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ADVOCATE NEWSLETTER



# FINANCIAL COMPENSATION FOR SEXUAL ASSAULT VICTIMS

Number 3

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## In This Issue

- **CRIME VICTIMS' COMPENSATION 101**
- **CVC ADVOCACY TIPS**
- **THE NUTS & BOLTS OF VICTIM RESTITUTION IN CRIMINAL SENTENCING**
- **CIVIL TORT LIABILITY: QUESTIONS & ANSWERS**
- **RESOURCES & ATTORNEY REFERRAL INFORMATION**

Message from the Editor:

This issue of our Advocate Newsletter is dedicated to the various options a sexual assault survivor may have to receive financial compensation. The economic consequences of a sexual assault can be astounding. Victims may face significant hospital and medical bills, lost wages and benefits, lost tuition, counseling fees, housing relocation costs and other expenses. In this newsletter, we will explore several potential avenues of economic recovery: Crime Victims' Compensation, restitution and civil tort liability.

While no amount of money can redress the harm and trauma that a victim of sexual violence has suffered, financial compensation can help survivors with the economic losses they encounter in the aftermath of an assault. Also, a civil lawsuit may provide a victim with a means of acknowledgment of their pain, suffering and the wrongness of the assault.

The purpose of this newsletter is to provide you with a general understanding about the main types of financial compensation available to sexual assault victims. This information is not meant to be comprehensive. Other avenues of economic recovery for a victim may exist. We have additional resources and information on this topic at WCSAP and I encourage you to contact me with any questions or comments at [kelly@wcsap.org](mailto:kelly@wcsap.org).

Sincerely,  
*Kelly O'Connell*, Staff Attorney  
WCSAP Legal Services Department

### **DISCLAIMER:**

*The legal information provided in this newsletter should not be considered legal advice. Whether a particular factual situation is contrary to federal or state law will depend on a number of circumstances specific to the victim. If you or your client needs legal advice, you should consult an attorney. Laws change both as the result of legislative and court decisions. The information here is current as of February 2006.*

# CRIME VICTIMS COMPENSATION 101

BY KELLY O'CONNELL, ESQ.

The Washington Crime Victims Compensation Program (CVC) is state program that provides financial assistance to victims of violent crime, including rape and sexual assault.

Benefits Covered. The program currently provides reimbursement of the following expenses:

- Medical
- Dental
- Counseling
- Partial payment of lost wages
- Partial payment of funeral costs
- Modifications to homes and vehicles to accommodate permanent injuries
- Limited pension payments if the crime permanently prevents the victims from returning to work
- Limited pension payments to the spouse or child of a deceased victim
- Counseling for family members of sexual assault and homicide victims
- All benefits have maximum dollar limits set by law

Uncovered Expenses and Limitations. Unfortunately, housing, moving and relocation expenses are not covered. Also not covered are property losses, and lost wages for the parent of a child victim.

CVC benefits are only given after the victim first exhausts all other available insurance benefits, both public and private.

Forensic Rape Examination. The cost of a forensic rape exam must be paid by CVC, regardless of insurance. A sexual assault victim does not need to file an application with CVC and may not be billed for this cost. However, if the exam includes any treatment costs or the victim requires follow-up treatment, an application for benefits must be filed with CVC for any of those treatment costs.

Informing Victims about CVC. Since so many sexual assault victims never learn about CVC, it is critical that advocates tell them about the program. Even if the victim is not currently experiencing economic losses, they should still submit an application to the program. Once considered eligible for CVC, they can access compensation funds to cover future damages.

Eligibility. In order to be eligible for CVC, a sexual assault victim *must report the assault to law enforcement within one year of the assault* or when they would have reasonably discovered the assault occurred. Generally, the victim must then *file their CVC application within two years of reporting the assault to law*

*"Since so many sexual assault victims never learn about CVC, it is critical that advocates tell them about the program. Even if the victim is not currently experiencing economic losses, they should still submit an application...to cover future damages."*

*"Advocacy strategies: have a local list of CVC approved providers in the area; be aware of the reimbursement rates and communication the providers are receiving from CVC; work with new providers to become CVC approved."*

*"If a victim's claim is initially denied by CVC, prior to engaging in the formal appeal process, contact the claims adjustor directly and ask them about the basis for denial. Sometimes claims are denied because the claims adjustor does not have enough information to make a proper decision."*

enforcement, unless they can show "good cause" for why the period of time should be extended.

Providers. Treatment providers must be registered with CVC in order for the victim's expenses to be reimbursable. Since victims must first exhaust all other insurance resources, the victim and the provider will be notified at the time of the CVC claim if a change in providers is required by the victim's insurance. Verifying the provider's CVC registration and the victim's insurance is very important to ensure that the expenses are reimbursable by CVC.

Once a victim's claim has been allowed, the provider cannot bill the victim for any treatment related to the crime injury. If the victim has paid for any of the treatment, the provider must refund the victim in full for amounts paid once the claim is allowed.

Advocacy strategies: have a local list of CVC approved providers in the area; be aware of the reimbursement rates and communication the providers are receiving from CVC; work with new providers to become CVC approved.

Filing the Application. An application for CVC benefits must generally be received *within two years of the police report*, or within two years of the 18<sup>th</sup> birthday if the victim was a minor. A victim should include in their application:

- Date of the assault
- Date of reporting to law enforcement
- Evidence and verification that a criminal act occurred
- Description of injuries
- Documentation of expenses

A victim's ability to receive compensation can be significantly enhanced by simple record keeping. It can be helpful for an advocate to work closely with a victim to draw up a comprehensive list of all financial costs stemming from the assault, starting immediately following the assault and continuing to the present. Advocates can assist the victim with documenting these expenses by collecting receipts, bills, affidavits, and other relevant documents.

Once a victim of sexual assault applies for CVC benefits, she generally will be informed as to whether her claim is accepted or denied within six to eight weeks.

Advocacy Tip for Denied Claims. If a victim's claim is initially denied by CVC, prior to engaging in the formal appeal process, contact the claims adjustor directly and ask them about the basis for denial. Sometimes claims are denied because the claims adjustor does not have enough information to make a proper decision. Advocacy cannot be underestimated in responding to CVC denials. *Contact the WCSAP Legal Department for a list of regional claims adjustors.*

Appeal Process if CVC is Denied. A crime victim may disagree with the decision made by CVC. These decisions are generally communicated by Order and Notices, which include protest and appeal rights and the addresses where

*"If a victim's case cannot be settled in mediation, it would be wise for the victim to consider hiring a lawyer. Usually a lawyer will accept a fee on a 'contingent fee' basis, meaning that the victim only pays the lawyer if they win their benefits on appeal."*

they must be sent. These rights are governed by the Board of Industrial Appeals of the Department of Labor and Industries.

*1. Send a Written Protest*

If a sexual assault victim disagrees with the decision made by CVC, she must send a written protest within 90 days of receiving the Order and Notice.

*2. Mediation Conference*

If an appeal is granted, the Board will likely schedule a mediation conference. A mediation conference is an informal gathering of the parties with a judge to try to settle the appeal without a formal hearing.

The victim does not need to bring witnesses to the conference, but should bring copies of anything documenting the facts and supporting their appeal.

If a settlement is reached at the mediation conference, the Board will issue an Order of Agreement of Parties that explains the terms and directs the action that was agreed to. If settlement is not reached, it is assigned to a judge to schedule and conduct a hearing.

If a victim's case cannot be settled in mediation, it would be wise for the victim to consider hiring a lawyer. Usually a lawyer will accept a fee on a "contingent fee" basis, meaning that the victim only pays the lawyer if they win their benefits on appeal.

*3. Hearing before the Board*

Hearings are like mini-trials where the judge presides over the proceedings, witnesses are sworn-in and give testimony to a court reporter, and evidence is admitted under the same rules as in court. There are no juries at a Board Hearing.

When appearing before the Board, a victim may represent themselves. The victim may bring someone with them to give advice and support. They may also choose to be represented by a non-lawyer or a lawyer.

When the hearing is done, the judge will issue a Proposed Decision and Order explaining the decision. This becomes final 20 days from receipt, unless someone disagrees with the decision and files a Petition for Review.

*4. Petition for Review*

If there is disagreement with any part of the Proposed Decision and Order, a Petition for Review of the order must be filed in writing, within 20 days from the date the Proposed Decision and Order was received. If this is not done, the decision becomes final and it cannot be appealed to Superior Court.

*Kelly O'Connell is a staff attorney for the Washington Coalition of Sexual Assault Programs. Prior to joining WCSAP, she advocated for survivors of domestic violence in numerous capacities and also formerly practiced at the law firm of Montgomery, Purdue, Blankinship & Austin.*

## CVC ADVOCACY TIPS

BY GRACE CALL

*"Move beyond the idea that it is enough to give the victim an application or to help the victim complete her or his application."*

- Develop relationships with the adjudicators in your region of the state.
- Obtain a release from the victim you are working with to speak directly to CVC on their behalf.
- Move beyond the idea that it is enough to give the victim an application or to help the victim complete her or his application.
- Work quickly to get the application approved.
- Follow-up shortly after the application is sent in.
- Once the claim has been approved or denied, ask the adjudicator what needs to happen next.
- Understand the confines of the system that you are working in.
- Add weekly/daily/monthly reminders to your calendar to check in on the status of the claim.
- Work directly with the victim's service providers and CVC to ensure that they are approved providers, billing regularly, and getting reimbursement.
- Don't be afraid to refer the victim to a private attorney.
- Use existing relationships with local prosecutors and law enforcement officers to write letters to CVC on behalf of victims, particularly in cases that are difficult to prosecute in our existing social climate – such as acquaintance rape.
- Provide realistic guidance and expectations to the victim.
- Ask for copies of correspondence from CVC to the victim.

*Grace Call is a program specialist at the Office for Crime Victims Advocacy (OCVA). In addition to managing VOCA, VAWA and other contracts, she does policy work for OCVA. Grace recently moved to Washington from Utah where she ran the Utah Coalition Against Sexual Assault.*

# THE NUTS & BOLTS OF VICTIM RESTITUTION IN CRIMINAL SENTENCING

BY STEVE ECKSTROM

*"When setting the minimum monthly payment amount, courts may take into consideration the offender's ability to pay, but may not reduce the total amount ordered because the offender lacks the ability to pay it."*

## **What is restitution?**

Restitution in criminal sentencing is an amount of money set by the court to be paid to the crime victim for losses or injuries caused by the crime. Courts in Washington must order restitution in cases in which the victim sustains damages related to an injury or loss of property.

## **When do victims get restitution?**

The amount of restitution ordered is to be based on "easily ascertainable" costs related to the crime, such as treatment expenses, lost wages, or property damage or loss.

Certain types of damages are specifically excluded from restitution, such as damages related to mental anguish, pain and suffering, or other "intangible" losses. Counseling costs reasonably related to the offense, however, may be included.

In cases of Rape of a Child in the First, Second, or Third Degree in which the victim becomes pregnant, state law specifically requires that medical expenses related to the assault and the resulting pregnancy be included in the order of restitution. If child support is ordered through either a judicial or administrative process, the amount of support must also be included in the restitution order.

## **How is restitution ordered?**

In most cases, victim/witness advocates in prosecutors' offices work with victims to submit an order of restitution to the court. When setting the minimum monthly payment amount, courts may take into consideration the offender's ability to pay, but may not reduce the total amount ordered because the offender lacks the ability to pay it.

For offenses committed after July 1, 2000, the court has jurisdiction over the offender until the entire restitution amount is fully paid, even if it is longer than the maximum sentence for the crime.

## **How is restitution paid?**

Restitution is paid through the clerk of the court in the county that ordered it. Payments are first applied to victim restitution until the amount ordered has been paid in full. After that, amounts paid are divided proportionally among fines, assessments, court costs, etc.

## **What about interest?**

Interest on the unpaid portion of restitution (as well as fines and other costs imposed as part of the sentence) accrues at the interest rate applicable to civil judgments. Under current law, the minimum rate of interest is twelve percent per

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year.

For financial obligations *other than restitution*, the court is permitted to waive all or part of the interest as an incentive for the offender to pay the remaining amount. Interest on restitution cannot be completely waived, and can be reduced only after the full principal amount has been paid.

### **Who manages restitution obligations?**

For those not under supervision or in prison, County Clerks are responsible for managing restitution. The primary responsibility for supervising a prisoner's (or supervised offender's) compliance with court-ordered financial obligations is the Department of Corrections.

### **What if the offender doesn't pay?**

If restitution has not been paid, victims may contact the County Clerk to determine: 1) whether payments have been received that have not yet been disbursed to the victim, 2) what court action may be pending if the offender has not paid, and 3) whether the Clerk or the Department of Corrections is currently responsible for supervising the offender's compliance with the restitution order. Staff in the Clerk's office should be able to direct the victim to the responsible office through which to request that action be taken to enforce compliance.

In addition, state law provides that either the state or the victim may enforce court-ordered restitution in the same manner as a judgment in a civil action.

### **How much restitution is collected in Washington?**

During 2002, 2003, and 2004, superior courts statewide collected an average of \$7.7 million per year in restitution.

### **Why is restitution so important to victims?**

The importance of restitution to victims is put into perspective in a 2003 resolution of the Washington Coalition of Crime Victim Advocates:

It is the element of the justice system that most directly addresses the damage caused by crime in a tangible way. It expresses judicial recognition of the fact that a criminal act creates a cost to the victim. It attests to the central importance of holding offenders accountable for the damage they do by requiring them to pay victims back.

Restitution is not, nor is it intended to be, a sufficient means to address all categories of crime-caused injury and loss. Obviously, restitution cannot erase a traumatic experience, heal a permanent disability, or restore a lost life. Even in many cases of "material" losses, such as the theft of a family heirloom or important gift, the dollar-value of the stolen item is the least significant aspect of the loss to the victim.

However, an order of restitution can serve, even in these cases, as a representation or symbol of the debt owed to the victim by the offender. It requires the offender to surrender something of value in a transaction that is

legally connected to the victim's loss. Though the offender may or may not, through this process, gain insight regarding the consequences of his or her crime, the opportunity for enlightenment is offered. More importantly, the victim's loss is recognized by that branch of government created to redress grievances.\*

*Steve Eckstrom is Manager of the Victim Services Program of the Washington State Department of Corrections. He has previously served as Advocacy Services Program Manager in the Office of Crime Victims Advocacy, and as Director of the Victim/Witness Assistance Program of the Snohomish County Prosecutor's Office.*

*\*Resolution Affirming the Integral Function of Restitution in Criminal Justice. Washington Coalition of Crime Victim Advocates, March 2003.*

*"A victim may choose to pursue a civil claim as a way to recover monetary damages, to force changes that will prevent future harm, and/or to receive acknowledgement of the wrongness of the assault."*

## **CIVIL TORT LIABILITY: QUESTIONS & ANSWERS**

**BY JO-HANNA READ, ESQ.**

*Editor's Note: In civil actions, victims initiate complaints against their assailants or third parties who may be liable to them. Civil lawsuits are separate processes from any criminal action initiated against the assailant by the state. A victim may choose to pursue a civil claim as a way to recover monetary damages, to force changes that will prevent future harm, and/or to receive acknowledgment of the wrongness of the assault. Civil actions are based on various legal theories. The hypothetical scenarios below outline just a few of the possible tort theories of liability – there are numerous others.*

*It is important for a sexual assault victim to talk with an attorney if she or he is interested in pursuing a civil claim. Victims should be aware that there are time limits for bringing a civil claim (called "statute of limitations"). An attorney can assist the victim in determining the relevant legal theories of civil liability and whether there are any statute of limitations issues. WCSAP Legal Services Department has also produced "A Survivor's Guide to Filing a Civil Lawsuit" that outlines important considerations for sexual assault survivors and explains the civil lawsuit process in more depth - download a copy at [www.wcsap.org](http://www.wcsap.org).*

### **Question:**

**I was recently consulted by a 19 year old woman who had an "affair" with her 40 year old high school English teacher four years ago. At the time she saw it as a consensual "special" relationship, but is now questioning whether it was appropriate and wondering if the depression and other problematic symptoms she has developed since might be connected. She wants to know if she can sue him and/or the school for damages.**

*"It is a crime, and thus a basis for civil liability as well, for a person to have sexual contact with anyone who is at least three years younger than him/her, is younger than 16 years of age and is not married to him/her."*

**Answer:**

Claims against the teacher. It is a crime, and thus a basis for civil liability as well, for a person to have sexual contact with anyone who is at least three years younger than him/her, is younger than 16 years of age and is not married to him/her. (RCW 9A.44.083, .086, and .089).

It is also a crime for a person in a significant relationship<sup>1</sup> to a minor between the ages of sixteen and eighteen to abuse a supervisory position within that relationship in order to engage in sexual contact with the victim, where the abuser is at least five years older than the minor. In addition, it is a crime for any school employee to have sexual contact with such a minor who is a registered student of the school, if the employee is at least five years older than the minor. (RCW 9A.44.093 and .096). Again, this provides a clear basis for civil liability of the individual involved. "Consent" is not an issue in a case like this.

The minimum legal deadline ("statute of limitation") for starting a lawsuit against the former teacher is the date on which the former student turns 21. Under some circumstances, she may be able to bring a claim even if she's older than 21, but it would be safest to take action before her 21<sup>st</sup> birthday.

Claims against the school. Because children are required to attend school, school districts have a high duty of care for their students. This includes a duty to take precautions to protect the students in their custody from dangers which can be reasonably anticipated, including foreseeable criminal acts. So, for example, if there had been prior complaints about inappropriate behavior of the teacher (making inappropriate remarks, touching students, etc.) or someone in the school administration had learned of suspicious behavior involving the teacher and your client, then the school had a duty to investigate and protect your client as appropriate. If they did not, there is a potential claim against the school district.

The rules about the statute of limitations are the same for the school as for the individual teacher. There are often technical rules that must be followed if your client is bringing a claim against a school district, so it is a good idea to encourage her to meet with a lawyer who is familiar with such claims, sooner rather than later.

<sup>1</sup> Defined in RCW 9A.44.010 as: (a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors; (b) A person who in the course of his or her employment supervises minors.

**Question:**

**I am providing services to a 35 year old woman who originally came to me for help because her daughter was raped. She recently revealed to me that she herself had been sexually abused by her uncle for a period of time when she was 8 to 12 years old. She has always remembered that the abuse happened, but tried to put it behind her. When she was 9 years old, she tried to tell her mother that her uncle was touching her genitals, but her mother refused to believe her and washed her mouth out with soap. The abuse continued, and she has never told anyone else. She told me that her therapist**

has diagnosed her with Post Traumatic Stress Disorder as a result of that early abuse. She is just beginning to understand the profound and prolonged effects of her uncle's actions and her mother's response to her. Can she bring any claims for damages against either her uncle or her mother?

**Answer:**

Claims against the uncle. A childhood sexual abuse survivor may file suit against her abuser anytime within three years of discovering particular injuries caused by the abuse, even if she has always remembered that the abuse occurred. Washington law recognizes that many adult survivors of childhood sexual abuse have always remembered some or all of the abuse, but only realize at some later time the extent or nature of damage suffered as a result of the abuse. A survivor in this category may still file suit against her abuser, so long as suit is filed within three years of discovery of particular injuries. (RCW 4.16.340).

Often an adult survivor of childhood sexual abuse will only discover the true impact the abuse has had throughout her life when she seeks help from a mental health professional for an immediate life problem, such as coping with a child reaching puberty or with difficulties in a relationship, and in the process of working on the immediate issues begins to confront and examine her own abuse issues. Sometimes an adult survivor hits a crisis point because coping mechanisms she has used all her life begin to unravel or themselves become destructive. It is important to note that the standard as to when a childhood sexual abuse survivor discovered that a particular injury was caused by the abuse is subjective, not a "reasonable person" standard. What matters is the survivor's actual knowledge, not what she "should have known." In addition, discovery of *some* harm does not trigger the statute of limitations as to other harm not yet discovered.

Your client may sue her uncle anytime within three years of discovering particular injuries he caused her, such as the PTSD her therapist has diagnosed. It would be safest in terms of any possible arguments about whether such a suit has been brought within the statute of limitations, if she could file suit within 3 years of beginning therapy. However, because the uncovering of symptoms and understanding of connections to the abuse is an ongoing process, it may not be too late to bring a claim even if she has been in therapy more than 3 years. If she is interested in possibly bringing a claim against her uncle, you should encourage them to meet with a lawyer with experience in this area as soon as possible.

Claims against mother. Parents have a duty to care for and protect their children. When your client told her mother that her uncle was touching her sexually, her mother should have intervened to protect her. She not only did not intervene, she punished your client. A childhood sexual abuse victim in Washington may sue not only her abuser but also anyone who had a duty to protect her, had reason to believe there was or could be abusive behavior, and failed to act. The time lines for bringing a claim are the same as the time lines for suing her uncle, the actual abuser, as outlined above.

*"Washington law recognizes that many adult survivors of childhood sexual abuse have always remembered some or all of the abuse, but only realize at some later time the extent or nature of damage suffered as a result of the abuse. A survivor in this category may still file suit against her abuser, so long as suit is filed within three years of discovery of particular injuries."*

**Question:**

**A 50 year old man came to my agency for support because he has become increasingly upset about news reports about sexual abuse of children by Catholic priests. He was molested by a priest when he was an altar boy and has tried not to think about it since. He never told anyone it had happened. Since he started noticing these stories on the news about a year ago, he has been having nightmares and flashbacks of the abuse he endured and is having a very hard time concentrating at work and interacting with his family. Can he bring claims against the Catholic Church? The individual priest?**

**Answer:**

Claims against the priest. The standards for bringing a claim against the sexually abusive priest are the same as those set out for a claim against the uncle in the prior question.

Claims against the church. Religious institutions have a high duty of care for children in their care, both on the premises for services or religious instruction and off the premises for activities of the institution (such as youth camps). If the church in our example had any reason to believe the priest had any propensity to molest children and they allowed him to continue supervising altar boys, then they are responsible for the damage caused to the children. Because of the high level of authority that the Catholic Church exercises over its priests (the right to the priest's obedience in all phases of life activity), the church may even be liable if there was no direct knowledge of propensities of the priest to sexually abuse. In any event, a lawyer knowledgeable in this area will know how to proceed to find out all the pertinent circumstances about the priest and the church.

The time lines for bringing these claims are the same as for the uncle and the mother in the prior example. Your client can file suit anytime within three years of discovery of particular injuries.

*Jo-Hanna Read is an attorney in Seattle and has been practicing law for 29 years. She represents clients in personal injury claims, with emphasis on representation of victims of sexual and/or physical abuse, therapy malpractice, and related areas. She is a member of the Northwest Women's Law Center, the Washington State Trial Lawyers, and the National Crime Victim Bar Association.*

*"Religious institutions have a high duty of care for children in their care...if the church...had any reason to believe the priest had any propensity to molest children and they allowed him to continue supervising altar boys, then they are responsible for the damage caused to the children."*

## WASHINGTON STATE ATTORNEY REFERRALS

### Save the Date!

The 2006 WCSAP Annual Conference is May 23-25, 2006 in Spokane, WA.

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2415 Pacific Ave, SE  
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*WCSAP is committed to fostering a culture of respect, dignity and autonomy for all individuals. We recognize that disrespect, ignorance and the abuse of disparities in power are the roots of sexual violence. To that end, WCSAP endeavors to engage with agencies and individuals who share our commitment.*

WCSAP maintains a list of attorneys throughout Washington state who have received training from WCSAP on sexual assault issues and have agreed to take case referrals from rape crisis centers. Please contact the Legal Services Department at WCSAP if you need an attorney referral. I encourage you to discuss with any attorney you intend to use as a referral, the possibility of reduced fees for clients that you refer to them. For more information and/or assistance in developing attorney referrals in your region, please contact Kelly O'Connell, Staff Attorney, at [kelly@wcsap.org](mailto:kelly@wcsap.org).

## WEB RESOURCES

Crime Victims Compensation  
[www.lni.wa.gov/ClaimsIns/CrimeVictims/default.asp](http://www.lni.wa.gov/ClaimsIns/CrimeVictims/default.asp)

Office of Crime Victims Advocacy  
[www.cted.wa.gov/ocva](http://www.cted.wa.gov/ocva)

Victim Services Program – WA Department of Corrections  
[www.doc.wa.gov/CPU/victim\\_svcs.htm](http://www.doc.wa.gov/CPU/victim_svcs.htm)

Northwest Women's Law Center  
[www.nwwlc.org](http://www.nwwlc.org)

Washington Coalition of Sexual Assault Programs  
[www.wcsap.org](http://www.wcsap.org)



