Toronto. 1991.

women who experience rape or attempted rape.<sup>9</sup>

**If we realize that what is necessary to commit a sexual assault is a sexual abuser**, the rest becomes clear. If there were no sexual abusers, every person at risk or who engaged in what is labelled “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?”

But not everyone who picks up a hitchhiker – or buys someone a drink or hangs out on the corner - commits rape. Only a sexual abuser would make that choice. To really understand the dynamics of sexual assault is to understand that **it is sexual abusers and their behaviors (not victims or their behaviors) that cause sexual assault**. Until we as a society understand and confront that fact, we continue to provide an environment in which sexual assault can flourish.

### **Victims**

Victims of sexual assault can be anyone. As mentioned above, however, victims are most often selected by perpetrators based on the perpetrator’s perception that they will be able to successfully sexually assault the other person and that the victim will not report or will not be believed if they do report. Individuals who fit the descriptions below are disproportionately targeted for sexual assault:

#### **ACCESSIBLE (or can be made so):**

A victim is accessible when an perpetrator perceives them as attainable by proximity and/or as someone easily approached, coerced or influenced. Victims may be accessible through work, school, home, or social events, or accessibility can also be created by the perpetrator. For example, someone who sexually abuses youth might choose to become a volunteer coach, a tutor, a youth group leader at church, or work in an outreach program for homeless teens. That positions them to have a great deal of access to adolescents and will likely grant a certain degree of trust and respect; an open door.

#### **VULNERABLE (or can be made so):**

For our purposes, vulnerability is any way in which someone may not have real or perceived limitations in individual options and choices. For example, an elderly woman in a retirement home may be accessible to all of the staff working there, as well as vulnerable due to her limited physical strength and mobility. She may be unable to fight off an attack, call out for help, or find other arrangements for care to avoid the perpetrator.

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<sup>9</sup> 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, D.C., 2000.

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

Our society tends to assess trustworthiness and credibility based on factors unrelated to a person's character. For example, the pastor of a church may be deemed credible by virtue of their profession. A sex worker, on the other hand, is someone who may be inherently distrusted. People with criminal histories, histories of substance abuse, communication impairments, cognitive disabilities, mental health issues, poor grammar, and other such characteristics may also be perceived as lacking in credibility.

**Further, the effects of systemic oppression can influence who may become a sexual perpetrator's target.** For example, a lesbian woman of color may be perceived as less likely to report a sexual assault to authorities based on the fear she would not be believed, or fear of 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 populations or identity groups. Perpetrators rely upon accessibility and vulnerability to successfully carry out their crimes and *count on* the victim's perceived 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).

### **Victim Reporting**

Sexual Assault is the most under-reported crime in the United States.<sup>10</sup> As detailed above, perpetrators select victims in part based on a lower likelihood that the crime will be reported by the victim. Between 1992 and 2000, an average of just 31 percent of attempted

### **Who Might Sexual Offenders Target Most?**

Based on vulnerability, accessibility, and lack of credibility in our society, sexual offenders may be more likely to target the following groups:

- Women, especially women of color
- Children
- Adolescents
- People with developmental disabilities
- People with communication impairments
- People with mental illness
- Those dependent upon another for care
- Institutionalized or incarcerated persons
- Non-English speaking people
- Undocumented immigrants
- People who are poor/houseless
- People on the fringe of crime
- Low-wage workers
- People with physical disabilities
- People who are drunk/on drugs
- Sexual minorities
- People with non-dominant gender identities and/or expressions
- Native Americans living on tribal lands
- People of color/racial minorities

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<sup>10</sup> 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.

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 (23.3%). This high propensity to categorize sexual assault as a personal matter is deeply rooted in our socio-cultural beliefs about sexual assault; that this cultural belief functions to silence victims is borne out in the data.<sup>11</sup> Other reasons cited for non-reporting were fear of reprisal (16.3%) and fear of police bias (5.8%).

The likelihood of a prior relationship between victim and perpetrator also plays in to categorizations of sexual assault as a “personal matter.” The closer the relationship is between the victim and the perpetrator, the greater the likelihood that police will not be notified about the sexual assault. One study by the U.S. Department of Justice indicates that when the perpetrator is a current or former husband or boyfriend, 75% of sexual assaults are not reported. When the perpetrator is a friend or acquaintance, 82% of sexual assaults are not reported. However, when the perpetrator was a stranger, a much lower percentage, 34%, were not reported.<sup>12</sup>

Victims who do decide to report may experience being blamed by responders (law enforcement, prosecutors, medical professionals, etc.), the community, the media, and their family or support system (see “Victim-Blaming” chapter). Many victims have observed that when such cases go to court and receive media attention, victim-blaming often follows; this has a stifling effect on a victim’s willingness to seek help or to report the assault. In an infamous case involving basketball star Kobe Bryant, for example, the victim was accused of mental illness, promiscuity, and “gold-digging” in both the media and in the courtroom. 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 these kinds of accusations “... has a chilling effect on rape victims coming forth.”<sup>13</sup> Given the realities of this environment, it’s completely understandable that many victims chose not to engage with the formal response system following an assault. As victim advocates, we can communicate a very different message: “I believe you. I am here to support you no matter what choices you make.” Supporting a victims’ choices helps them to re-build a sense of control that was stolen by the sexual perpetrator.

### **“Sexual Assault” vs. “Sex”**

Because rape and sexual assault manifest in a sexual act, it is important to understand how the elements of sexual assault compare to those of healthy sexuality. Behaviors and actions that may be involved in a sexual assault may include some of the same behaviors considered part of healthy sexuality, such as touching, kissing, fondling, and sexual intercourse. It may be confusing to victims, as well as to people victims disclose to, when some of the sexual behaviors that occurred prior to the assault were consensual and

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<sup>11</sup> 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](http://webapp.icpsr.umich.edu/cocoon/ICPSR---STUDY/03140.xml).

<sup>12</sup> 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.

<sup>13</sup> 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.

mutual. Our culture often adheres to the belief that once consent is given or any level of consensual intimacy is initiated that holds for everything that comes next. A common misconception is that once a man becomes sexually aroused, he is incapable of stopping. But sexual assault is *not* “sex gone bad,” and healthy sexuality is not “all or nothing.” Let’s unpack the difference by taking a deeper look at healthy sexuality.

**Healthy sexuality is fundamentally based on all expressions of sexual intimacy being both mutual and consensual;** the persons involved want to participate and are actively engaged. In fact, within the context of healthy sexuality, sexual arousal is derived from the participation, interest, excitement and pleasure of each other. There is a broad range of sexually intimate behaviors and activities on the continuum of healthy sexuality, but whatever the behavior or activity, all involved parties are consenting and the intimacy is mutual. Care and regard for the other person’s choices around sex are integral; the moment a person decides they are no longer willing or interested in continuing or engaging in more sexual intimacy, the sexual intimacy stops. Concern and respect for each other is the marker of sexual intimacy, rather than an interest solely in one’s own needs and interests. For most individuals who are sexually active, sexual intimacy includes a range of mutual behaviors that sometimes leads to intercourse or orgasm and other times may not.

In addition to differences in mutuality and consent, remember that sexual assault begins with *victim selection*; victims are chosen on the basis of their accessibility, vulnerability, and a perceived lack of credibility. These intentions and purposes are distinctly different from the elements of partner selection within the expression of healthy sexuality.

### **Conclusion**

The dynamics of sexual assault are influenced and informed by history, socio-cultural values, culture and individual beliefs. Sexual assault does not occur in a vacuum; the thinking errors and justifications of perpetrators are influenced by society, as are the perspectives and responses of victims. Victims may hold to some of the same thinking errors as perpetrators, such as beliefs that drinking or using drugs are risky behaviors that can potentially invite rape, or that once men begin sexual activity they are physically incapable of stopping. These responses contribute to victim self-blame after an assault, or to victims not recognizing that what happened to them was rape - both situations can result in the victim choosing not to report or disclose the assault. Victims must confront their own doubts as well as those of responders, the community, and friends and family. A victim advocate may be one of only a very few people who support, validate and believe victims unconditionally.

### **Advocacy and Diversity: Cultural Competency**

Cultural competency “involves understanding and appropriately responding to the unique combination of cultural variables...that the professional and client/patient bring to interactions.”<sup>14</sup> Developing cultural competency requires ongoing self-assessment and actively expanding our knowledge of other cultures.

Within the field of sexual assault response, culturally competent advocacy can be seen in the advocate’s ability to plan and provide a response that is consistent, specific, appropriate and useful to the unique needs of each victim and their family. The advocacy response will take into consideration how cultural variables may influence both victims’ and advocates’ experiences and perceptions, in order to appropriately tailor the advocacy services and response. Cultural competency applies to our work with all victims, and as our cultural competency increases, we come to better understand the relationship between oppression and the causes and responses to sexual violence.

### **Victimization and Diversity**

As noted in the previous chapter (“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 Survey<sup>15</sup> indicated the following:

- Asian and Native American women are more likely to be victims of rape than Caucasian or African-American women [Is this accurate?].
- 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).
- Among people with developmental disabilities, as many as 83% of females and 32% of males are victims of sexual assault.<sup>16</sup>
- 79% of people with disabilities who have been sexually assaulted have been assaulted on more than one occasion.<sup>17</sup>
- Latinas report a higher rate of rape than Caucasian women (Tjaden & Thoennes, 2000. USDOJ).

Despite high overrepresentation in crime statistics, these and other specific populations are underrepresented in the numbers of victims receiving assistance in formal systemic response. 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:

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<sup>14</sup> <http://www.asha.org/Practice-Portal/Professional-Issues/Cultural-Competence/>

<sup>15</sup> U.S. Department of Justice. National crime victimization study (NCVS), Washington, DC, 2005

<sup>16</sup> Stimson, L. & Best, M.D., “Courage Above All:” Sexual Assault Against Women with Disabilities. Toronto, Disabled Women’s Network, Canada, 1991.

<sup>17</sup> Sobsey, D. & Doe, T. “Patterns of Sexual Abuse and Assault.” *Sexuality and Disability*, 9 (3), 1991: 243-259.

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

### **Barriers to Effective Victim Assistance**<sup>18</sup>

What makes for the substantial drop-off between those reporting a crime of sexual assault and those ultimately assisted by law enforcement- or prosecutor-based Victim Assistance Programs? Below is a list of some of the many elements of the complex challenges victims may face throughout their involvement in the sexual assault response system:

#### **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

**Many barriers faced by victims of sexual assault** are caused, influenced by, or can be exacerbated by: cultural variables and the resultant disparities, biases, and lack of understanding they may face as they seek help following an assault. It is an important part of our work as advocates to sharpen our own awareness as we work with a diverse array of victims and providers.

**Our commitment to provide meaningful and tailored services to victims**, along with recognition of the sheer magnitude of diversity that exists in the world, in the United

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<sup>18</sup> Adapted from materials developed by the National MultiCultural Institute, 1998

States, in Oregon, and in our own communities makes cultural competency a continuous developmental process for both the individual and the agency. The following sections will examine various aspects of working toward enhanced cultural competency on both individual and organizational/systemic levels.

### **Overcoming Individual Barriers to Cultural Competency**

#### ■ **The Role of Stereotyping**

People are not born with racist, sexist, ageist, anti-Semitic, homophobic, or other oppressive attitudes and beliefs. Through the process of development and socialization, we learn information - and misinformation - about people who are different from us. Information and misinformation can come from both the people in our lives and from individual and structural/cultural sources, including:

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

Learned stereotypes and misinformation help construct our belief system and can affect our **thoughts, feelings, and behaviors** towards other people. As a result, we may operate in certain situations with little awareness of where our “information” came from and whether it is grounded in fact. We may respond automatically to people who are different from us without employing the “thinking brain.” These automatic responses, also called implicit bias, can be built upon hurtful and harmful stereotypes, which runs counter to our primary goal as advocates to provide consistent, compassionate and effective services for victims.

In our work as sexual assault advocates, it’s critically important to recognize and deconstruct stereotypes. Stereotyping and sexual violence are both forms of oppression. Both stereotypes and sexual violence disproportionately target people of non-dominant identities, objectify them, and rob them of power and agency. This is *not* to suggest equivalence in the level of trauma any given incident may trigger. However, both inflict emotional harm and share systemic or institutionalized oppression as their root cause.

#### Think About It:

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

Do some sources factor in more powerfully than others?

## Advocacy and Diversity: Cultural Competency

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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;
- Step back and think;
- Don't act on stereotypes; and
- Actively seek new information and question assumptions;

These can go a long way toward eliminating the harmful and negative effects of stereotyping.

### ■ Assumed Similarity and Privilege

When an individual is part of the dominant culture (for example, in the United States, being white, middle-class, heterosexual, Christian, able-bodied and cisgendered), it is easy to see that identity as the standard, and to assume that others are the same. This assumption of similarity can occur without thought or awareness. Those who fit that dominant culture identity have the enormous privilege of very rarely feeling out of place, or of having their behaviors, worth, intentions, and demeanor questioned. As a result, they may assume that their experience in the world is universal; the same for everyone.

As we develop our individual cultural competency, we can see that assumption could not be further from the truth. People who are not a part of the dominant culture (such as people of color, people with disabilities, LGBTQ folks, and 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 get a better sense of your own personal comfort with cultural differences. ***I get uncomfortable when someone:***

- ✓ Speaks a language other than English in the workplace.
- ✓ Speaks English with an unfamiliar or foreign accent.
- ✓ Does not take initiative.
- ✓ Agrees with everything I say, even if they don't understand or agree with me.
- ✓ Constantly challenges me.
- ✓ Stands too close or too far away during conversation.
- ✓ Fails to acknowledge what I say or show understanding.
- ✓ Agrees with everything I say but does not follow my advice or instructions.
- ✓ Insists on bringing his or her entire extended family to appointments.
- ✓ Who is a male answers for a female.
- ✓ Always asks questions or never asks questions.
- ✓ Is never on time for an appointment.
- ✓ Does not make eye contact.
- ✓ Cannot handle negative feedback.
- ✓ Addresses conflict situations head-on.
- ✓ Shies away from conflict.
- ✓ Speaks very softly or speaks loudly.
- ✓ Giggles and smiles at "inappropriate" times.
- ✓ Uses "inappropriate" humor.

## Advocacy and Diversity: Cultural Competency

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- ✓ Is often silent.
- ✓ Does not answer questions directly.
- ✓ Refuses to discuss the crime.

Caution yourself against drawing conclusions about the “goodness” or “badness” of these, and other, differences you observe between yourself and others. Many of them are rooted in culture, histories, and experiences of living as a marginalized person in a larger society.

### ■ Cross-Cultural Communication

70% of communication is non-verbal. This includes smiling, silence, gestures, nodding, eye contact, posture, touch, facial expressions, and use of personal space. Physical context (such as whether someone uses a wheelchair or other aide) and circumstantial context (such as sitting in a police station or lying in a hospital bed), can also affect communication. Verbal communication comes with a host of nuances that affect the impact and meaning of what we say. Accent, tempo, diction, slang, idioms, technical jargon, word choice and direct vs. indirect phrasing are among the many ways that verbal language is influenced and modified.

Staying attuned to both non-verbal and verbal communication is critical when speaking with people who are different than us, or across cultures. For example, someone who has had a stroke may speak slowly and with difficulty, but it doesn't mean that they have difficulty hearing or understanding. When someone struggles to communicate verbally, it can be a natural inclination to speak slowly and loudly in response, even if it's unnecessary (and could even be offensive).

### Here are a few suggestions to facilitate more effective cross-cultural communication:

- ✓ Be aware of stereotypes and preconceptions.
- ✓ Don't assume similarity or shared experience.
- ✓ Avoid using your own cultural filter to interpret verbal and non-verbal communication or cues.
- ✓ Be willing to ask questions; admit when you are unsure and want to get it right.
- ✓ Express a desire to understand and to engage with the other person to better ensure effective and respectful communication.

### ■ Ensure Meaningful Language Access

Shared language is critical to effective communication. Although it is possible to express basic concepts, needs, or feelings with someone who is not proficient in our language, it's a challenge to exchange more detailed information effectively, especially if emotions are raw and privacy is compromised. In situations where you don't share the same language or share limited language with someone, best practice is to use an interpreter to

#### Think About It:

What are some other examples of misinterpreting another's communication?

What can we do to overcome this tendency?

ensure accuracy and effectiveness and to honor the dignity of the other person.

**When preparing to use interpreters**, ensure the interpreter is appropriate in terms of culture, gender, and age. Ensure that using this interpreter maintains the victim's privacy and confidentiality; avoid ever using family members. Spend time together prior to direct conversation with the victim; ask a few screening questions relevant to the situation ("Do you have any relationship to the victim?" "Have you ever been a victim of a person crime, and if so, how do you think that might influence your ability to interpret for this situation?"). If possible, use two interpreters to offset potential bias. Using an interpreter is not easy for any of the parties involved. Be patient and take all the time that is needed.

### Tips for Using Interpreters

- 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, except where paraphrasing is necessary for cultural understanding.
- Look at 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

## **Organizational Cultural Capacity**

The Nonprofit Association of Oregon (NAO), located in Portland, has identified three areas in which an agency must focus to increase cultural competency. These are: **attitudes, policies and practices**. The NAO further notes 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 establishing a starting point for your agency's work on cultural competency, it may be helpful to look at the following continuum and identify where your agency is located:

### **Cultural Destructiveness**

The most negative end of the continuum is represented by attitudes, policies and practices that are destructive to cultures and consequently to individuals within the culture. The most extreme examples of this orientation are programs that actively

participate in cultural erasure or genocide — the purposeful destruction of culture.

### **Cultural Incapacity**

At this point on the continuum, the system or agency does not intentionally seek to be culturally destructive but lacks the capacity to help clients from specific populations or communities. The system acts in accordance with a belief in the superiority of the dominant group and assumes a paternal posture toward “lesser” cultures or 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 (“We don’t see color.”). 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 position on the spectrum implies movement. The pre-competent agency recognizes 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 a more diverse staff, conduct needs assessments and explore how to reach marginalized populations in their service area, initiate training for their workers on cultural sensitivity, and recruit members of non-dominant cultures for their boards of directors or advisory committees. These agencies are characterized by the desire to deliver quality services and to embody 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 to better meet the needs of specific populations. Basic cultural competency is also demonstrated by a commitment to hire unbiased employees, seeking advice and consultation from the culturally specific communities, and honest assessments of what the agency is, and is not, capable of providing to specific clients.

### **Advanced Cultural Competence**

The culturally proficient agency seeks to add to the knowledge base of culturally competent practice by conducting research, developing new practices and approaches based on culture, and sharing what it learns from these efforts and new models. The culturally proficient agency hires staff who specialize in culturally competent practice, advocates for cultural competence throughout the system and, more broadly, works toward improved understanding between and equity among 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 from the bottom up as well as from the top down;

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.

### **Overcoming Organizational and Systemic Barriers to Cultural Competency**

Consider how the following elements might impact your agency's/system's ability to provide services and assistance in a culturally competent manner:

❖ **Distribution of information about victim services**

*Are people from historically marginalized or underrepresented backgrounds in your community (such as Latinx, people of color, recent immigrants) aware of your program? Does your agency/community provide any culturally-specific services (e.g. support groups in multiple languages, etc.)?*

❖ **Training and Partnerships**

*Does your agency have a collaborative working relationship with culturally specific providers in your community? Is learning about the cultures in your community and how to provide culturally sensitive services integral to your staff training/orientation?*

❖ **Location of victim services**

*Is your agency/systems response accessible by public transportation? Is your agency/systems response accessible to people using wheelchairs or with limited mobility? Is your agency/systems response located in a central area where privacy may be compromised because community members can see who is coming and going? Do you have the capacity to provide mobile advocacy/bring services to victim's location?*

❖ **Victim Compensation**

*What limitations to Victim Compensation exist in your state? Does it require victims to have Social Security Numbers, proof of residency or citizenship? Does your agency work to inform the community about the availability of Victim Compensation?*

❖ **Limited Resources**

*All agencies struggle with funding; does your agency make a priority of existing funding to provide services to diverse populations within your community? To what degree is increasing service access to diverse populations a priority? To what degree is ensuring services are culturally appropriate and available to diverse populations a priority?*

❖ **Diversity among program staff and leadership**

*Does the direct service staff at your agency reflect the diversity within your community? If not, what steps might you take to move toward that goal? What attitudes, policies and practices need to be implemented or revised to make hiring a diverse staff possible? Does your management team and Board of Directors reflect your community's diversity? How do all levels of the organization take responsibility to ensuring cultural competency?*

### **Conclusion**

Cultural competency is an important aspect of providing meaningful and effective response to victims of sexual assault. Negative experience with responders has a chilling effect, and decreases the likelihood that victims will seek help in the future. The most important factor in increasing cultural competency is the 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. This chapter has provided just a partial list of the ingredients to consider when assessing your individual, agency's, or system's current cultural competence. For further information about moving toward advanced cultural competence, the Oregon Health Authority's Office of Equity and Inclusion is a good place to start: <https://services.oregon.gov/OHA/OEI/Pages/About-Us.aspx>. *Please see also the case studies on the following pages to assist in your agency's efforts to serve victims from a variety of circumstances and backgrounds.*

### **Helpful References**

**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  
<https://nonprofitoregon.org/>

### **Case Studies in Culturally Competent Sexual Assault Advocacy**

The following case studies are provided as a mechanism for your agency to consider how you could best serve victims from a variety of circumstances and backgrounds. You can discuss them in a staff meeting, retreat, or during training.

### ■ **Case Study #1: “Anna”**

**Anna is a 45-year old woman with cerebral palsy.** She uses a power wheelchair to get around and lives in a house that she shares with her husband Larry.

**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. He is complaining that she “can’t even make him feel like a man.” When the two first started dating, Anna says Larry “made me feel like a woman” for the first time in her life. She says that in the two years they’ve 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. From what Anna describes, he has frequently raped her, saying he can have sex with her any time he wants because she is his wife.

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

**Anna is completely dependent on Larry for her health care needs.** She reports many nights being left to sleep in her wheelchair and sitting in her excrement. Larry also sometimes neglects to feed her. Anna got a call from her doctor’s office today and discovered that Larry has been regularly canceling her appointments. She didn’t tell the nurse what was going on at home; fearing Larry’s anger and the prospect of being sent to a nursing home.

**Anna lived in a nursing home for twenty-two years,** where she was mistreated and abused. She wonders 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 initially assumes she is drunk,** and then becomes embarrassed when in the course of the call she comes to learn that Anna is developmentally disabled.

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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 could be done in advance to prepare your agency to meet the needs of clients with cerebral palsy?
- 

### ■ **Case Study #2: “Mi-ran”**

**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; she is afraid that they will be angry with her and will disown her. The cousin convinces Mi-ran that she should file a police report, but Mi-ran is terrified about her parents’ reaction – and what the rest of the community say?

She is also intimidated about appearing in court and quite nervous about the entire process. Mi-ran's cousin promises to be with her and to help.

**Mi-ran's parents hear about the incident after charges are filed.** The cousin reports that the parents are furious and accuse Mi-ran of being "loose" and "too 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. Mi-ran's worst fears are coming true.

**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 the front row of the court room, thinking that this will help Mi-ran feel comfortable, with her family there to back her. Instead, Mi-ran never so much as glances at her family. When questioned, she is evasive and shaky about the details of the incident and she 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 issues around interpretation? What guidelines could be used for interpreter selection? 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?
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### ■ **Case Study #3: "Rachel"**

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

**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 some 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 and was later changed to sexual assault. Further, the other "victim" did not file a complaint and, when approached, denied any such incident involving

her.

**The DA concludes that this is a case of “teasing” and “barrio rivalry.”**

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

- 
1. What factors may be preventing Mrs. Peralta and Rachel from reporting?
  2. Do you think that race or gender play a role in the DAs’ 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 this community?
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### ■ **Case Study #4: “Anthony”**

**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 LGBTQ-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.

## Advocacy and Diversity: Cultural Competency

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**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.

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

#### **The Role of the Advocate**

The advocate's role in sexual assault response is to provide knowledgeable, compassionate, and supportive intervention to the victim 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. Perhaps more than all other responders, advocates are responsible for ensuring that at all stages of response, the best interests of the victim are always in the foreground.

#### **The Victim's Choices Determine Advocacy Strategy**

Like other specialized disciplines, advocates require skills and knowledge 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 knowledge necessary for advocates:<sup>19</sup>

##### **Empathy & Compassion**

Developing the expertise to listen for and perceive what the survivor is experiencing – and to communicate that to others - is a key responsibility of advocates. Empathy with the victim does not require every advocate to have a sexual assault history of their own, but they must develop the ability to relate to and 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 keenly attending to the victim, and demonstrating care, concern, and compassion for the victim's particular situation.

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<sup>19</sup> Material adapted from the Pennsylvania Coalition Against Rape, "Trainers Toolbox: A Resource Guide for Sexual Assault Counselor Training," 2000.

## How to Support Victims/Survivors

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### **Respect**

Given the traumatic nature of sexual assault, respect is an essential element of the advocate/victim relationship. It requires advocates to show genuine appreciation for the victim, their experiences, and their behavior. This includes protecting the victim's rights to make their own decisions, acknowledging their assessment and account of the situation, and supporting their ability to overcome the crisis without being overprotective, "taking over," or imposing judgements on the client.

### **Warmth**

Being treated with genuine warmth by an advocate has a comforting, reassuring effect on the victim of sexual assault. Warmth carries with it a sense of care, concern and closeness that helps to build trust. Warmth can be conveyed with words, tone, and with non-verbal communication such as: eye contact, facial expressions, posture, and through other body language.

### **Authenticity**

It is important for advocates to be themselves when intervening with victims of sexual assault, taking care not to behave or interact in ways that may come across as rehearsed, rote, or ingenuine. Being "real" allows the advocate to relax and focus on the victim, rather than on their own behavior or appearance. Genuineness conveys trustworthiness and a commitment to partner with the victim throughout the process of working together.

### **Offer Concrete Choices**

One of the common reactions to rape or sexual assault is a feeling of disorientation, which can shine a spotlight on feelings of powerlessness and confusion. Effective advocates avoid being directive or giving advice/instruction, but instead offer choices so victims can regain their own sense of personal power (not "We should call your parents," but "Is there anyone you would you like to call?"). Avoid statements that start with: "You should..." or "You need to..." as they imply "correct" choices. It's also important to be as clear and specific as possible when interacting with a victim; providing detailed information in relevant, understandable terms. This helps victims stay oriented to the here and now, and on what to expect next.

### **Competency in addressing Cultural Factors, Social Conditions and Personal Identities**

As discussed in the previous chapter, it is important for advocates to understand how cultural factors, social conditions, and identities impact a victim's experience of sexual assault. The advocacy 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 their background/experience and how social issues affect their life. It is important not to make assumptions based on generalizations and stereotypes. Check in with the victim about their background to better understand the ways in which their culture, religion and/or identity influence their life and the way they perceive the assault.

## **Responsibilities of the Advocate**

Sexual assault advocates are proactive. Rather than waiting for a victim to ask for assistance or supportive services, advocates offer options, information, and referrals that

## How to Support Victims/Survivors

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can help each individual victim find a pathway to whatever helps them meet their unique needs. Advocates work to build trust, establish rapport, and maintain communication with the victim; including understanding and respecting their wishes if they no longer choose to participate in the system response or engage in advocacy/supportive services.

There are a number of approaches and practices that advocates can employ to help victims begin to heal and to regain a sense of control in the aftermath of the assault:<sup>20</sup>

### ✓ **Validate and Believe**

The advocate can validate a victim's feelings by listening with caring and acceptance, reiterating what they say, and offering supportive feedback. Communicate your belief in the victim and your unconditional support as they seek what they need.

Set a tone of openness that allows the victim to share what they choose about what happened. Gather information on a "need-to-know" basis. Refrain from asking questions in a manner that could come across as interrogation; if the information the victim has offered is unclear, phrase clarifying questions thoughtfully so as not to imply that the victim has been inconsistent or untruthful. For example, the advocate might say, "I know that you've shared a great deal with me; you must be exhausted. I'm so 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**

Support and empower the victim by looking for opportunities to offer information to dispel society's myths and misconceptions about sexual assault. This should be done with sensitivity to the victim's feelings and emotional state; if the victim is crying or dealing with a specific concern it wouldn't be an appropriate time. However, if the victim begins blaming herself for the assault or expresses feeling of guilt or shame, the timing is perfect for communicating that sexual assault is never the fault of the victim, that they did not deserve to be assaulted, and they are not in any way responsible for what happened.

### ✓ **Normalize**

Victims often feel that there is something wrong with them, and that their reactions are abnormal. Ensure that they know many victims feel this way, and that there is no "wrong" way to feel after a sexual assault. Communicate that their feelings – whatever they are – are commonly experienced and entirely normal given the trauma of assault.

### ✓ **Be Responsible**

It's 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.

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<sup>20</sup> 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: 6-7.

## How to Support Victims/Survivors

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### ✓ **Create a Safe Environment**

As discussed in the chapter on Trauma and Trauma-Informed Advocacy, ensuring safety around all interactions with the victim is key. While a reassuring touch, for example, can be comforting in some circumstances and with some victims, any touch or closeness must be appropriate and occur only with clear permission from the victim. Also, consider the physical space in which you work together; is it private? Is it spacious, with comfortable chairs to sit on? Have you removed any potentially disturbing pictures or upsetting pamphlets or posters?

### ✓ **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 rather than injecting their personal opinions.

### ✓ **Allow for Expression of a Full Range of Feelings**

It's vital for advocates to develop an ability to be comfortable with the entire continuum of human emotion and their expression. This includes bursts of anger, crying, laughing, animated talking, yelling, trembling, silence, and many others. Aim for being attentive and compassionate - but not personally involved - as these emotions are expressed.

### ✓ **Cultural Sensitivity**

A victim and an advocate may be different in many ways; cultural background, gender, sexual orientation, age, race, religion, nationality, gender identity, or socioeconomic status. Learn as much as possible about the diversity of cultures of the potential population that you serve, and consider how those differences might influence the impact of the assault and shape what will be healing for different victims. Keep in mind that individuals from a particular background, culture, or race may not all have the same reaction and response to the assault; avoid using stereotypes or making assumptions. If you don't know or are unsure about something, ask the victim; let them know that you are attuned to the fact that culture and background can be very relevant to their experience and healing. People are much more likely to feel respected when you show a willingness to acknowledge what you don't know about a particular culture than if you make assumptions that could be wrong or hurtful.

### ✓ **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 religious or spiritual leaders. Assist the victim in identifying who they want to disclose to and what they want them to know about what happened. Who are their "safe people?" Advocates can also offer to help victims prepare for making disclosures and to prepare for responses that are blaming, unsupportive, or alienating. Peer support groups can be an excellent resource for victims who have limited family or friends who are judged as safe to disclose to. This can help the victim to feel less isolated and to build support networks.

## How to Support Victims/Survivors

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### ✓ **Help Develop Constructive Ways of Coping**

It's not uncommon for victims to develop potentially harmful defense mechanisms or coping patterns. This can include the use of drugs or alcohol, prescriptions abuse, overeating or not eating, sleeping all the time or not sleeping at all, 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 emerge.

Validating the victim and helping them to understand the desire to avoid or suppress their feelings is important. The advocate can then assist the victim in identifying more useful coping skills – exercise, support groups, talking with friends, etc. Offer information and referrals if victims want to connect with services such as drug and alcohol treatment, counseling, or cultural supports. Remember to always respect the victim's choices; a referral that you see as key and much-needed support may be declined by the victim. Imposing your own ideas about what will be helpful may damage your relationship and alienate the victim from seeking your ongoing support.

### ✓ **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 information that is accurate and up-to-date. After gathering the relevant information, offer to assist the victim with making appointments or accessing services rather than simply providing a list of phone numbers. Some victims may choose to access these systems on their own or with the help of someone from their natural support system, but others will appreciate your active help in making the connections.

### ✓ **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 intervene on behalf of victims to ensure that they have the option of being present during a trial, or to access a stalking order through the courts or law enforcement.

### ✓ **Develop an Advocate Knowledge Base**

Communication skills, cultural sensitivity, and the ability to develop trust are essential elements to effective advocacy. Additionally, advocates should be committed to acquiring rock-solid knowledge of key elements of the sexual assault response system, legal and medical processes, and victim rights and to bring them to their work with each and every victim. Other information may be sought out as needed, depending on the specifics of the work entailed with a particular victim.

### **What Should Advocates “Know Cold?”**

- Victims’ Rights
- Criminal Justice System Procedures and Processes
- Civil Legal Options, Rights, and Processes —Protection Orders
- Resources in the Community
  - Housing
  - Food
  - Childcare
  - Emergency financial assistance
- Medical Procedures/Evidence Collection

### **What Should Advocates Know How to Find Out?**

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

## **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 they feel encouraged to identify the best options for them.

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## **EMPOWERMENT**

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### **Empowerment IS**

- ✓ Respecting Boundaries and Confidentiality
- ✓ Honoring Choices
- ✓ Understanding the Role of Culture
- ✓ Promoting Access to Services
- ✓ Believing and Validating Experiences

### **Empowerment IS NOT**

- ✓ Trying to “Save” the Victim
- ✓ Confusing Your Needs with the Victim’s
- ✓ Being Punitive or Judgmental
- ✓ Being Stoic or Unemotional
- ✓ Sympathy/Pity
- ✓ Giving Advice or Telling Them What to Do

## How to Support Victims/Survivors

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Victims should be able to rely on advocates to listen, help identify what is needed and wanted, obtain the information needed and the resources that will be necessary, and always to provide compassionate, empowering support.

### Victim-Blaming

One of the more challenging roles of advocates is to confront the tendency of many in our society to point to the victim of rape and sexual assault as the one responsible for its occurrence. Interrupting victim-blaming requires educating the community at large and responders in particular about the myths and misconceptions that are often associated with sexual assault.

Victim-blaming springs from attitudes or beliefs that if the victim had not made a particular choice, engaged in a particular activity, or acted in a particular way, they would not have been assaulted. This type of second-guessing is something that victims are usually already doing to themselves; hearing any variation of this theme from others compounds the trauma they are already experiencing. Before we look at what can be done to counter victim-blaming, let's take a deeper look into its underpinnings.

### Roots of Victim-Blaming

Victim-blaming most often originates in socio-cultural values and beliefs that support the dominant world view. It can also result from a desire to create a sense of individual safety or be a reaction or coping mechanism to being exposed to the pain and suffering of others.

- **“Innocent Victim” versus “Rape-able Offenses”**

This framework divides victims into two categories: those who are innocent and those who are culpable. An “innocent victim” is someone who is viewed as naïve and sexually inexperienced; truly an undeserving victim of a random act of violence. If seen as an innocent, the community will rally around to provide support and demand justice on the victim's behalf. A “culpable victim,” on the other hand, is someone whose choices are viewed as having resulted in assault; maybe they chose to go to a club, proceeded to get drunk, and then went home with someone they just met. If seen as culpable, community may often claim that “you deserved it.”

- **“Good Victim” versus the “Discreditable Victim”**

This is another example of a simplistic framework that divides victims into two categories: those we naturally want to help and those we would really rather not deal with.

“Discreditable” victims can include sex workers, the poor or houseless, individuals with drug addiction or mental health issues, and others often dismissed as “less than.”

A “discreditable victim” often has many intersecting issues, needs multiple services, has what is considered a “complex” case, or simply is not well-liked or seen as credible.

- **Preserving the Myth of Personal Safety**

This analysis of sexual assault is based in a desire to provide a sense of safety for women and the community. Recognition that sexual assaults occur in the community can erode one's sense of personal safety and trigger fear and anxiety. 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 sexual assault is something over which you have control; you can avoid being raped or sexually assaulted if you simply avoid *those* behaviors, actions and choices.

## Victim-Blaming

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### ▪ **Vicarious Trauma/Compassion Fatigue**

Victim-blaming may be a sign of vicarious trauma, toxic stress, or occupational burnout for a responder or provider. Muting one's ability to feel empathy and compassion for someone who has been harmed can be a coping mechanism or reaction to one's own trauma experiences.

### ▪ **Intersections of Oppression**

Most societies devise, and perpetuate, a cultural framework that divides things into two general categories: 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 the "norm" or dominant group and restricts the potentialities of those who do not. Victim-blaming may be tied to the victim's identification with a marginalized or oppressed group and may even take the form of believing that they somehow "deserved" or "should have expected" to be assaulted based on their social position.

In the U.S. context, victim blaming can be rooted in sexism, racism, able-ism, ageism, heterosexism, classism, religious intolerance, and xenophobia. Members of the non-dominant group who are sexually assaulted are more likely to be blamed for the victimization they experience.

### **The thinking behind victim-blaming is flawed in several ways:**

- 1) There is no particular activity, choice or behavior that naturally and consistently results in sexual assault.
- 2) There are many victims who have not engaged in activities, choices, and behaviors that are widely viewed as risky and yet still experience sexual assault.
- 3) Victims of sexual assault include all cultures, ethnicities, genders, etc., including the dominant group.
- 4) The only factor that exists across all occurrences of sexual assault is that there was a individual willing to perpetrate the sexual offense.

### **Confronting Victim-Blaming: Reframing**

Reframing is a strategy that advocates can employ in supporting the victim and addressing victim-blaming that may occur on the part of the victim, the family, friends and responders. Reframing allows the individual engaging in 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 any of us can be guilty of poor judgment, rape and sexual violence are neither a natural consequence of poor choices nor are they appropriate punishments.

Reframing begins with identifying the specific way the victim is being blamed, finding the flaws in that argument, and suggesting other ways to look at what has happened.

### **Let's look at an example:**

#### ***Scenario:***

Candace was sexually assaulted by a man who followed her to the bus stop after she left a nightclub. She had been drinking with her friends all evening and her family believes she could have avoided being raped if she hadn't been intoxicated.

## Victim-Blaming

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### **Reason victim is being blamed:**

How is Candace being held at fault for the assault? Candace's family blames her for being raped because she drank too much alcohol.

#### **1. Natural consequences**

Identify what the natural consequences are for drinking alcohol—or even for drinking too much alcohol. These natural consequences might include headache, making a fool of oneself, throwing up, slower reaction time, perhaps stumbling or falling down, etc. These are consequences that might be faced by every person that drinks too much alcohol.

#### **2. Logical Conclusions**

Ask the family if everyone who drinks too much is sexually assaulted. The answer, of course is “no.” Your next question for the family is “why not?” The answer is that there isn't always a perpetrator in place—with an intent and a plan to commit a sexual offense—every time and place that someone might drink too much. There will only ever be a sexual assault if there is a person who sexually abuses present.

#### **3. Further Explore the Concept of “Risky Behaviors”**

For Candace's family (and many others), drinking or using drugs to the point of passing out might be considered a “high risk” behavior. But sexual assault is not a natural consequence of the behavior of drinking or using drugs to the point of passing out. First, not all people who drink to the point of passing out are sexually assaulted. And as pointed out above, a sexual assault will only occur if there is an individual present who is willing to engage in sexual contact with someone without that person's consent and mutuality.

In many party settings, many of the people present may notice an obviously passed-out person, and some may demonstrate a measure of care and concern (covering the person up, placing a bowl near the person in case they begin to vomit, or check to make sure that they are not suffering from alcohol or drug poisoning). These responses demonstrate that it's obviously not the behavior of the victim that leads to or results in sexual assault, but rather the conscious choice of the person who committed the sexual offense.

#### **In fact, most people engage in some level of calculated risk on a regular basis!**

Most of the time those calculated risks don't result in harm to ourselves or others. On the other hand, sometimes they do. 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 know that wearing a seatbelt will decrease risk of injury or death in the event of a car accident – and is required by law. 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 (except possibly a ticket) had there not been an accident. It is not the act of using or not using a seatbelt that causes an accident; wearing a seatbelt cannot stop an accident from occurring.

### **Be Ready to Interrupt! Examples of Victim-Blaming:**

- “She was dancing provocatively and wearing revealing clothes that invited or provoked the assault.”

## Victim-Blaming

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- “She started the kissing and touching, how was he to know she didn’t want to continue?”
- “He agreed to stay over, and even slept in the same bed with her.”
- “It was a miscommunication; she didn’t say no; was he supposed to read her mind?”
- “They have sex all the time; why would this time be different?’ Was he supposed to know she didn’t want to have sex if she didn’t say ‘no’?”
- “They have lied about things before.”

### **Additional Thoughts on Reframing**

Though the circumstances surrounding or leading up to a sexual assault may be relevant for purposes of investigation or prosecution; they are not relevant to culpability of the victim. For instance, whether the victim and the perpetrator were drinking may be important pieces of the investigation; they may help assess the victim’s ability to consent or demonstrate intention or planning on the part of the perpetrator. 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 do not make them responsible for the assault. Regardless of the circumstances, the sexual abuser is the sole responsible individual.

#### **Here are some everyday ways to illustrate that point:**

- 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 can’t decline a refill?
- Every time you sleep in a bed with someone, does it mean you’ll have sex?
- If you are playing catch with someone and they silently turn and walk 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?

### **Conclusion**

Identifying the nature or “root” of the victim-blaming you encounter can help to guide your intervention. As one more example, if a disclosure of sexual assault is doubted or dismissed because the individual reporting has a developmental disability (or is mentally ill, under the influence of drugs, a sex worker, etc.), the reframing might include sharing what we know about how a sexual abuser chooses someone based on vulnerability, accessibility, and awareness that they may lack credibility if they were to report. We can also intervene if we see that perceiving that victim as lacking in credibility is impeding 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, “likeability,” or “poor choices,” we will treat them with respect, dignity, and compassion and provide them a consistent, thorough, and professional response.**

### Victim Impact

#### **Trauma: The First Impact**

The first impact experienced by victims of sexual assault is the trauma of living through the assault. Trauma is the term commonly used to describe the biological defense/response of a human when faced with an overwhelming, terrifying and/or life-threatening event. That response is based in human physiology, outside the control of cognitive thought processes, but is often misunderstood as a conscious choice by uninformed observers and responders. In addition, a specific series of chemical and neurological changes take place during sexual assault – changes which are not commonly well understood. (*For more information about the biology of traumatic response please refer to the “Trauma and Trauma-Informed Responses” chapter of this manual*).

The initial trauma of being assaulted is often followed by a range of trauma responses that can be of greater or lesser intensity based on the details of the assault itself, and by the responses of those close to the victim. Trauma can be resolved or healed if initial responses recognize and respect the challenges faced by survivors as they work to integrate the experience into their lives.

**Following are some factors that can complicate or add to the trauma experienced by a victim:**

#### **BETRAYAL causes trauma.**

There is an expectation that people, especially those we know, trust and/or love, will not hurt us. When someone violates these expectations by harming us, it generates feelings of betrayal, which can cause a victim to experience decreased feelings of trust for certain people, certain groups, or can generalize to all people. Betrayal, even if it is experienced by someone not well known to a victim, can lead a victim to lose confidence in their ability to assess the safety, integrity, or intentions of another person.

#### **EXTREME FEAR or TERROR cause trauma.**

The inability to stop or control an event that causes emotional or physical harm, injury, or death to oneself or to someone else can generate terror and extreme fear. The effect of this trauma can be for life. The fear and terror caused by the assault may be re-experienced when victims are *triggered* or *re-stimulated* by sounds, smells, activities, individuals or circumstances that are reminiscent of 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 may seem more obviously surprising or shocking in the case of stranger sexual assault. 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, it becomes easier to understand how non-stranger sexual assault is also a surprise. The trauma response to a blitz or surprise attack

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is an altered sense of safety. Victims may question their ability to assess or correctly judge whether another person is safe or trustworthy; they may also question how capable they are of protecting themselves in general.

### **SELF-BLAME causes trauma.**

Often no one is harder on a victim than they are on themselves – especially if self-blame is already a tendency. Survivors may characterize the assault as something they could have stopped or controlled as a way to regain personal control and avoid being labeled a “victim.” More than likely, victims will be influenced by broadly held socio-cultural values that assign rape and sexual assault as a natural consequence of *risky* behaviors.

Unfortunately, self-blame diminishes the power of the potentially greatest avenue of Self-blame also reinforces the myth that the victim did something wrong or that there is something wrong with them. Reframing or challenging this mistaken belief can lessen the trauma.

### **INVALIDATION causes trauma.**

If a victim’s experience is minimized, by one’s self or others, it creates a confusing dissonance for the victim. The body, mind, and spirit know that there has been an experience of 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 lead to the distorted perception that the victim not only doesn’t deserve support but may even deserve punishment. A victim often internalizes invalidation, which becomes a buffer against processing the pain and a deterrent to seeking the nurturing of others and caring for oneself.

## **Other Common Reactions to Sexual Violence**<sup>21</sup>

### **Humiliation**

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

### **Shame and Self-Blame**

As noted above, most victims blame themselves, all or in part, for the assault. Echoing societal messages, 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 are especially likely to blame themselves if they were engaging in illegal or “risky” behavior prior to the assault.

### **Guilt**

Guilt comes from a person's sense that they could have - *and should have* –done something to protect themselves or prevent the assault.

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<sup>21</sup> Material adapted from the Pennsylvania Coalition Against Rape, “Trainers Toolbox: A Resource Guide for Sexual Assault Counselor Training,” 2000.

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### **Fear**

Most sexual assault victims feel a level of terror during the attack, and 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's fear and distrust of everyone often increases. It is also important to recognize that the victim may still be in the presence of, or in close proximity to, the rapist, which perpetuates the fear and sense of ongoing vulnerability.

### **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, or be dependent upon the perpetrator (as in the case of a husband or caregiver) and/or have an aversion to involvement in the criminal justice system.

### **Grief**

An assault is experienced as a profound loss and is often characterized by intense sadness. A victim may feel that their life has been shattered to such an extent that they believe they 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 as though everything is going wrong and nothing will ever be resolved.

### **Denial**

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

### **Anger and Irritability**

Sexual assault may result in feelings of anger and rage – feelings which may sometimes be aimed toward advocates, law enforcement, prosecutors and others offering assistance. Being the target of these angry expressions may be difficult for first responders to accept and to address. It can be helpful to remember that the anger is usually expressed when a victim feels safe doing so (a tribute to the atmosphere created by responders). Expressing anger may also be a reaction when people around the victim have been blaming, dismissive, or challenging their credibility.

## **There is No “One Way” or “Right Way” to Respond**

Despite the fact that victims of sexual assault have consistently described certain common symptoms, it's also true that each victim's experience is shaped by a number of factors that make their experience unique. Because each victim of sexual assault has their own unique history, experience, culture, coping and support systems, each victim's response is unique. Further, both the quality and quantity of validation and support they receive from their own support systems and from professionals with whom they come into contact can influence the degree of suffering they experience. Memories of the assault will remain and may always cause

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pain, but not everyone exhibits outward signs of pain and trauma.

### **Sexual Assault is a Life-Changing Experience**

- Immediately following the assault, the victim may feel a heightened sense of fear: fear of the perpetrator 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 their bedroom may fear sleeping in bedrooms. For some victims, a fear may become so extreme that it develops into a phobia.
- Victims must often cope with outside influences and interactions with others.
- The victim may feel depressed and experience a general sense of loss. Former feelings of well-being, safety, security, and a sense of control over one's life have been taken away from the victim by the perpetrator. Victims may deny that the rape has affected them and may assure everyone that they are fine.
- The victim may silence their feelings to avoid pain or in reaction to a belief that people are tired of hearing about the assault or their feelings. They may withdraw from social relationships or personal interactions with friends and relatives; some relationships may be lost or severed.
- Victims may spend their waking hours distracting themselves from feeling or thinking. The victim may also change eating and sleeping patterns.
- It is common for a sexual assault to disrupt the victim's typical routine. Although they may continue to work or go to school, they may be unable to do more than what is essential. Others may work all the time or volunteer for every activity or assignment possible 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.
- Victims may come to distrust existing relationships and/or hesitate to initiate new ones.
- 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.
- Excessive fears or phobias, 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.

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### **Victims May Also Experience Physical Responses**

- Sleeping all the time.
- Vivid dreams, recurrent nightmares, insomnia, sleeplessness.
- Pain in the area(s) of the assault (mouth, throat, vulva/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.

### **The Healing Process**

Through the healing process, victims may start to integrate the assault into their lives so that the incident is no longer the central focus of each day. They may begin to deal with any harmful effects of coping strategies adopted in earlier stages. If the victim self-medicated through the daily use of sleeping pills, for example, they might begin trying to sleep or relax without those aids.

Throughout the healing process, victims may experience being "triggered" by sensory stimuli or feelings that result in reliving the traumatic event. They may also experience "flashbacks" of visual memories, like "watching a movie" of the event in their mind, complete with feeling the exact same level of fear or terror as during the event itself.

### **A Word about "Rape Trauma Syndrome"**

These common markers of the recovery process are sometimes used to describe the phases of what is referred to as Rape Trauma Syndrome, (RTS). Please note, however, that RTS is not a sub-category of Post-Traumatic Stress Disorder or PTSD. It is not a recognized diagnosis or a recommended or recognized defense in the courtroom. Rather, it is a framework for describing the progression of healing or recovery. Advocates should understand that RTS does not speak to the full range of symptoms and experiences a victim of sexual assault may have.

A victim's reaction or healing process may be in stark contrast to what you believe a victim's response *should* be. Stay attuned to your biases and stereotypes of victims 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 a wide range and inconsistency of emotions is often what is most consistent.

### **Post-Traumatic Stress and Post-Traumatic Stress Disorder (PTSD)<sup>22</sup>**

Post-Traumatic Stress involves a pattern of symptoms that some individuals develop after experiencing a traumatic event, usually involving actual or threatened death or injury to self or others and feelings of fear, helplessness or horror.

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<sup>22</sup> Adapted from David Baldwin's Trauma Information website: <http://www.traumapages.com>.

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**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.

Trauma symptoms include repeated thoughts of the event; memories and nightmares; avoidance of thoughts, feelings, and situations related to the event; and increased arousal (e.g., difficulty sleeping and concentrating, jumpiness, irritability). One study that examined trauma 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 one-third (1/3) of all rape victims develop PTSD sometime during their lives and 11% of rape victims currently suffer from the disorder.<sup>23</sup>

**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. 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.

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 can make it much more difficult to process the trauma.

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 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.

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### Prevalence rates of PTSD

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

- National Center for PTSD

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repeated, may increase the risk of developing PTSD after traumatic exposure as an adult.

### **Trauma and Relationships**

Trauma victims often experience problems in their intimate and family relationships.

Trauma symptoms 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.
- Feeling irritable, on guard, easily startled, worried, or anxious may lead to victims being 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 them, 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 therapists).
- 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

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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.

### **Other Stress-Related Disorders**

PTSD is the "prototypical" traumatic disorder, but some people experience others.

**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.

#### **Dissociation**<sup>26</sup>

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", "getting lost" in a book or a movie and losing 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 the past couple of decades, 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.

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<sup>26</sup> 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>

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### **Medical Response and Advocacy**

#### **The Advocate's Role in Medical Response**

Advocates play a critical role in providing accurate information that enables victims to make informed choices. Advocates assist victims in considering how best to preserve their future options for engaging with the criminal justice system, and/or accessing additional services and care. Our advocacy response to sexual assault may include working on behalf of, and together with, victims to access their rights to particular components of the medical response to sexual assault. This chapter provides information about the rights, laws and routine procedures that are a part of that medical response.

#### **■ The Right to a Personal Representative**

Patients have the right to be accompanied by a personal representative through almost all stages of the process, including the medical-forensic exam. The personal representative must be at least 18 years old and have no involvement in the assault (witness, suspect, etc). Health care, law enforcement, and DHS may not prevent the personal representative from being present unless they are interfering.

#### **■ Notification of a Victim Advocate**

Requires medical professional or law enforcement officer to contact a victim advocate when patient presents to a medical facility for an exam. The Advocate, when available, will explain their role and services they have to offer in person, and will offer the patient the option to decline their services.

#### **■ The Sexual Assault Nurse Examiner (SANE)**

As can be true of any of the professionals involved in sexual assault response, some medical responders come across as compassionate and supportive, while others may be business-like and matter-of-fact. Some may display obvious insensitivity. 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 qualified to provide an appropriate, sensitive, and thorough response to sexual assault victims.

#### **■ 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

## Medical Response and Advocacy

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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 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 if evidence collection must be tied to immediate law enforcement involvement. By eliminating the requirement to report to law enforcement before a SAFE Kit can be collected, victims are given time to consider systems involvement without losing their option to initiate a formal justice system response at a later date. Likewise, the 2007 revision ensures access to vital evidence pertaining to the assault for law enforcement and prosecutors should the victim initiate the criminal justice system response at a later time.

### **Oregon Law Requires that Medical Facilities:**

- Offer all victims of sexual assault a medical exam, SAFE Kit collection, and STI and EC prophylaxis if they present within 120 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 victims who have not reported the assault.

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

- The SAFE Kit number.
- Date of the exam.
- Law enforcement agency that received the SAFE Kit and other evidence.
- Name and location of the medical facility where the exam was conducted.

### **For victims assaulted in Oregon who present to the medical facility within 5 days (120 hours) post-assault, The SAVE Fund covers:**

#### **A Complete Medical Assessment, which includes:**

- Thorough medical exam with documentation.
- SAFE Kit collection (evidence collection).
- All medications related to the assault, including prophylaxis for pregnancy and sexually transmitted infections (STIs), nausea medication, pain medication, and anxiety medication.
- All medical care related to the assault, including pregnancy test, blood tests, and imaging.
- Initial doses of HIV prophylaxis.

## Medical Response and Advocacy

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- Take-home packs of HIV prophylaxis (3 to 5 days) covered at 50%.
- Up to 5 counseling sessions with a licensed therapist, to be scheduled within 18 months of the medical visit.

### **For victims assaulted in Oregon who present to the medical facility within 7 days (168 hours) post-assault, the SAVE Fund covers:**

#### **Partial Medical Assessment**, which includes:

- Thorough medical exam with documentation.
- All medications related to the assault, including prophylaxis for pregnancy and sexually transmitted infections (STIs), nausea medication, pain medication, and anxiety medication.
- All medical care related to the assault, including pregnancy test, blood tests, and imaging.
- Initial doses of HIV prophylaxis.
- Take-home packs of HIV prophylaxis (3 to 5 days) covered at 50%.
- Up to 5 counseling sessions with a licensed therapist, to be scheduled within 18 months of the medical visit.

The SAVE Fund pays for all the elements of a Partial Medical Assessment and reimburses the hospital directly (the victim is not billed unless they receive treatment or medications, such as HIV prophylaxis, not covered by SAVE). As of July 2019: The maximum amount reimbursed to hospitals by the Fund for the Partial Assessment is \$215, or \$310 if the examination is conducted by a certified Sexual Assault Nurse Examiner (SANE). The Fund reimburses \$125 for STI prophylaxis, \$70 for emergency contraception, and \$840 for all counseling sessions combined. Payment for all other services will be calculated using the Oregon Workers Compensation Fee Schedule.

### **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 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 a 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 following:**
  - Victims whose assault occurred within the U.S. but outside of the state of Oregon
  - Care outside of one medical visit, including follow-up tests or care (except for counseling sessions)
  - Medical care or treatment during the visit unrelated to the assault
  - Medication prescriptions

## Medical Response and Advocacy

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- HIV prophylactic medications in full

### **SAVE Fund Eligibility**

- **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, or outside of the U.S., \*\* and;
- The victim presents to the provider within the specified time frame (120 hours for a complete assessment or 168 hours for a partial assessment).

**\*\* This is an important point of advocacy. When a victim's assault occurred in another state, the advocate or provider should help the victim obtain information regarding funds available in the state where the assault occurred. States vary in coverage of medical costs, but under federal law (Survivor's Bill of Rights Act of 2016), all 50 states must cover the cost of evidence collection regardless of whether the victim reports the assault. This law, however, does not prevent the hospital from billing for medical services outside of forensic evidence collection.**

- **Provider Eligibility:** 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 can access whichever assessment for which they qualify).

Eligible providers are as follows:

- ORSANE 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 if they are equipped to conduct both partial and complete exams. In the case of SAFE Kit and other evidence collection, this will 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)**

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, and;
- Orally inform victims of their option to be provided emergency contraception at the facility and, if requested by the victim and if not medically contraindicated, provide the victim with emergency contraception immediately at the facility.

## Medical Response and Advocacy

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### **Consent**

Consent of the victim 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.

### **When the Victim is a Minor**

- 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.
- A minor's ability to consent without parental notification does not mean that a minor victim's parents won't eventually find out about the assault; all medical providers in Oregon are legally required to report the sexual assault of a minor to law enforcement.
- Minors of any age can consent to receive birth control information and services.
- Minors age fifteen (15) and older can consent to an abortion without parental consent.
- 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, their clothes may be taken as part of the SAFE Kit. Sometimes hospitals provide sweats and slippers, but some do not. Be familiar with your community's medical facilities and their resources.
- ✓ If the facility in your community doesn't provide clothes for sexual assault victims, bring along some clothing items from your agency, or check with the victim about whether they can 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, however, refer a patient to another facility for 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 following procedures that account for the chain of evidence to the point of retrieval (pick-up) by law enforcement. However, it should be noted that when the

## Medical Response and Advocacy

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victim is an individual housed in a correctional facility, it's highly likely that corrections officers will remain in the room at all times.

**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.
- Identification, treatment, and documentation of injuries.
- Forensic evidence collection and packaging.
- STI evaluation and prophylaxis.
- Pregnancy risk and prophylaxis (testing is recommended).
- Follow-up care, information and referral.

**SANEs (or whomever is conducting the exam) should 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, if known.
- 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 also 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 who worked with the victim can be asked to repeat in court, under oath, comments made by the victim during the exam and history taking.

## Medical Response and Advocacy

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### **Evidence**

The specific evidence collected is largely determined by the description of the assault provided by the victim. If a victim indicates, for example, that the assailant licked or bit her breasts, the SANE will swab the area of the breast indicated by the victim to obtain DNA evidence in the form of the assailant's saliva. Areas of the body not indicated by the victim as affected during the assault would not be swabbed.

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:**

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). Shoes may also be collected. Clothing items will not be returned to the victim.

#### **PHOTOGRAPHS:**

Photos may be taken of visible injuries. For more information on the use of photographs in the Medical Forensic Exam, please : <http://oregonsatf.org/wp-content/uploads/2016/12/Medical-Photography-Position-Paper.pdf>

#### **BODY SWABS:**

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

#### **TRACE EVIDENCE:**

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, as many as 24-30 hairs are plucked. Sometimes dried saliva or semen can be found in the hair and obtained by cutting the hair.

#### **FINGERNAIL SWABS:**

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

#### **BLOOD:**

May be collected in cases where drug-facilitated sexual assault is suspected or a blood alcohol screen is needed.

#### **URINE:**

Usually collected only in cases where drug-facilitated rape is suspected or when a pregnancy test is needed.

## Medical Response and Advocacy

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### **ORAL SWABS:**

Usually collected on all patients as a DNA standard, and in cases where oral sex was a part of the assault.

### **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:**

External swabs, collected if the victim indicates any contact with their genitals, especially if ejaculation occurs. This may include penetration or attempted penetration of the anus. Even without anal contact, swabs are recommended due to fluid transfer from the vulva, vagina, or scrotum.

### **RECTAL SWABS:**

Internal swabs, collected if the victim indicates penetration or attempted penetration of their anus. Typically collected through use of an anoscope. External anal swabs will also be collected.

### **VAGINAL OR COMBINED VAGINAL-CERVICAL SWABS:**

Internal swabs, collected if the victim indicates being vaginally assaulted in any way. This would include collecting swabs from the entrance to the vagina and interior vaginal walls. Combined swabs include use of a speculum and will include swabs from both the vagina and the cervix.

### **EXTERNAL GENITAL/VULVAR SWABS:**

External swabs, collected if the victim indicates any penetration or attempted penetration of their vagina. Also collected if there is contact with their genitals externally, even without penetration.

### **SCROTAL SWABS:**

External swabs, collected if the victim indicates any contact with their penis or scrotum.

### **PENIS SWABS:**

External swabs, collected if the victim indicates any contact with their penis or scrotum.

## **Drug-Facilitated Sexual Assault (DFSA)**

In any case of suspected DFSA, urine and blood samples should be collected as soon as possible with patient permission. While the likelihood of detection goes down over time, given the variety of substances that can be used in DFSA, the overall evidence collection

## Medical Response and Advocacy

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window of 120 hours (5 days) is recommended.

The drug most commonly used in DFSA cases is alcohol. Alcohol is often voluntarily consumed by the victim, although perpetrators 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 unconsciousness.

### **Signs and symptoms of DFSA 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

**SANEs will offer the victim the option to collect blood and urine with any signs or symptoms of DFSA.** If the victim reports to law enforcement, these specimens will be tested by the forensic laboratory for metabolites of over 200 substances. The victim also has the option to have the medical facility run an in-house toxicology screen. This screen is faster but is much more limited, with less sensitivity, and the results will not be able to be used in court due to lack of chain of custody. The patient may choose to pursue both tests, but should understand the potential benefits and drawbacks of each.

### **Criminal Justice System**

The criminal justice system includes police officers who respond to and investigate reports (including sexual assault), prosecutors, defense attorneys, 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 or the court (judge) 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 the duty of the criminal justice system to thoroughly consider the risks that sexual abusers pose in each community and the responsibility of the criminal justice system to address those risks.

### **The Sexual Assault Response Team (SART)**

Responders, agencies and systems in many of Oregon's 36 counties have developed and implemented Sexual Assault Response Teams (SARTs) in an effort to re-define the criminal justice system response to sexual assault and improve its response to victims. The purpose of a SART is to ensure an effective, consistent, comprehensive and collaborative response to sexual assault that brings responsible parties to justice within a commitment to prioritize the needs of sexual assault victims and to ensure they are treated with sensitivity, dignity, and respect. Victims of sexual assault who are treated respectfully, involved in the process, kept informed and, above all else, **believed**, are more likely to participate in the criminal justice system. Participation and engagement by the victim may increase the options of the criminal justice system. Oregon, like 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 and ongoing emotional support.
- Provide case status updates.
- Timely notification to victims about Victim's Rights, and to ensure those rights are honored.
- Assist with Restitution requests, Crime Victim Compensation applications, Protective Order applications, and Victim Impact Statements.
- Victim accompaniment to police interviews, court hearings, and trials.
- Resources and referrals for basic needs (food, housing, transportation, etc.), safety issues, and supportive services such as counseling.
- Provide information to the victim so they can make informed decisions.

### **Law Enforcement**

- Establish the elements of the crime.
- Gather and document information and physical evidence.
- Establish probable cause of possible arrest.
- Conduct interviews with the perpetrator, victim, and witnesses.
- 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.

### **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.
- Information and Referral.

## **The Criminal Code — Oregon Revised Statutes (ORS)**

Earlier in this manual, we provided a definition of sexual assault to establish a broad understanding of the scope and nature of sexual assault not limited by the definitions within the criminal code. In this chapter, we provide a summary of each of the ORS related to sexual assault crimes and their corresponding definitions.

### **■ RELEVANT LEGAL DEFINITIONS**

#### **Sexual Intercourse**

In the State of 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 the State of Oregon, mental defect means that a person suffers from mental “disease or defect,” rendering the person incapable of understanding the nature of the conduct of the perpetrator.

#### **Mental Incapacitation**

In the State of Oregon, mental incapacitation means a person is rendered incapable of appraising or controlling the conduct of the person at the time of the sexual offense. This can be due to voluntary or involuntary intoxication.

#### **Physical Helplessness**

In the State of Oregon, physical helplessness means that a person is unconscious or

otherwise physically unable to communicate consent.

### **Deviate Sexual Intercourse**

In the State of 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.

### **Unlawful Sexual Penetration**

In the State of 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.

### **Sexual Abuse**

In the State of Oregon, sexual abuse encompasses many sexual assault crimes not otherwise covered under rape, sodomy, or unlawful sexual penetration.

### **Sexual Contact**

In the State of 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.

### **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.

## ■ RELEVANT OREGON REVISED STATUTES (ORS)

### **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.

### **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.

### **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.

### **ORS 163.408 Unlawful Sexual Penetration in the Second Degree**

(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age. (ORS 163.412 provides an exception for medical treatment or corrections search)

### **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.

### **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.

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

### **Mandatory Reporting**

In the State of Oregon there are specific instances in which any form of sexual assault must be reported either to law enforcement or to the Department of Human Services (DHS). Protected populations, or populations who receive additional protections by criminal code, include: children and adolescents (those who are under 18 years), people with cognitive or developmental disabilities, people with mental illness, and seniors (those who are 65 years and above).

District Attorney-based victim advocates, law enforcement and law enforcement advocates, and medical professionals are expected to follow their own agency procedure and report abuse of protected populations. Community-based advocates, unless licensed or certified and thus required by statute to do so, are not mandatory reporters.

The following is a summary of the mandatory reporting requirements as stated in the ORS (see also 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).

Note: 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 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.

### ■ **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 a mentally ill or developmentally disabled adult 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.

**Note: Victims of sexual assault 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 Law**

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); 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 they intends to offer. The judge then holds an *in camera* (in chambers; private) hearing 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 the evidence admissible, the state can appeal the decision to a higher court before trial. If the judge rules the evidence inadmissible, the defendant can appeal the decision to a higher court after trial if they are found guilty.

### **More Helpful General Legal Definitions**

#### **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 of a party that has lost on one or more issues and to determine if the decision was correct. 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.

#### **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. Often asked to plead guilty or not guilty. Release on bail or personal promise to return (recognizance) is also often decided.

#### **Citation to Appear**

A legal paper, in lieu of a warrantless arrest, requiring the named person to appear in court.

#### **Civil Compromise**

An agreement between the victim/survivor and defendant by which a criminal case is resolved 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 (as opposed to criminal, military, or religious domains). 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; such principles can be changed by legislation.

### **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.

### **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 a legally binding marriage.

### **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 they do not complete the diversion program, they are 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.

### **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 primarily in felony cases.

### **Information**

A written accusation charging a named person with the commission of an offense. Information means data, text, images, sounds, codes, computer programs, databases, or the likes as proof. 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.

### **Jurisdiction**

Authority of court to exercise power in a geographical area. 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 them 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 county or city.

### **Parole**

When a person is released from prison conditionally, they are 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, they can be returned to prison without a new trial, though a fact-finding hearing is often required.

### **Petitioner**

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

### **Plaintiff**

Person who initiates a complaint or 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 them. The defendant can decide to plead guilty at the time and will not go to trial. If they plead 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).

### **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 served upon the person before it is valid. If a person violates the restraining order, they are subject to arrest.

### **Sentence**

The penalty the judge gives to a defendant after they plead guilty or no contest or is found 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.

### **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. This is a civil rather than criminal matter.

### **Verdict**

Formal decision made by jury on issues submitted to it.

### **Violation**

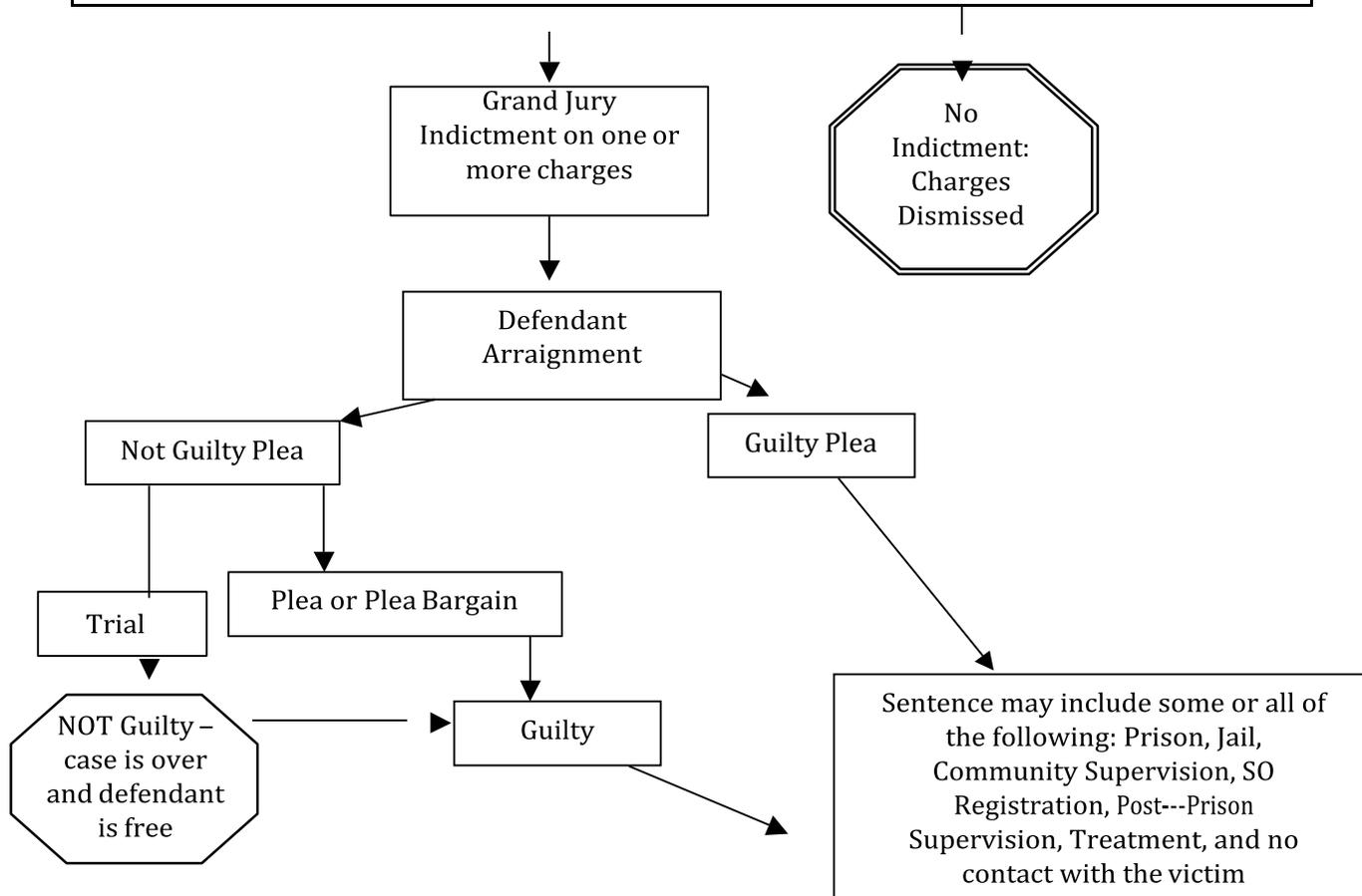
An offense is a violation if it is so designated in the statute. A violation is punishable only by a fine, forfeiture, fine and forfeiture, or other civil penalty. Commission of a violation is not commission of a crime.

### **Warrant**

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

## Criminal Justice System Flow Chart

<u>Initial Report to LE</u>
The law enforcement agency whose jurisdiction includes the <u>location of the crime</u> will take an initial report. Depending on the size of the agency, the initial responding officer may investigate the case or refer it to a detective for immediate response or future follow-up.
<u>Investigation</u>
Investigations can last several days to many months, and sometimes even years. Detectives conduct extensive interviews with the victim, suspect and any available witnesses, collect and assess evidence and determine whether the evidence meets the elements of a crime. Cases are forwarded to the District Attorney's office for charging (at the discretion of law enforcement). If the case is NOT forwarded, it will be closed unless further evidence is revealed.
<u>District Attorney's Office</u>
A District Attorney or Deputy DA (prosecutor) will decide whether or not to issue charges or decline the case. If charges are issued, the case is presented to Grand Jury.
<u>Grand Jury</u>
The prosecutor presents the case to seven grand jury members (citizens) who decide whether to indict the suspect on any or all of the charges presented by the prosecutor.



### Crime Victims' Rights

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*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 involved. Nationally, crime victims' rights law is still developing and is 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](http://www.ncvli.org)) in Portland, or the Oregon Crime Victim Law Center (OCVLC, [www.ocvlc.org](http://www.ocvlc.org)) might be resources for you.

#### **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 themselves 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 they are a victim; if the court determines that they are a victim in the case, they have the rights that other victims have.

## Crime Victims' Rights

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The definition of “constitutional victim” and how that affects cases is not yet fixed; unless you are sure that your client is a “constitutional victim,” it’s best to check with NCVLI<sup>28</sup> or OCVLC<sup>29</sup>.

### **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 Oregon Constitution are:

- In the statute, there is no qualification that “victim” status 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 (**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 pertain to notification of what is going to happen in a case. A crime victim has a right to have a support person and to have them present 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, victims of sexual assault, or victims of crime related to driving under the influence of intoxicants (DUII). 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 will not 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

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<sup>28</sup> National Crime Victim Law Institute, [https://law.lclark.edu/centers/national\\_crime\\_victim\\_law\\_institute/](https://law.lclark.edu/centers/national_crime_victim_law_institute/)

<sup>29</sup> Oregon Crime Victim Law Center, <https://www.oevlc.org/>

## Crime Victims' Rights

hearing is going to take place.

### **Automatic Rights vs. Rights Upon Request**

While some crime victims' rights are automatic, many 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. See the table below for examples of each:

Crime Victims' Rights that Require Victim to Take Action Before It Takes Effect	Crime Victims' Rights that Do Not Require Victim to Take Action to Take Effect
Right to crime victims' compensation for certain person crimes (if crime victim applies for the compensation)	Right to due dignity and respect
Right to a court order prohibiting distribution of sexually explicit information (upon request)	Right to fair and impartial treatment
Right to be informed in advance of "critical stage hearings" (upon request)	Right to notice of constitutional rights as soon as practicable
Right to a copy of a court transcript (if requested and paid for)	Right to reasonable protection from the defendant, et al.
Right to information about the defendant, alleged youth offender, convicted person or youth offender (if information is requested)	Right to a support person and to have them present
Right to have phone number and address withheld (upon request)	Right not to be contacted by the defendant/alleged youth offender
Right to HIV testing (for victim and/or defendant) (upon request)	Right not to have personal identifiers disclosed
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 have schedule considered for trial date
Right to information in a DUII case (upon request)	Right to be contacted by a pre-sentence report preparer
Right to consult with the district attorney on a plea in a violent felony case (upon	Right to appear at pretrial release and sentencing, and to be heard

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request)	
Right to no public access coverage of sex offense proceedings (upon request)	Right to receive prompt restitution
Right to notice of hearings before the Psychiatric Security Review Board (including for youth found responsible except for insanity) or State Board of Parole and Post-Prison Supervision (upon request)	Right to bring certain civil actions
Right to request ongoing involvement in any court actions that happen after the conviction such as appeal, post-conviction or federal habeas proceedings	Right not to have graffiti removed by the offender
Right to assert a claim of violation of crime victims' rights if your rights are not honored	Right to emergency contraception if victim of sexual assault

For more information, access the Crime Victims' Rights web portal at <https://www.doj.state.or.us/crime-victims/victims-rights/victims-rights-guides/>

### **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..."

But other crime victims' rights lack specificity as to who is responsible, or how it will happen. 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..." The constitution does not name the person or office responsible. Even when the law identifies *who* is responsible, it does not usually indicate *how* that will happen. In the above-referenced statute, for example, 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, 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. The process is defined in **ORS 147.515** through **147.575**.

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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 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 they or have 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 they remain 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, Louarna 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 Community-Based Victim Advocates**

Given the uneven response to victims' rights in the criminal and juvenile justice systems in Oregon, community-based sexual assault advocates in Oregon have a critical role – especially with the advent of constitutional amendments that make the rights enforceable. Advocates are well positioned to help victims request their rights and to help them navigate the criminal and juvenile justice systems. They are a logical choice as the point person for information exchange between a victim and other responders. As this communication and broader advocacy hub, advocates need to be familiar with the language of victims' rights,

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the specific rights that inform their advocacy, and the possible ways to have rights enforced or otherwise honored.

A strong and consistent victim voice in the adult criminal and juvenile justice systems has the promise of transforming the adversarial system in ways as significant as the changes brought by the Miranda decision. A process that gives crime victims a respected 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 be able to navigate it will be greatly shaped by victim advocates.

### **Oregon Crime Victims' Rights List**

#### **For Practitioners (With Case Law)**

See also DOJ CVSD Crime Victim Rights Practitioners Guide at

[http://www.doj.state.or.us/victims/pdf/oregon\\_crime\\_victims\\_rights\\_practitioners\\_guide.pdf](http://www.doj.state.or.us/victims/pdf/oregon_crime_victims_rights_practitioners_guide.pdf)

#### **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.

#### **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

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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. 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' 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

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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 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

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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 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 agency; and the time and place that the youth offender was taken into custody and whether there was resistance, pursuit or a weapon

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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 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

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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 147-512 (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).

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

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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. 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).

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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. 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

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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 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). 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).

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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 163A.230. 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 144.102(4)(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(4)(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(4)(c)(A). ORS 144.270(4)(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

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included in the judgment document. ORS 137.540(4)(b). ORS 144.102(4)(c)(B). ORS 144.270(4)(c)(B).

35. A victim has the right to be heard on the issue of whether a sex offender adjudicated in juvenile court should be required to register. The juvenile court shall hold a hearing on the issue of reporting in the six-month period before the termination of juvenile court jurisdiction or the discharge from the jurisdiction of the Psychiatric Security Review Board. The District Attorney shall notify the victim prior to the hearing of their right to appear under ORS 419C.273. ORS 163A.030.
  
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 163A.130(7). ORS 419C.273(1) and (4)(a) and (b)(K).
  
37. Victims who have requested notification have the right to notice and to be heard at a hearing held when a sex offender petitions for reclassification or relief from registration under ORS 163A.125 when the hearing is held by the Oregon Board of Parole. ORS 144.750.
  
38. 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 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

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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 the 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 Oregon Supreme Court affirmed the award concluding that the 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.

39. 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

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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).

40. 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.
41. 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.
42. 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).
43. 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).
44. 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.
45. 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, at 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

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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 144.750. 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)). 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.

46. 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).
47. 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 144.750.
48. 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.
49. 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).
50. 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).
51. 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

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person to be designated by the 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.

52. 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.
53. 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(12)(B)(b); (15)(b).
54. 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. ORS 138.627.

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

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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 these rights, please see <https://www.doj.state.or.us/crime-victims/>*

### **Crime Victims' Rights in Post-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.

### **Civil Legal Rights for Crime**

55. 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).
56. 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 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

## Crime Victims' Rights

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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.*

57. 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.
58. 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).
59. 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.
60. 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).
61. A covered employer shall allow an eligible employee to take leave from employment to attend a criminal proceeding. ORS 659A.192.
62. 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.272. 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.
63. 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 § 1437f (2006).
64. A victim of domestic violence may have a right, in some Oregon Housing Authorities, to a housing preference.
65. A person at risk for family abuse, elder abuse or abuse of people with disabilities has

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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.

66. 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.
67. 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.
68. 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 461-135-1200 et seq.
69. 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 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).
70. 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).
71. 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).

### **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.doi.state.or.us/crime-victims/](http://www.doi.state.or.us/crime-victims/). If you are aware of resources that would strengthen this Web portal, please contact the Crime Victims' Services Division at 503-378-5348.

### **Confidentiality and Privilege**

#### **The Importance of Confidentiality**

Confidentiality is a fundamental principle at the very core of victim services. When victims of violence are assured of confidentiality, they are more willing to access services and to disclose the true nature of the abuse or assault they have experienced. This allows for effective, individualized safety planning and advocacy response.

Victims often experience humiliation, shame, self-blame, guilt, fear, and depression as a result of the violence they have experienced. In addition, talking about the abuse or violence can be very traumatic. Those feelings and worries can be eased when victims can disclose and seek help in a confidential setting.

Confidential services also enhance victim safety. Many victims rightfully fear that unintended disclosure will put them at further risk of violence or escalation of violence. Disclosure may reveal a victim's safe location and jeopardize their safety plan. When victims lose control over their information, other negative consequences may occur. Information may be used against them in divorce, custody, or child welfare cases; or manipulated by perpetrators in criminal cases. If disclosed, information confided to an advocate can also negatively affect employment, education, or housing.

Victims' trust in advocacy services and willingness to seek help will be reinforced when they are assured that their information is being protected. This practice also reinforces the principle that victims control their personal information and get to decide if, how, and when their information will be shared.

#### **What All Advocates Have in Common**

While advocates within different agencies may have varying roles, all advocates have in common a commitment to confidentiality in their work with victims. They have a shared recognition that confidentiality is integral to victim safety and view it as a core component of their shared ethical standards and practices to treat victims with respect. Virtually all advocates work with agencies that receive funding requiring advocates to protect the confidentiality and privacy of the people they serve. These shared confidentiality requirements flow mainly from the Violence Against Women Act (VAWA) of 2013. The Oregon Department of Justice, Crime Victim Services Division, and the Oregon Department of Human Services administer many funding streams to advocacy programs; each include the VAWA standards in funding contracts. As a result, all advocates are required to follow the same basic rule with regard to confidentiality.

It is important to recognize, however, that advocates working in government-based programs also have obligations related to holding individuals accountable in the criminal justice system, as outlined in the following sections.

### **Confidentiality Issues Unique to Victims' Assistance Programs and other System-Based Advocates**

In the State of Oregon, Victims' Assistance programs are operated by the district attorney's offices. Many law enforcement agencies have domestic and sexual violence advocates on staff. Victim Assistance and law enforcement advocacy programs have dual purposes: protecting victim safety and promoting accountability for those who have caused harm. These advocates' primary function is to assist victims who are working with law enforcement, involved in the criminal justice system, or obtaining protection orders in the civil justice system.

Generally employed and supervised by the agency in which they are placed, systems-based advocates are considered to be agents of law enforcement or district attorney agencies. As a result, they are unable to prevent disclosure of information within their own agencies; such as to prosecutors or law enforcement officers. Further, they may be unable to prevent disclosure of victim information in a court or other legal proceeding. In certain circumstances, law enforcement officials may be obligated to turn information over to the district attorney's office. In turn, the district attorney's office may be required by state or federal law to disclose certain information evidence to the defense (and thus to the defendant).

- **'Exculpatory' evidence** is information that could be favorable to the defendant and that could potentially make a difference in the outcome of the case.

#### **Examples of 'Exculpatory' Evidence:**

- A photograph of the place on the victim's body showing no bruising where they were allegedly injured by the perpetrator. A prosecutor with a copy of such a photograph would be obligated to provide it to the defense.
- A written portion of the victim's diary in which they indicate that they were under the influence of drugs during the night the abuse or assault took place. If a Victim Assistance advocate had a copy of this diary excerpt, they would likely be required to provide this information to the prosecutor, who would then likely be required to turn it over to the defense.

- **Discovery:** Prosecutors are also required by law to provide copies of "discovery" to the defense. Discovery consists of any documents, reports, pictures, or other evidence in the prosecution's possession that will be used in the prosecution of the case. Sometimes Victim Assistance advocates get information that is considered discovery, and it must be turned over to prosecutors and then to the defense.

#### **One example of 'discovery' is a victim impact statement.**

Victims should always be informed that, if they provide a written statement to Victim Assistance, it will be provided to the prosecutor and discovered to the defense.

- **Mandatory Reporting:** Another confidentiality issue unique to system-based advocates in Oregon involves mandatory reporting of abuse of children, elders and

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disabled persons. District attorneys and employees of law enforcement agencies are mandatory reporters. As employees, and thus agents, of District Attorney's offices or law enforcement agencies, these obligations are imputed to the advocates. *Note: Mandatory reporting is discussed in detail later in this chapter.*

### **Distinctions in Reporting Obligations for Community-Based Advocates:**

In some circumstances, a private non-profit victim services agency may have advocates stationed at district attorney or law enforcement-based programs. Where such arrangements exist, it is essential that advocates at both organizations understand the differences in their respective confidentiality responsibilities. A written policy documenting how the collaboration will handle these differences is vital. ***These differences also must be communicated to victims before they disclose information.*** Victim autonomy and safety is enhanced when victims are able to make informed decisions about what and to whom they disclose.

## **Confidentiality within Community Collaborations**

When working with community partners it is important to discuss and appreciate one another's roles, including similarities and differences, range of services provided, and the strengths each bring to the table. Also, each partner's confidentiality policy should be shared. This allows the group to have a clear understanding of each other's responsibilities, limitations, and abilities. When working in multi-disciplinary teams, these discussions lay the foundation for common understanding and respect from the outset, and will help in the development of structures for communication and problem-solving.

Often collaborative teams have an expectation that, as part of working together, all partners will share information about specific cases. It is best practice to clarify from the start that such practices are inconsistent with confidentiality responsibilities and advocate-victim privilege and may create safety concerns for victims. Advocates should strive to carve out a role that does not require information-sharing about specific victims they have contact with. Typically, other partners not bound by confidentiality have sufficient information to further the collaboration and respond to victim needs.

Many multidisciplinary teams have some form of confidentiality agreement designed to prevent information from leaving the group. Such agreements do not authorize advocates to provide personally identifying victim information and are **not** a substitute for an informed, written and reasonably time-limited release of information (ROI) from the victim.

In very rare circumstances when clearly beneficial to a client and with informed consent, it may be appropriate for an advocate to disclose information after obtaining a ROI. The informed consent conversation must include a specific discussion that identifies each of the partners who will receive the information and explain how it will be used. For example, victims should know that if a prosecutor participating in the multidisciplinary team determines that information is exculpatory, it will be shared with the attorney representing the abuser.

Even when an advocate is unable to share information about a particular victim in the

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context of a disciplinary team, advocates can meaningfully participate in many ways. Advocates can provide general information about the dynamics of sexual assault or domestic violence; they can identify gaps in services; they can offer support and safety planning information; they can give perspective on a victim's experience; and they can suggest ways that agency partners can increase victim safety. All of this information can enhance collaboration and improve the overall systems response to victims.

### **Confidentiality: How It Works**

#### ✓ **Policies and Procedures:**

All programs providing advocacy to victims should have in place written and clearly-defined policies and procedures that protect victim confidentiality and safety to the greatest extent possible. Such policies should include information about any exceptions or limitations regarding confidentiality. All volunteers and staff, as well as the victims they serve, need to have the same information and understanding. Written confidentiality policies protect the safety of victims and help prevent inadvertent disclosures.

#### ✓ **Responding to Informal Requests for Information:**

Confidentiality policies should include a written policy regarding proper response to informal requests for information. It's helpful to include a description of a standard response that advocates can use when they receive such requests. For example, if a caller telephones the shelter looking for a victim, a standard response could be "We are covered by state and federal confidentiality laws. I can't confirm or deny whether that person has had contact with this program. I can take a message, though, and I will post it." Programs should always notify a victim immediately of any requests for information.

#### ✓ **Explaining Confidentiality:**

When victims first access services, they should be made aware of the boundaries of confidentiality protections available to them, including any exceptions to confidentiality. Before being asked to disclose sensitive information, they should be provided with the agency's written confidentiality policies and have the opportunity to discuss them with an advocate in private. Because of the safety and autonomy interests at stake, advocates are responsible for ensuring that victims have a clear understanding of the limits of the confidentiality that a program is able to provide.

For example, if a Victim Assistance advocate is expected to help gather evidence in connection with the prosecutor's office, victims must be informed of this relationship before they are asked to provide any information.

#### **Some of the questions that should be answered for victims:**

- Do I have the right to confidentiality?
- What will the agency do to protect the confidentiality of my information?
- Are there circumstances in which the agency will disclose information without my consent?
- Do I have a right to see my file?

- Who else has a right to see my file?

### **The Basic Rule and Other VAWA Confidentiality Requirements**

The Violence Against Women Act of 2013 (VAWA) sets out confidentiality requirements that are a condition of the receipt of funding. As mentioned above, all Oregon advocacy programs that receive state funds are bound by these requirements.

**VAWA's Basic Rule** is that advocates must protect the confidentiality and privacy of persons receiving services and may not disclose Personally Identifying Information (PII) or individual client information without the informed, written, and reasonably time-limited consent of the person. The primary exception to this rule is when release of information is compelled by:

- a statutory mandate (law) or
- court mandate (court order or case law)

If release of a victim's PII is compelled by statute or court orders, advocates must make reasonable attempts to notify the victim(s) that their information is being disclosed. The advocate must also take whatever steps are necessary to protect the privacy and safety of the persons who are affected by the release of information.

VAWA **does** permit the sharing of certain types of information:

- non-personally identifying data in the aggregate for reporting purposes,
- court and law enforcement-generated information stored in secure protective order registries, and
- law enforcement and prosecution-generated information necessary for law enforcement and prosecution purposes.

### **Personally-Identifying or Individual Information (PII):**

PII refers to information that is likely to identify the individual or disclose the location of the individual. Such information includes:

- a first and last name,
- home or physical address,
- contact information (e.g. postal or e-mail address, or telephone number)
- social security number, driver license number, state-issued picture I.D. number, passport number or student identification number, and
- any other information (such as date of birth, racial or ethnic background, or religious affiliation) that in combination with any of the above information would serve to identify the individual.

***In making the determination about whether such information will identify a person, it is important to look at the facts and circumstances of each individual's case.***

## Confidentiality and Privilege

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### **Informed Consent:**

Informed consent means that a victim ***fully understands the potential consequences of disclosure***. Advocates are responsible for ensuring that victims grasp how their information will be used and shared, including potential misuses, ***before they give consent***. Advocates must ensure that victims comprehend the conversation about informed consent in a meaningful way and that any issues with regard to language or other barriers to understanding are effectively addressed. Victims must be given the chance to ask questions and to take the time to think about the pros and cons of release before making their decision. The victim must also be given the opportunity to refuse to consent to the release of information.

DARE is a useful acronym when thinking about Informed Consent –  
Must **D**iscuss and **A**gree upon what information will be released, to whom, for what purpose, over what period of time, etc. Must also **R**Ecord that agreement in writing.

### **Ensuring True Informed Consent: Recommended Points to Cover with Victim:**

- Information, once shared, cannot be taken back.
- Both the advocate and the victim will lose control over how the information is handled once it's released. For example, agencies receiving the disclosed information may be governed by rules or laws that require further disclosure.
- Information may be re-disclosed; either inadvertently or on purpose.
- Information disclosed to an attorney or a court may become a part of the public court record and be accessible in later court proceedings; by an abuser or by the general public.
- Some risk exists that the perpetrator could get access to the information through other avenues.

In addition, advocates should explain that once a victim has consented to the release of some information related to the substance of confidential or privileged communications, the door may be open for all information to be released. A program or advocate may be unable to limit the amount or type of information released once confidentiality protections have been waived. *See the discussion of 'waiver' in the advocate-victim privilege section below.*

**Note: VAWA explicitly states that a provider may not make consent to release of information a condition of eligibility for services.**

### **Written Consent or Release of Information (ROI):**

Advocates must have written permission from victims to release their PII. This is most easily accomplished with a Release of Information form. The National Network to End Domestic Violence (NNEDV) provides a template ROI form that can be adapted for use in any advocacy agency; this template can be found at [nnedv.org](http://nnedv.org).

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### **An effective and VAWA-compliant release of information form should contain:**

- the exact information the victim is authorizing to be released
- the name of the agency designated to receive the information
- the purpose of the release
- the duration of the release (must be reasonably time-limited)
- the date the release was signed
- a statement acknowledging that the victim has read the form and understands the consequences of authorizing the release of information and
- a statement on the form that victim may revoke their consent for release

VAWA requires written releases.

#### ✓ **Reasonably Time-Limited:**

In determining the appropriate time frame for release of information, it is important to consider what will be the most protective of the victim and at the same time allow the advocate to help the victim accomplish their goals. The reasonableness of the time frame should be based in the victim's particular circumstances; their lives can be marked by chaos and change. As their situations evolve, information they previously authorized to be released in a ROI may no longer be safe to disclose. National technical assistance providers for the Office of Violence Against Women generally recommend no more than 30 days, and prefer even shorter time frames. Time-limited releases better protect victim safety, but do require advocates to check in with victims periodically to ensure that the release of information is up to date and still safe and appropriate.

#### ✓ **Revocation of a Release of Information:**

A victim may revoke a ROI at any time. A written revocation of consent is not required; a victim may revoke orally. As soon as a victim has done so, the agency must cease sharing information and should document the change. Revocation of consent only prevents the release of information from the date of revocation forward; victims cannot reclaim control of information already released.

## **Oregon Law Regarding Confidentiality and Advocate-Victim Privilege**

In 2015 the Oregon Legislature passed HB 3476, which mandates advocate confidentiality (ORS 147.600) and creates an advocate-victim privilege that applies to certified advocates in qualified victim services programs (ORS 40.264). The substance of this law went into effect October 1, 2015. In essence, advocate-victim privilege is available to advocates within non-governmental, nonprofit, community-based programs or campus-based or affiliated programs. ***Advocate privilege does not apply to system-based advocates.***

This law was designed to work seamlessly with the confidentiality conditions set out in VAWA. Thus, nonprofit programs who operate under and comply with VAWA rules are acting consistently with HB 3476.

### ■ **Key Definitions Relating to Confidentiality Requirement and Advocate-Victim Privilege:**

#### ✓ **Certified advocate:**

A certified advocate is a person who has completed 40 hours of training in advocacy for victims of domestic violence, sexual assault, or stalking. The training must be approved by the Attorney General. This advocate must **also** be employed by a qualified victim services program.

***Advocate-victim privilege is only available to an advocate who meets both requirements.*** It is not enough that an advocate is simply employed by a qualifying program.

#### ✓ **Qualified victim services program:**

- A nongovernmental, nonprofit, community-based program that offers safety planning, counseling, support, or advocacy services to victims of domestic violence, sexual assault or stalking; **or**
- A campus-based or affiliated program, specifically a sexual assault center, student affairs center, or other program providing safety planning, counseling, support, or services to victims. The program must be on the campus of or affiliated with a two or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity grant.

#### ✓ **Qualified victim:**

A qualified victim is a person who is seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault, or stalking ***at a qualified victim services program***. The definition is quite broad and could be applied to individuals seeking assistance for family members or friends who are victims of and affected by domestic violence, sexual assault, and stalking.

#### ✓ **Confidential communication:**

Confidential communication is written or oral communication that is not intended for further disclosure, except to:

- a person present when the communication is made and who is there to further the interest of the victim in the course of seeking services (e.g. a trusted family member, a counselor, a case manager at a culturally specific program that does not provide domestic violence services),
- persons reasonably necessary for the transmission of the communication (interpreters), or
- other persons, in the context of group counseling.

### ■ **Confidentiality Mandate (Requirement):**

HB 3476 states that a certified advocate or a qualified victim services program may not disclose confidential communications between a victim and a certified advocate or qualified victim services program made in the course of providing services, or records created or maintained in the course of providing services. Similar to VAWA, a certified

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advocate or qualified victim services program may disclose with the written, informed, reasonably time-limited consent of a victim.

Two exceptions to the confidentiality requirement are set out in the law. ***Disclosure is allowed:***

- if necessary for defense when an advocate or qualified victim service program is sued in any civil, criminal or administrative action or
- when otherwise required by law, such as when an advocate is a mandatory reporter of: child abuse, elder abuse, or abuse of Certain Adults with Severe and Persistent Mental Illness (who are receiving mental health treatment from a community program), Developmental Disabilities or Substance Use Disorder; due to a professional license or additional employment outside the qualified victim services program. An example is an advocate who is a regulated social worker. *Note: Mandatory abuse reporting is discussed in detail later in this chapter.*

### **Statutory Privilege**

The concept of privilege is based upon the idea that there are certain relationships and communications that should be protected in order for a person to receive the help they are seeking without fear that the information they share will be used against them. A ***statutory privilege*** is one that is created by the legislature and codified in the statutes.

In Oregon, many types of communications have statutory privileges which protect against disclosure in court. For example, the ***lawyer-client statutory privilege*** protects communications between lawyers and their clients. A lawyer may not be compelled to disclose a client's confidential communications in court or in other legal proceedings, unless the client consents to disclosure or unless certain exceptions have been met.

Oregon's statutory privileges are found at ORS 40.225 through 40.295. Some other examples of Oregon's statutory privileges are the ***physician-patient*** privilege, the ***psychotherapist-patient*** privilege, the ***clergy-penitent*** privilege, and the ***husband-wife*** privilege, to name a few.

### **Advocate-Victim Privilege Explained**

***Note: Advocate-victim privilege does not apply to system-based advocates.***

Privilege is based on the concept that in a civil, criminal, and administrative proceeding and in institutional disciplinary proceedings, a victim has a recognized right, or privilege, to refuse to disclose and to prevent any other person from disclosing; (1) confidential communications made by the victim to a certified advocate in the course of advocacy services and; (2) records created or maintained in the course of providing services.

Privilege is held by the victim, who can choose to waive (give up) the privilege. A victim can consent to disclosure of confidential communications that are otherwise protected by the privilege. A victim can sign a ROI authorizing an advocate to testify in or furnish records to a civil, criminal or administrative action or in an institutional disciplinary proceeding. Ensuring that such consent is ***informed*** is critical (*see section above regarding informed consent*).

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Another way a victim may waive the privilege is by disclosing the substance of a confidential communication with an advocate to a third party. The victim can share the underlying facts of their abuse or assault without waiving the privilege; it is the confidential communications between the advocate and the victim that must be protected to maintain the victim's right to assert the privilege. Thus, a victim may report the facts of the assault to law enforcement without waiving the privileged nature of their relationship with their advocate, so long as they do not disclose or describe their conversations with an advocate.

The law has an important exception to waiver of the privilege. The privilege is **not** waived by disclosure of the communication of confidential communication by a certified advocate to another person if the disclosure is ***reasonably necessary to accomplish the purpose for which the certified advocate is consulted***. One example might be a ROI authorizing an advocate to disclose information relevant to a victim's application for TA-DVS, or a request for leave from work. Even in these situations, the less information disclosed the better. An even safer alternative is to arrange for the needed information to come from a source other than an advocate whenever possible.

A victim also does not waive the privilege if the disclosure itself is a privileged conversation. For example, if a victim discloses the substance of privileged communications to a psychotherapist or an attorney, the disclosure itself is a privileged communication and is therefore not a waiver.

***Once waived, a victim may not claim the privilege in a legal proceeding***, and if subpoenaed an advocate likely will be required to testify. However, advocates are still required to maintain the confidentiality of communications under the general confidentiality mandate in HB 3476 and various funding requirements. The release of information in a legal setting does not relieve advocates and programs of their responsibilities regarding confidentiality.

Oregon law relating to waiver of privilege is complicated and has not yet been applied in the context of advocate-victim privilege. Therefore, it's not always clear when disclosure will result in a partial or complete waiver of privilege. During initial conversations with victims about confidentiality, advocates should discuss waiver and in general should strongly caution victims against disclosing their confidential communications with advocates to third parties.

### **Mandatory Abuse Reporting**

As a professional group, advocates in Oregon are **not** mandatory reporters of abuse of, elders, or disabled adults. In fact, ***VAWA 2013 and HB 3476 prohibit an advocate who is not required by law to report abuse from making a report unless the victim signs a release of information***. Advocates who are co-located in a system-based agency, like DHS, should be mindful that they retain their own agency's confidentiality requirements.

Individuals who are mandatory reporters due to some other aspect of their professional

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lives, however, may be employed as advocates by a victim services program. These individuals, because of their licensure or employment elsewhere, are still mandatory reporters when working or volunteering for that agency.

**It's important to note that advocates based within a district attorney's office are considered mandatory reporters.** The district attorney and all the prosecutors in the district attorney's office are mandatory reporters under Oregon's child abuse and elderly and disabled persons abuse reporting statutes. Because advocates employed by the district attorney are considered agents of the district attorney, this responsibility is imputed to advocates.

**Advocates who are mandatory abuse reporters as defined by Oregon law must understand how their reporting obligations intersect with confidentiality requirements set out in VAWA and HB 3476.** Both laws allow mandatory reporters to carry out their legal responsibilities and report abuse without a release of information. Both laws make clear only that which is required by law (statutorily mandated) can be reported. To disclose more information than required would violate confidentiality mandates. VAWA also clearly states that if release of a victim's information is compelled by statute or court mandate, advocates must make reasonable attempts to notify the victim that their information is being disclosed. The advocate must also take whatever steps are necessary to protect the privacy and safety of the persons who are affected by the release of information.

**An advocate who is a mandatory abuse reporter must disclose their obligation to report to victims** and ensure they understand what that means and how it might affect them. This allows victims to make informed decisions about what to share and what not to share. The conversation should take place when establishing a relationship with a victim and before disclosures are made. The advocate should offer the services of someone who is not a mandatory reporter, either within the agency if that is an option, or at another agency, who can support the victim with the issues the victim wants addressed. If the victim later seems to be on the verge of disclosing information that must be reported, the mandatory reporter should interrupt and explain their role as a mandatory reporter again.

### **If you are a mandatory reporter:**

- Inform the victim at the beginning of your conversation and before disclosures are made that you are a mandatory reporter.
- Inform the victim when their disclosure requires that a report be made. Provide the victim with an opportunity to self-report or report with the support of an advocate.
- Protect your relationship with the victim. A victim may feel betrayed or angry that the report must be made. Provide opportunities for the victim to air these emotions immediately and assure them that you'll continue to do what you can as their advocate. Offer the option to work with a different advocate or a different provider if the victim no longer wants to work with you.
- A victim'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 victim.
- Safety plan with the victim. Explore and address risks the victim may face because of the mandatory report.

**Oregon specifically excludes from the definition of “public or private officials” employees of a public or private organization providing child-related services or activities if the individuals are employees of “community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.**

**To summarize, the essential rule regarding mandatory report is that only advocates legally designated and required to report are allowed to do so under VAWA and HB 3476. Otherwise, VAWA and HB 3476 absolutely prohibit advocates from reporting abuse. For additional guidance on confidentiality, please see “Guidelines for Confidentiality Policies” in the Appendix.**

Agencies should have clear policies outlining how situations requiring a mandated report will be handled and ensure that all volunteers and staff know and understand the policies. Oregon law, not program policy or practice, determines whether or not a domestic or sexual violence advocate is a mandatory reporter.

### **Record-Keeping and Documentation Policies**

The proper creation and handling of records and information obtained from a victim is a crucial aspect of any advocacy program, regardless of whether the program is a law enforcement agency, a district attorney-based agency, or a non-profit victim advocacy organization. Keeping records serves an important dual purpose. Records help ensure the continuity of service for a victim from one visit to the next. Records also help protect the agency from liability in the event that a program is sued.

Record-keeping policies should be in writing, and all staff and volunteers should understand the policy. A copy of the policy should be made available and explained to the victim, so that they may know what to expect.

Government agency and non-government agency victim programs seek somewhat different types of information and have different purposes for which information is maintained. However, both types of programs have the same goal of preserving victim safety to the greatest extent possible. Record-keeping policies for both types of programs should balance the need to record information against the potential risk of disclosure.

### **Content of the Record:**

#### **Record May Include:**

- \* Identification of victim
- \* Relevant information necessary for service
- \* Intake forms
- \* Documentation of requests to see file

#### **Record Should NOT Include:**

- \* Casual comments
- \* Conclusions
- \* Personal opinions or criticisms
- \* Information from other sources

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- |  |                                    |
|--|------------------------------------|
| * Documentation of informed consent to release of file and withdrawal of consent | * Personal observations            |
| * Referrals made/Services provided   | * Speculations                     |
| * Progress   | * Statements written by the victim |
| * Discharge/termination status   | * Diagnostic determinations        |
|  | * Verbatim comments                |
|  | * "Treatment" Plan                 |
|  | * Photos of injuries               |

In order to best protect victims, advocates should take care to seek and document only information that is essential to the provision of services. Advocates should not ask questions about non-relevant matters and should avoid asking about and documenting information that might endanger the victim if released. Only information that is relevant and essential to the provision and continuity of services should be included in the record.

### **Subpoena Response**

#### ■ **Definitions:**

- **Subpoena:** a document that requires a person to give testimony as a witness in a court proceeding.
- **Subpoena duces tecum:** a document that requires a person to appear in court with specific documents or records.

#### ■ **Consequences for Violation of a Subpoena:**

A person who does not respond to a subpoena may be charged with contempt of court if they do not either respond to the subpoena or file appropriate objections within the correct timeframe. If a person does not comply with a subpoena and no response has been filed, either punitive or remedial sanctions may be imposed. Sanctions could include:

- Confinement in jail until compliance with the subpoena,
- Confinement in jail despite compliance with subpoena,
- A fine for a set amount for contempt that has already happened, or
- A fine that accumulates until compliance.

#### ■ **The Importance of Subpoena Response:**

A subpoena puts the confidentiality and safety interests of the victim at stake and also puts advocates and programs at risk (of punishment, fines, and potential loss of funding). It is crucial that programs have specific and well thought out written policies and procedures in place for responding to subpoenas.

#### ■ **Subpoena Response in System-based Programs**

While information held by system-based programs is generally less protected, every effort should be made to prevent the release of personally identifying information without an informed, written and reasonably time-limited consent. Because of limited protections, it is especially important that system-based programs have a strong policy and practice in place to respond to subpoenas. When served with a subpoena, the program manager should

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contact the appropriate prosecutor so they can respond on behalf of the program. In many offices this would be the prosecutor on the related case.

For identification of specific issues and considerations regarding subpoena response, please refer to the National Crime Victim Law Institute (NCVLI) “Checklist For An Oregon Victim Assistance Program (VAP) Responding to/Quashing A Defense Subpoena *Duces Tecum* That Seeks Records Concerning A Crime Victim” which can be accessed via the links at the end of this chapter.

### ■ Subpoena Response in the Context of Advocate-Victim Privilege:

Despite advocate-victim privilege, programs will still be served with subpoenas, and they cannot be ignored. With time, it is hoped that attorneys will be more aware of the privilege law and subpoenas will be served less frequently.

When served with a subpoena, a program must respond in a timely fashion. ***It is strongly recommended that the program contact an attorney immediately on receipt of a subpoena.***

**The following information should be considered in conjunction with legal advice and direction from an attorney:**

- Programs should contact the victim as soon as possible. Depending on the circumstances, the victim may want the program to produce records or testify. In that case, an informed, written and reasonably time-limited consent is required.
- Otherwise, it may be possible in light of advocate-victim privilege to make arguments that will convince the issuer of the subpoena to withdraw it. If the subpoena is not withdrawn, the advocate or qualified victim service program must take action to quash the subpoena based on advocate-victim privilege or appear on the date, and at the time and place designated in the subpoena and assert the privilege.
- Based on advocate-victim privilege, the judge likely will not require testimony or production of records although preliminary issues about the applicability of the privilege may need to be addressed.

### **Organizational Preparation for Responding to Subpoenas:**

1. Designate a “Custodian of Records.” The custodian of records is a person designated to be officially responsible for the program’s records and is the only person who is authorized to accept a subpoena for records. Usually, the custodian of records should be the program’s executive director or program manager.
2. Review and revise the program’s recordkeeping policies and procedures.
3. Develop a relationship with an attorney NOW (rather than in time of crisis.)
4. Develop written policies re: subpoena response and ensure that all staff are familiar with the policies.

### **Uniform Response to Subpoenas:**

- Never disclose ***anything*** to the person serving (delivering) the subpoena.

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- Inform the Executive Director/Program Manager and the ‘custodian of records’ about the subpoena **immediately**.
- Note (and document) how the subpoena was served, by whom, and to whom. (*If the subpoena is improperly served, then it is invalid and may be more easily contested.*)
- Read the subpoena carefully and note who signed it.
- Note whether the subpoena is for records or for testimony.
- Note whether the subpoena is for a criminal proceeding, a civil proceeding, or a dependency proceeding. (*If it is for a criminal or dependency proceeding, one of the parties will be the State of Oregon.*)
- Find out whether the victim has given **informed** consent to the release of information.
- Call an attorney for immediate assistance.

### **A Final Note: Respect for Different Roles**

The quality of community advocacy for victims of domestic and sexual violence will be enhanced by cooperative relationships between nonprofit victim services programs and district attorney and law enforcement-based programs. Each type of program provides vital support to victims, but each, to an extent, has different roles and offers different services. Owing to these different roles, each has different obligations with respect to confidentiality and privacy. Acknowledging and discussing these differences is an essential part of collaborating in order to more effectively and efficiently serve victims in local communities.

These relationships can be fostered at many levels. Participation in local coordinating councils and multi-disciplinary teams, assistance in crafting local coordinated community response to domestic violence and sexual assault, attendance at joint meetings with staff, supervisors, or boards of directors – all these activities can promote positive and productive working relationships. In many counties, these relationships already exist, as advocates from both types of agencies have long been an essential source of community support for victims of domestic violence and sexual assault. In communities where such collaborations are not yet formed, programs should look for opportunities to establish and develop them, whether informally or formally.

### **Resources on Documentation and Confidentiality**

**For additional guidance please see the Appendix.**

**National Crime Victim Law Institute (NCVLI)**

[https://law.lclark.edu/centers/national\\_crime\\_victim\\_law\\_institute/](https://law.lclark.edu/centers/national_crime_victim_law_institute/)

**Oregon Coalition Against Domestic and Sexual Violence (OCADSV)**

[www.ocadsv.com](http://www.ocadsv.com)

### **Sexual Abusers**

The terms “rapist” and “sex offender” often conjure the image of a violent, wild-eyed, unkempt criminal who drives a panel van and looks for women walking alone at night. Risk reduction efforts (often inaccurately described as *rape prevention*) support this notion by focusing on such things as improving lighting in public places, physical self-defense for women, home security systems, and warning women against walking alone at night.

Although this depiction may be compelling, it can serve to promote the false conviction that sexual abusers can somehow be spotted within the population, and that rape and sexual assault can be avoided if potential victims just make the right decisions. But this is an inaccurate framing of the issue and its dynamics. The fact is that people who commit sexual offenses are far more likely to be someone known, and even trusted, by the victim. Over 75% of completed forcible rapes are committed by individuals who are known by the victim.<sup>30</sup> Moreover, sexual abusers 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 neighbors.

### **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 this focus on “stranger danger” persists:

#### **A sense of safety**

We’re comforted by the notion that sexual abusers can be readily identified and therefore avoided. If we know who to look for and what places or activities to avoid, we will be safe<sup>31</sup>.

#### **Popular culture and the media**

The incidents of rape and sexual assault most often highlighted in the media are cases involving strangers and high levels of violence and/or weapons. Sexual assaults without high levels of violence are often discounted by society 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. In this framework, women who are sexually active or who engage in sexualized behavior are viewed as having “provoked” the assault, while men are forgiven based on an inherent inability to “control their sexual urges.”

#### **Evidence is based on incarcerated sexual offenders**

The vast bulk of research findings on sexual offending comes from studies using

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<sup>30</sup> D. Lisak and P. Miller, “Repeat Rape and Multiple Offending Among Undetected Rapists.” *Violence and Victims*, Vol. 17, No. 1 (2002): 73-84.

<sup>31</sup> See The Association for the Treatment of Sexual Abusers statement about, [Halloween and Sexual Abuse Prevention: The Mythical “Halloween Effect”](#).

## Sexual Abusers

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incarcerated offenders. Because the societal focus on stranger sexual assault is also reflected in the criminal justice system, stranger rapists are more likely to be prosecuted and convicted, and probably overrepresented in the research sample.

It's important to remember that while stranger rape constitutes a minority of the incidents of rape and sexual assault, it does occur, and these individuals should be held accountable. But the fact is that ***over 75% of rapes and sexual assaults are committed by someone known to the victim, no weapon is involved, and no physical injury is inflicted on the victim.***<sup>32</sup> Our challenge as a society, in order to better serve victims and hold *all* sexual abusers accountable, is to expand our understanding of rape and sexual assault.

### **Facts about Sex Abuse and Sexual Offending**

We encourage you to read, *Eight Things Everyone Should Know About Sexual Abuse & Sexual Offending*, published by the Association for the Treatment of Sexual Abusers<sup>33</sup>.

**There is no single explanation for what motivates a person to perpetrate sexual violence.** Some individuals may be opportunistic, while others may be motivated by anger, a need for power and control, or an underlying condition or disorder.

**Sexual abusers are found in all socioeconomic and racial groups.**

**“Research demonstrates that males commit the majority of sexual abuse, with approximately 5% of sexual abuse perpetrated by females.”<sup>34</sup>**

**“Adolescents (13-17) who engage in sexual abusive behavior account for more than one quarter (25.8%) of all sexual crimes and slightly more than a third (35.6%) of sexual abuse against minors; please note that once detected, decades of research indicates that adolescents who have engaged in sexual abusive behavior do not continue to engage in these behaviors.”<sup>35</sup>**

**People who sexually abuse fall into many categories.**

These may include voyeur, exhibitionist, statutory offender, incest offender, pedophile, rapist, sexual sadist, sexual murderer, and Sexually Violent Predator (SVP).

**Typology categories or diagnoses do not determine a sex abuser's dangerousness.**

It's the individual's *behavior* that determines the level of dangerousness. Reliance on typology categories is an imperfect predictor, as many sex abusers cross over to different victims, fall into multiple categories, and/or have multiple paraphilias.

**Paraphilias are conditions characterized by abnormal sexual desires, and include:**

- Rape: forced sexual contact

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<sup>32</sup> 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.

<sup>33</sup> <http://oregonsatf.org/wp-content/uploads/2016/12/Eight-Things-Everyone-Should-Know-About-Sexual-Abuse-Updated-2019.pdf>, a paper adopted by The Association for The Treatment of Sexual Abusers (ATSA).

<sup>34</sup> <https://www.atsa.com/pdfs/Policy/8ThingsEveryoneShouldKnow.pdf>, Accessed 1.7.20

<sup>35</sup> <https://www.atsa.com/pdfs/Policy/8ThingsEveryoneShouldKnow.pdf>, Accessed 1.7.20

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- Child molesting: having sexual contact with a person under 18
- Frottage: touching or rubbing a person without the person's consent for sexual gratification
- Necrophilia: sexual contact with a deceased person
- Voyeurism: watching someone for sexual gratification
- Exposing: displaying of one's genitals for sexual gratification

### **Using Details of Sexual Offense Specific Behavior and Abuse Experiences in Training, Media, and Legislative Hearings**

The Offender Management Subcommittee (OMC) of the Sexual Assault Task Force published the following recommendations<sup>36</sup> on using sexual offense specific behavior and abuse experiences in training, the media, and legislative hearings in an effort to address the myths and misconceptions<sup>37</sup> regarding those who sexually abuse present a challenge to the goal of ending sexual violence.

Effective advocacy for the prevention of sexual violence must provide accurate knowledge, information, and education about sexual abusers by dispelling commonly held myths and misconceptions. Specific problems emerge requiring sensitivity and respect for the precarious nature of professionals using details of individual's experiences in training, legislative hearings, and the media.

While details of individual's experiences may provide useful information and insight into risks of perpetration, it is important to give thought to the purpose and intent of sharing such information and weigh the potential risks and benefits. The considerations provided here are a useful starting point for determining what is most appropriate for each situation and audience.

#### **SEVEN IDENTIFIED CONSIDERATIONS**

##### **# 1 SURVIVOR/VICTIM TRAUMA**

It is known that many victims/survivors of sexual abuse, harassment, and assault attend trainings, legislative hearings, or watch or listen to media when details of sexual abuse are part of the content. It is recognized that the potential exists for this information to be harmful and traumatic.

##### **Recommendation**

It is recommended that when using details of abuse, consider the audience to whom the information is shared with. For example, a law enforcement audience may be different than an advocacy audience. It is also recommended that warnings or qualifications be given at the onset of training and to the media regarding sensitivity to potential harm.

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<sup>36</sup> [Recommended Guidelines for Using Sex Offense Stories and Experiences](#), published by the Offender Management Subcommittee, Accessed 1.7.20

<sup>37</sup> We recommend reviewing, "[Eight Things Everyone Should Know about Sexual Abuse & Sexual Offenders](#)" published by the Association for the Treatment of Sexual Abusers (ATSA).

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### **#2 PRURIENT INTEREST**

It is recognized there can be a prurient interest in sexual abusers, and some professionals may use details of abuse experiences for shock or titillation rather than knowledge building.

#### Recommendation

It is recommended that professionals be educated about the potential result of shocking or titillating information provided through sharing details of abuse experiences and how these can be counterproductive to the educational goals.

### **#3 CONSENT**

The problem of consent arises if professionals ask individuals to give permission to use their personal experiences in training events, legislative hearings, or in access to the media. Since professionals hold great power and control, **true consent** may be impossible and a question of ethics. More importantly, it is particularly problematic if youth are asked to give permission for use of their narratives/offense histories since by virtue of being **children**, true consent is impossible.

#### Recommendation

It is recommended that careful consideration be given to whether individuals can truly consent - consent forms should reflect different language to those sensitive issues. Considering youth, it is recommended that the conversation be youth driven and that parent or guardian or trusted adult be involved in the conversation. In interfamilial cases, consent should also be given by the survivor. If a written or electronic materials are created (press releases, presentation materials, etc), the survivor should always be informed of their level of control over this document. For example, "We are going to write a press release about this criminal conviction. The PIO has the ultimate say in what goes in that press release, but we would really like your feedback." If you ask the survivor for edits or content be VERY CLEAR about whether or not you will be able to include those edits or content. Be prepared to explain to the survivor how these materials will be used.

### **#4 CONFIDENTIALITY**

Confidentiality is a broad, complex, and potentially dangerous issue when using details of abuse experiences. Even though ethical demands prohibit the use of specific names and personal identification information of victims/survivors, without sensitivity, professionals could provide technically "non-confidential" information that could nonetheless identify the survivor and cause them additional trauma.

#### Recommendation

It is recommended that training occur regarding sensitivity beyond the ethics of confidentiality, teaching the potential harm when information is disclosed that may allow the identification of the victim without violating specific laws of privacy.

## Sexual Abusers

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### **#5 AVOID SEXUAL OFFENSE BEHAVIOR REINFORCEMENT**

If people who have sexually abused are asked to make personal presentations or provide face-to-face interviews to the media, there is always a risk that the process enhances arousal as the sexual criminal conduct is relived.

#### Recommendation

It is recommended that professionals be educated about the arousal potential in individuals who may be asked to provide a public forum describing their past conduct. This is not to suggest that, because of the potential arousal, details of abuse experiences cannot be educational. It is recommended, however, that the reality of potential arousal become part of education for professionals and that a clarifying statement to that fact should be considered for audiences or for members of the media who may desire to use these experiences.

### **#6 INTENT**

There is a clear difference between professionals using details of abuse experiences in trainings, hearings, and the media and having people who have sexually abused others provide information in person. Much confusion exists regarding whether this effort should be used as testimony of the individual's growth and progress or, in reality, contributes to the offending behavior of the individual.

#### Recommendation

Although some survivors/victims may feel exonerated or empowered sharing their experiences in public, the benefit to people who have sexually abused in this process should not be considered a valid motivation. There is no guarantee that making public the individual's conduct is evidence of their remorse or treatment success. Therefore, it is recommended that no such claims be made by professionals. It is also recommended that professionals involved provide qualifying statements clarifying that the use information is for the sole purpose of providing knowledge and information.

### **#7 LANGUAGE**

The language we use in trainings, media, and legislative hearings is very important. Language can unintentionally minimize the behavior of people who sexually abuse. An example of this is, "The victim was forced to perform oral sex," instead of, "The victim was sexually assaulted." Although it is often more comfortable for a reader, the language "perform oral sex" is language we use around consensual sexual activity and minimizes the assault as a violent and humiliating act. Language also has the power to shape our collective consciousness of what sexual assault is and is not. An example of this include headlines like, "Nurse Impregnates Woman in Vegetative State." The pregnancy is secondary only because it is evidence of the issue at hand, a sexual assault, which the headline does not mention. Problematic language can even victim blame, specifically when it comes to active vs. passive voice. Examples of this include, "Jane was raped," instead of, "John raped Jane." The difference is obvious – in one phrase we wonder what Jane did and in the other phrase we wonder what John did.

## Sexual Abusers

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### Recommendation

It is our shared responsibility to carefully consider the language we use in trainings, media, and legislative hearings. Avoid using minimizing terms to describe a sexual assault, even if that language can create discomfort, but without using shocking or titillating language as described above. Do use an active voice when talking about the behavior of a person who has sexually abused. Recognize that passive voice surrounding violence only reinforces rape culture. Involve a review process that specifically looks at how and why certain language is used. Strive to be thoughtful and intentional about all language used.

### Summary

Sexual violence does not occur in a vacuum; a fundamental component of improving our socio-cultural response lies in recognizing the prevalence of sexual violence and to attune to the reality that capacity for sexual offending exists in a much broader group of people living among us. Most people who commit a sexual offense are known to their victims and don't fit the timeworn stereotype of "boogey men." Holding on to inaccurate and narrow beliefs about who can and cannot be a sexual abuser positions us to dismiss, question and disregard the experiences of those who have been victimized.

### **Sex Offender Registration and Notification**

#### **Sex Offender Registration Requirements**

The Oregon State Police Sex Offender Registry unit (SOR) is responsible for maintaining the Oregon Sex Offender Registry.

**Oregon Revised Statutes 163A.010, 163A.015, 163A.020, and 163A.025 require registration as a sex offender for persons who are:**

- convicted in Oregon of a sex crime, or convicted in another state of a crime for which a person would have to register as a sex offender in that state, or convicted of a sex crime under federal law; or
- found guilty except for insanity of a sex crime; or
- a juvenile who has been ordered to report as a sex offender under ORS 163A.030<sup>38</sup>; or
- a juvenile who has been found in a juvenile adjudication in another United States court to have committed an act while the person was under 18 years of age that would constitute a felony sex crime if committed in this state by an adult.

Sex crimes that require registration are defined under ORS 163A.005 and are listed at the end of this section. Offenders will be advised of their requirement to register at the time of sentencing or before release from custody.

**Registrants who are in the above categories are required to report in person to a law enforcement agency in the county in which they reside:**

- within 10 days following release onto parole, post-prison supervision, or other conditional supervised release;
- within 10 days of release from jail or placement on probation;
- within 10 days following discharge from supervision;
- within 10 days of any change of residence including moving out of state or going to jail for 10 days or more;
- once each year within 10 days of the person's birthdate, regardless of whether the person changed residence;
- within 10 days of the first day the person works at, carries on a vocation, or attends an institution of higher education; and
- within 10 days of a change in work, vocation, or attendance status at an institution of higher education.

**Registrants who do not live in Oregon but attend school or work in Oregon are required to register in the county in which the school or work is located:**

- no later than 10 days after the first day of school attendance or the 14<sup>th</sup> day of employment in this state; and
- no later than 10 days after a change in school enrollment or employment.

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<sup>38</sup> ORS 163A.030 provides for a hearing on the issue of reporting by a sex offender adjudicated in juvenile court.

## Sex Offender Registration and Notification

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**In addition to the above reporting requirements, all sex offender registrants who do not have a permanent address must report to a law enforcement agency and provide an address where they actually reside.** Registrants who move out of Oregon must report their new address in person within 10 days of moving out of Oregon, to an Oregon law enforcement agency in the county where they previously resided. The Oregon State Police will notify the registrant's new state of residence. Federal law requires registrants to contact the appropriate agency in the state to which they move within three days of arrival.

### **Juveniles Adjudicated for Sex Offenses**

The law change also clarified that juveniles adjudicated for sex offenses will no longer automatically be required to register as sex offenders. Six months prior to the end of court jurisdiction, juvenile courts shall hold a hearing to determine whether a youth will be required to register or not.<sup>39</sup> At the registration hearing, the court may consider several factors listed in statute, including the extent and impact of physical and emotional injury to the victim, if the youth used force, the age and vulnerability of the victim, the youth's willingness to take responsibility for the consequences of the act, completion of sex offender treatment, and compliance on supervision.<sup>40</sup>

**Juvenile offenders who have been ordered to register will still need to petition the court for relief from the requirement to register as a sex offender.** Registrants must petition the juvenile court in the county in which they were adjudicated, or if the registrant lives out of state but is required to register in Oregon, in the juvenile court in the county where they work or attend school. The juvenile court will hold a hearing and the registrant will have the burden of proving they are "rehabilitated and do not pose a threat to the safety of the public."<sup>41</sup>

### **Assessment and Classification of Sex Offenders**

In the 2013 and 2015 legislative sessions, the Oregon Legislature established and refined a new classification system that assigns notification levels to every sex offender registered in Oregon. Registrants will be classified as Level 1, Level 2, or Level 3 sex offenders. These levels will determine the release of offender information to the public, with Level 1 as the narrowest and Level 3 providing the widest range of notification, including the posting of Level 3 registrant information on the Oregon State Police public website.

**The Oregon Board of Parole and Post-Prison Supervision is the agency with primary responsibility for implementing this new process.**<sup>42</sup> Local Community Corrections offices have responsibility for assessing and classifying registrants already on probation,

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<sup>39</sup> Youth who were adjudicated on or after August 12, 2015, or who were adjudicated before August 12, 2015 and under the jurisdiction of the juvenile court or PSRB on April 4, 2016 will have hearings to determine if they are required to register. Youth adjudicated before August 12, 2015 and no longer under the authority of the juvenile court or PSRB on April 4, 2016 will be required to register.

<sup>40</sup> For a full list of factors, see ORS 163A.030 (7)

<sup>41</sup> ORS 163A.130

<sup>42</sup> ORS 163A.100 to ORS 163A.115 and OAR 255-085-0001 to OAR 255-085-0050 outline this process

## Sex Offender Registration and Notification

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and the Psychiatric Security Review Board (PSRB) has responsibility for assessing and classifying registrants who are under PSRB jurisdiction. The Board of Parole is responsible to assess and classify all other adult registrants, including those convicted out of state and juveniles convicted as adults.

### ■ **The Sex Offender Notification Level (SONL) Assessment Process**

**Adult male registrants will be assessed based on the Static-99R Assessment,**<sup>43</sup> an actuarial tool based on static factors predicting the likelihood of recidivism that has been thoroughly tested and normed for use in assessing adult males who have committed sex crimes.

The Static-99R is scored with information from law enforcement reports, court documents, corrections information, and the registrant's self-report. Once initial scoring is complete, Board Assessment Specialists may finalize the assessment for registrants scored as Level 1 offenders. Registrants who score as Level 2 and Level 3 have an opportunity to review the score and object to any factual errors. Any objections submitted are reviewed by a Hearings Officer, who may re-score the Static-99R if necessary. The Hearings Officer responds to the objections in a memorandum that is reviewed by Board members, who make the final decision. Board Registered Victims are notified of the SONL Level after the final order is issued.

**All other registrants (females, juvenile offenders, and those who commit Category B offenses such as promoting prostitution) will be assessed with an alternative assessment.**<sup>44</sup>

This assessment consists of the Level of Services/Case Management Inventory (LS/CMI) and sex-offense specific evaluation. The evaluation will be completed by a licensed counselor or a Sex Offender Treatment Board-certified provider who is qualified to conduct sexual offense risk assessments. The evaluator provides the Board a written report with a recommended level. The registrant may also submit written factual objections to the report, which will be reviewed by a hearings officer in the same manner described above, with final orders signed by the Board.

### **What does each level mean?**

The table below shows the scores corresponding to each level, and the range of notification that a notifying law enforcement agency or supervising agency (parole and probation office) may make.

	<b>Static-99R Score</b>	<b>LS/CMI score plus sex-offense specific evaluation</b>	<b>Range of Notification</b>

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<sup>43</sup> OAR 255-085-0040

<sup>44</sup> OAR 255-085-0050

## Sex Offender Registration and Notification

<b>Level 1: <i>Lowest Risk to Re-Offend</i></b>	-3 to 3	0 to 10	<ul style="list-style-type: none"> <li>• Person who resides with offender</li> </ul>
<b>Level 2: <i>Moderate Risk</i></b>	4 to 5	11 to 19	<ul style="list-style-type: none"> <li>• All Level 1 notification plus:</li> <li>• Person with whom the offender has a significant relationship</li> <li>• Residential neighbors and churches, community parks, schools and childcare centers, convenience stores, businesses and other places that children or other potential victims may frequent</li> <li>• A long-term care facility or residential care facility if offender is seeking admission to the facility</li> </ul>
<b>Level 3: <i>Highest Risk to Re-Offend</i></b>	6 or higher	20 or higher	<ul style="list-style-type: none"> <li>• All Levels 1 and 2 notification plus:</li> <li>• OSP Public Sex Offender Website</li> <li>• Local and regional media sources</li> </ul>

Registrants previously designated as Predatory Sex Offenders (PSO's) between February 10, 2005 and December 31, 2013 or designated under ORS 137.765 as Sexually Violent Dangers Offenders (SVDO's) will be automatically assigned a Level 3 classification. After January 1, 2019, any registrant who was required to register before 2014 and who refuses or fails to participate in a sex offender risk assessment will be classified as a Level III offender.

### **Reclassification and Relief from Registration**

ORS 163A.120 to ORS 163A.150 codify the process for registrants to petition for reclassification or relief from registration. This process, too, is changing.

**Until December 1, 2018**, adult registrants must petition the circuit court in their county of residence for relief from registration under ORS 163A.120. Registrants must meet the following criteria:

- Registrant has been off supervision for no less than 10 years;
- Registrant has only one conviction for a sex crime;
- The conviction was for a misdemeanor or Class C Felony sex crime; and
- Registrant was not designated a PSO

**After December 1, 2018**, Level 3 and Level 2 registrants may petition the Board of Parole and Post-Prison Supervision for a hearing for reclassification to a lower notification level, and Level 1 registrants may petition for relief from the obligation to register.

## Sex Offender Registration and Notification

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- Only Level 1 registrants can petition for relief from registration.<sup>45</sup> Certain convictions are listed in statute that disqualify registrants from relief.<sup>46</sup>
- Level 3 registrants can only ever be reclassified as a Level 2, and are not eligible for reclassification to Level 1 or relief.
- Automatic Level 3 registrants designated as PSO's or SVDO's are not eligible for reclassification to Level 2 status.

Registrants who petition the Board for reclassification or relief from registration must be off supervision for no fewer than 10 years for reclassification and 5 years for relief and not have been convicted of a Class A Misdemeanor or a "person" felony since their conviction for a sex crime.

At the hearing, the registrant will have the opportunity to present evidence that they are sufficiently low-risk to be reclassified or relieved.<sup>47</sup> The District Attorney from the county of conviction and any Board Registered Victims will also have an opportunity to address the Board at the hearing.

### **Failure to Register**

An offender who fails to make an initial report to law enforcement to register as a sex offender, or who fails to register after a change of residence, work, school, or annually can be charged with the crime *Failure to Register as a Sex Offender*. In addition, an offender who fails or refuses to participate in the assessment process, or who fails to submit to fingerprinting and photography of their face, scars, and tattoos can also be charged with *Failure to Register*.

### **Registerable Sex Crimes (Oregon)**<sup>48</sup>

- Rape in any degree
- Sodomy in any degree
- Unlawful Sexual Penetration in any degree
- Sexual abuse in any degree
- Incest with a child victim
- Using a child in a display of sexually explicit conduct
- Encouraging child sexual abuse in any degree
- Transporting child pornography into the state
- Paying for viewing a child's sexually explicit conduct
- Compelling prostitution
- Promoting prostitution
- Kidnapping in the first degree if the victim was under 18 years of age

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<sup>45</sup> ORS 163A.125

<sup>46</sup> ORS 163A.115 – Rape in the first degree, Sodomy in the first degree, Unlawful Sexual Penetration in the first degree, Kidnapping in the first degree as described in ORS 163.235(1)(e) or when victim is under age 18, and Burglary in the first degree when committed with the intent to commit any of the offenses listed in ORS 163A.005 (5)(a) to (v).

<sup>47</sup> ORS 163A.125 (5) lists the criteria that shall be considered at a hearing

<sup>48</sup> ORS 163A.005(5)

## Sex Offender Registration and Notification

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- Contributing to the sexual delinquency of a minor
- Sexual misconduct if the offender is at least 18 years of age
- Possession of materials depicting sexually explicit conduct of a child in the first degree
- Kidnapping in the second degree if the victim was under 18 years of age, except by a parent or by a person found to be within the jurisdiction of the juvenile court
- Online sexual corruption of a child in any degree if the offender reasonably believed the child to be more than five years younger than the offender
- Luring a minor if the offender reasonably believed the minor, or in the case of a police officer or agent of a police officer posing as a minor, the purported minor to be more than five years younger than the offender or under 16 years of age and the judge designates in the judgement that the offense is a sex crime
- Sexual assault of an animal
- Public indecency or private indecency, if the person has a prior conviction for a sex crime
- Trafficking in persons as described in ORS 163.266(1) (b) or (c)
- Purchasing sex with a minor if the court designates the offense as a sex crime pursuant to ORS 163.413 (3)(d), or the offense if the defendant's second or subsequent conduction under ORS 163.413(3)(b)(B)
- Invasion of personal privacy in the first degree, if the court designates the offense as a sex crime pursuant to ORS 163.701 (3)
- Any attempt to commit any of the above listed crimes
- Burglary when committed with intent to commit any of the offense listed above
- Criminal conspiracy if the offender agrees with one or more persons to engage in or cause the performance of an offense listed above

### **Registrants under the Authority of the Psychiatric Security Review Board**

For individuals found Guilty Except for Insanity and required to register as a sex offender, the PSRB is the agency responsible to complete the classification and assign a level to those registrants. Like the Board of Parole, the PSRB uses the Static-99R assessment or LS/CMI and sex offense specific evaluation. The PSRB is also the decision-making authority for those GEI sex offenders who petition to be reclassified or apply for relief from the obligation to register. The same circumstances that require the Board to automatically classify a registrant as Level 3 and the same circumstances that disqualify registrants from seeking reclassification or relief also apply to the PSRB. The PSRB partners with the Oregon Department of Justice Crime Victim and Survivors Services Division Appellate Advocacy Program for victim notification and participation in its hearings, including hearings for sex offender reclassification and relief.

### **The Sexual Offense Treatment Board (SOTB)**

The Sexual Offense Treatment Board (SOTB) oversees the practices of clinical, secondary, and intern sexual offense therapists in the State of Oregon. The SOTB consists of seven members appointed by the Governor, including a representative from a victim advocacy

## Sex Offender Registration and Notification

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organization. The SOTB has adopted the following treatment standards for sexual abusers:

“Adult sexual offense treatment standards: The Sexual Offense Treatment Board has adopted the 2014 Association for the Treatment of Sexual Abusers (ATSA) Practice Standards and Guidelines. A copy may be purchased through the [ATSA website](#) or by contacting ATSA: 4900 SW Griffith Drive, Suite 274, Beaverton, OR 97005; phone 503-643-1023 or fax 503-643-5084; email [atsa@atsa.com](mailto:atsa@atsa.com). HLO has a copy on file in Salem for review upon request.

Download SOTB's guides for treating juvenile and developmentally disabled sexual abusers here:

[Juvenile Sexual Abusers Treatment Standards](#)

[Developmentally Disabled Sexual Abusers Treatment Standards](#)<sup>49</sup>

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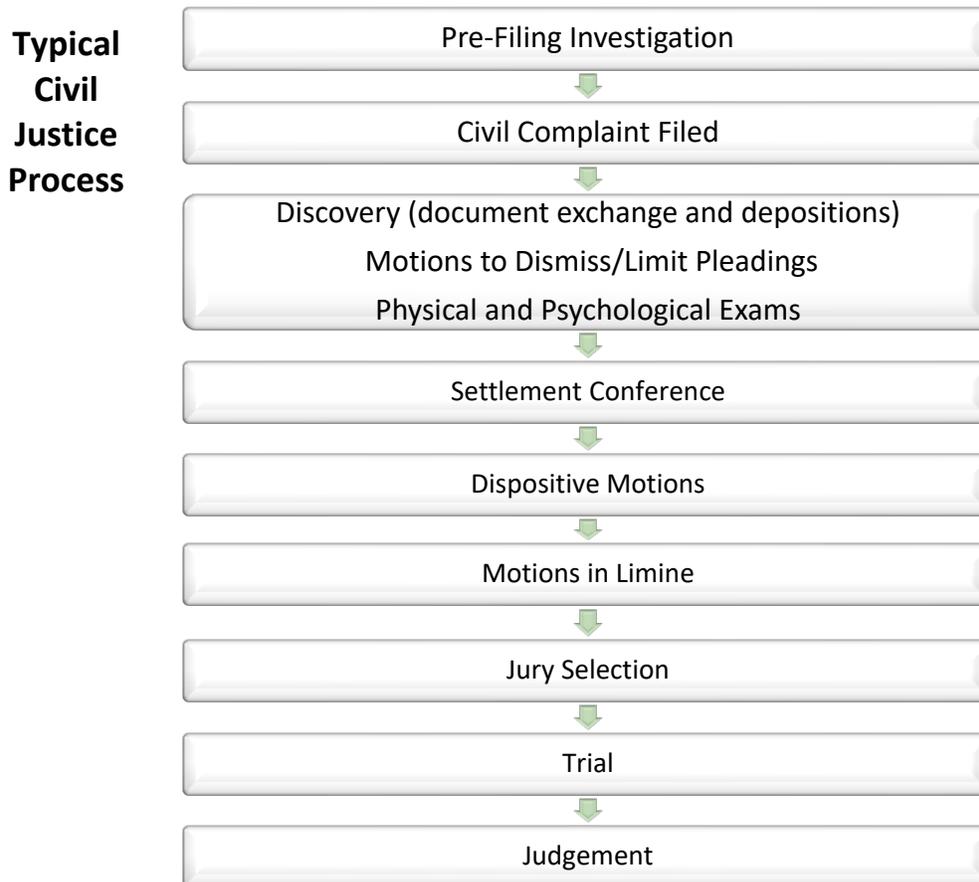
<sup>49</sup> Oregon Health Licensing Office, Sexual Offense Treatment Board, <https://www.oregon.gov/oha/PH/HLO/Pages/Board-Sex-Offender-Treatment-Information.aspx>, Accessed 1.7.2020

## Civil Legal Remedies

### Civil Justice System

A person who is 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 their lawsuit in the civil court system. The attorney works for the plaintiff and is required to carry out their 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 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. In civil cases, doubt is not considered. Rather, the plaintiff’s attorney must prove that a **“preponderance of evidence”** demonstrates the defendant’s culpability. By this standard, a judge or jury believes that the plaintiff has demonstrated its case with more (or better) supportive evidence than the defendant. In Oregon, the same judges hear both criminal and civil cases in the same courts.



## Civil Remedies

To protect citizens, the criminal and civil justice systems have provisions for **protective orders** that are issued by a judge when there is reason to believe a person may be at risk of harm from another. Although there may be criminal actions also taking place, these protective orders are part of the civil remedies available to victims of sexual assault. In Oregon, protective orders may be:

- I. Stalking Protective Orders;
- II. Family Abuse Prevention Act (FAPA) Restraining Orders; or
- III. Elderly Persons or Persons with Disabilities Abuse Prevention Act (EPPDAPA) Protective Orders
- IV. Sexual Abuse Protective Order (SAPO)
- V. Emergency Protective Order (EPO)

The following sections provide detailed information on each.

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### I. 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 them (the respondent), or against anyone who has stalked a member of their 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.

#### **What is Stalking?**

- 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.***

## Civil Legal Remedies

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- 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.

### **Examples of Stalking Behavior**

- 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 emails, telephoning, interfering with other relationships; and
- Other types of behavior that create actual and reasonable fear for petitioner's physical safety.

***Note: Speech-based communication (letters, phone calls, email, etc.) is protected by the First Amendment and so must rise to the level of an actual threat 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 dependent.
- A petitioner may get a stalking order against a stalker who is under the age of 18.

### **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 1) by requesting a Police Citation: or 2) by submitting a Civil Petition to the Court. Each process is outlined briefly below.

#### **1. 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 three (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).
- Petitioner should bring witnesses, if possible, as well as 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 second hearing regarding whether the Court should issue a permanent order.
- The first hearing is usually shorter than the second hearing.
- If Respondent is not in Court for the hearing as ordered, a warrant should be issued for their arrest.

##### **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 first hearing.

- Petitioner needs 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 first or second hearing, they must be served with any resulting orders or hearing notices.
- In some counties, service may be provided by the sheriff for free.

## **2. Civil Petition Procedure:**

### ***Petition***

- In some counties in Oregon, self-help paperwork is available at the Courthouse, where the Petitioner can go to fill out and sign a petition for Stalking Protective Order. In counties where the Court doesn't 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, including listing dates (if possible), explaining fear, and demonstrating how the stalker knew the 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's 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.

### ***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 first 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 their 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.



## **II. 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.**

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), however:**

- 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 they fear 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;
- 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, such as 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.

**Note: A Petitioner may not get a Restraining Order against an abuser who is under the age of 18.**

### **How to Obtain 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.

#### **Respondent's Right to Request a 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 Hearings**

- 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.).
- 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.
- A Restraining Order may also be renewed by a person who: was protected by the original order, was a child in the Petitioner's custody during the time of the order, and who has reached the age of 18 years old since the order was entered.

- This person would need to show that they would reasonably fear further acts of abuse by the respondent if the order was not renewed.
- This person can renew the Restraining Order even if the original Petitioner does not.

### **Safety Concerns**

The Petitioner should let the Court know of any special safety concerns about the Respondent (for example, misuse of guns or weapons, mental health issues, etc.). The 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 is not the restrained party and 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 and State 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 and state 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 or state 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](http://www.oregonlawhelp.org).
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## **III. 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

### **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 a disability.

*Note: 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?**

EPPDAPA Protection Orders are available to elderly persons or persons 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 Court must find that within the last six months, the elderly person or person with a disability is in immediate danger of further abuse by the abuser, 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 period.
- 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.

## **How to Obtain 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's 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 either signs the order or dismisses the petition if they find the order unjustified.

### **Service**

- The Petition and the signed EPPDAPA protective order must be served on the abuser.
- The order is not enforceable until it has been served.
- Service is provided by the Sheriff for free.

### **Respondent's Right to Request a Hearing**

- The abuser has 30 days from 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 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, 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 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.



## **IV. Sexual Abuse Protective Order (SAPO) – A Guide for Advocates ORS 163.760-163.777**

### **What is a Sexual Abuse Protective Order (SAPO)?**

A Sexual Abuse Protective Order (SAPO) is a protective order that prohibits the perpetrator (Respondent) from contacting the victim/protected person (Petitioner) and from intimidating, molesting, interfering with or menacing the petitioner, or from attempting to intimidate, molest, interfere with or menace the Petitioner. The Petitioner can also ask the judge to add other conditions (listed in the protective order) that will keep them safe.

The SAPO was created to fill a gap for victims of sexual assault or abuse when there was no other protective order in place or available.

### **Who can get a SAPO?**

#### **1. Adult Petitioners:**

- Petitioner and Respondent cannot be “family or household members” as defined by ORS 107.705. This means that the Respondent and Petitioner cannot be:
  - Spouses or domestic partners

## Civil Legal Remedies

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- Former spouses or domestic partners
- Adults living together (or previously lived together) in a sexual relationship
- Adult who have been in a sexual relationship in the last two years
- Adults related by blood, marriage, or adoption, or
- Parent of a child
- The Respondent must be 18 years old or older.
- The Respondent must not be subject to any other protective order, including:
  - Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA)
  - Family Abuse Prevention Act (FAPA)
  - Release agreement or no contact order in a criminal case
  - Stalking Protective Order
  - Protective order from Juvenile Dependency Court
  - Any restraining order from another state or tribe

### **2. Minor Petitioners:**

- The Respondent must be 18 years old or older.
- Minor Petitioners may be “family or household members” and still be eligible to apply for a SAPO.
- Minors who are 12 years old or older may file the SAPO petition on their own behalf.
- A parent or guardian must file the SAPO petition on behalf of any minor who is under 12 years of age.
- If a parent or guardian applies for a SAPO on behalf of a minor, they should use the minor’s information in completing the forms and would answer the questions as though the minor were completing the forms.

### **What Justifies the Issuance of a SAPO?**

**1. Only one instance of abuse is required.** The Respondent must have subjected the Petitioner to sexual abuse. Sexual abuse is defined as sexual contact with:

- A person who does not consent to the sexual contact;  
**ORS 163.305 defines “sexual contact”** as “any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor, for the purpose of arousing or gratifying the sexual desire of either party.

**OR**

- A person who is considered incapable of consenting to a sexual act under ORS 163.315.  
**For example:** Petitioner is under 18 years of age; mentally defective; mentally incapacitated; or physically helpless.

**2. Petitioner must prove claim by a preponderance of the evidence.**

**3. The Petitioner must reasonably fear for their physical safety with respect to the Respondent.** The Petitioner must be able to tell the Court why they are afraid for their safety.

### **What Can the SAPO Do?**

#### ***The SAPO will prohibit the Respondent from:***

- contacting Petitioner and from intimidating, molesting, interfering with or menacing the petitioner, or
- attempting to intimidate, molest, interfere with or menace the Petitioner.

#### ***The Petitioner can also ask the Court to order that:***

- Respondent be restrained from contacting the petitioner's children or family or household members;
- Respondent be restrained from entering, or attempting to enter, a reasonable area surrounding petitioner's residence;
- Respondent be restrained from intimidating, molesting, interfering with or menacing any children or family or household members of petitioner (or attempting to do this);
- Respondent be restrained from entering, or attempting to enter, any premises and a reasonable area surrounding the premises when necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the petitioner or the petitioner's children or family or household members; and
- Other relief necessary to provide for the safety and welfare of the petitioner or the petitioner's children or family or household members

## **How to Obtain a SAPO**

### **Petition**

- Petitioner must file for a SAPO in the courthouse in the county where either the Petitioner or the Respondent lives.
- Petitioner fills out relevant parts of the Protective Order form and files petition with the court clerk at the appropriate time. ***Note: Each county's process may differ, so Petitioners should confirm with the court clerk what time the judge will consider the Petitioner's request for a SAPO.***
- Petitioner may use a contact address instead of a residential address to keep the residential address confidential. ***Because the Court will notify the Petitioner by using this contact information it is important that the Petitioner use a contact address that they will check regularly for communication from the Court.***
- All forms and instructions for a SAPO are available at the local courthouse and online at: <http://courts.oregon.gov/OJD/forms/pages/SAPO.aspx>.

### **Ex Parte Hearing**

- Petitioner will be directed to and have a brief hearing with a Judge.
  - Petitioner may request to appear by telephone or other two-way electronic communication device; court will decide whether to allow this.
  - Court will consider whether the safety or welfare of the petitioner would be threatened if testimony were required to be provided in person as well as other "good cause" reasons.
- The Judge will review the Petition and Protective Order and may ask questions of the Petitioner.
- The Respondent does not get advance notice of this hearing and is not likely to be present.

- The Judge grants or denies the Protective Order.

### **Service**

- If the court grants the SAPO, the Petition, Order, and “Notice to Respondent,” and “Request for Hearing” documents must be served on the Respondent in order to be enforceable.
- The Sheriff’s office serves restraining orders for free.

### **Respondent’s Right to Request a Hearing**

- The Respondent has 30 days from the date of service to contest the SAPO by requesting a hearing.
- The hearing must be held within 21 days of the hearing request. The court will provide notice of the hearing to both the Petitioner and the Respondent.

### **Contested Hearing**

- The Petitioner is not required to have a lawyer, but they may choose to do so.
- If the Respondent is represented by a lawyer the Petitioner may ask the Judge to extend the date of the hearing for up to five days so that they may get a lawyer.
  - If the Petitioner has questions about how the law works or what it means, talking to lawyer may be helpful.
  - Petitioners who need help finding a lawyer may call the Oregon State Bar’s Lawyer Referral Service at 503.684.3763 or 1.800.452.7636.
  - If the Petitioner believes they cannot afford a lawyer, they can ask court staff if their area has a legal services (legal aid) program that might help them. They can also go to: [www.oregonlawhelp.org](http://www.oregonlawhelp.org).
- If the Petitioner does not attend the hearing, it is likely that the SAPO will be dismissed by the Court.
- The Petitioner may request to appear by telephone or other two-way electronic communication device. ***It is up to the Court to decide whether to allow this, as described above.***
- The Court will hear testimony from both sides of the case.
  - The Petitioner must be prepared to provide testimony that they have been sexually abused and that they reasonably fear for their physical safety.
  - If there are witnesses to the abuse, the Petitioner should have them come testify at the hearing.
  - If there is any other evidence relating to the abuse, the Petitioner should provide it to the Court at the hearing. Examples of evidence could include photos of injuries or text messages from the Respondent.
- ***The Court may not charge filing, service, or hearing fees.***
- ***The Rape Shield law as found in ORS 40.210 applies to these proceedings,*** and prohibits the use of certain types of evidence in this hearing, including:
  - Reputation or opinion evidence of past sexual behavior of an alleged victim of the crime, or a corroborating witness; or
  - Reputation or opinion evidence presented for the purpose of showing that the manner of dress of an alleged victim of the crime incited the crime or indicated consent to the sexual acts alleged in the charge.

### **Final Order**

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

### **How Long Does a SAPO Last?**

- If the Petitioner is 18 or older then the order is effective for **five** years, unless the order is renewed, modified, or terminated.
- If the Petitioner is under 18 years old, the order will be effective for **either five years, or until the Petitioner turns 19 years old**, whichever is later (unless the order is renewed, modified, or terminated).
- If the Respondent has been convicted of a crime described in ORS 166.355 to 166.445 committed against the Petitioner, then the court shall enter a **permanent** order.
- Without a criminal conviction, the court may still enter a **permanent** restraining order if the court finds that it is objectively reasonable for a person in the Petitioner's position to fear for their physical safety and that it is unlikely for that fear to be reduced by a change in circumstances or the passage of time.
- The SAPO may be modified by either party for good cause shown.
  - The Petitioner may remove or make terms less restrictive by ex parte motion.
  - For other modifications by either party, notice and hearing is required.
  - Forms for modifying the SAPO are available online and at the courthouse.
- A SAPO may be renewed if the Petitioner submits a request.
  - Forms for renewing the SAPO are available online and at the courthouse.
  - The process is similar to that described above for the initial request and issuance of the SAPO.
  - The Court must make a finding that it is objectively reasonable for a person in the Petitioner's situation to fear for their physical safety if the SAPO is not renewed.
  - A finding of additional sexual abuse is not required.

### **Enforcement**

- The Petitioner is not the restrained party and cannot violate the SAPO; only the Respondent can violate the order.
- Violation of a SAPO is cause for mandatory arrest of the Respondent.
- A SAPO violation can be prosecuted by the issuing county or by the county in which the violation occurred.
- A SAPO violation is punishable by contempt of court and can be referred to the district attorney's office for prosecution.
- A SAPO is enforceable throughout Oregon, in every other state, and by Tribal courts.

### **Firearm Restrictions – ORS 166.255, OR Laws 2019, ch 201 (HB2013)**

- Respondent may be subject to restrictions on their ability to possess firearms.
- If the Petitioner is under 18 years of age and is a family or household member of the Respondent, then it is unlawful for the Respondent to possess firearms or ammunition.

- Within **24 hours** of becoming subject to the court order, Respondent must follow the process in section 3 of HB 2013 (codified in ORS 166.255 to 166.270) to transfer any firearms or ammunition in their possession to a law enforcement agency, gun dealer, or third party.
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## V. Emergency Protective Order (EPO) – A Guide for Advocates

ORS 133.035

### **What is an Emergency Protective Order (EPO)?**

An Emergency Protective Order is a short-term *ex parte* protective order initiated by a peace (law enforcement) officer. **The victim is the protected person and the perpetrator of abuse is the respondent.** To apply for an EPO, a law enforcement officer must have the consent or permission of the protected person.

The order prohibits the respondent from contacting the protected person or from intimidating, molesting, interfering with, or menacing the victim or attempting to do any of these things. At least one judge in each county circuit court must be available around the clock to enter these orders. The order lasts for seven (7) days.

### **Who Can Get an Emergency Protective Order?**

**A qualifying relationship between the protected person and the respondent is required.** The protected person can only get this type of order against a “family or household member.”

For purposes of the Emergency Protective Order, a “family or household member” is:

- A spouse or former spouse;
- An adult related by blood, marriage, or adoption;
- A person (of the same or opposite sex) who does or did cohabit (live in a sexually intimate relationship) with the protected person;
- A person (or the same or opposite sex) who has had a sexually intimate relationship with the protected person within the last two years; or
- A co-parent of the protected person’s child(ren).

### **What Justifies the Issuance of an Emergency Protective Order?**

A peace officer must have probable cause to believe that an emergency protective order is necessary ***to prevent the protected person from suffering the occurrence or recurrence of abuse*** because:

- The officer has responded to an incident of domestic disturbance and circumstances exist for mandatory arrest as described in ORS 133.055(2)(a),(d); OR
- The person is in immediate danger of abuse by a family or household member.

### **What Can the Emergency Protective Order Do?**

### **The Emergency Protective Order prohibits the Respondent from:**

- contacting the victim,
- intimidating, molesting, interfering with, or menacing the victim,
- attempting to intimidate, molest, interfere with, or menace the victim.

### **How an Emergency Protective Order is Obtained**

The Oregon Department of State Police has drafted and made a form EPO available to peace officers throughout the state (a copy of the form can be found at:

<https://www.oregon.gov/osp/Docs/Emergency%20Protection%20Order%20Form.pdf>.

Once a law enforcement officer has established probable cause as described above, and has the consent or permission of the victim, the officer will contact a judge to issue the order.

Once the judge issues the order, which ***must include the date on which the order expires***, the officer will provide a certified true copy of the order to the protected person and file the order and declaration with the Court. The peace officer will serve the respondent personally. If the peace officer is unable to serve the respondent within one day of entry of the order, the officer must notify the court.

After the order has been served on the respondent, the peace officer will enter the order into the Law Enforcement Data System (LEDS). No filing, service, or hearing fees may be charged in connection with issuance of an EPO.

### **How Long Does an Emergency Protective Order Last?**

An Emergency Protective Order expires seven (7) calendar days from the date the court signs the order. It will automatically expire at midnight on that seventh day. An Emergency Protective Order can also be terminated by court order at an earlier date.

### **Enforcement**

- Violation of an Emergency Protective Order is cause for mandatory arrest of the respondent.
- A security amount for violation of the order must be included; the default amount in the form order is \$5,000.
- The protected person is not the restrained party and cannot violate the Emergency Protective Order; only the respondent can violate the order.
- A violation of an Emergency Protective Order is punishable by contempt of court and can be referred to the district attorney's office for prosecution. The hearing must be conducted in the county where the order was issued or where the alleged violation occurred.

### **Federal and State Gun Laws**

Federal and State gun laws do not apply to the Emergency Protective Order.

## **Additional Civil Legal Protections for Victims of**

## Sexual Assault



### Housing Protections

Victims of sexual assault have 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 victims experience any of the items below or think their landlord has otherwise discriminated against them, they may have rights under state and federal laws. As their advocate, you can explore with them whether they wish to contact an attorney to investigate their possible rights.

#### Examples of landlord actions that might be sex discrimination:

- A person who has lived with an abusive partner is evicted by the landlord or has a housing voucher taken away because of the abuser's actions.
- A landlord learns that a tenant or prospective tenant is in an abusive relationship, makes comments about women who have been abused, and then evicts the tenant or denies their rental application.
- A landlord learns that a tenant is in an abusive relationship or has experienced sexual assault, and then treats her differently from male tenants by imposing different rules on her as a condition of renting.
- A landlord learns from a prior landlord or review of public records that a prospective tenant was in an abusive relationship or filed for a protective order, and then denies her application because of this history.

#### ➤ **Changing Locks for Safety**

Victims of domestic violence, sexual assault or stalking (or a child living with them) have the right to have their locks changed promptly.

**The landlord must promptly change the victim's locks or give them permission to change their locks if they notify the landlord that they (or a child living with them) are a victim of domestic violence, sexual assault or stalking and that they want their locks changed.**

- This notice can be verbal, but written notice is always best.
- The victim does not need to provide proof that the violence occurred.

#### **If the landlord refuses or takes too long to change the locks:**

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

#### **Who pays?**

- The tenant is responsible for the cost of changing the locks.
- The landlord should not insist they pay for the lock change before changing the locks.

### **If the abuser is on the rental agreement and the victim wants to change the locks to keep the abuser out:**

- The person 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 the person's permission unless court ordered.
- The abuser is jointly responsible for the rent until the date they were excluded from the unit.

### ➤ **Breaking a Lease Early**

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

#### **How to end a lease with a 14-day notice:**

- Make a request to the landlord in writing. Provide verification of the abuse by giving the 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.
- Once the above request and verification have been provided:
  - ✓ The victim will not be responsible for rent or damage occurring past the release date.
  - ✓ The victim will not be charged for terminating their lease early (such as a lease buy-out fee).
  - ✓ Any tenants remaining on the lease will continue to be responsible for rent.

### ➤ **Protection from Responsibility for Damage Caused by Perpetrator**

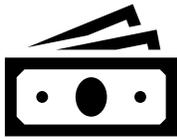
- A tenant may not be held responsible for damage that results from conduct of a perpetrator relating to domestic violence, sexual assault, or stalking committed against the tenant.
- A landlord may require a tenant to provide verification that the tenant or a member of the tenant's household is a victim of domestic violence, sexual assault, or stalking.
  - Verification could include a statement from a law enforcement officer or other qualified third party (attorney, licensed health professional or victim advocate) stating you have reported an act of dating or domestic violence, sexual assault, or stalking": <https://oregonlawhelp.org/files/CCDACC15-944D-570E-7F1F-7BBF3DEC0018/attachments/38BC8B56-EA28-4E57-B91E-5F3EAA239A9F/dv->

[housing-protections-w-subsidized-housing-info-2017.pdf](#).

### ➤ **Federal Housing Protections**

Victims of sexual assault, domestic violence, or stalking who live in HUD-funded housing have other protections under the Violence Against Women Act (VAWA). Victims concerned about losing their Section 8 or other housing benefits because of a sexual assault may have steps they can take to protect their benefits and may want to contact a lawyer for assistance.

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### **Employment Protections**

If a person feels they are being treated differently by their employer because they have been a victim of sexual assault, they may want to contact a lawyer about their options.

If a person is unsafe at work, they can ask their employer to take steps to help keep them safe. For example, they 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 the victim.

In many circumstances victims and their family members are entitled to take time off work to attend criminal proceedings against the perpetrator. Ask for more information.

If safety concerns force a person to leave work, they 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 to protect their safety or the safety of their children. A person may be eligible for unemployment benefits if:

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

#### **How Victims Can Apply for Benefits**

- Unemployment compensation benefits can be applied for at a local employment office,

or online [www.oregon.gov/employ](http://www.oregon.gov/employ).

- Victims must be sure to explain why continuing to work put them in danger of further harm and how leaving their job was their safest choice.
- If benefits are denied, a hearing must be requested within 20 days of the denial decision.
- For more information, victims can call the Public Benefits Hotline (1-800-520-5292) or their local Legal Aid Services Office for possible advice or representation (for a directory of legal aid programs, go to [www.oregonlawhelp.org](http://www.oregonlawhelp.org)).

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

Information provided by the Legal Aid 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.

#### **A person may be eligible for reasonable time off from work if:**

- The person or their child (or their dependent, if they are a guardian) has been a victim of domestic violence, sexual assault or stalking, **and**
- They have worked for more than 25 hours per week at their job for at least the last six months, **and**
- Their 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 them or their child.
- To get medical treatment for them or their child or to heal from injuries caused by domestic violence, sexual assault, or stalking.
- To get counseling for them or their child because of domestic violence, sexual assault, or stalking.
- To get services from a victim services program for them or their child.
- To move or to take steps to make their home safer.

#### **Asking for time off:**

Written notice must be given to the employer before the employee needs to take time off, unless it is not possible to do so. If the employee cannot give notice ahead of time, they must give written notice as soon as they can. The employer can require that the employee provide proof that they or their child is a victim and that they are taking time off for one of the allowed reasons (as listed above). ***The employer must keep the employee's request for leave and any information provided confidential.***

#### **Some examples of proof of victimization include:**

- 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.

### Is the time off from work paid?

- The employer does **not** have to give you paid leave for this time off.
- The employee can use paid leave (such as vacation, personal, or sick leave) if it is available.

### If employer will not grant leave: Options

- File a complaint with the Bureau of Labor and Industries (BOLI) **as soon as possible, but within one year of being denied leave at the latest**. BOLI may be contacted at 971-673-0761, or [www.oregon.gov/boli](http://www.oregon.gov/boli).
- Seek help from an attorney.
- File a court case; **must be done within one year of being denied leave**.
- If person is a public employee, you must send a legal notice (a “tort claims notice”) **within six months of the denial of leave** (an attorney’s help is needed).

### Taking 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/](http://www.oregoncrimevictimsrights.org/)
- If you would like to speak with someone at a victims’ assistance programs, go to: <https://www.doj.state.or.us/crime-victims/victims-resources/other-resources/county-victim-assistance-programs/> for a list of programs by county.



## Immigration Protection

Undocumented people who are victims of sexual assault, sex trafficking, rape, or other sex crime, and their children, may qualify for a special Visa to remain in the U.S.

Immigrants may qualify to “self-petition” the U.S. government for lawful residency without knowledge of the assailant if they are:

- Undocumented; and
- Seeking legal status; and
- Have been the victim of sexual assault by a U.S. citizen or lawful permanent resident who is a spouse, former spouse (within 2 years), or parent.

Such individuals may also qualify for suspension of deportation proceedings.



### **Family Law Proceedings**

Victims who have been abused by the other parent of a child may have certain protections available in Family Court. These include:

- If the other parent of a person's child is found to have abused them, either by sexual assault, physical injury, or threatening with injury, then ***the law presumes that it's 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 the non-abusive parent's safety needs. Parents who have been assaulted by the other parent of a child who need protection in parenting time arrangements ***may ask for a safety-focused parenting plan in their divorce or custody order.***
- The non-abusive parent ***may ask permission to move more than 60 miles further away from the other parent*** without giving advance notice.
- If a parent is afraid of the other parent or of someone else, they may ask to keep certain information about their home telephone, place of employment, driver's license, etc. out of the public record for safety reasons.
- The non-abusive parent may use a contact address in place of a residential address in any family law proceeding.



### **Pursuing Child Support Safely**

Individuals who fear that asking for child support may cause them or their child to be harmed deserve protection. There are two ways that the Child Support Program may be able to help individuals get child support AND keep them and their child safe.

#### **1. Low Level of Protection: Address of Record**

When the Child Support Program sends mail to the other parent or person in a person's case, it may show their home address. If the person doesn't want the other parent to get mail showing their home address, they can use another address. ***This is called an "Address of Record."***

Once this arrangement is in place, the Child Support Program will use the Address of Record for any legal mail they send to the parent. They will also list the Address of Record on legal paperwork they send to the other parent.

A person doesn't need a reason to use an Address of Record – anyone can have one.

### Parents interested in using an Address of Record should:

- Fill out the appropriate form (*included in the [Division of Child Support's Client Safety Packet](https://www.doj.state.or.us/child-support/calculators-forms/forms/): <https://www.doj.state.or.us/child-support/calculators-forms/forms/>).*
- Be sure **NOT to use their home address or the address where they get their child support or cash assistance checks** for the Address of Record.
- Be sure to choose an address where they can easily and reliably receive their mail.
- Be sure to update the Address of Record if they move.

## 2. Medium Level of Protection: Claim of Risk

Legal papers contain personally identifying information 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 someone without their knowledge or consent.

If a survivor thinks that making this information available could put them or their child in danger, they may ask that it be kept confidential.

### Individuals who want this information to be kept confidential should:

- Fill out the Claim of Risk form (*included in the [Division of Child Support's Client Safety Packet](#)*).
- Even if a Claim of Risk form is filed, there must be an Address of Record made available to the other parent.

## Sometimes It Is **NOT SAFE** to Pursue Child Support.

In some circumstances it may not be safe to pursue child support at all, even with the information protections described above. In that case, a survivor may choose not to start a child support case, or to stop enforcing an order that already exists.

However, individuals who receive cash assistance or Oregon Health Plan assistance from the state are obligated by law to help the Division of Child Support to get a support order against the other parent. ***If complying with this obligation would put the person or their child at risk of harm, they may claim "Good Cause."***

## High Level of Protection: Good Cause

- If the survivor claims "Good Cause" and asks the Child Support Program not to pursue their case, the ***Child Support Program must not pursue the case.***
- To claim "Good Cause," the survivor should:
  - Tell their benefits worker, if they have one; OR
  - Fill out the "Good Cause" form (***please visit [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for more information.***)



## **Administrative Benefits**

There are other forms of financial assistance that may be available to victims.

- **Social Security**  
If the assault caused the survivor debilitating physical or psychological damage, they may apply for social security benefits.
- **Temporary Assistance to Domestic Violence Survivors (TA-DVS)**  
There is limited assistance available through the Department of Human Services to individuals who have been assaulted by a family member or partner if they have children, are low-income, and who need financial help to stay safe.

Survivors can call the Public Benefits Hotline (1-800-520-5292) or contact their local Legal Aid office (go to [www.oregonlawhelp.org](http://www.oregonlawhelp.org) for a directory of legal aid programs) for assistance.

Legal Aid Services of Oregon & Oregon Law Center published **A Legal Guide for Oregon Advocates** in 2017. It is available at <https://oregonlawhelp.org/files/CCDACC15-944D-570E-7F1F-7BBF3DEC0018/attachments/1AE3BF12-D72C-4A8D-B8C2-3DEFD466C3F0/advocate-manual-072517.pdf>

### **Adolescent Victims**

Adolescents are the **highest risk age group** for sexual assault victimization, and sexual assault advocates must acquire the knowledge base, comfort and skills necessary to work with this age group. This 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**

Sexual assault is defined 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 use of physical force, manipulation, coercion, threats, or intimidation.

When it comes to adolescents, age figures heavily into this definition. 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**.

### **Incidence**

Juveniles are more likely than adults to be victims of violent crime.<sup>50</sup> 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 other forms of abuse. Rates of sexual assault alone are staggering, with 40% of all sexual abuse cases involving adolescents. Adolescents are involved in 35% of physical abuse cases, and 25% of all abuse and neglect cases reported in a given year.<sup>51</sup>

### **Risk Factors and Areas of Vulnerability**

Adolescents in general are, and are perceived by perpetrators as, more vulnerable, accessible, and lacking in credibility than other age groups. Further, American social, cultural and legal norms for adolescent rights and protection are not clear, and the concept of adolescent self-determination is not widely accepted.

Some adolescents experience particularly elevated rates of risk for repeated, chronic victimization. Below are some of the factors that may increase vulnerability to re-victimization:

- Substance abuse
- Running away/homelessness
- Poor academic performance

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<sup>50</sup> Juvenile Offenders and Victims: 2006 National Report. National Center for Juvenile Justice, 2006.

<sup>51</sup> 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 Victims

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- Eating Disorders
- Self-Injury/self-harm
- Delinquency
- Prior victimization
- Suicide
- Family violence
- Socioeconomic status

### **Gender, Race, Class and other Cultural Considerations**

Elevated risk for repeated victimization, as can be seen above, may be situational or individual, such as being intoxicated, or relying on others for transportation. But the disenfranchisement and stereotyping of adolescents in general, compounded by oppressions based on their other identities, are part of the high incidence as well. Risk can be exacerbated by intersecting issues of race, ethnicity, gender, socioeconomic status, and other forms of marginalization.

***Girls and young women aged 12-21 represent the highest-risk group for sexual assault in the United States.*** 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 referenced throughout this manual, girls and young women experience victimization at rates that vary across racial and population-specific lines. Reported rape and violent victimization rates are highest for African American girls, especially those between ages 12 to 15 years. Rates of rape, sexual assault, and simple and aggravated assaults are higher in general for African American and American Indian youth.<sup>52</sup> Gay, lesbian, bisexual, transgender and questioning youth report elevated rates of sexual harassment and violence; resulting in the highest rate of suicide and attempted suicide rates among LGBTIQ youth.<sup>53</sup>

***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.<sup>54</sup>

### **Adolescent Development**

While the trauma of sexual assault affects adolescent victims in many ways similar to adult victims, adolescent developmental needs demand that adolescent victims also receive

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<sup>52</sup> 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.

<sup>53</sup> 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.

<sup>54</sup> 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.

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knowledgeable support that understands their unique needs and experiences. Sensitive, competent support also must include attention to issues related to race, gender, culture, sexual identity, and class. Further, legal requirements and ethical considerations regarding confidentiality and mandatory reporting are different for 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.

**Late adolescence:** Individual identity established, increased maturity, closer family ties, and 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 to 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. In trying to cope, adolescents may become involved with risky behavior, make a change in their peer group, or isolate themselves 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 advocacy needs, such as information about minor consent and victim rights, help dealing with parents/family, navigation through mandatory reporting requirements, and transparency about limits to confidentiality. For victim advocates, this requires:

- Flexibility
- Preparation
- Awareness of and comfort with intersecting identities and oppressions
- Mobilizing resources, including connection to culturally specific supports
- Providing options
- Promoting safety
- Supporting choices
- Attention to patterns of victimization (adolescents victimized early in youth may be re-victimized – or commit offenses themselves)

## Adolescent Victims

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### **Adolescent Victims Need:**

- ✓ Immediate safety (physical and emotional)
- ✓ Nurturing and acceptance
- ✓ Avenues to re-establish a sense of control
- ✓ Opportunities to process/release trauma feelings, including through creative outlets (art, poetry, journaling, music)
- ✓ Parent/family involvement (or social services, if abuse is within family structure)
- ✓ Informational materials that are age-appropriate and in a relatable format (ie., web-based rather than hard copy)
- ✓ Accessible services tailored to age, race, language, ability, gender, sexual orientation, homelessness, etc.
- ✓ Choice about where services take place (such as in a familiar space rather than an office)

### **What Advocates Should Know Cold:**

- Victim rights laws
- Mandatory reporting
- Minor consent laws
- Confidentiality
- Crime Victims Compensation
- Protection orders unavailable in Oregon to adolescents who self-represent
- Resources available in your community (youth system, medical services, therapists and other providers who specialize in working with adolescents)

### **What Advocates 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.

## ■ Reporting

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

## Adolescent Victims

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### **Barriers to Reporting**

- 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 perpetrators's retaliation
- Fear that the perpetrator 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 with adult victims/survivors. A key point to bear in mind 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' policies and procedures should guide advocates about circumstances that should override an adolescent's refusal to report. Age, proximity of perpetrator, and likelihood of re-victimization should all be considered in such reporting guidelines.

Advocates, both non-profit and systems-based alike, have an obligation to inform victims of their duties to report under specific circumstances. Advocates also have an obligation to inform victims when they must report, and to assist victims in dealing with the ramifications of reporting. ***"Confidentiality & Privilege" in the appendix for more detailed information.***

### **■ Adolescent Rights & Minor Consent Laws**

Below are additional relevant points of law with which advocates should become familiar:

- Any age can consent to receive birth control information and services.
- Individuals who are age 14 and older can consent to psychiatric and chemical dependency treatment.
- Individuals who are age 15 and older can consent to medical treatment – including a sexual assault medical and/or forensic exam. Ages 15 and older are also entitled to have a personal representative present.

In Oregon, 18 years is the 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.

### **Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning (LGBTIQ) Victims**

This chapter focuses on providing effective 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 identity and sexual orientation are aspects of an individual's identity – not its entirety.

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,” though she may identify as being part of the LGBTIQ community. Avoid making assumptions; give people space to let you know what fits for them or ask how they<sup>55</sup> identify. Keep in mind, however, that some people may choose not to self-disclose for 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 and dominance, though when LGBTIQ individuals are targeted, it is often also a hate crime. LGBTIQ individuals who are victims of sexual assault typically encounter multiple barriers when trying to access services. Already having endured discrimination and oppression due to their sexual orientation and/or gender identity or expression, LGBTIQ individuals may find disclosure more difficult. For many years, 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 and skills allowing them to work comfortably with victims of sexual assault outside of the “usual-gendered” configuration.

### **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, street harassment, physical assault, battery, sexual assault, rape, torture, attempted murder and murder. According to

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<sup>55</sup> 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. The word “they” has achieved official recognition as an acceptable work-around to the gender binary in academic writings. 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 Victims of Sexual Assault

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the FBI, in 2016 the number of reported hate crimes increased 5% over the previous year. And while nearly 57% of these were crimes motivated by racial or ethnic bias, nearly 20% were crimes against people based on sexual orientation or gender identity, making hate crimes perpetrated against the LGBTIQ community the third most common type of hate crime.<sup>56</sup> FBI data does not distinguish between sexual violence and other types of hate crime, so the exact prevalence of sexually-based hate crimes is unknown.

Unfortunately, much of the 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 studies have begun to paint a picture of the prevalence of sexual violence against gay and lesbian individuals, however, these studies do not include a look at incidence within the transgender population. Data indicates 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%.<sup>57</sup> It's important that further research be conducted that better demonstrates the scope of this problem.

### **Definitions**<sup>58</sup>

To better serve LGBTIQ survivors of sexual assault, advocates should understand basic terms commonly used or associated with this community. Familiarity with these definitions can support your work with LGBTIQ survivors and help you to comfortably invite them to self-identify.

**Asexual:** Asexual individuals lack sexual attraction to persons of any gender or have little or no interest in sexual activity. They may engage in purely emotional romantic relationships. Terms specifically associated with purely emotional/romantic relationships can include:

- **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 chooses not to identify as biromantic, which implies a binary gender construct.

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<sup>56</sup> "Hate Crimes Statistics, 2016," FBI Uniform Crime Report. Released November 2017.

<sup>57</sup> Research and Advocacy Digest: Linking Advocates and Researchers, Volume 6, #1. December 2003. Washington State Coalition of Sexual Assault Programs.

<sup>58</sup> 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, AGREAA (The Association for Gender Research, Education, Academia & Action), HRC, and WPATH (World Professional Association of Transgender Health).

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**Biocentrism:** Assuming 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 may come into play when, for instance, shelters that have historically been seen as “women’s shelters” are uncomfortable serving transsexual/transgender people out of fear that non-transgender (or cis-gender) clients would be uncomfortable.

**Biphobia:** The irrational fear, aversion to, and/or hatred of people who are bisexual, often held by both heterosexual and sexual/gender minority communities. This results in 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 person who is comfortable in the gender assigned at birth, in contrast with “transgender” on the gender spectrum. Sometimes 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 cisgender individuals; or
- **trans-exclusion:** refusing to acknowledge and respect a transsexual’s identifying gender or denying the person access to spaces, organizations, or events designated for that gender

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

**Gay:** Sometimes refers to a male-identified person whose primary romantic, emotional, and/or sexual attractions and connections are with other male-identified people. “Gay” is also a term that may be 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) transsexual individuals to bring their physical self into alignment with their gender self.

**Gender & Sex:** Gender refers to one’s psyche or internal sense of “self,” and sex refers to

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one's physiological self or, more simply put, one's "body". These terms are often mistakenly conflated; one is not a synonym for the other.

**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.

**Gender Assignment:** Gender assignment refers to the presumption of one's status as male or female based solely on the person's external genitalia at birth. The assigned label has vast implications as to social roles, norms and expectations of being "male" or "female."

**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 Fluid:** A person whose gender identity is not fixed, and is capable of change over time.

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

**Gender Nonbinary:** is a spectrum of gender identities that are not exclusively masculine or feminine—identities that are outside the gender binary.

**Genderqueer:** A term that came into common use in the early 21<sup>st</sup> 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 may rise to the level of a crime or chargeable offense and 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 expectations and structures that assumes heterosexuality is the norm and privileges heterosexually-identified people. Heterosexism promotes the belief that heterosexuality is inherently better than, morally superior to, and more natural than all other sexual orientations, and that those who are not heterosexual are wrong, sick, or unacceptable. Heterosexism perpetuates institutionalized homophobia and reinforces denial of the existence of LGBTIQ communities and individuals, and upholds heterosexist language, laws, and social norms.

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**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:** 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.

**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.<sup>59</sup>

**Lesbian:** Female-identified person whose primary romantic, affectional, emotional, and/or sexual attractions and connections with other female-identified people.

**LGBTIQ:** An umbrella acronym referring 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. It should also be noted that despite inclusion under the same umbrella acronym, there may be ignorance about, mistrust of, and violence between individuals or groups within the LGBTIQ community.*

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

**“Out”:** An LGBTIQ person who is “out” has decided to disclose and be open about their LGBTIQ identity. People may be “out” to some people and not to others, or in some situations and not in others. It’s important to note that some LGBTIQ individuals, by their appearance, do not conform to heteronormative expectations and may be perceived by others as LGBTIQ without having communicated this verbally. Further, some individuals who *don’t* identify as LGBTIQ may by *their* appearance be perceived as such and may experience similar discrimination and targeting.

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<sup>59</sup> “FAQs: How Common is Intersex?” Intersex Society of North America. Accessed at <https://isna.org/faq/frequency/>

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**Queer:** Originally a derogatory term used to demean, intimidate, dehumanize and attack lesbian and gay people, in 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. ***As with all terminology in this section, it's important not to assume that an LGBTIQ survivor you may be working with is comfortable with the use of this term 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 belief that sexual orientation is a choice 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 (not synonymous with sexual orientation).

**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). Often used synonymously with transgender.

**Transgender:** An umbrella term that may include people who are transsexual, transgender, 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 transgender or transsexual people may go through in adapting their gender presentations and/or physical attributes to better match their gender identities.

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**Trans-Misogyny:** Sexism that specifically targets those on the trans female/trans feminine spectrums. Arising 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 applied to cisgender 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.

**Transsexual:** A person whose gender identity does not match their 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 who has decided against surgeries or who feels they can live in their gender identity without altering their body surgically. “Pre-op” indicates a person who has not yet had any intended surgery and “mid-op” indicates a person having completed some intended surgeries. “Post-op” indicates a person has completed all intended surgery.

### **Sexual Assault within LGBTIQ Communities and Against LGBTIQ Individuals**<sup>60</sup>

#### ■ **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 that may take the form of disbelief, unwillingness to admit the problem, lack of support, and blaming the survivor for “airing the community’s dirty laundry,” thus giving a heterosexist world one more reason to shame and repress the community. Same sex/same gender violence may threaten the sense of solidarity within LGBTIQ communities.

Survivors of same sex/same gender sexual assault experience a kind of “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.

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<sup>60</sup> Advocacy Handbook, Sexual Assault Support Services: Eugene, Oregon. 2008.

### ■ Hate Crimes and Sexual Assault of LGBTIQ persons

As noted above, LGBTIQ people are targets for hate crimes, verbal harassment, hate mail, and acts of violence including physical assault, sexual violence, and murder.

While data detailing sexually-based hate crimes is insufficient, one study found that approximately ten percent of hate crimes against gay men and lesbians include sexual assault.<sup>61</sup> For transgender individuals, the levels of sexual abuse and assault are staggeringly high, with estimates that one in two transgender people will experience sexual abuse or assault at some point in their lives.<sup>62</sup> 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 the result of murder or suicide.

### **Myths & Facts**<sup>63</sup>

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 estimate is that one in ten people are LGBTIQ, but it's difficult to find accurate data. For many reasons, many LGBTIQ individuals may not disclose their identities or live openly as part of the LGBTIQ community. In 2011, The Williams Institute reported that there are at least 8 million people who identify as lesbian, gay or bisexual living in the U.S., and another 700,000 who are transgender. That means that about 4% of the US population is *openly* LGBT, with many millions more who have engaged in some relationships or sexual behavior with someone of the same sex or have admitted to feeling some same-sex attraction at some point.<sup>64</sup>

**MYTH:** Parents cause their children to be LGBTIQ.

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

**MYTH:** Sexual violence and abuse are issues that primarily affect heterosexual people.

**FACT:** LGBTIQ people are at increased risk of sexual assault relative to heterosexual/cisgender people. 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

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<sup>61</sup> Comstock, *Violence Against Lesbians and Gay Men*, 1991.

<sup>62</sup> FORGE, 2005, *Sexual Violence in the Transgender Community Survey*, unpublished data; G. Kenagy, 2005, "The Health and Social Service Needs of Transgender People in Philadelphia," *International Journal of Transgenderism* 8(2/3):49–56; G. Kenagy and W. Bostwick, 2005, "Health and Social Service Needs of Transgendered People in Chicago," *International Journal of Transgenderism* 8(2/3):57–66.

<sup>63</sup> Adapted from, "Lesbian, Gay Bisexual, and Transgendered Survivors" by Danielle Tillman. Published by CALCASA.

<sup>64</sup> <https://www.advocate.com/news/daily-news/2011/04/06/how-many-lgbts-live-america>

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disease; there is nothing to be “cured.”

**MYTH:** Sexual abuse may be a causal factor in becoming 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 women aren’t “built that way.” There is also an assumption that the physically larger person is always the perpetrator. Although most individuals who commit sex offenses are men, women do sexually assault others.

### **Barriers to Reporting Faced by LGBTIQ Survivors of Sexual Assault**

In Oregon, 90% of all sexual assaults go unreported.<sup>65</sup> Sexual assault survivors frequently find it difficult to report their assault. Survivors often feel fear, self-blame, anger, shame and/or shock after an assault, and all these feelings exacerbate the challenges of participating in the civil or criminal justice systems. 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. This adds another layer of stress in deciding whether to report the assault; coming out can lead to experiences 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. Survivors may also fear that reporting their sexual assault will reinforce negative stereotypes about their community.

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<sup>65</sup> *Rape in OR: One in Six, 2003.*

## LGBTIQ Victims of Sexual Assault

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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-sensitive services to support LGBTIQ survivors.

### **Legal, Medical and Logistical Concerns**

**LGBTIQ families may not be legally entitled to all the legal rights and remedies granted to married couples** on matters such as child custody, child and spousal support rights or certain other family law protections. Below are some notable examples:

- Abusive relationships that involve children can become difficult to navigate legally, and some LGBTIQ victims will choose to stay with an abusive partner rather than risk losing children.
- LGBTIQ immigrant survivors have not have all the rights and privileges conferred to immigrants in heterosexual relationships. For more information, see <https://vawnet.org/sc/resources-immigrant-survivors-and-their-advocates>.
- 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. They are at particular risk for being outed and for inappropriate care. For example, a female-to-male transgender individual may not be assessed for the 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, and making medical decisions for partners.

### **Seeking Help**

Many LGBTIQ people have experienced homophobia, biphobia, transphobia, and/or heterosexism when seeking services from programs whose purpose is to provide support and safety. As a result of bad experiences when reaching out for help, the prospect of accessing service providers for assistance after experiencing sexual assault may feel like a

## LGBTIQ Victims of Sexual Assault

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set-up for further traumatization. There may be a host of other barriers to seeking services for LGBTIQ victims of sexual violence, whose experiences with systems may leave them with little confidence that they can rely on the police, the court system, hospitals, service providers, etc., without facing discrimination, violence, shaming, and inappropriate or inadequate response.

LGBTIQ survivors, particularly those in rural areas, may find it more difficult to build support networks where they can be completely safe and open. In addition to being painful, this isolation can interfere with the survivor's opportunities for coping and healing. Supportive and informed advocates and counselors, a solid support network, and appropriate resources are extremely important for survivors dealing with sexual assault. Agencies can assist by doing outreach in LGBTIQ communities, keeping updated resource lists (including LGBTIQ-specific 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.

### **Effective Advocacy**

Advocates are encouraged to seek training to become more culturally responsive to LGBTIQ survivors. A bad first impression of a local agency could cause the survivor to view the agency as unsafe and not to return, reinforcing their isolation. Additionally, survivors who have negative experiences with helpers are likely to share their experience with others in their community to help protect others from similar traumatization. This can lead to an entire community of survivors 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-informed response to the victims they serve.

### **■ Frequently Asked Questions and “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 about this). 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 avoid having to use a bulky acronym (LGBTIQ) in favor of one word that encompasses a large and diverse community.

As with all labels, it is most important to refer to people in the ways that they prefer. Some people are still very uncomfortable with the term queer and would not want 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 they prefer to be referred to.

Many advocates and service providers are unsure about whether it's appropriate to use the term “queer” when referring to someone else. Here are some tips:

- It's 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) you're talking with see this as a positive or negative term? Even if you use the word with good intentions, if your audience isn't

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familiar with the context, it may be interpreted as derogatory.

- If you wish to use this word, take the time to explain the context to be sure you're understood.

### 2). **How do I interrupt homophobia, biphobia and transphobia?**

When talking with sexual assault survivors, their families and friends, and other service providers, advocates may witness homophobic, biphobic, and transphobic attitudes or behaviors. There are also times when people may not intend to be discriminatory but aren't sure how to approach the unfamiliar.

#### **Some Examples:**

- A heterosexual survivor was assaulted by someone of the same sex or gender. Clearly concerned that they not be taken for gay, they engage in the use of derogatory language or name-calling to distinguish themselves from LGBTIQ people.
- A survivor's friends or family, in trying to make sense of an assault, are blaming the survivor's sexual orientation or gender identity or expression as having played a part in why it occurred.
- 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, 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 avoids connecting with a survivor because the advocate is uncertain how to talk about some aspect of the 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. In all cases, however, the ideal outcome is that the person you are interrupting leaves the conversation:

- **with new information;**
- **unashamed; and**
- **as a potential future ally**

If the person who is impacted is present, it is equally, if not more, important that they feel safe and respected.

#### **Tips for Interruptions:**

- Gauge your audience.
- "I" statements, finding common ground to relate upon, and sometimes even humor can be good places to start.
- Sometimes it's just a brief reminder that is needed. Other times, a more in-depth conversation is necessary.
- Example of an opening: "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?**

Without the “usually-gendered” markers and absent a clear picture of what happened, it may be very hard to tell if the person presenting as the victim is actually the person who did harm. There are 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.

In non-heterosexual relationships, assessment of the dynamics can be complicated, and further training is recommended. The consistent theme across all abusive relationships is that one person has power and control over another and finding out more about that dynamic when working with LGBTIQ survivors is a critical part of ensuring that are responding with the same compassion, support, and resources that any survivor should receive.

### **4). How should I respond when someone calls and I’m not sure if they are LGBTIQ?**

It is good practice to answer all calls using gender-neutral pronouns, and not to assume the gender of the caller or the perpetrator until the caller has identified the pronouns specific to them. Always use the language and pronouns callers use to refer to themselves and don’t make assumptions about the caller’s identity; this communicates your recognition that not everybody is heterosexual or identifies with the gender and/or sex assigned at birth. Because LGBTIQ survivors often have experienced homophobia, biphobia and/or transphobia 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?”).

In addition to these practices around pronouns, remember to refer to callers/survivors using the labels they have used themselves. If you are unsure how they identify and it’s relevant to the work you’re doing together, **ask, don’t assume**. An appropriate way to ask someone how they identify 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 their identity, be sure to that you’re asking not out of curiosity but because knowing will help you serve the survivor most competently and effectively.

### **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. Your response to them should be consistent with your usual response, which should always include finding out how you can best help them. As with any marginalized population, there may be specific resources for which you’ll want to offer referrals, or there may be aspects of their victimization that require a focus on LGBTIQ-specific needs.

If you think that you or your program isn’t prepared to meet their needs, we recommend

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that you seek training in working comfortably and effectively with this population. In addition to training, get to know your community; what LGBTIQ-friendly resources are available? What is missing; are there out-of-area or national resources you should know about? Prepare ahead of time so that you can be ready with appropriate referrals. Your agency should ensure that a list of legal, counseling and other resources for LGBTIQ survivors is included in the information and referral listings the agency maintains. Without doing your homework, LGBTIQ individuals can easily fall through the cracks and receive inadequate support and services.

### **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. What if I say the wrong thing?**

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, just own it. Apologize. Acknowledge that you're still learning and ask respectful questions to get the information you need to help, such as "Can you tell me how you prefer to be referred to?" or "I'm not familiar with the term that you used. Could you help me better understand?" 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. For example, it's unlikely that your work with a transgender person would require you to know details about their anatomy or surgery status. (*Note: Those details **may** be important to know if 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 private nature of the subject, explain why you are addressing it, and ask if they are prepared to address this with medical staff or would like you to know more so that you can help if needed).*)

Another example would be asking an LGBTIQ person when they "knew" (that they were gay, lesbian, bisexual, transgender, etc.). It's hard to imagine that you would ask a heterosexual person when they "knew" they were heterosexual; asking an LGBTIQ person is equally inappropriate.

While you may find yourself learning during the course of advocating for an LGBTIQ survivor, recognize that it's not their 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 become romantically involved with 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

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programs to anticipate potential dynamics and scenarios, and it's always advisable to think ahead and to plan accordingly. While each program may determine its own policies around such situations, programs should be mindful that policies never result in disparate treatment based on sexual orientations, gender identities, or any other protected category under Civil Rights and Fair Housing law.

### **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**

In a landmark report, the World Health Organization recognized the centrality of oppression to sexual violence: <sup>66</sup>

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*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.*

*- World Health Organization*

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When working with survivors of sexual violence from any marginalized community (LGBTIQ, people of color, people with disabilities, immigrants, etc.), it is important to acknowledge the intersections of identity, corresponding oppressions and sexual violence.

The SATF recognizes that perpetrators target victims they perceive as vulnerable, accessible and/or lacking in credibility (for more information see the Sexual Assault Dynamics chapter). As members of a marginalized community subject to discriminatory treatment and other societal biases, LGBTIQ people may be perceived as vulnerable, accessible and lacking in credibility and may become more likely targets of sexual violence.

LGBTIQ survivors may also identify strongly with a racial, religious, cultural, ethnic, or other community; being LGBTIQ may not be the most important part of the survivor's identity. Cultural norms springing from these identities may be shape the needs of a LGBTIQ client, sometimes more so than the client's sexual orientation or gender identity/expression. A survivor of color, for example, may care more that their advocate is a person of color than that they are LGBTIQ.

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<sup>66</sup> Krug E.G. et al (Eds) (2002). "World Report on Violence and Health." Geneva: World Health Organization.

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Further, 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 to which they have transitioned.

### **Legal Issues**

When providing options related to legal issues for LGBTIQ survivors, keep in mind that legal needs and resources may be different 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, they will encounter this outdated and demeaning 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.

Advocates can encourage the survivor to consult with the prosecutor or law enforcement officer(s) to explain the Oregon criminal law. This may help survivors understand why the sexual assault they experienced may not be charged as “Rape.” Outside of the legal system, survivors may refer to the assault that they experienced in the language that fits for them, and advocates should listen and validate.

- **Discrimination and Equality under the Law**

Under the Oregon Constitution, the law must be applied equally to gay, straight, transgender and bisexual people. If LGBTIQ identity 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, they 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 [info@ogalla.org](mailto:info@ogalla.org), or the National Crime Victim Law Institute at 10015 SW Terwilliger Blvd., Portland OR 97217, [ncvli@lclark.edu](mailto:ncvli@lclark.edu).

- **Same-Sex Marriage in Oregon**

The landscape in which same-sex couples find themselves in regard to marital rights and benefits has vastly changed. Since May 2014, same-sex marriage has been legally recognized in Oregon, and in July 2015 gender-neutral marriage was codified in various Oregon statutes (the law change went into effect on January 1, 2016). On June 26, 2015, the U.S. Supreme Court ruled that same-sex marriage bans are unconstitutional, allowing same-

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sex couples to legally marry and have their unions recognized anywhere in the United States.

Same-sex couples who have legally married are entitled to any privilege, immunity, right, benefit or responsibility that the state of Oregon provides or imposes on the parties to any marriage. Same-sex married partners are also entitled to all benefits conferred to married people under federal law.

Oregon same-sex couples may also choose to register as domestic partners, which confers many - but not all - of the rights and responsibilities of couples who have legally married. For example, this legal status does not come with all of the federal benefits of marriage and may not be recognized in other states. Likewise, same-sex civil unions or domestic partnerships may not be recognized in Oregon and may not have the same rights as legally married couples or Oregon Registered Domestic Partners (RDP). Recognition of a trans survivor's gender and marital status will also vary from state to state. Advocates should be prepared to 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 or marriage
- Ability to file joint tax returns (Note: RDP 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 spouse's/partner's medical information
- Standing for "wrongful death" suits
- Upon death of a spouse/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 spouse/partner is disabled or killed on the job

It is important for advocates to be aware of these issues as they may need to advocate for the legal rights of the survivors and partners with whom they are working. The partner of an LGBTIQ survivor, for example, might encounter certain legal obstacles if the partnership is not registered (or, sometimes, even if it is), such as difficulty visiting the survivor in the hospital if the survivor is hospitalized for assault-related treatment. Or if a survivor is sexually assaulted and killed in the workplace, an advocate can help 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 who is in a same-sex relationship to 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 who is now part of the parent's life. If a non-biological parent is being sexually

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assaulted in an intimate partner relationship, they may be reluctant to leave because it may place their custodial rights at risk. Offering a referral to an attorney versed in these issues is the best course of action if the LGBTIQ survivor expresses concern about custody issues.

### **Considerations for the Medical Response**

As an advocate, you may respond at the hospital or another medical setting. It's important to have a general understanding of what specific needs and considerations an LGBTIQ person may have in such situations. 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 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 actions:**

- ***Communicate the importance of utilizing appropriate pronouns.***  
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.
- ***Be attuned to the survivor's choice of language about their body.***  
Individuals in the LGBTIQ community may have complex relationships with their physical selves. When working with transgender survivors, regardless of whether or not they have had surgery, they may be quite sensitive about their bodies and the language used to describe them. When taking a medical or post-assault history, it is important to be mindful of this. Follow their lead and use the terms they use when asking survivors about their body, any surgeries, or any specific sexual acts that may have been experienced during an assault.
- ***Ensure that the SANE/medical personnel address specific infection risks.***  
For some sexual abusers, 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. It's often incorrectly assumed, for example, that lesbians are at decreased risk of HIV infection, which could mean that medical providers may fail to discuss the risk and possible need for prophylaxis. Survivors may minimize their own 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.
- ***Ensure that pregnancy prophylaxis in the form of emergency contraception is addressed when appropriate.***  
Assumptions are often made based on perceived or actual gender identity, and misconceptions may exist regarding whether risk of pregnancy is a concern. Remember, a

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person's sexual and/or gender identity may not give you all the information you need to assess risks for pregnancy or infection. It's your job as an advocate to identify respectful ways to initiate conversations about risk and not to make assumptions based on your perception of the person's gender or the gender of the perpetrator.

- ***Ensure 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 members of the LGBTIQ community. Individuals may have had to face uncertainties about - or actual - disparate treatment that can stem from coming out in order to receive post-assault services. For some individuals this fear may result in delaying 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.

- ***Work closely with the SANE/medical personnel to provide resources if additional medical or advocacy follow-up is needed.***

Rates of depression and suicide are higher among LGBTIQ youth than among youth in the general population<sup>13</sup> and may warrant the need for additional medical or other follow-up services that are tailored to the survivors' needs. Safety and discharge planning may be more complex with members of the LGBTIQ community, and it's essential that the SANE/medical personnel are aware of appropriate resources within the community.

### **LGBTIQ Survivors and Shelter**

Temporary emergency housing may be a necessary resource for some LGBTIQ sexual assault survivors. When determining whether a stay in an emergency shelter might be a good option, advocates should be prepared to discuss the realities of shelter life, such as the number of people who may be staying there, the degree to which living space may be shared versus private, whether the shelter location is accessible to public transportation, etc. There may be additional considerations, however, for LGBTIQ survivors, as shelters range in the degree to which they are attuned to ensuring the comfort of LGBTIQ survivors within their programs. Sexual assault advocates need to know how their local shelters address a number of issues before making a referral.

#### **Some questions to consider:**

- 1) How does the shelter serve non-female identified survivors? If not in the shelter itself, what equitable and appropriate alternatives have they made available?
- 2) What is the shelter's policy and practice around interrupting homophobic, biphobic, and transphobic communication and behavior?
- 3) What are the shelter's LGBTIQ anti-discrimination policies, and how are they enforced?
- 4) Does the intake process include informing all residents that the shelter is an LGBTIQ-friendly shelter, and utilize gender-neutral language and paperwork?
- 5) How are staff trained to address questions or issues related to sexual orientation and gender identity/expression within the shelter community and in shared spaces?
- 6) How well is the shelter's physical space set up to appropriately accommodate all

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people? Are there gender-neutral bathrooms? What are the sleeping accommodations?

7) How are support groups and advocacy services made safe and inclusive for LGBTIQ survivors? Is pronoun neutrality utilized, and is the gender of the abuser varied or not assumed in examples and conversations?

In addition to being ready to provide information about the shelter program itself, it's also important to discuss with LGBTIQ survivors what they would like your role to be in advocating for them with the shelter program. Does the survivor intend to come out to program staff when discussing shelter admission, and do they want your help with that?

In preparing for conversations with LGBTIQ survivors about whether your local shelter is a good option, it's important to acknowledge that programs across the state of Oregon may be in different stages of adopting policies and practices that reflect equity and inclusion for LGBTIQ individuals. 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.

### LGBTIQ-Friendly Intake and Advocacy: Tips for Shelters

- Re-evaluate your intake process regularly. Consider the reasons for asking the questions you use to ensure they are necessary to providing appropriate services.
- Don't assume anything about gender, relationships, or sexual orientation of any survivor or caller.
- Sample questions for screening: "What's the name of the person who harmed you?" "What's your relationship to the person who harmed you?"
- Use terms that are more inclusive, such as "partner," rather than "husband," "wife," "boyfriend," "girlfriend," etc.
- Allow survivors to self-identify. Use gender-neutral pronouns (they/them/their) for survivor and perpetrator until the survivor specifies; then, follow their lead.
- Provide options for survivors to select their gender identity on forms that you use. Options should include "Male," "Female," "Transgender," or "Gender: \_\_\_\_\_."
- During intake conversations, survivors may need LGBTIQ-specific referrals, resources, and ideas. Be sure staff are trained and prepared ahead of time with resource lists and accessible resources.
- Be proactive; talk with LGBTIQ survivors about any concerns they have about privacy, housing, employment, immigration, education, benefits.

### Training & Competency

#### Training Opportunities

**SATF:** The Sexual Assault Task Force offers opportunities for training on issues related to LGBTIQ survivors and sexual assault, both as part of existing training programs or as 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 that 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.

**OCADSV:** 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.



### LGBTIQ Cultural Competency: Steps to Making your Agency a Safe Place

- Include a commitment to combating homophobia, biphobia, intersex oppression and transphobia in your mission statement or outreach materials.
- Put information in 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.
- Be consistent about using inclusive language in all written materials and service provision (including support groups, trainings, and other public outreach).
- Don't make assumptions or ask about marital status, sexual orientation, or gender on the phone or on forms.
- Don't ask questions about sex, which requires revealing private information about the body. If you need to know, ask about gender instead.
- Know about resources for LGBTIQ communities, including safe counselors, lawyers, and doctors.
- Recruit LGBTIQ volunteers, staff, and board members and actively support their inclusion.
- Make it clear that oppression targeting LGBTIQ people will not be tolerated; communicate this in the hiring process, trainings, and intake interviews.
- Find out about LGBTIQ events in or near your community and participate through tabling, speaking out about sexual assault, marching in parades, or just being a visible supportive presence.
- 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.

### **Resources**

#### ■ **Oregon Resources**

##### **Basic Rights Oregon (BRO)**

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 builds and mobilizes a broad coalition of citizens to ensure democratic freedoms for all Oregonians.

<http://www.basicrights.org/>

##### **The Sexual Minority Youth Resource Center (SMYRC)**

SMYRC, in Portland, is a program of New Avenues for Youth. SMYRC provides a safe, supervised, harassment-free space for sexual and gender minority youth ages 13-23 who participate in positive activities like art, music, community organizing, open mic nights, drag shows, and support groups and receive services including case management, counseling, education, and more. With the goals of increasing academic success and access to jobs, reducing poverty and school drop-out, SMYRC honors, empowers, and supports LGBTQ youth to be their best selves and become leaders in their communities.

<http://www.smyrc.org/>

##### **The Oregon Coalition Against Domestic and Sexual Violence (OCADSV)**

OCADSV, a non-profit organization founded in 1978, 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/>

##### **Q Center**

The Q Center provides a safe space to support and celebrate LGBTQ diversity, equity, visibility and community building. It offers multi-generational programs and services in four core areas: Arts & Culture; Education & Training; Health & Wellness and Advocacy.

[www.pdxqcenter.org](http://www.pdxqcenter.org)

##### **Sexual Assault Support Services (SASS) of Lane County**

SASS 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 SASS 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, 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](http://www.sass-lane.org) or 541-343-SASS (7277) or toll-free 1(800)788-4727.

## LGBTIQ Victims of Sexual Assault

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### ■ **National Resources**

#### **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, gender identity, or gender expression.  
<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/>

#### **Parent, Family and Friends of Lesbians and Gays (PFLAG)**

PFLAG 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. PFLAG 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)**

INSA offers peer support, education, advocacy, as well as written and video materials.  
<http://www.isna.org>

#### **National Center for Transgender Equality**

NCTC works at the local, state, and federal level to change laws, policy, and society. Site includes info about legal rights of transgender and gender-variant people.  
<https://transequality.org/>

#### **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 (NCAVP)**

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. <https://avp.org/ncavp/> or (212) 714-1184.

#### **National Lesbian, Gay, Bisexual, Transgender, and Queer Task Force (NLGBTQTF)**

The National LGBTQ Task Force builds the grassroots power of the LGBTQ community by

## LGBTIQ Victims of Sexual Assault

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training activists, equipping state and local organizations with the skills needed to organize broad-based campaigns to defeat anti-LGBTQ referenda and advance pro-LGBTQ legislation, and building the organizational capacity of our movement. Washington, DC office phone: 202.393.5177, fax: 202.393.2241. [www.thetaskforce.org](http://www.thetaskforce.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.

<https://williamsinstitute.law.ucla.edu/>

### **Pride Institute**

Exclusively for LBGTIQ community members. Trainings, webinar presentations, cultural diversity presentations. Me+ntal 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](http://www.pride-institute.com)

### **Native American Victims of Sexual Assault**

As mentioned in the chapter on Sexual Assault Dynamics, sex abusers 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.”<sup>67</sup>

### **Prevalence/Incidence Nationwide**<sup>68</sup>

- American Indian and Alaskan Native women are significantly more likely (34%) to report that they were raped than White women (18%).<sup>69</sup>
- The vast majority (at least 70%) of the violent victimizations experienced by Native Americans are committed by a person **not** of the same race.<sup>70</sup>
- 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).<sup>71</sup>
- Over 1 in 3 American Indian and Alaskan Native women will be raped during their lifetimes.<sup>72</sup>
- 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.<sup>73</sup>

### **Barriers Faced by Native Victims**

Native American victims of sexual assault face many barriers to accessing services. Many of these barriers are related to the deeply entrenched, historic and ongoing racial oppression and systemic marginalization faced by Native Americans, including:

- Mistrust of the federal/state government and the criminal justice system;

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<sup>67</sup> Amnesty International, “Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA” 24 April 2007.

<sup>68</sup> *The following data was created by Sarah Deer, Staff Attorney for the Tribal Law and Policy Institute.*

<sup>69</sup> 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.

<sup>70</sup> *American Indians & Crime Report*, US Dept of Justice, BJS, Feb. 1999.

<sup>71</sup> *Ibid.*

<sup>72</sup> Tjaden, Patricia and Nancy Thoennes. *Full Report of the Prevalence, Incidence and Consequences of Violence Against Women*. Washington DC: National Institute of Justice, 2000.

<sup>73</sup> 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

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- Inadequate investigations or failures of law enforcement and tribal governments to respond to sexual assaults on Native land;
- Lack of promised governmental resources;
- Remote locations of and abject poverty faced by many Native communities.

Additionally, the agencies and organizations that provide services to victims of sexual assault may also face barriers due to complex issues surrounding jurisdiction, inadequate 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)**  
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, though neither state nor tribal governments consented to this arrangement. 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 sexual abuser. 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.<sup>74</sup>
- **Violence Against Women Reauthorization Act of 2013 (enacted in 2015)**  
Allowed Tribal Courts the right to consider a lawsuit where a non-Indian man commits domestic violence toward a Native American woman on tribal land. However, tribes' criminal jurisdiction over non-native individuals is limited to domestic violence crimes, dating violence, and criminal violations of protection orders. Crimes between two strangers, including sexual assaults, do not fall under this law.

For more information about the history of gender violence against Native American women and its jurisdictional complexities, see <http://www.inquiriesjournal.com/articles/1092/the-human-rights-impacts-of-vawa-2013>.

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<sup>74</sup> Fletcher, Matthew. *Sawnahezewog: "The Indian Problem" and the Lost Art of Survival*, 2003.

### **Barriers to Reporting**<sup>75</sup>

- **Victim-Blaming and Prejudice**

Victim-blaming is something that most all victims of sexual assault face. However, Native victims are confronted with the addition of racist stereotypes, ignorance about 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 to accessing services by Native victims.

- **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 Federally Recognized Tribes**

There are nine federally recognized tribes in Oregon. Most of Oregon's tribes offer victim services and/or advocacy to victims of crime, including sexual assault. **Including tribes in local planning and victim response is essential to addressing the gaps in response and services for Native American survivors.**

- **Burns Paiute Tribe**

100 Pasigo Street

Burns, OR 97720

**Administration:** (541) 573-2088

**Tribal Council:** (541) 573-1910

**Domestic Violence and Sexual Assault Program Coordinator:** Teresa Cowing

**Office:** (541) 573-8053

**Cell:** (541) 413-0216

<http://www.burnspaiute-nsn.gov/index.php/departments/social-services/domestic-violence-and-sexual-assault-program>

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<sup>75</sup> 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

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- **Confederated Tribes of Coos, Lower Umpqua & Siuslaw**

1245 Fulton Avenue Coos Bay, OR 97420

**Phone:** (541) 888-9577

<http://www.ctclusi.org>

- **Coquille Indian Tribe**

3050 Tremont Street

P.O. Box 783

North Bend, OR 97459

**Administration:** (541) 756-0904 or (800) 622-5869

<http://www.coquilletribe.org>

**Healthy Families First: Domestic Violence and Sexual Assault Program Family Support**

**Phone:** (541) 888-9494, ext. 2219

- **Confederated Tribes of Grand Ronde**

9615 Grand Ronde Road

Grand Ronde, OR 97347

**Tribal Headquarters:** (503) 879-5211 or (800) 422-0232

<http://www.grandronde.org>

**Domestic and Sexual Violence Prevention Department**

**Office:** (503) 879 1660

**24-hour crisis line:** (971) 832 0730.

<http://www.grandronde.org/departments/social-services/domestic-and-sexual-violence-prevention/>

- **Klamath Tribes**

P.O. BOX 436

501 Chiloquin Blvd.

Chiloquin, OR 97624

**Tribal Administration:** (541) 783-2219 or (800) 524-7987

<http://www.klamathtribes.org>

**Counseling and Family Services Department**

**Phone:**(541)783-2219 Ext. 148

**Domestic Violence Hotline:** (541) 783-3682

- **Confederated Tribes of Siletz**

P.O. BOX 549

201 SE Swan Avenue

Siletz, OR 97380

**Phone:** (541) 444-2532

<http://ctsi.nsn.us>

## Native American Victims of Sexual Assault

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- **Cow Creek Band of Umpqua Indians**

2371 NE Stephens Street, Suite #100

Roseburg, OR 97470

**Phone:** (541) 672-9405

<http://www.cowcreek.com>

- **Confederated Tribes of Umatilla**

46411 Timine Way

P.O. BOX 638

Pendleton, OR 97801

**Phone:** (541) 276-3165

<http://www.umatilla.nsn.us>

**Family Violence Services**

**Phone:** 541-429-7045

- **Confederated Tribes of Warm Springs**

1233 Veterans Street

PO Box C

Warm Springs, OR 97761

**Phone:** (541) 553-1161

<https://warmsprings-nsn.gov/>

**Victims of Crime Services**

<https://warmsprings-nsn.gov/program/warm-springs-victims-of-crime-services/>

- **NAYA Family Center, Native American Family Healing Center**

5135 NE Columbia Boulevard

Portland, OR 97218

**Phone:** (503) 288-8177 ext.339

<https://nayapdx.org/>

### **Military Sexual Trauma**

The following information on Military Sexual Trauma is courtesy of the Rape, Abuse, & Incest National Network (RAINN) at: <https://www.rainn.org/articles/military-sexual-trauma>.

If an individual survived sexual assault while serving in the military, there are services available to help in the recovery of the experience.

#### *What is Military Sexual Trauma?*

Military Sexual Trauma, or MST, is the term used by the Department of Veteran Affairs to describe the effects of sexual violence experienced by a military Service member. Many of the **effects** are similar to the experiences of civilian survivors. As a Service member, you may experience additional reactions that are more specific to your military experience.

#### *Active Duty Service Member Resources*

DoD **Safe Helpline** provides live, one-on-one support and information to the worldwide DoD community. The service is confidential, anonymous, secure, and available worldwide, 24/7— providing survivors with the help they need anytime, anywhere.

- **Call the Telephone Helpline** at 877.995.5247. The phone number is the same inside the U.S. or via the DSN.
- Visit the Online Helpline at **SafeHelpline.org** for live, confidential help through a secure instant-messaging format.
- Visit **Safe HelpRoom** to connect to a secure community of survivors that can meet to help each other in a safe, moderated, online platform, 24/7. Visit the online chatroom at SafeHelpRoom.org.
- Download the free **Self-Care App** (iOS and Android) to create a customized self-care plan and connect to all of the Safe Helpline resources from anywhere in the world. Self-care plans and exercises can be accessed any time, even without an internet connection. Users can also use the App to call the Telephone Helpline for free using Voice over IP (VoIP) technology.
- Text your ZIP code or installation/base name to 55-247 (in the U.S.) or 202.470.5546 (outside the U.S.), and you will receive a text back with contact information for the resource you requested. (Message and data rates may apply.)

#### *Transitioning Service Members Resources*

Is the individual in the process of separating or retiring from Military Service? Being a survivor of sexual assault and going through the transition process can be difficult.

Visit Safe Helpline's **Transitioning Service Member resource** search to access hundreds of resources for Active Duty, Veteran, and civilian resources that best fit your needs.

## Military Sexual Trauma

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### ***Veteran Resources***

If an individual is a veteran and survivor of sexual assault, there are resources to help them recover. They can receive help even if they didn't report the crime when it occurred. Most likely, a VA benefits coordinator will ask them directly if they've survived sexual assault. The VA recognizes that this is an underreported crime and hopes directly asking will let survivors know that there is special care available for them.

- Contact the MST Coordinator at your [local VA medical facility](#).
- Contact your local [Vet Center](#).

### **Vulnerable Adults and Children**

Studies consistently demonstrate that people with disabilities are victimized more often than people who don't have a disability. It's important for advocates and other service providers to have a good understanding of the wide diversity of disabilities and of the obstacles people with disabilities face. This section provides information about different types of disabilities, specific forms of abuse, barriers experienced by people with disabilities, and advocacy tips for working with this vulnerable population.

### **Types of Disabilities**<sup>76</sup>

#### ■ **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 affects the capacity to use expressive and/or receptive language, which may be significantly limited or delayed. Difficulties may be seen in one or more of the following areas: speech, such as articulation and/or voice; conveying comprehensible meaning; understanding others' communication; or using spoken, written, or symbolic language. This disability includes people 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 (three to nine years old) is significantly limited, impaired, or delayed. It 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 five years of age or older that is attributable to either a mental or physical impairment or combination of the two. Manifested before the individual attains age twenty-two and likely to continue indefinitely, this disability results in substantial functional limitations in three or more of the following areas of major life activity:

- self-care
- receptive and expressive language

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<sup>76</sup> Adapted by Elizabeth McNeff, Portland State University Regional Research Institute, from the Federal Statutory Definitions of Disability: <https://icdr.acl.gov/resources/reports/federal-statutory-definitions-disability>.

## Vulnerable Adults and Children

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- learning
- mobility
- self-direction
- capacity for independent living
- economic self-sufficiency

Individuals with developmental disabilities need an individually-tailored combination and sequence of special, interdisciplinary, or generic services, supports, or other assistance that is lifelong or of extended duration and is individually planned and coordinated.

### ■ Emotional Disability

A person with an 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:

- inability to learn that cannot be explained by intellectual, sensory, or health factors
- inability to build or maintain satisfactory interpersonal relationships with peers and teachers
- inappropriate types of behavior or feelings under normal circumstances
- general pervasive mood of unhappiness or depression
- 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 that significantly limits or impairs the physiological capacity to function, and negatively impacts strength, vitality or alertness. Health impairment results in a heightened alertness to environmental stimuli, which limits the ability to focus in an educational environment. Health impairments may include asthma, attention deficit disorder (ADD), attention deficit with hyperactivity disorder (ADHD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia, if these conditions adversely affect a person's daily life.

### ■ Intellectual Disability

Intellectual disabilities significantly limit or impair a person's permanent capacity for performing cognitive tasks, functions, or problem solving. These disabilities may be 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. "Intellectual Disability" replaced "Mental Retardation" as the official terminology for this disability by the US Government in 2013.

### ■ Neurological Impairment

Neurological impairment limits the capacity of the nervous system and results in difficulties 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

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people who have experienced a traumatic brain injury.

### ■ **Physical Disability**

A physical disability is marked by significant limitation, impairment, or delay in the capacity to move, coordinate actions, or perform physical activities. People with physical disabilities experience difficulties in at least one of the following: physical and motor tasks; independent movement; and performance of basic life functions. Physical disabilities include severe orthopedic impairments as well as disability caused by congenital anomaly, cerebral palsy, amputations, and fractures, if such impairments adversely affects a person's daily life.

### ■ **Sensory Impairments**

- **Hearing:** The capacity to hear is limited, impaired, or absent and results in at least one of the following: reduced performance in hearing acuity tasks; difficulty with oral communication; and/or difficulty in understanding auditorily-presented information. Includes people who are deaf and people who are hard-of-hearing.
- **Vision:** The capacity to see 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. Includes people who are blind and people with limited vision.

### ■ **Specific Learning Disability**

Refers to a disorder in at least one of the basic psychological processes involved in understanding or in using spoken or written language. May manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Includes conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

## **Specific Forms of Abuse**<sup>77</sup>

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. These may include:

- Medication manipulation (over- or under-medicating someone).
- Destroying or withholding assistive devices (such as communication devices or mobility equipment).
- Threatening to have the person institutionalized.
- Threatening to have the person's children taken away (such as 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

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<sup>77</sup> 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).

## Vulnerable Adults and Children

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a wheelchair!”).

- Neglect: Does not show up to provide scheduled care or refuses to assist with essential care tasks such as eating, drinking, and hygiene.
- Steals valuables, medication, or money; forging checks or taking checks and credit cards.
- Sexual abuse (such as inappropriate touch while assisting with intimate care).
- Use of physical force or acts of violence.
- Abandoning a person who needs assistance.
- Threatening, intimidating or humiliating a person.
- Sexual assault or exploitation.
- Forcing a person to remain in their room isolated from contact with others.
- Tying a person to their 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
  - Abuse services not open to men
  - Unsure who to call
- Systems (legal, medical, advocacy, etc.) lack 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.

### **Misconceptions and Stereotypes**

In addition to the barriers listed above, people with disabilities may face barriers due to misconceptions and stereotypes about people with disabilities. These include beliefs 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

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- 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 “best” way to work with people with disabilities. However, there are a few tips that can be useful to keep in mind:

- Arrange to speak privately with 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 them. Sometimes it’s the person who seems most concerned or loving who is actually the one causing harm, 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. Explain the reporting procedures or legal steps that will be taken if the person discloses abuse.
- 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 they are feeling.
- 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 immediate intervention is required, 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.

### **Resources**

#### **The Arc Oregon**

Arc 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.

2405 Front Street NE, #120

Salem, OR 97301

**Phone:** (503) 581-2726

<https://www.thearcoregon.org/>

#### **Disability Rights Oregon (DRO)**

DRO is a non-profit law firm designated as Oregon’s Protection and Advocacy (P&A) office. P&As have broad statutory powers to safeguard the human and civil rights of people with disabilities. They provide assistance for legal problems directly related to disability.

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511 SW 10<sup>th</sup> Ave., Suite 200  
Portland, OR 97205  
**Phone:** 503-243-2081 or 1-800-452-1694  
TTY users: dial 711  
<https://droregon.org/>

### **FACT Oregon**

FACT's mission is to empower Oregon families experiencing disability in their pursuit of a whole life by expanding awareness, growing community, and equipping families. Webpage includes links to many Oregon resources that support people with disabilities.

13455 SE 97th Ave.  
Clackamas, OR 97015-8662  
**Helpline:** (503) 786-6082 - or - 1 (888) 988-3228 (503) 786-6084  
[info@FACToregon.org](mailto:info@FACToregon.org)

### **Oregon Department of Human Services**

To report suspected abuse, neglect, or financial exploitation of an elderly person, adult with physical or developmental disabilities, adult with mental illness, or any child, you can call:

**1-855-503-SAFE (7233)**

For more information about reporting abuse and neglect, go to  
<http://www.oregon.gov/dhs/abuse/Pages/index.aspx>

### **County Services for Seniors and Developmental Disability Programs**

Find your county's office at the website below:

<http://www.oregon.gov/DHS/SENIORS-DISABILITIES/DD/Pages/county-programs.aspx>

### 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:

- This conduct explicitly or implicitly affects an individual’s employment;
- Unreasonably interferes with an individuals’ work performance; or
- Creates an intimidating, hostile, or offensive work environment.”<sup>78</sup>

**It is unlawful to harass a person (an applicant or employee) because of that person’s sex.** Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person’s sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

**Victims and harassers can be any sex,** and the victim and harasser can be the same sex. Anyone affected by the offensive conduct, not only the person being harassed, can be the victim. The harasser can be the victim’s supervisor, a supervisor in another area, a co-worker, or someone not an employee of the employer, such as a client or customer.

Although the law doesn’t prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, **harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment** or when it results in an adverse employment decision (such as the victim being fired or demoted). Unlawful sexual harassment may occur without economic injury to or discharge of the victim.

**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. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. 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 courts:**

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.

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<sup>78</sup> “Facts About Sexual Harassment,” The U.S. Equal Employment Opportunity Commission: <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>

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.

### **Intervention Options**

#### ➤ **Internal-Informal Responses**

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:

- **Tell the harasser in a letter that the conduct is unwelcome.**  
Clearly identify the harassing behaviors and state that they must stop. List the actions you will take (consequences) should the behavior continue. This approach may work with harassers who don't want to risk facing a formal complaint. You will also have documentation of your effort.
- **Tell the harasser face to face that the conduct is unwelcome.**  
This approach may work when people are harassing because of their ignorance of appropriate behavior in the workplace. When confronted, they are likely to stop, especially in an atmosphere of 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 others about harassment.**  
Find out if other employees or students have experienced inappropriate comments or unwanted touching. Find out whether someone has left the job or classroom due to sexual harassment.
- **Think creatively about 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 them know that you are concerned about the behavior and that you would like to resolve it informally (without initiating the formal employee grievance procedure).

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### ➤ **Internal-Formal Responses**

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. Some tips:

- Initiate the grievance process exactly 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-Formal Responses**

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. They may also 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. Following are some of the routes for taking External-Formal action:

#### • **The Equal Employment Opportunity Commission (EEOC)**

The EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The EEOC has the authority to investigate charges of discrimination against employers who are covered by the law. Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered.

The EEOC's role in an investigation is to fairly and accurately assess the allegations in the charge and then make a finding. If they find that discrimination has occurred, they will try to settle the charge. If they aren't successful, they have the authority to file a lawsuit to protect the rights of individuals and the interests of the public. They do not, however, file lawsuits in all cases where they find discrimination. To file a deferral discrimination lawsuit, a complaint must first be filed with the EEOC. Generally, complaints must be filed with EEOC within 180 days of the violation.

#### **The Oregon Bureau of Labor and Industries (BOLI)**

BOLI protects the rights of workers and citizens to equal, non-discriminatory treatment through the enforcement of anti-discrimination laws that apply to workplaces, housing and public accommodations. Oregonians who feel they have been discriminated against can call

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the Bureau of Labor and Industries or visit their website (*see resource list at the end of this chapter*) 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 lawsuit 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**

Tort claims that could be applicable in sexual harassment include:

- Assault
- Battery
- Words or acts causing mental or emotional disturbance
- A lawyer can help to file a breach of contract or 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, you may opt to make an official complaint to their 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 their job due to the sexual harassment, they may qualify for unemployment.

- **Worker's Compensation**

If the victim lost wages due to the sexual harassment, they may be entitled to worker's compensation.

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### ADVICE ABOUT LEGAL ADVICE

“If you decide to file a complaint with an outside agency, it is advisable to consult an attorney, although you are not required to retain counsel in order to file. Attorney referrals can be obtained by contacting local (e.g women's centers, rape crisis centers) or national women's organizations, your union (if a member), specialized employee interest groups, law schools, legal aid community services, state Fair Employment Practice (FEP) agencies, or state Equal Employment Opportunity Commission (EEOC) offices. In addition, your friends and professional contacts may know suitable attorneys.

“Interview all attorneys who may potentially represent you. At the very least, any attorney you choose must specialize or have experience in employment discrimination law. Ask the attorney if she/he has prior experience dealing with sexual harassment cases, and what the outcomes of those cases were. Pay attention to the attorney's demeanor and to your "gut" feeling about this person. Once you retain an attorney, pay attention to how she/he treats your case. Are your phone calls returned within a reasonable time frame? Does your attorney take your concerns into consideration as she/he develops your case? ***Like anyone else you may hire, you have the option of firing an attorney who does not adequately represent you.***

“For more information on dealing with attorneys see: "Lawyerland: The World of Attorneys" in ***The Frugal Shopper*** by Ralph Nader and Wesley J. Smith. (Washington, DC: Center for Responsive Law, 1992); "Legal" in *Why Women Pay More: How to Avoid Marketplace Perils* by Frances Cerra Whittelsey. (Center for Study of Responsive Law, Washington, DC, 1993) and "Lawyers and Legal Research" in ***Sexual Harassment on the Job*** by William Petrocelli and Barbara Kate Repa. (Nolo Press: Berkeley, CA, 1995).

### **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: “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:

• <b>Admissions</b>	• <b>Financial Aid</b>	• <b>Housing</b>	• <b>Athletics</b>
• <b>Registrar's Office</b>	• <b>Grading</b>	• <b>Academic Advising</b>	• <b>Discipline</b>
• <b>Recreational Services</b>	• <b>Classroom Assignments</b>	• <b>College Residential Life Programs</b>	• <b>Health, Counseling and Psychological Services</b>

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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.

The U.S. Department of Education's [Office for Civil Rights](#) (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972. They serve student populations facing discrimination and the advocates and institutions promoting systemic solutions to civil rights problems.

A [complaint of discrimination](#) can be filed by anyone who believes that an education institution that receives Federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination but may complain on behalf of another person or group.

### **Harassers**

Sexual harassers may be divided into two broad classes: "public" and "private."

- **"Public" harassers:** Flagrant in their seductive or sexist attitudes towards colleagues, subordinates, students, and others.
- **"Private" harassers:** Carefully cultivate a restrained and respectable image on the surface, but when alone with their target, their demeanor changes completely.<sup>79</sup>

**Of the two common profiles, the "private" harasser confuses victims and others in the community** because they don't seem as though they would "need" to abuse anyone. An adult male harasser is often middle aged, married with children, a churchgoer, and someone who is highly respected in the community. A teacher who sexually harasses students may have been named "Teacher of the Year" or be Chair of their department. A young harasser may be captain of the football team, an honor student destined to attend an Ivy League school, or someone who seems to have everything going for them.<sup>80</sup>

**Harassers may have several motivations:**

- **"Predatory" harasser:** Gets sexual thrills from humiliating others. May become involved in sexual extortion, and may harass to see how targets respond, with those who show no resistance possibly becoming targets for rape.
- **"Dominance" harasser:** Most common type. Engages in harassing behavior as a means to boost their own ego.
- **"Strategic" or "territorial" harasser:** Seeks to maintain privilege in jobs or physical locations, such as male harassment of female employees in a predominantly male occupation.<sup>81</sup>

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<sup>79</sup> Referenced *ibid*, (Billie Wright Dziech and Linda Weiner, *The Lecherous Professor: Sexual Harassment on Campus* (Chicago, IL: University of Illinois Press, 1990).)

<sup>80</sup> [http://www.newworldencyclopedia.org/entry/Sexual\\_harassment](http://www.newworldencyclopedia.org/entry/Sexual_harassment) - accessed in 2016

<sup>81</sup> Referenced *ibid*, (Martha Langelan, *Back Off: How to Confront and Stop Sexual Harassment and Harassers* (Fireside, 1993).)

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### **Sexualized Environments**

Sexualized environments are those where use of obscenities, sexually themed joking, sexually explicit graffiti, open viewing of internet pornography, display of sexually degrading posters and objects, etc., are common. These behaviors or objects may not necessarily be directed at anyone in particular, but they can create an offensive environment and constitute “hostile environment sexual harassment.” For example, in the case of *Morse v. Future Reality Ltd* in the United Kingdom (1996), the female complainant was awarded compensation after management ignored her complaint that her office mates spent much time studying sexually explicit images downloaded from the Internet and creating a “general atmosphere of obscenity” in the office.<sup>82</sup>

Sexualized environments have also been shown to create atmospheres that encourage more serious and direct sexual harassment. For example, when obscenities are common in the workplace, women are three times more likely to be treated as sex objects and to be directly sexually harassed than in environments where profanity is not tolerated. When sexual joking is common, sexual harassment is three to seven times more likely<sup>83</sup>

### **Advocating for Victims of Sexual Harassment**

In helping someone take steps to address behaviors or conditions that may constitute as sexual harassment, advocates may first need to help the victim distinguish what they are experiencing from “normal” flirting. Nan Stein, of the Wellesley Center for Research on Women and an expert on the sexual harassment of young women, suggests considering the following checklist (originally appeared in *USA Today*):

Sexual Harassment	Flirting
feels bad	feels good
one-sided	reciprocal
feels unattractive	feels attractive
is degrading	is a compliment
feels powerless	in control
power-based	equality
negative touching	positive touching
unwanted	wanted
illegal	legal
invading	open
demeaning	flattering
sad/angry	happy
negative self-esteem	positive self-esteem

As in cases of sexual assault, victims of sexual harassment can find it humiliating, embarrassing, and frightening. Similarly, sexual harassment may be a traumatic experience

<sup>82</sup> Referenced *ibid*, (EOC, [Sexual Harassment: Case decisions.](#))

<sup>83</sup> Referenced *ibid*, (Mary L. Boland, *Sexual Harassment: Your Guide to Legal Action* (Naperville, IL: Sphinx Publishing, 2002).)

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and can have serious emotional and economic consequences. Supporting, validating and normalizing the experiences of sexual harassment victims is important to their healing and recovery.

When working with victims of sexual harassment, **the victim's choices should define the strategy**. Victims should be informed that taking no action to address the situation 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. However, before suggesting options, find out what their hope is; what do they want to see happen? Together you can construct a plan that best fits the victim's vision for a good outcome.

### **Here are a few things to consider when working with victims of sexual harassment:**

- **It's quite common for victims 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 they are being targeted. There may be feelings of shame, doubt and of self-questioning, such as “why me” and “what did I do?” Research indicates that harassers tend to repeat the same types of behaviour, and that severity generally increases over time. Although past discipline for sexual harassment appears to reduce this escalation, it is not very effective in stopping the behaviours. Perpetrators who engage in gender harassment are also more likely to have a record of aggressive behaviours.<sup>84</sup>
- **It is important to put sexual harassment in the context of the rest of the workplace or school environment.** Many victims of harassment may try to dismiss harassing incidents as “personality problems,” saying things to themselves like, “he's just a jerk.” But sexual harassment and abuse “are acts of violence and domination, not sensuality and flirtation. These acts are calculated to dominate and control, not enhance the enjoyment and safety of the targeted person...The violator may be very high functioning in all other areas of his or her life but is driven within this realm to act out needs inappropriately.”<sup>85</sup> When victims recognize their experiences as sexual harassment, many look for choices about what to do next.
- **People 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.
- **Many of those who experience sexual harassment and stay do so because they believe they don't have the option to leave.** 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;

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<sup>84</sup> Lucero, M.A., Allen, R.E. & Middleton, K.L. Sex Roles (2006) 55: 331. doi:10.1007/s11199-006-9087-y

<sup>85</sup> McGrath Systems, ‘The Early Warning Signs of Sexual Harassment and Abuse In School.’ Retrieved July 17, 2007.

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the victim may jeopardize their career path. Sometimes people who experience sexual harassment feel that it is the harasser who should be the one to leave. But regardless of the reason - economic, positional or personal - advocacy should be directed at supporting that choice.

- **Victims may not report due to fear of worsening the situation in the workplace or school setting.**  
Victims who attempt to “hang in there” regardless of the harassment, want the sexual harassment to stop 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 fear reprisal and recrimination, ostracism by peers and/or managers, and consequences for their job security.
- **Many victims of sexual harassment don’t know their reporting options.**  
Some schools or workplaces provide clear information about sexual harassment policies, but many do not. Some have 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. That person may or may not have any power to make the harassment stop.

### **Victim Impact**

#### **Common professional, academic, financial, and social effects:**

- Highly damaging barrier to career success and satisfaction for women<sup>86</sup>
- Avoidance tactics take time and attention away from work-related items.
- Increased sense of helplessness/hopelessness impacts morale and productivity.
- Decreased work or school performance; increased absenteeism
- Lower organizational commitment, withdrawing from work<sup>87</sup>
- Loss of job or career, loss of income
- Having to drop courses, change academic plans, or leave school (loss of tuition)
- Personal life may be offered up for public scrutiny; the victim’s appearance, clothing, lifestyle, and private life will often be examined, implicated, or attacked (***note: this rarely occurs for the perpetrator***).
- Being objectified and humiliated by scrutiny and gossip
- Being publicly sexualized, with people “evaluating” the victim to establish if they are “worth” the sexual attention or the risk to the harasser’s career
- Defamation of character and reputation
- Change in viewpoint; may begin to see the workplace or educational setting as unwelcome, hostile places to be. May avoid the type of job in which they experienced the harassment.
- Loss of trust in people who occupy similar positions as the harasser

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<sup>86</sup> Chelsea R. Willness, et al., Journal of Personnel Psychology, [A Meta-Analysis of The Antecedents and Consequences of Workplace Sexual Harassment](#) (2007)

<sup>87</sup> Ibid

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- Extreme stress on intimate relationships, peer relationships, or relationships with colleagues
- Weakened support network, ostracism from professional or academic circles (friends, colleagues, or family may distance themselves from the victim, or shun them altogether)
- Having to relocate to another city, another job, or another school
- Loss of references and recommendations

### **Potential Psychological and Other Health Effects**

- Acute: confusion, dissociation, panic, agitation, or amnesia.
- Long-term: depression, anxiety and stress-related physical problems, especially when the harassment is severe and frequent. **No job benefits need to be lost for harassment to have a psychological effect on its target.**<sup>88</sup>
- Depressive symptoms can appear both at home and in the workplace; victim may withdraw from normal social activities, cry easily and/or more often, and experience fatigue.
- Serious negative impact on women's physical and emotional health; the more severe the harassment, the more severe the reaction. Women frequently report anxiety, sleep disturbances, weight loss or gain, loss of appetite, and headaches.
- Sexual harassment has been linked to Post-Traumatic Stress Disorder (PTSD),<sup>89</sup> a debilitating anxiety disorder marked by feelings of hyper-arousal, reliving the event, and avoidance.
- Physical symptoms may include fainting, stomachache, muscle aches, increased blood pressure and/or constipation.
- Victims may feel betrayed and/or violated, and may feel angry or violent towards the perpetrator, an unresponsive system or an unsupportive community.
- Victims may feel powerless or out of control.
- May exhibit signs of high stress and anxiety, which may include "panic attacks."
- Victims may experience a loss of confidence and self-esteem.
- Issues around trust and safety may develop, which can 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.
- Victims may experience suicidal thoughts or make attempts to commit suicide.

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<sup>88</sup> From Bridget Murray, Psychology's voice in sexual harassment law, American Psychological Association (August 1998)(referencing Fitzgerald, L.F., Drasgow, F., Hulin, C.L., Gelfand, M.J. & Magley, V.J., Antecedents and consequences of sexual harassment in organizations: A test of an integrated model, *Journal of Applied Psychology*, Vol. 82, 578-589 (1997); Fitzgerald, L.F., Swann, S. & Magley, V.J., But Was It Really Harassment? Legal, Behavioral and Psychological Definitions of the Workplace Victimization of Women, in W. O'Donohue (Ed.), *Sexual Harassment: Theory, Research and Treatment* (1997); and Schneider, K.T., Swann, S. & Fitzgerald, L.F., Job-related and psychological effects of sexual harassment in the workplace: empirical evidence from two organizations, *Journal of Applied Psychology*, Vol. 82, 401-415 (1997)).

<sup>89</sup> Barbara A. Gutek and Mary P. Koss, Changed Women and Changed Organizations: Consequences of and Coping with Sexual Harassment, *Journal of Vocational Behavior*, Vol. 42, 28, 33 (1993); Louise F. Fitzgerald, *Sexual Harassment: Violence Against Women in the Workplace*, *American Psychologist*, Vol. 48, 1070, 1072 (1993)

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### **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 deter 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.

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 options. Victims of sexual harassment can and do find formal and legal relief and prevail over harassers.

### **Resources**

#### **Victim Rights Law Center (VRLC)**

520 SW Yamhill, Suite 200  
Portland, OR 97204

**Phone:** 503-274-5477

<http://www.victimrights.org/>

#### **Oregon Law Center (OLC)**

Portland Administrative Office\*  
921 SW Washington, Suite 516  
Portland, OR 97205

**Phone:** 503-295-2760

<http://www.oregonlawcenter.org/>

\*other offices located throughout the state

#### **Oregon State Bar**

**Location:** 16037 SW Upper Boones Ferry Rd  
Tigard, OR 97224

**Mailing address:** P.O. Box 231935

Tigard, OR 97281-1935

**Phone:** (503) 620-0222, or 1(800) 452-8260

**E-mail:** All General OSB Inquiries: [info@osbar.org](mailto:info@osbar.org)

<https://www.osbar.org/index.html#>

#### **Oregon Bureau of Labor and Industries (BOLI)**

800 NE Oregon St., Suite 1045  
Portland 97232

**Phone:** 971-673-0761

**TTY:** 971-673-0766

<http://www.oregon.gov/boli/Pages/index.aspx>

**To File a Complaint:** [http://www.oregon.gov/boli/CRD/Pages/C\\_Crcompl.aspx](http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx)

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### **U.S. Equal Employment Opportunities Commission (EEOC)**

1801 L Street, N.W. Washington, D.C. 20507

**Phone:** (202) 663-4900

**TTY:** (202) 663-4494

<https://www.eeoc.gov/>

**To file a charge of discrimination:** <https://www.eeoc.gov/employees/charge.cfm>

### **U.S. Department of Education**

#### **Office for Civil Rights**

Seattle Office

915 Second Avenue Room 3310

Seattle, WA 98174-1099

**Phone:** 206-607-1600

**TDD:** 800-877-8339

**Email:** [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

**To file a complaint:** <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

### **Other Federal Civil Rights Offices**

[Americans With Disabilities Act \(ADA\) Home Page](#)

[U.S. Department of Justice, Office of the Attorney General, Civil Rights Division](#)

[U.S. Commission on Civil Rights](#)

[U.S. Department of Health and Human Services, Office for Civil Rights](#)

[U.S. Department of Agriculture, Civil Rights Office](#)

[Federal Aviation Administration, Civil Rights Office](#)

[U.S. Department of Transportation, Civil Rights Office](#)

[U.S. Department of Housing and Urban Development, Fair Housing Civil Rights](#)

[U.S. Department of Labor, Civil Rights Enforcement for Department of Labor Grant Recipients](#)

## 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.

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.

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Without a doubt, there is a strong need for services and support for survivors of sexual violence. Advocates are trained to respond after an incident has occurred and to help survivors rebuild their lives. This focus is essential, but it can also lead to a sense of hopelessness that the problem will never end. Unless we shift some of our focus and efforts to stopping sexual violence before it occurs, we will never see an end to the need.

In this chapter, we will focus on prevention, and on situating it within the other services programs typically provide, such as victim response, public awareness, community education and risk reduction.<sup>90</sup> We'll define oppression and discuss ***why anti-oppression work is central to all aspects of prevention***. We'll 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
  - Nine Principles of Effective Prevention Programs
  - Risk and Protective factors for first time perpetration of sexual violence

Finally, we've included a guide to recognizing and working within the stages of a community's readiness to engage in prevention.

### **Public Awareness, Risk Reduction and Prevention**

The movement to end sexual violence has spent years educating communities about what sexual violence is (public awareness) and educating people about how to protect themselves and to reduce their risk of being sexually assaulted (risk reduction). But these approaches typically do not address the social, economic, and political conditions that allow the violence to occur, which prevention does. Let's examine these approaches further.

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<sup>90</sup> 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.

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➤ **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 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.

➤ **Risk Reduction strategies** focus on *teaching individuals to reduce their risk of becoming victims* by taking steps such as self-defense or paying attention to factors that may increase a person's risk of being victimized (such as using alcohol or drugs). Because it focuses almost entirely on the victim, a risk reduction approach can seem to communicate that people 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 recognizing that the potential perpetrator is the only one who can prevent the violence from occurring. Victims are not to blame if their efforts to reduce risk fail to prevent sexual violence; to truly reduce risk, perpetrators must be held accountable for their actions.

➤ **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)<sup>91</sup> 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 or replace public awareness and risk reduction.** Rather, it encompasses and builds upon these efforts. When engaging in prevention efforts, any audience will almost always include survivors who may need information about victim services. By the same token, incorporating prevention messages into victim services and

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<sup>91</sup> A graphic representation of the Ecological Model and discussion of its meaning and use begin in Section VI, below.

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public awareness efforts can 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 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.

### **Anti-Oppression Framework**

Prevention efforts are enhanced when they are built upon an understanding of the intersectionality of oppressions.

**Oppression can be defined as:** a systemic social phenomenon that involves ideological domination, institutional control, and the infiltration of the dominant group's ideology and culture on the non-dominant or oppressed group. **The result is the exploitation of one social group by another for its own benefit, real or imagined.**<sup>92</sup>

As discussed in the 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 result is oppression of other groups. Sexism, racism, classism, heterosexism, and other forms of oppression all result from this foundation. The various forms of oppression often work together to further marginalize oppressed people and groups and also function to reinforce each form of oppression.

The Oregon Sexual Assault Task Force believes that oppression lies at the core of sexual violence and is the driving force behind creating an environment in which sexual violence is likely to occur, and in which individuals believe sexual violence is a viable behavioral option. Simply put, oppression is the primary root cause of sexual violence.

**In this context, sexual violence is 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 developmental disabilities, or lack housing or documentation of legal residency. It is essential, therefore, that sexual assault advocates approach sexual violence prevention work from an anti-oppression framework, key elements of which include:

- Understanding our own personal biases and how they may affect our work and our 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 its forms in our public and private lives, and understanding our own roles as people in positions of power or privileged status;
- Attention to the process as well as the outcome;

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<sup>92</sup> School of Americas Watch, "Definitions," [http://www.soaw.org/index.php?option=com\\_content&view=article&id=629](http://www.soaw.org/index.php?option=com_content&view=article&id=629).

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- Commitment to inclusivity, accessibility, equity, and social justice; and
- Awareness of factors that may undermine community accountability and perpetuate oppressive dynamics.

An anti-oppression framework seeks to openly and intentionally address oppression and change the social and cultural norms in which sexual violence is embedded.

## **Public Health Approach and Health Equity**

### **Public Health Approach**<sup>93</sup>

While much of the work responding to sexual violence occurs within a public safety framework that views 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, an approach that distinguishes public health from the traditional medical model focused on the individual. Based on this population-based framework, 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 is fitting, 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.** Its community-oriented approach takes the onus from victims and advocates and encourages the entire community to prevent sexual violence. Prevention efforts move beyond teaching individuals 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 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.

### **Health Equity**<sup>94</sup>

Because oppression shapes our world, it also affects individual access to the resources necessary for long and high-quality lives. These resources are called **social determinants of health** and include food supply, housing, education, health care, environment, and other essential resources. When some groups have less access to or poor-quality social determinants of health, differences in health status, or **health disparities**, result. The public health approach, working with an anti-oppression framework, seeks to eliminate these disparities and promote **health equity**, in which no one is prevented from attaining optimal health due to socially determined circumstances.

When we consider how sexism limits women's and girls' options and access, **sexual**

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<sup>93</sup> Centers for Disease Control and Prevention, *Sexual Violence Prevention: Beginning the Dialogue*, (Atlanta, GA: Centers for Disease Control and Prevention, 2004).

<sup>94</sup> 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).

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**violence clearly emerges as a health equity issue.** Violence against women is one of the costliest health hazards to our society. Victims of intimate partner violence lose nearly eight million days of paid work annually, at a cost of nearly \$900 million in lost productivity.<sup>95</sup>

### **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.

#### ■ **WHEN do we intervene?**

The timing of the intervention determines whether prevention efforts are considered **primary, secondary, or tertiary**. The Prevention Institutes conceptualizes the three levels of prevention as “**upfront**” (primary), “**in the thick**” (secondary), and “**in the aftermath**” (tertiary).

**Primary Prevention** focuses on the root causes of sexual violence 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.

**Secondary Prevention** efforts are immediate responses that take place after sexual violence has occurred. Secondary efforts deal with the short-term consequences of sexual violence.

**Tertiary Prevention** responses are long-term and are provided after sexual violence has occurred. Tertiary efforts deal with the lasting consequences of sexual violence and sex offense specific treatment.

SATF believes that since we want to prevent sexual violence from ever occurring, our ultimate goal is primary prevention, which will be our major focus in this chapter.

#### ■ **WHO does the intervention target?**

Prevention strategies are often developed based on the intervention’s intended group. 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 without factoring in individual 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 thought to have a heightened risk for sexual violence perpetration, such as men and boys. Some versions of this categorization focus on risk of victimization, but again, we believe that to truly prevent sexual violence, prevention best focuses on potential perpetrators.

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<sup>95</sup> “Costs of Intimate Partner Violence Against Women in the United States,” (Centers for Disease Control and Prevention, 2003).

## Prevention

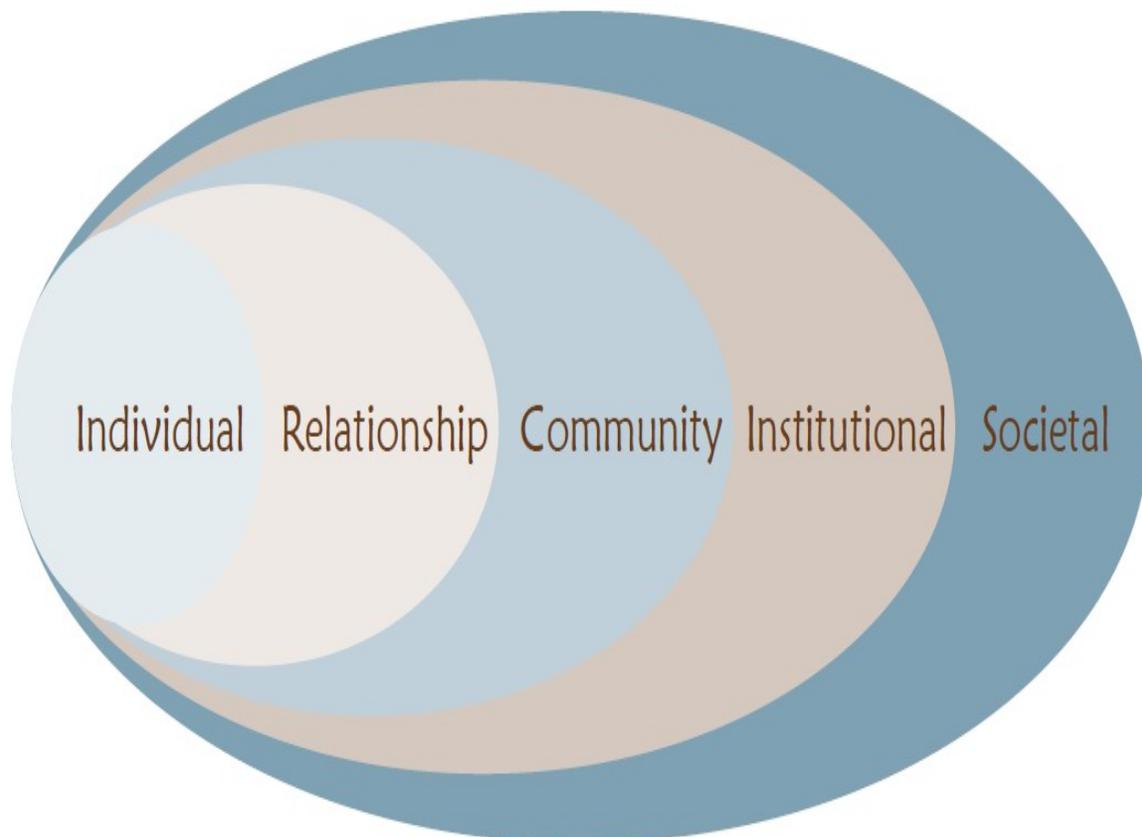
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**Indicated Interventions** are aimed at those who have already perpetrated sexual violence or those who have been victimized. Indicated interventions include treatment and service provision. This is often not considered primary prevention, since it is more focused on preventing subsequent perpetration or victimization. However, absence of treatment and service within a community perpetuates the conditions in which violence occurs (e.g. gender inequity) and undermines primary prevention efforts.

### ■ WHAT is the focus of the intervention?

To prevent sexual violence, we must understand the circumstances and factors that influence its occurrence. There are many theoretical models that attempt to describe the root causes of sexual violence (e.g., biological, psychological, cultural, and 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 examples of theoretical models are presented in the following section.

### **Prevention Theoretical and Practical Tools**



### 1. The Socio-Ecological Model

The US Centers for Disease Control and Prevention, the Oregon Public Health Division, and the Oregon Sexual Assault Task Force all promote the use of an ecological model to help frame our discussion, as it allows us to encompass risk factors 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). 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. ***Oregon's Recommendations to Prevent Sexual Violence in Oregon: A Plan of Action*** uses the five-level ecological model presented below.<sup>96</sup>

#### ○ **Individual**

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 gender, age, education, history of child abuse or neglect, income, psychological or personality disorders, substance abuse, and a history of behaving aggressively.

#### ○ **Relationship**

This level includes family, friends, intimate partners, mentors, peers, and other significant relationships that may increase or decrease a person's risk of becoming a perpetrator of sexual violence. Examples of these factors include: having friends who engage in and encourage/discourage violence and living in a home where there is/is not mutual respect for all household members.

#### ○ **Community**

This level denotes larger contexts in which social relationships occur - such as sports facilities, community centers, parks, and neighborhoods - and examines characteristics of these settings which may increase or decrease the risk for sexual violence. These characteristics include: population density, employment trends, and crime rates.

#### ○ **Institutional**

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**

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<sup>96</sup> 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).

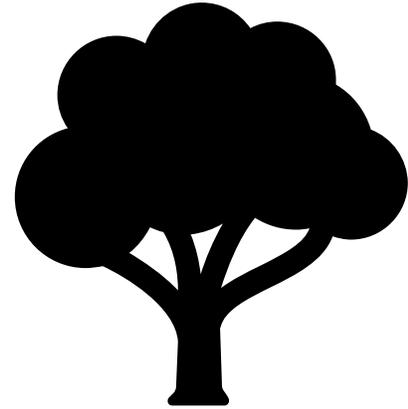
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This level explores broad societal factors that foster a climate in which violence may be encouraged. These factors include: availability of weapons, social and cultural norms that endorse or reject violence, and social norms that support or deny male dominance over women and children.

### 2. Roots of Change Model

Another way to look at comprehensive prevention efforts is to use the analogy of a tree, with leaves representing the interconnectedness of individuals, branches depicting the interplay of communities, and the tree itself as the larger society. The tree is supported and fed by its roots, which grow deep into the soil. We may not think often enough 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.



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’s more and more critical that we recognize the impact that world events have on our “local climate.” Just as disease can be spread from tree to tree, what happens in the world around us impacts our own communities. Prevention efforts must 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 the tree’s healthy growth and cultivate the surrounding soil so that the tree and its surrounding forest can thrive. Developing individual and community strengths and promoting healthy norms, values and beliefs is essential for prevention work.

### 3. Risk and Protective Factors

#### ■ Risk Factors

Risk factors are elements that predict an increased probability of a person acting violently, or the conditions, influences, experiences or occurrences that increase the chances that a particular event (victimization) or behavior (perpetration) will occur.<sup>97</sup> **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.** There are other factors known to increase or decrease an individual’s risk of being victimized, but discussion of risk factors for victimization distracts from a primary

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<sup>97</sup> 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](http://www.ncdsv.org/images/AJPM_CDC'sExpertPanelOnProtectiveFactorsForYouthViolencePerpetration_2012.pdf)

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prevention focus because it places attention on avoiding assaults (see inset on following page). Because **primary prevention seeks to identify and address the social conditions that support the use of violence, and because sexual violence is a choice**, considering factors that increase the risk for perpetration must guide primary prevention efforts.

Risk factors that increase men's proclivity for committing sexual violence are listed on the following page. Risk factors can be characteristics of an individual or conditions present in the environment. It's important to remember that risk factors, if present, **increase the chance** of perpetration, but they are not the same thing as root causes. For example, research indicates that perpetrators of sexual violence are more likely to have been sexually abused as a child than the general population but having a history of sexual abuse as a child **does not cause** a person to commit sexual violence later in life.

For more information, see the Oregon Attorney General's Sexual Assault Task Force's Prevention Section on their website:

<https://oregonsatf.org/resources/for-prevention/>

### **Individual Factors**

- Attitudes and beliefs supportive of sexual violence
- Coercive sexual fantasies (often encouraged by use of pornography)
- More likely to consider victims responsible for rape
- Less knowledgeable about 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**

- Sexually aggressive and delinquent peers<sup>98</sup>

### RISK REDUCTION DOES NOT PREVENT SEXUAL VIOLENCE

- Risk reduction strategies focus on individual behaviors and not comprehensive social, behavioral, and policy changes.
- An individual may escape an act of sexual violence through use of a risk reduction strategy, but this does nothing to stop a perpetrator from seeking new victims or consider changing attitudes and behaviors.
- Many commonly identified risk factors (gender identity, age, etc.) are markers that cannot be changed by potential victims. The larger issues of oppression and intersectionality are better addressed by comprehensive primary prevention strategies.
- Perpetrators target individuals they see as accessible, vulnerable and lacking in credibility, but that perception varies depending on many factors.
- Primary prevention doesn't require that individuals guard against being vulnerable in all

<sup>98</sup> This is actually more closely associated with the actor's belief that one's

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- 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
- 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**

Protective factors include attributes, characteristics, or elements that ***decrease the likelihood*** that violence will be perpetrated. The presence of a protective factor doesn't necessarily prevent perpetration, but the presence of multiple protective factors decreases the chances of perpetration. Protective factors can be characteristics of an individual or conditions present in the environment and can be used to help focus prevention efforts. Protective factors that may affect adolescent sexual behavior (selected list):<sup>99</sup>

### **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

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peers have sexually aggressive and delinquent attitudes/behaviors.

<sup>99</sup> D. Kirby, G. Lepore, and J. Ryan, "Executive Summary: Sexual Risk and Protective Factors" (Washington, DC: The National Campaign to Prevent Teen Pregnancy, 2005).

### **4. 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. Below are some examples of risk factors and the health issues/forms of violence with which they are associated:

- 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 (IPV))
- Having many sexual partners (teen pregnancy, HIV/STIs)
- Involvement in sex work (teen pregnancy, HIV/STIs, drug and alcohol abuse, IPV)
- Poverty (teen pregnancy, HIV/STIs, drug, alcohol and tobacco use, child abuse, IPV)
- Impulsive and antisocial tendencies (juvenile delinquency)
- Exaggerated sense of masculinity (IPV)
- Inclination to assert personal interests at the expense of others (IPV)
- Witnessed family violence as a child (IPV)

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 tools).

Because much of the research to date has focused on identifying risk (and thus helping to focus scarce resources on populations at highest risk), less evidence exists about the salience of protective factors. For example, in its 2010 publication, *Preventing Intimate Partner and Sexual Violence Against Women*, the World Health Organization devoted ten pages to detailing risk factors, and only one paragraph summarizing what is known about protective factors. The “Key Messages” about Risk and Protective Factors refers only to risk factors.<sup>100</sup> 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.

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 the underlying risk factors. By partnering with others who are addressing common issues, we can expand the scope and effectiveness of our efforts.

### **5. Sexual Health Promotion**

Many prevention movements, such as teen pregnancy and HIV/STD prevention, are moving towards promoting sexual health. In keeping with this shift, sexual violence prevention experts have begun framing our work within a sexual health context, with freedom from sexual violence identified as one of many rights that all people have as part of living sexually healthy lives. Others 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.

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<sup>100</sup> [http://www.who.int/violence\\_injury\\_prevention/publications/violence/9789241564007\\_eng.pdf](http://www.who.int/violence_injury_prevention/publications/violence/9789241564007_eng.pdf)

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Sexual violence prevention advocates can easily articulate what we are fighting *against*, but how well do we articulate what we are fighting *for*? Applying a health promotion model to preventing sexual violence starts with identifying the attitudes, beliefs, behaviors, and norms that should be fostered and amplified. When we work towards comprehensive sexual health promotion, we work towards the elimination of sexual violence. Brad Perry, former Prevention Coordinator for the Virginia Sexual and Domestic Violence Action Alliance, put it this way: “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.”

### **Strategies for Effective Prevention**

We’re most effective when we focus our efforts on strategies and tactics that create the outcomes we are working for. As noted above, risk-reduction efforts will never end sexual violence: the only person who can truly stop sexual violence from occurring is the person who chooses to perpetrate. The true onus for ending sexual violence is best placed on those most able to create the desired outcomes. Primary prevention is most effective when we hold accountable not only the perpetrator, but also the individuals, communities, and institutions who perpetuate norms, values and beliefs that condone, support and lead to violence and other oppressive behaviors.

Because the field of prevention is newer and less fully developed than is intervention, there are few evidence-based strategies for preventing sexual violence as yet. However, there are some promising practices and tools that we know to be helpful in developing prevention strategies that fit your target community.

#### ■ **Spectrum of Prevention**<sup>101</sup>

Complementary to the Ecological Model, the Spectrum of Prevention reflects a framework for thinking about preventive approaches that can be used at each level, from individual to societal. One single strategy or approach will not eliminate a complex social problem 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 that builds 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, as depicted below:

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<sup>101</sup> 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.

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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

### **Nine Principles of Effective Prevention Programs<sup>102</sup>**

As noted previously, the field of prevention is still developing, and there are few “proven” strategies. However, in a review of the literature across several prevention disciplines, researchers found 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 utilize multiple teaching methods, including some type of active, skills-based component;
- 3. Sufficient “Dosage:”** Participants are exposed to enough of the activity for it to have an effect;
- 4. Theory-Driven:** 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; and

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<sup>102</sup> [http://www.ncdsv.org/images/AmPsy\\_WhatWorksInPrevention\\_6-7-2003.pdf](http://www.ncdsv.org/images/AmPsy_WhatWorksInPrevention_6-7-2003.pdf)

**9. Well-Trained Staff:** Programs need to be implemented by staff members who are sensitive, competent, and have received sufficient training, support, and supervision.

### ■ **Stages & Strategies of Community Readiness**<sup>103</sup>

In determining where to focus prevention efforts, it is important that the message and strategy fit with the target audience's readiness to receive the information. This may include using different messages and strategies for specific communities.

"Community" refers to the place where individuals experience culture and society. This can include specific geographic and social contexts in which activities occur. For purposes of prevention efforts, large communities are best broken down into their smallest contexts, such as a specific school, church, neighborhood, etc. The shared beliefs and values for each community should shape design of the message/strategy to fit with its specific needs. For example, it can be very important to recognize and address the fact that even talking about sexual violence can be taboo in certain communities.

In a well-regarded article, "Community Readiness: Research to Practice,"<sup>104</sup> Edwards, et al, describe nine stages of community readiness with corresponding strategies for engagement at each point in the process. As you begin the work of assessing what stage a particular community is in, it can be useful to supplement your organization's own observations with the perspectives of key members of the community (four to five is usually sufficient). This better assures that your prevention efforts can be well-aligned with the targeted community.

**Below is a summary of the nine stages of Community Readiness.** Please note that the strategies described for the various stages don't need to be applied in the order or in the exact fashion presented. In accordance with the "Nine Principles of Prevention," it's essential that efforts be culturally relevant, and variables may look different across different communities.

### **1. Pre-Awareness**

*"It's just the way things are."*

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.

**Goal in This Stage:** To raise the community's 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.

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<sup>103</sup> Adapted from R. Edwards et al., "Community Readiness: Research to Practice," *Journal of Community Psychology* 28 (2000): 291-307.

<sup>104</sup> 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.

## Prevention

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- Make one-on-one contacts with 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.

### 2. Denial

*“It’s not our problem.” “It’s just those people who do that.” “We can’t do anything about it.”*

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.

**Goal in This Stage:** 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 the involvement of those with whom you’ve talked.
- 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.

### 3. 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 in This Stage:** To raise awareness that the community can do something about sexual violence.

#### **Strategies:**

- Present information at local community events and to a range of 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 holding your own events (lectures, community meetings, etc.) to present information on sexual violence.
- Conduct informal local surveys/interviews with community people by phone, online, or through door-to-door canvassing.
- Publish newspaper editorials and articles with general information and its implications

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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 there are things it can do to change the culture that supports sexual violence.

### **4. 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 in This Stage:** 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.

### **5. Preparation**

The community is engaged in planning and focusing its 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 in This Stage:** 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 community (e.g., health care, mental health care, and other services for victims; incarceration and sex offense specific treatment; etc.)
- Conduct public forums to develop strategies for preventing sexual violence.

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- 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.

### **6. Initiation**

The community has information that justifies specific strategies for addressing sexual violence in the local community. The strategy is underway but is still seen as “new” and in need of evaluation. 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 arisen to curb enthusiasm. There is little or no active resistance within the community.

**Goal in This Stage:** 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 that spotlight the 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 resource cultivation/fund development to support efforts.

**Community Impact:** The community is taking active steps to engage in ending sexual violence.

### **7. Stabilization**

Prevention activities, programs, and efforts are stable and supported by authorities and community decision-makers. Limitations may be somewhat apparent, but there is little recognition as yet of the need for change or expansion. Capacity for in-depth evaluation of efforts is limited or unavailable. Routine tracking of the prevalence of sexual violence may be occurring. The community generally supports the current strategy.

**Goal in This Stage:** 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.

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- 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.

### **8. Confirmation/Expansion**

Standard prevention efforts are occurring 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 in This Stage:** 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 public 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.

### **9. Sustainability**

Knowledge of prevalence, risk factors and causes of sexual violence is extensive. Efforts across the socio-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; community members are highly involved and hold programs accountable. Evaluation is used to determine effectiveness of activities and modifications are made to continue to progress towards desired outcomes.

**Goal in This Stage:** To maintain momentum and continue growth.

#### **Strategies:**

- Engage the local business community and solicit their financial support.
- 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.

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- 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 local institutions are in place and are unlikely to be affected by turnover or minor program setbacks.

## **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 sexual violence, tacitly or explicitly, is permitted and condoned. Challenging and changing 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. Prevention efforts are aimed at fostering a culture in which everyone takes action to reduce the factors that contribute to the perpetuation of sexual violence.

The concepts and tools presented in this chapter 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, please contact the Sexual Assault Task Force.

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### **Sustainable Advocacy**<sup>105</sup>

Working with survivors of sexual assault can be both rewarding and difficult. As advocates, we're privileged to witness and support a survivor's powerful transformation as they move through the healing process. But exposure to the traumatic consequences of human cruelty takes a toll on our own sense of well-being, and we must take special care of ourselves and each other to stay healthy and effective in our work. This is especially true if we've experienced violence or abuse in our own lives. Sustainable advocacy also requires that organizations examine the workplace and agency culture with an eye to preventing and responding to vicarious trauma.

### **Vicarious Trauma**

As part of effective advocacy, we strive to listen deeply and to be truly present with survivors. In doing so, we become witness to the pain, fear, terror and hopelessness that survivors experience. Absorbing and empathizing with survivors' stories can create a state of tension, anxiety, and preoccupation with the traumatic experiences they have endured. Supporting sexual assault survivors, as well as survivors of other violent crimes, can lead to a range of emotional effects called **Vicarious Trauma (also known as Compassion Fatigue and Secondary Trauma)**.

**How do you do this all day?"** How many times have we as helping professionals been asked this question only to respond with a look on our faces that hardly represents our true feelings? Unless, of course, you are talking with another person who has walked a mile in your shoes – anyone who serves as a “good ear” - one who can empathize with your authentic response to that commonly asked question.

**Vicarious Trauma is defined as a transformation in the helper's inner sense of identity and existence that results from utilizing controlled empathy when listening to clients' trauma-content narratives.** In other words, Vicarious Trauma is what happens to your neurological (or cognitive), physical, psychological, emotional and spiritual health when you listen to traumatic stories day after day or respond to traumatic situations *while having to control your reaction*.

Exposure to vicarious trauma is an “environmental hazard” of our work, and all advocates can expect to contend with it at some point. It can hinder our ability to provide effective services and is important to monitor. On the next page, we provide a self-assessment to help advocates look at how their work with people experiencing trauma may be impacting them and what steps they might take to manage and cope with their feelings and experiences.

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<sup>105</sup> This Chapter was originally prepared by Elaine Walters, Trauma Healing Project, 2008.

## PROFESSIONAL QUALITY OF LIFE

### Compassion Satisfaction and Fatigue Subscales – Revision III<sup>106</sup>

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.
- \_\_\_\_ 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

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<sup>106</sup> © 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.

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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:

### 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.

### **Managing Vicarious Trauma**

Vicarious trauma can be the instant physical reaction we feel when we hear a story, or it can be more insidious. We may lose our personal balance for a short while or a long time. We may feel drained of strength, confidence, desire, friendship, calmness, laughter, and good health. We may feel confused, apathetic, isolated, anxious, sad, and get ill. Impacts are cumulative, ongoing, and may also interact with changes in our personal lives and relationships.

Our work as advocates often includes supporting survivors in practicing self-care as part of managing the trauma impacts that result from sexual assault or other victimization. Self-care includes things such as eating well, exercising regularly, and getting proper sleep. Self-care can also include stress management practices, such as meditation, breath work, self-soothing routines (bubble baths, listening to music, drinking chamomile tea, etc.), and other practices that promote healing (massage, sweat lodges, prayer, therapy, etc.).

Because vicarious trauma affects helpers in ways that are quite similar to the impacts of direct trauma, it's equally important that advocates identify and employ self-care strategies. But we must also recognize that self-care alone is not enough. Vicarious trauma can have impact on our deeply held beliefs, our world view, our spirituality and sense of self. We may face challenging questions, such as: *What is the purpose of life? Why do horrific things happen to good people? How can the higher power I believe in allow such violence to occur? What is the point of my work if the violence never stops?*

### **■ Prevention**

The good news is that vicarious trauma can be managed and even prevented. Borrowing from the same suggestions we routinely provide to survivors; we know that key to prevention are:

- **Relaxing:**  
Relaxing means actively dedicating time to clearing your mind. This may look like having a daily deep breathing practice, routinely meditating, watching the clouds float by, feeling the sun on your skin or listening to the wind in the trees.
- **Playing:**  
Playing involves finding joy and ways to lighten your spirit. This may look like laughing until your tummy hurts, giving yourself the freedom to be extra silly, dancing wildly (with or without an audience), or rolling around on the ground with your child or your pet. Engaging in activities that delight you provide wonderful counterbalance to the exposure to trauma you find often in your advocacy work.
- **Escaping:**  
Escaping involves giving your mind a break from work and stress. This may look like diving into a good book, becoming absorbed in a movie or mindless sit-com, or being taken away by hearing your favorite music through a good pair of headphones. It also helps to physically escape by doing things like taking a long drive, going on a vacation, or hiking in the woods.

### ■ Management

Active prevention of vicarious trauma is essential to ensuring our work as advocates is sustainable. But no matter how much we try to prevent it, we will still experience it. Consequently, we must also learn how to actively manage its impacts.

Again, borrowing from the suggestions we might provide to survivors, we can manage vicarious trauma through:

- **Awareness:**  
Awareness means acknowledging how your work is impacting on you and then adjusting your life to compensate for the impacts of work. This might take the form of setting firm boundaries with people in your life or listening to your body and responding to what it needs. An example might be paying attention to the fact that you feel exhausted and letting go of an obligation you just don't feel able to meet, or levelling with a friend about not having the emotional energy to support them.
- **Connection:**  
Feeling a part of something bigger than your everyday reality is essential to managing vicarious trauma. Finding ways to connect with nature, community, or a higher power can help us feel less isolated and alone. This may look like weekly dinners with loved ones, routine worship with a spiritual community, frequent time spent in nature, or involvement in community-level activism.
- **Balance:**  
Balancing your life so your work doesn't consume you or become your whole identity is integral to health. This means immersion in non-traumatic settings and activities, and taking time off for family, friends and for yourself. It also involves eating a healthy diet and regulating your body through exercise and proper sleep. If you experience health issues, chronic pain or disability, this may mean taking extra steps to ensure you are caring for all aspects of your health.

### ■ Organizational Support

Organizations play an integral role in supporting advocates to successfully manage the negative aspects of trauma work. Victim service programs must take the responsibility to address how its practices, policies, procedures, and expectations might either contribute to or help mitigate the impacts of vicarious trauma on advocacy staff. Lack of attention to the inevitability of vicarious trauma can result in high turnover, staff conflict, loss of commitment to and energy for the work, and a host of "spin-off" problems. A work culture characterized by role strain, staff conflict, lack of tangible support from co-workers, work overload, lack of clarity about goals or philosophy, and failure to involve staff in program or policy decisions places an unfair burden on advocates struggling to manage vicarious trauma.

In addition to encouraging and supporting staff's efforts to develop their own individual responses, organizations can consider the following:

- ✓ Identify ways to create a work culture that promotes a balanced life (such as gym memberships, massages, yoga classes, or generous paid time off).

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- ✓ Clearly define the operating structure and philosophy of the organization.
- ✓ Determine and put into writing clear guidelines, structures, roles, and policy.
- ✓ Define and put into writing the staff's participation in planning and policy development.
- ✓ Invite and welcome staff input in your decision-making process.
- ✓ Implement ongoing training for staff.
- ✓ Provide breaks from direct service work (such as shorter shifts, attending community meetings, providing trainings, and going to conferences).
- ✓ Develop ways to ensure lunch and other breaks are taken during a shift.
- ✓ Encourage and support vacations and time off.
- ✓ Promote staff autonomy in decisions relating to participants.
- ✓ Prioritize regular supervision and opportunities for peer consultation.
- ✓ Create a work culture where de-briefing is a daily occurrence (see below).

### **Debriefing for Advocates**<sup>107</sup>

#### ■ **What is Debriefing?**

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. Debriefing is a process in which advocates share important information, sharpen and hone their communication and advocacy skills, demonstrate their accountability to those they serve, and provide one another with validation and emotional support. Debriefing is an essential skill for advocates as well as an effective tool for helping to manage vicarious trauma.

#### ■ **Why Debrief?**

##### **1. Professional Self-Care**

Many people in helping professions find that outreach, crisis intervention, and advocacy are the most rewarding work they have ever done. But as we've discussed, this work can also be stressful, emotionally draining, heartbreaking, and frustrating. In the U.S., dominant White culture teaches strength, self-reliance, control over our emotions, and taking care of ourselves without needing support from others. Survivors struggle with these cultural messages and must overcome them each time they make the choice to pick up the phone or drop by an advocacy program to seek support from an advocate.

Advocates also struggle with these deeply ingrained social expectations. Learning to overcome the social mandate of silence around sexual assault and around our emotions is an elemental part of our work as advocates. As with all anti-oppression work, we must begin with ourselves. Advocates receive extensive training to deal with the 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 participants if we don't receive support for ourselves. De-briefing is an essential activity for advocates.

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<sup>107</sup> Developed by Maria Paladino for Sexual Assault Support Services, 2002.

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### **To Protect Client 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.

### **2. To Become 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.
- Learn from one another's experiences.
- 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.***
- Receive respectful feedback about their advocacy skills and approach and give constructive feedback to their team members.
- 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.
- 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.
- Share strategies for self-care.

Through these exchanges, advocates learn to trust and support one another and maintain a strong, cohesive team.

### **■ When to Debrief**

Advocates debrief every day. Ideally, every contact with a survivor should be debriefed immediately afterward, or, if that's not possible, 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 survivor's name can be avoided. To minimize your team's exposure to vicarious trauma, it's recommended that graphic details of the survivor's assault not be shared. Instead, an advocate can note that "extreme physical abuse" was used rather than providing detail.

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:**

### **1. 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 survivor’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 information and share any new facts 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 survivor’s partner/friends/family were present and were pressuring the survivor to follow their wishes (e.g., report the incident, move out of the apartment). What have you found is an effective way to deal with that?” “The survivor 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 experiences of other advocates, and the survivor benefits through accessing the shared knowledge and resources of the whole team.

### **2. Emotional Debriefing**

This type of debriefing addresses how the advocate feels, and/or strong emotions, attitudes or beliefs that came up during an advocacy contact. Try to be clear you’re your team when you are moving into the emotional part of debriefing. This is a time to talk in more depth about how you were impacted emotionally during your interaction with the survivor. 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 survivor 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.** Don’t 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. While it’s true that some people may feel the emotional need to debrief more or less frequently than others, there are additional considerations to keep in mind.

Advocates come 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. 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 estimate how much the cultural mandates to “go it alone” without support from others may come into play when we assess our need to debrief. Choosing not to debrief can allow these damaging cultural messages into our workplace and help to keep them alive and well.

Further, for team members whose work focuses on providing outreach and advocacy to oppressed groups or to survivors who have little access to other resources or support, advocacy can be particularly challenging and draining; support from the team may be more crucial for them. Advocates of color or those from marginalized communities may also be triggered by stories of oppression in addition to violence. No advocate should feel that they are asking too much of the team when they want support, or to be left to feel that they are the only ones who seem to need it.

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***.

### **Vicarious Resilience**

It’s our empathy, openness, and commitment to listening deeply that makes us vulnerable to vicarious trauma’s impacts. We’re exposed to the realities of people’s cruelty to others; we bear witness to atrocities.

This work is life-changing, yes. But the change is not all negative. We come to see the world more vividly. We’re exposed to strength, courage, dedication, and hope. We see positive change and are witness to survivors’ phenomenal ability to come through horrid experiences and recognize their own worth, to heal and adapt, to thrive.

Embracing and celebrating the positive aspects of our work supports us in also thriving and healing. Vicarious resilience can lead to spiritual growth, a greater sense of hope, a passion for social justice, and joy of connection to others doing this work.

### **Conclusion**

Caring for ourselves and each other in this work isn’t a luxury; it’s our responsibility. It’s vital 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.

### Appendix: Confidentiality and Privilege

This document includes guidelines and recommendations for community based, non-profit and tribal domestic violence and sexual assault service providers related to victim-advocate privilege, mandatory reporting, and release of information.

**First and foremost:** Remember it's the survivor's information. The survivor has the right to choose and be informed of when, how and what personal information will be shared, or not shared, and with whom, and to know for what purpose their information will be released. Agencies and advocates are responsible for respecting and honoring the victim's wishes and safeguarding any of the survivor's information that they collect or hold.<sup>108</sup>

**Law and General Principles:** Your program<sup>109</sup>, staff and all volunteers, including board members<sup>110</sup>, must know the law that governs confidentiality and any exceptions to those laws.

These guidelines were created to assist programs supported with Oregon DOJ-CVSSD and DHS domestic violence (DV) and sexual assault (SA) grant funds to develop confidentiality policies and procedures.

Oregon DOJ and DHS have adopted and integrated the U.S. Violence Against Women Act (VAWA), Victims of Crime Act (VOCA) and the U.S. Family Violence Prevention and Services Act (FVPSA) confidentiality protections for all DHS and DOJ-CVSSD funded domestic violence and sexual assault programs or services, across all grants<sup>4</sup>.

Also, the state of Oregon has created certified advocate-victim privilege<sup>111</sup> and confidentiality<sup>112</sup> for "certified advocates" working for "qualified victim services programs" and established basic confidentiality requirements for those advocates & programs.<sup>113</sup>

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<sup>108</sup> For the purpose of this document, the terms "victim" and "survivor" are used interchangeably.

<sup>109</sup> For the purpose of this document, "program" means organization, agency or government, as well as victim services division or component.

<sup>110</sup> While all board members shall have basic understanding about these laws, only those with direct access to DVSA clients and/or client information, or those who make decisions about identified clients, are required to comply with the requirements to become a certified advocate outlined in OAR 137-085-0080. <sup>4</sup> 34 USC §12291(b), 42 USC §104062 (5)(F), and 42 USC 110, §10406(c)(5)

<sup>111</sup> ORS 40.264

<sup>112</sup> ORS 147.600

<sup>113</sup> ORS 147.600

## Appendix: Confidentiality and Privilege

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Your program, organization, tribe, or profession may have other confidentiality provisions and/or laws that also apply to domestic violence and sexual assault survivors.

Tribal programs are included in Oregon certified advocate-victim privilege statute, and tribal advocates may meet the definition of “certified advocates.”<sup>114</sup> Tribes are sovereign nations, however, and it is their individual Tribal Codes that determine privilege and reporting requirements in their respective jurisdictions. For example, a survivor’s communications with a certified advocate who works for a tribal government-based program may be covered by Oregon’s advocate privilege laws, but because the privilege is created by state (not tribal) law, the privilege will only apply in state civil, criminal, administrative and school proceedings. It will not extend to any tribal court or agency proceedings (unless the tribe says it does). This can be challenging for survivors and providers alike and can lead to uncertainty about what communications are private and confidential. We encourage you to ask for help when questions arise.

These guidelines refer to federal and state laws, rules, and best practices. When something is required rather than optional, we use the terms “will”, “shall” and “must.” Recommendations for best practice use the terms “may” and “should.” It is the responsibility of each Oregon DOJ-CVSSD and DHS-funded program to have comprehensive confidentiality policies in place and to ensure all staff and volunteers are familiar with them. We recommend that programs seek legal advice when creating agency policies.

Federal and State statutes and rules include:

FVPSA – 42 USC §10406(c)(5)

ORS 40.264 – Advocate-Victim Privilege

ORS 147.600 – Confidentiality of Certain Victim Communications and Records

OAR<sup>115</sup> 137-085-0080 – Advocate Certification

VAWA – 34 USC §12291(b)(2)

☐ VAWA Confidentiality FAQs:

[https://www.doj.state.or.us/wpcontent/uploads/2017/11/vawa\\_confidentiality\\_provision\\_faqs\\_2017.pdf](https://www.doj.state.or.us/wpcontent/uploads/2017/11/vawa_confidentiality_provision_faqs_2017.pdf)

VOCA – 28 CFR § 94.115

Confidentiality protections are applicable to all staff and volunteers, including members of the board of directors, governing body, or advisory councils, who have access to DVSA clients or client information, or make decisions about identified clients. ***For brevity in this document this is often referred to as “staff and volunteers.”***

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<sup>114</sup> ORS 40.264

<sup>115</sup> Oregon Administrative Rule (OAR)

## I. KEEPING INFORMATION CONFIDENTIAL

Confidentiality starts with the first contact/inquiry and protected information may not be shared without a written release of information, except as described in these guidelines. The VAWA confidentiality requirements apply to anyone who seeks, receives, or was denied victim services from a victim service provider.

### Protected Information

**The following information shall not be released without a VAWA-compliant release of information.**

- Personally identifying information (PII) collected in connection with services requested, utilized, or denied **will not** be disclosed from the Grantee’s organization including victim and non-victim services divisions or components and leadership of the organization without a written release of information, unless an exception applies.
  - The information **will not** be disclosed even if it has been encoded, encrypted, hashed or otherwise protected. (This would include PII by email, text, etc.)
- Privileged communications made by a victim to a certified advocate, at a qualified victim services program, as described under Oregon law, made when a victim is seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking.
- Records of a qualified victim services program in Oregon that are created or maintained in the course of providing services regarding the victim.

“Personally identifying information”, “individual information”, or “personal information” is defined as:

- a first and last name;
- a home or other physical address;
- contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
- a social security number; and

### Compliance Certification – DOJ-CVSSD and DHS

All DOJ-CVSSD and DHS DVSA grantee programs **must sign** the form, *Grantee Certification of Understanding and Compliance with Confidentiality and Privilege Requirements*, provided by DOJCVSSD and DHS.

As outlined in OAR 137-085-0080, all staff and volunteers who have access to clients or client information, or make decisions about clients, including members of the board of directors or governing body, if any, **must receive the required training to make them Certified Advocates and sign the Employee and Volunteer Certification of Understanding and Compliance with Confidentiality and Privilege Requirements** form provided by DOJ-CVSSD and DHS.

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- any other information, including date of birth, racial or ethnic background, or religious affiliation, that, in combination with any other non-personally identifying information would serve to identify any individual.

### **Protected Information in Multi-Service Organizations, Agencies, and Governments:**

- Disclosure of Protected Information **is prohibited** from victim services divisions or components of an organization, agency, or government:
  - to any other non-victim service divisions within the organization, agency, or government; **and**
  - to the leadership of the multi-service organization, agency, or government (e.g., executive director). The executive shall have access without releases only in extraordinary and rare circumstances. Routine monitoring and supervision are not extraordinary and rare circumstances.

One example of an “extraordinary and rare circumstance” that justifies release to an organization’s leadership is if allegations of fraud are made against the victim services division or one of its staff. (VAWA FAQ #10, page

### **Protecting Information in a Coordinated Community Response (CCR) setting** (such as Sexual Assault Response Team (SART), Multidisciplinary Team (MDT), Child Abuse Multidisciplinary Intervention (CAMI), Co-located, School outreach/prevention):

- All program staff and volunteers **must** follow the VAWA/VOCA and Oregon privilege requirements regardless of the location of the service, intervention, or activity.
- VAWA/VOCA and Oregon privilege requirements **cannot be over-ridden** by a certified advocate, executive director, or other qualified victim services program staff or volunteer signing a confidentiality agreement within a coordinating team, e.g. in an MDT or SART. Only the survivor may consent to their information being shared, Services may not be conditioned on a survivor signing a release of information.
- VAWA/VOCA and Oregon privilege requirements **cannot be over-ridden** by signing a Memorandum of Understanding.

### **Media Request for Information:**

- If the program receives a request from the media regarding a recipient of services, the program **shall**:
  - Not indicate anything to the media, including confirming whether or not the client was a recipient of the program’s services, without the client’s permission as set out in the terms of a release of information (ROI);
  - Make reasonable attempts to notify the victim/recipient of services immediately;

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- Notify Oregon DOJ-CVSSD promptly that there was a media request if the services were funded with VAWA, VOCA, and/or ODSVS grants. (DOJ CVSSD Grant Agreement).
  - Program will notify assigned CVSSD Fund Coordinator,
  - Fund Coordinator will notify CVSSD management and DOJ Media Director.
  - Program shall not disclose any PPI about the subject of the media request if the Program is required to inform the CVSSD Fund Coordinator.

### Shelter:

- The shelter address or location **will not** be made public, except with written authorization of the person or persons responsible for the operation of such shelter.

### Access to Victims/Service Areas:

Programs **should** protect confidentiality by restricting access to service areas where survivors may be present.

For example, programs **may** refuse access to confidential shelters. Programs **may** limit access to their public offices. Programs **may** establish separate entrances for survivors, especially if main entrances are shared with other non-DVSA services. Programs **should** have policies for responding to law enforcement or other officials demanding access to their premises. Programs **should** have policies outlining how to contact emergency services in a way that protects the personally identifying information of victims. Programs **may** want to have a separate name, checking account, and “cover story” for their confidential shelters or service areas, so that repairs, deliveries, etc. can be made without revealing that the space is related to their DVSA agency. Arrangements with motels for emergency housing **should** be made in a way that keeps motel staff from knowing that the person being housed is a client of a DVSA program.

Programs **should** always require signed confidentiality agreements from anyone not a staff or volunteer who accesses survivor service areas. Survivors **should** always be warned if anyone who is not a certified advocate will have access to service areas they may be using or planning to use.

### Records

The Program **must** assure that paper and electronic records are kept confidential and secure (this includes on site, off-site, and during transport). For example, programs **may** have electronic records on computer(s) not connected to the internet. Programs **may** have locking filing cabinets or controlled access to file storage areas.

Document retention and destruction policies **should** be in place and posted (see grant agreements for retention requirements).

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- Destruction policies **should** cover both paper and electronic records.
- Paper records being destroyed **should** be shredded or made unreadable in some way.
- Offsite or during transport, programs **may** want to provide locking briefcases, require that confidential records be transported in a locked car trunk, and/or require that locking file cabinets be available offsite.
- Programs **may** also want to consider offsite policies that forbid the use of personally identifying information on paperwork outside the office/shelter or have policies that govern how staff should protect survivors' PII when working remotely and on electronic devices.

### **Inadvertent Release of Information:**

The program **must** take reasonable efforts to prevent inadvertent releases of “personally identifying information” or “individual information” (VAWA Rule 90.4 (5)). For example, programs **should not** permit personally identifying information to be shared by email or other electronic methods without survivor consent. Programs **may** want to ensure that any written information that is mailed or otherwise shared has been double checked by a certified advocate to ensure that only the intended and appropriate information is being shared and that it is being shared with a party covered by a signed ROI.

In the case of an inadvertent release of confidential information, the program **shall** (1) make reasonable attempts to notify the victim; and (2) take steps necessary to protect the privacy and safety of the persons affected by the release of information. For example, victim notification **must** be made in a manner that the victim has designated as safe. Victim notification messages **should not** include information about the fact of or content of the inadvertent release. Programs **should** provide any assistance necessary to mitigate the impact of the inadvertent release, including reimbursing travel and re-housing costs. With a signed ROI from the victim, programs **may** want to contact an attorney on how to protect privacy and safety.

In the case of an actual or imminent breach (paper, oral, electronic) of PII, the program **must** report to CVSSD as soon as possible without unreasonable delay so they can report within 24 hours to the OVW/OVC program manager per special conditions of the VOCA and VAWA 2018 grant awards. The report to CVSSD shall not include any identifying information about the individual(s) whose information was released.

### **The Following Information May Be Released:**

Non-personally identifying data in the aggregate **may** be shared regarding services to their clients in order to comply with Federal, State, tribal, or territorial reporting, evaluation, or data collection requirements, as long as such information, alone or in combination with other provided information, does not identify any individual.

## II. WHEN RELEASE OF PROTECTED INFORMATION IS PERMITTED

**There are four circumstances in which releasing PII information is permitted: 1) With a written, informed, reasonably time limited, signed release of information; 2) Statutory mandate; 3) Court mandate; and 4) Fatality review team request (if all the necessary requirements are met).**

1. Release of Information (ROI) is permitted where the survivor/victim knowingly and voluntarily consents to the release.
  - An ROI **cannot** be required as a condition of service.
  - The release of information (ROI) document **must be**:
    - Voluntary
    - Written
    - Informed
    - Reasonably time-limited
    - Per person or agency, no blanket releases
    - Specific as to the scope and limited circumstances of any disclosure
    - Revocable

“Informed” consent means that the survivor and the provider have discussed why the information will be shared, <sup>116</sup>what information might be shared, who will have access to the shared information; they have agreed what information will be shared and with whom, and the release records the scope of their agreement<sup>10</sup>.

- Information **should not** be released based on a release of information from another agency. Only a release of information generated by the DV/SA program, discussed by DV/SA staff or volunteers with the survivor (as outlined below), and signed voluntarily by the survivor meets the exception to the requirement to keep all personally identifying information and records confidential.<sup>117</sup>
  - Programs **should not** create or respond to mutual releases.
- Discussions about signing a release **must** include:
  - Why the information might be shared,
  - Who would have access to the information,

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<sup>116</sup> CFR 90.4

<sup>117</sup> In some very limited situations, an organization may accept a ROI from another agency after consulting with the survivor to confirm that it was knowingly executed, that that content was discussed, that the survivor and program agrees on the scope, purpose, implications of signing (including the risks and benefits, and alternatives to signing) and that the release reflects this agreement.

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- What information could be shared under the release
- Discussions about signing a release **should** also include:
  - Alternatives to the release,
  - The risks & benefits of the release, including implications of releasing information to mandatory reporters or organizations with limited privacy protections<sup>118</sup>
  - How to revoke the release
- The release **must be** signed by:
  - Victim–
    - If the victim has legal capacity to consent
    - This includes a minor victim if the minor has the right to receive the services provided without a parent/guardian’s consent.<sup>119</sup>
  - Parent or Legal Guardian and the Minor –
    - If the victim is an unemancipated minor and does not have the right to receive the services provided without the parent/guardian’s consent. ☐ Guardian Only –
      - If the person with a guardian lacks legal capacity to consent.
  - If victim is a minor incapable of knowingly consenting, the parent or guardian may provide consent.
    - If a parent or guardian consents for a minor, the grantee or subgrantee should attempt to notify the minor as appropriate.
  - NOTE: Consent may not be given by the abuser of the minor or incapacitated person or the abuser of the minor’s other parent.
- The Signed Release Form **may be** based on NNEDV Confidentiality Templates: <https://www.techsafety.org/confidentiality-templates>.
- For examples of VAWA-compliant bilingual or Spanish-only templates, email the Victim Rights Law Center at [privacyTA@victimsrights.org](mailto:privacyTA@victimsrights.org).

### 2. Information May Be Released If Required by Statutory Mandate:

As noted above, PII may be released if required by a statutory (or court) mandate. Domestic and sexual violence advocates, according to Oregon state law, are exempt from the list of

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<sup>118</sup> Note that persons/programs that are not mandated to report abuse may choose to make such a report if they are not prohibited from doing so by VAWA, VOCA, FVPSA, Oregon law, or other privacy protections that limit such reporting. Be sure you understand the privacy protections of any organization to whom you refer a survivor or before advising a survivor on the risks/benefits of releasing information to another organization.

<sup>119</sup> As of this writing state legislative proposals are being considered to clarify youth consent to DVSA services.

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“public or private officials” in the definition section of the mandatory reporting law, and are therefore not mandated by the state to report child abuse, elder abuse, abuse of persons with severe and persistent mental illness or abuse of persons with developmental disabilities.<sup>120</sup>

- Each Tribal Nation has its own Tribal Code. Some tribes have tribal codes that specify that certain or all tribal members, staff, volunteers, residents, or other persons may be mandatory reporters.
- Advocates that are not mandated to report abuse under state or tribal law, are **prohibited** by federal and state funding to report suspected abuse learned of in the course of their role as staff and volunteers unless the survivor signs a written release of information voluntarily signed with informed consent (as outlined in the ROI section above).
- Advocates **must** know their personal status with regard to mandatory reporting such as tribal law, other professional employment (*e.g.*, a DHS, school, or nursing home employee) or licensing (*e.g.*, a licensed clinical social worker, certified child care provider, or health care provider), as well as any exemptions (*e.g.*, a lawyer, clergy, psychiatrist).
- Each staff member, volunteer and board member **should** know who within the organization is a mandatory reporter and what type of abuse that person must report.
- Informed consent to services requires that a survivor be advised – before they make a disclosure – if the provider is a mandatory reporter of any kind of abuse (child, adult with a qualifying disability, or elder).

### **LIMITS to STATUTORY MANDATE/ABUSE REPORTING:**

Each tribe may have tribal codes/laws that will guide statutory mandates and abuse reporting. Each tribe determines its own laws, so tribal codes differ in their mandatory reporting laws.

Mandatory reporters who are subject to confidentiality restrictions cannot report information voluntarily to DHS-CW. They can only report abuse as defined by the legislature.

Oregon specifically excludes from the definition of “public or private officials” employees of a public or private organization providing child-related services or

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<sup>120</sup> ORS 419B.005(5)(bb)(B).

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activities if the individuals are employees of “community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.<sup>121</sup>”

**Mandatory reporters must make reasonable attempts to notify the victim/survivor and take steps necessary to protect the privacy and safety of the persons affected by the release of information.** This includes limiting any report to ONLY the information that has been mandated by state or tribal law.

The following describes statutory reporting mandates under state law:

- **Child Abuse:** Those who are mandatory child abuse reporters under Oregon law are mandated to report child abuse only if they come in contact with either: (1) a child they have reasonable cause to believe has been abused or (2) a person they have reasonable cause to believe has abused a child. This obligation is in effect 24 hours/day and 7 days/week; it is not limited to the reporter’s working hours or contact made in an official capacity. (See ORS 419B.010)

The report shall contain, if known:

- the names and addresses of the child;
- the parents of the child or other persons responsible for care of the child;
- the child’s age;
- the nature and extent of the abuse, including any evidence of previous abuse;
- the explanation given for the abuse; and
- any other information that the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator. (ORS 419B.015)

- **Elder Abuse:** Those who are mandatory elder abuse reporters, as defined by Oregon law, are mandated to report abuse only if they come in contact with either: (1) a person 65 years of age or older whom they have reasonable cause to believe has been abused or (2) a person they have reasonable cause to believe has abused a person 65 years of age or older. This obligation is in effect 24 hours/day and 7 days/week; it is not limited to the reporter’s working hours or contact made in an official capacity. (See ORS 124.066)

The report shall contain, if known:

- the names and addresses of the elderly person;
- any persons responsible for the care of the elderly person;
- the nature and the extent of the abuse (including any evidence of previous abuse);
- the explanation given for the abuse; and

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<sup>121</sup> ORS 419b.005(5)(bb)(B)

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- any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator. (ORS 124.060)
- Abuse of Certain Adults with Severe and Persistent Mental Illness (who are receiving mental health treatment from a community program), Developmental Disabilities or Substance Use Disorder: Those who are mandatory reporters of abuse of certain vulnerable adults (defined below in accordance with state laws), are mandated to report abuse only if they come in contact with either: (1) the vulnerable adult they have reasonable cause to believe has been abused or (2) a person they have reasonable cause to believe has abused the vulnerable adult. **A report is only mandatory if the vulnerable adult also has a serious functional impairment that substantially interferes with or limits their ability to protect themselves from abuse.** This obligation is in effect 24 hours/day and 7 days/week; it is not limited to the reporter's working hours or contact made in an official capacity. (See ORS 430.765)
  - "Adults" covered by this section include:
    - ☐ Adults with a severe and persistent mental illness (SPMI; defined by rule<sup>122</sup>) who are receiving mental health treatment from a community program;
      - ☐ SPMI means<sup>123</sup> at least one of the following conditions as a primary diagnosis:
        - Schizophrenia and other psychotic disorders;
        - Major depressive disorder;
        - Bipolar disorder;
        - Anxiety disorders, limited to Obsessive Compulsive Disorder (OCD) and Post Traumatic Stress Disorder (PTSD);
        - Schizotypal personality disorder; or
        - Borderline personality disorder

**REMEMBER:** In order to trigger mandatory abuse reporting responsibilities, the adult with SPMI **must also have** a serious functional impairment that substantially interferes with or limits their ability to protect themselves from abuse.

- Adults with a developmental disability (DD; defined by statute) who is currently receiving services from a community program or facility or who was previously determined eligible for services as an adult by a community program or facility;

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<sup>122</sup> OAR 407-045-0130(24)

<sup>123</sup> See footnote directly above.

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or

- Adults receiving services for a substance use disorder (SUD) or mental illness in a facility or state hospital.

The report shall include, if known:

- the name, age and present location of the allegedly abused adult;
- the names and addresses of persons responsible for the adult's care;
- the nature and extent of the alleged abuse, including any evidence of previous abuse;
- 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;
- the date of the incident. (ORS 430.765)

When a person is mandated to report, they **must** immediately notify the supervisor or ED (where appropriate) that a particular report is mandated.

### 3. Release of Information is Permitted When Required by Court Mandate.

“Court mandate” is the other exception to the prohibition against releasing PII without written and informed consent. Typically, a court mandate includes a subpoena or court order.

When responding to subpoenas, programs **must** make reasonable attempts to notify the survivor and take steps necessary to protect the privacy and safety of the persons affected by the release of information if any information is going to be released. Programs **should** identify a “custodian of records.”

- When a subpoena is presented, a program **should**:
  - Immediately notify the supervisor, Executive Director, and/or “custodian of records” as applicable.
  - Never disclose anything to the person serving (delivering) the subpoena.
  - Note how the subpoena was served (mail, personal service, left at the door), by whom, when it was received (date/time), and to whom it was delivered
  - Note whether it is accompanied by a check for appearance fee and mileage
- After accepting a subpoena, a program **should**:

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- Contact the survivor in a timely manner to determine how the survivor wants the agency to respond to the subpoena;
  - If the survivor determines they want your program to release confidential information, the program **must** have survivor sign a detailed ROI as outlined above;
  - The survivor should review the records to be released before giving consent;
  - Refer the survivor to an attorney to discuss the pros/cons of the release of such information.
- If the survivor does not want any confidential information released, the program **must** make efforts to protect that information. The program **may** contact an attorney to quash the subpoena or file a motion for a protective order, based on confidentiality and advocate/victim privilege. The program **should** refer the survivor to an attorney.
- If a survivor cannot be contacted to determine their position on the release of the information, the program **must** take efforts to protect that information. The program **may** contact an attorney to quash the subpoena or file a motion for a protective order, based on confidentiality and advocate-victim privilege.
- If confidential information is ordered to be released even after taking these steps, the program **must** take all steps necessary to protect privacy and safety of the survivor and any others affected by the release of information.
- Case law is also considered a “court mandate.” If a court decision sets out a rule that certain professionals or providers are required, as a matter of law, to reveal or report otherwise confidential information in specific circumstances this is considered a “court mandate” under VAWA.

#### 4. Release of Information to Fatality Reviews:

If information is provided to a fatality review, the program **will** take reasonable steps to protect the rights and safety of surviving relatives and any others affected by the release of information.

Release of “personally identifying information” or “individual information” about deceased victims is permitted for a fatality review to the extent permitted by state law (ORS 418.712) or tribal law **and only if the following conditions are met:**

- The underlying objectives of the fatality review are to prevent future deaths, enhance victim safety, and increase accountability of the perpetrator;

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- The fatality review includes policies and protocols to protect identifying information, including identifying information about the victim's children, from further release outside the fatality review team;
- A reasonable effort has been made to get a release from the victim's personal representative (if one has been appointed) and from any surviving minor children or the guardian of such children (but not if the guardian is the abuser of the deceased parent), if the children are not capable of knowingly consenting; and
- The information released is limited to that which is necessary for the purposes of the fatality review.
- Note that all of these criteria must be met before the information may be released.

### III. RECORD KEEPING

- The program **should** keep minimal survivor records and inform survivors that this is their practice. Records **should** include:
  - Only what is necessary to the delivery of services and/or
  - Non-personally identifying information required by funders
- Records **should not** include:
  - Casual comments, staff or residents' opinions, exact and complete quotes or statements made by or concerning a survivor (including emails, letters), opinions, criticisms, observations or speculations, information from other sources or information unrelated to providing services
  - Photographs (unless necessary to the delivery of services)
  - Additional information that would compromise survivor safety or self-determination if released.
- Only certified advocates shall have access to records containing PII.
- Programs that maintain electronic records should follow best practices to safeguard information stored on computers. This includes internet access, computer and server maintenance, cloud storage and who owns and has access to information stored in the cloud, etc.
- If electronic records are created or accessed remotely the program **should** establish policies governing staff's remote access. This should address matters such as through whose devices the information may be stored or accessed (program's, personal or both), whether, how and how often information will be transferred or deleted, how it can be recovered or deleted for former staff, password security, and device storage when off-site.

#### IV. ENSURING COMPETENCE RE: CONFIDENTIALITY

- Members of the Board of Directors, Governing Body, and/or Advisory Council **must** attend two hours of training on confidentiality and privilege as part of the 12-hour requirement. They are strongly encouraged to also complete the 40 hours of pre-service advocate certification training for staff and volunteers.
- Consequences **should** be outlined for breaching confidentiality by staff and volunteers. These can include termination as appropriate.
- The importance of continuing to maintain confidentiality for staff and volunteers who are no longer with the program **should** be emphasized throughout the tenure of staff and volunteers, and any consequences outlined.
- The program **should** provide appropriate onboarding and additional trainings on program policies related confidentiality, privilege, appropriate release of information and the consequences for breaching confidentiality.
- Programs **should** have a brief explanation that quickly and clearly explains confidentiality to survivors.
  - ☑ Staff and volunteers who have access to clients or client information, or make decisions about clients, including members of the board of directors or governing body, if any, should be able to recite the brief explanation. Such explanations must be provided to a survivor before survivors are asked to make disclosures of any kind. For example:

“You get to decide who has access to what information about you. Except for \_\_\_\_\_ and \_\_\_\_ who are mandatory reporters of child abuse, no one here will share your information with anyone else without your written permission. We will only share information about you if you sign a paper telling us just what you want us to share and who you want us to share it with. I will not share anything with \_\_\_\_\_ or \_\_\_\_\_ (M.R.’s) unless you tell me to. The only time someone here will share information about you without your permission is if a court orders us to share it. If a court does order us to release your information, we will always try and reach you first to let you know and to ask what you want us to do. If we can’t reach you, we will try and protect your information the best we can.”

## Acknowledgements and References

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### **Acknowledgement:**

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<sup>i</sup> 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](mailto:taskforce@oregonsatf.org) | Web: [www.oregonsatf.org](http://www.oregonsatf.org)