



WCSAP
Washington Coalition of
Sexual Assault Programs

THE ADVOCACY STATION

Legal Advocacy Tips & Resources

Last year, WCSAP prioritized gathering information about sexual assault legal advocacy practices because we have heard from advocates that survivors continue to face many challenges within the legal system. This means that legal advocacy is also challenging and that advocates need support for their work in this system.

We gathered information from community sexual assault programs during site visits and requests for technical assistance, and primarily via an extensive legal advocacy assessment tool. In January and February 2014, WCSAP used this assessment tool to gather information from Washington State sexual assault advocacy program staff about advocacy within the Washington State criminal and civil legal systems. You can view a summary of the statewide assessment findings and common themes here: <http://www.wcsap.org/legal-advocacy-assessment-survey-2014>

WCSAP is continually working to improve the legal system's response to survivors and to meet advocates' needs around legal advocacy work. The purpose of the assessment was to help WCSAP prioritize and guide future activities such as training, collaboration, resource development, and system advocacy. Due to the complexity of the findings, we decided to develop this resource document that provides information, guidance, and additional resources (including recorded training) in response to specific questions raised and challenges identified in the assessment and in requests for technical assistance.

Role of the Legal Advocate¹

The legal advocate provides objective, knowledgeable, and supportive advocacy on behalf of the survivor, making sure that they have the information about the criminal and civil justice systems necessary to make critical decisions. The legal advocate also provides systems advocacy and coordination on behalf of the survivor in order to ensure that their rights are being upheld.

The legal advocate's role depends on how an individual survivor is engaged with the legal system and what the survivor's needs are. Some examples of legal

¹ This content is adapted from WCSAP's Advocate Core Curriculum, Day 4 Instructor's Manual.

advocacy are: (1) serving as a liaison between the survivor and the legal system, (2) facilitating the survivor's decision-making by providing legal information, (3) informing the survivor of their rights, (4) preparing the survivor for the legal system experience by being knowledgeable about how the system operates in their community, and (5) accompanying the survivor to criminal or civil court proceedings.

There are two legal systems; the criminal system and the civil system. It is important for advocates to know which system the victim is involved in or potentially will be involved in. Navigating each system requires knowledge of the different processes, players, and available resources, relevant victims' rights, and avenues for advocacy.

The purpose of the criminal justice system is to punish someone who has committed a crime. The state (in the form of the Prosecutor's Office) brings charges against the person who harmed the victim (e.g. State of Washington vs. Defendant Smith). The victim may be an essential witness in the case, but they are not a party and do not "press charges" on their own behalf. This means that the Prosecutor is not the victim's attorney and is not required to act on the victim's behalf and in their interest the way a private attorney does. The Prosecutor should still engage the victim in the process and comply with victims' rights laws. An emerging area of law, victims' rights law, contends that it may be in victims' interests to have their own attorney to represent their rights. In a criminal case, the Prosecutor must prove beyond a reasonable doubt that the defendant committed the crime. This is a very high burden of proof, and a Prosecutor must determine whether the evidence in each case allows them to meet it prior to filing charges. Victims choose not to engage with the criminal justice system for a variety of reasons, one of which is that many sexual assault crimes that are reported do not result in filed cases.

The purpose of the civil legal system is to make an injured party whole through awarding monetary damages to the survivor, ordering the other party to stop doing an act that harms the survivor (injunction), or other civil remedies. In civil court, the survivor is initiating the action and is a party to the case (e.g. Petitioner Survivor vs. Respondent Smith). Some examples of civil cases are: (1) divorce or custody matters, (2) protection orders, or (3) personal injury lawsuits. Since many people cannot afford to hire an attorney and legal services at free or reduced cost are of limited availability, survivors often represent themselves in court "pro se." The standard of proof in a civil case is a preponderance of the evidence, which means that evidence shows that it is more likely than not that the respondent caused the harm to the survivor. This is a low burden of proof.

Community based advocacy should be available for survivors in both systems. A trustworthy advocate who knows the legal system in their community and can

have confidential communication with the survivor is essential. Survivors may ask advocates' advice about their case, and advocates in both systems must be careful to provide information but not advice. They should not apply the law to the facts of the survivor's case (e.g. "The law says that someone who has experienced sexual assault may be able to take time off of work" vs. "You can sue your employer because they fired you when you took time off for your SAPO hearing").

Advocacy in the Criminal Justice System

Prosecutorial and Defense Interviews

Accompaniment during interviews with survivors of all ages is a key aspect of legal advocacy. However, we have heard that some prosecutors and advocates may have reluctance around this role due to concerns that the advocate could be called as a witness.

There is always the possibility that you could be called as a witness in a case when you are providing advocacy services to victims who are engaged with the criminal legal process. Most often, you will be able to avoid testimony by citing Washington law which privileges the communication between an advocate and a victim ([RCW 5.60.060](#)). However, victim interviews are not a confidential communication by nature, meaning that the information gathered during these interviews can be accessed by involved parties in a criminal case. Transcripts and recordings from these interviews are often available to recount what was discussed. Additionally, because there are third parties present, communication between the advocate and the survivor during the interview is not privileged.

The possibility of being called as a witness should not deter you or the prosecutor from offering advocacy to survivors during prosecutorial and/or defense interviews. In Washington State, ALL victims and witnesses of crime have a right to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews ([RCW 7.69.030](#), [RCW 7.69A.030](#)). Defense interviews can be especially intimidating for victims and can also be pivotal to a case. It is important that victims know what to expect during an interview and have the tools and support to exercise as much control over the process as possible.

Part of your role as a legal advocate is to ensure that victims' rights are being upheld and that they can make informed choices about exercising those rights. You will want to talk to the victim (or the victim's nonoffending caregiver) about their right to have an advocate present and the potential pros and cons of your accompaniment to the interview so they can decide what is in their best interest.

If the victim chooses to have you present, you will also want to be mindful of what you talk about and in the presence of whom, so that the victim's confidentiality is protected as much as possible.

Facilitating Survivor Input and Preparing Young Survivors for Trial

When a survivor and their family are told that charges have been filed in their case, they may assume that they will have to testify at trial. However, our statewide assessment showed that most child and adult cases in Washington are resolved by plea rather than a jury trial. Furthermore, we learned that many survivors in our state do not have knowledge and/or input about plea negotiations. Thus, it is important that survivors are educated about the options for a case's resolution, and are provided an opportunity to share their wishes and priorities with the prosecutor handling their case.

You may want to help a survivor and/or their caregiver think about how they feel about the possibility of testifying and what they want most as a result of their engagement with the process. Is their priority a maximum sentence, sex offender registration, treatment, or simply an acknowledgement of guilt? Additionally, child victims have a right to "allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child" ([RCW 7.69A.030](#)). While the prosecutor will make the ultimate decision about how to move forward with a case, they should take all of this information into account and be transparent with survivors about their role, priorities, and limitations. If it is not routine for your prosecutor to meet with a survivor at the start of the case to discuss their hopes for the outcome and their concerns about the process, this is something you will want to talk with the prosecutor's office about establishing.

When cases involving child victims do go to trial, many families are surprised to learn that their child will be required to testify. Although there is a statute in Washington that allows for closed circuit testimony for children under the age of 14 ([RCW 9A.44.150](#)), this can only be utilized in very specific circumstances and happens rarely. This option is certainly something to talk with your prosecutor about, but in most cases, your advocacy will focus on preparing the child and the family for testifying in open court. The tips below can help survivors feel prepared and safer. These tips are especially relevant for children and teens but many will be helpful for survivors of all ages:

- Outside of a specific case, talk with your prosecutor about pre-trial motions and informal strategies at their disposal to make testifying more comfortable and child-centered. The resource from National Child Protection Training Center (NCPTC) below has multiple suggestions.

- Work with the prosecutor to ensure that the survivor has a chance to become familiar with a court room and meet with the prosecutor prior to trial. These additional meetings will also help to build trust and rapport.
- Brainstorm strategies that the survivor can use during testimony if they are feeling anxious or scared, such as simple breathing exercises, calming thoughts, or having something in their pocket that they can hold.
- Facilitate a discussion between the prosecutor and the child about taking breaks during testimony. The prosecutor should plan to take frequent breaks, as well as agree on a "signal" that the child can use to indicate a need for a break.
- Model how caregivers and system partners can talk with the child about testifying. It is the prosecutor's job to prove the case; it is the child's job to tell the truth to the best of their ability. There are no right or wrong answers. No matter the outcome, we want the child to feel heard and believed and know that adults will continue to work to keep them safe.

Regardless of how a case ultimately resolves, having a voice and the opportunity to meaningfully participate in the process can be very powerful for survivors of all ages. The goals and priorities of our criminal justice partners may not always align with those of survivors, but advocates can still seek ways to help survivors feel empowered and heard when this happens.

Additionally, trauma-informed practice emphasizes the importance of helping survivors know what to expect. You can do this by providing general education about the criminal justice process in your community, but also by making sure that they receive regular updates about their case. It is the advocate's role to help facilitate this, and it is crucial given that the criminal justice system offers survivors little control over the process.

Additional Resources

- [*A Courtroom for All: Creating Child and Adolescent-Fair Courtrooms*](#) from the NCPTC has information that will be valuable for both advocacy and prosecutorial practice in cases involving child victims.
- The King County Sexual Assault Resource Center developed a practical resource of *Defense Interview Pointers* for advocates and victims: http://www.wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/webinars/Legal_Advocacy_CJS/DefenseInterviewPointersFinal.pdf
- Legal Advocacy in the Criminal Justice System (recorded webinar and links to related resources): <http://www.wcsap.org/legal-advocacy-criminal-justice-system>
- Research & Advocacy Digest – Child and Teen Survivors in the Criminal Justice System: <http://www.wcsap.org/child-teen-survivors-criminal-justice-system>

Systems Advocacy with Legal System Partners

Addressing Low Filing Rates for Sexual Assault Cases

Some advocates may be working in communities where, despite reports being made, charges in sexual assault cases are rarely being filed. This is discouraging and disheartening for individual survivors, but we also know that it has larger impacts on the community as a whole. When the systems in a community are not working to hold perpetrators accountable, it creates an environment where perpetrators feel safe to continue committing crimes and survivors are discouraged from coming forward. It also communicates to the broader community that addressing sexual violence is not a priority. The following are some strategies for your systems advocacy work to improve the legal response in your community:

- Identify avenues to have open conversations with your prosecutor about what the barriers are to taking these cases forward. Is it a lack of confidence or training in handling sexual assault cases? Is it a resource issue? Are investigations not producing the level and quality of evidence needed? Or is it a lack of investment? Go into the conversation with an open mind and a willingness to be a part of the solution. These barriers are not insurmountable.
- You may want to do some informal data gathering at your agency to provide tangible evidence of your concerns. For those cases your agency is involved with, track the type of case and the filing decision. Are there patterns that help to identify gaps and strengths? Remember, comprehensive case tracking also depends on you being connected with survivors going through the system. Are you consistently receiving referrals from your criminal justice partners or are you only involved in a fraction of the cases being investigated?
- The discretion of detectives also has an impact on whether cases move forward in the system. Staying in contact with detectives to make sure survivors are updated on their case status will also help to ensure that cases don't fall through the cracks and are ultimately forwarded to prosecutors for review.
- Examine the relationship between and the practices of law enforcement and prosecutors and support their collaboration. Both partners need to be invested in and trained to respond to sexual assault cases in order for them to be successfully prosecuted. For example, law enforcement may become apathetic about investigations if they are putting in a lot of effort and resources and prosecutors are unwilling to take on the cases they forward. On the other side, a prosecutor's case is only as good as the evidence they have to prove it; if law enforcement's investigations are poor, prosecutors will have difficulty filing charges.

- Talk with the prosecutor about the possibility of meeting with survivors whose cases have been declined for filing. This is an opportunity for a survivor to ask questions and for the prosecutor to explain the considerations that led to their filing decision. Most importantly, it is a victim-centered practice that acknowledges a survivor's engagement with the system and gives them information. But it also creates a sense of accountability to survivors and the community, as well as an avenue for systems advocacy.
- Continue to educate your community. Community members comprise your juries, and prosecutors are assessing how they think a jury will respond to the circumstances of a case when they are making filing decisions. The more community members understand about the dynamics of sexual assault, the more confident a prosecutor will be in their ability to take a case forward successfully.
- Utilize your other community partners to address this issue. Do they have concerns as well? How can you work together to instigate and support change? Your SART or multidisciplinary team meetings may be a good place to discuss what you collectively want the response to look like and how you can work together to get there. Avoid placing blame and look at the collaborative response as a whole; everyone has a role in improving sexual assault case outcomes.

General Considerations for Legal Systems Advocacy

In WCSAP's recent assessment, we asked multiple questions about how sexual cases are handled in the criminal justice system. While we gathered some helpful information, we also received a lot of "unsure" responses to the following questions:

- Are prosecutors regularly filing charges and/or do they track the filing rate?
- Do cases typically end in plea rather than trial?
- How long do sexual assault cases usually take to resolve?

It is difficult to identify gaps and advocate for improvements in the system response if we don't have this type of information. We have to know *what* isn't working in order to pursue the *why* and the *how*. Furthermore, we need to know the answers to these questions in order to provide information that helps survivors be prepared for what the process will look like and make decisions about engaging with the system.

We also heard from several survey respondents that there is inconsistency in referrals from system partners and a lack of communication between these partners and advocates/victims. These issues are significant barriers to individual and systems legal advocacy.

If these challenges resonate with you and your agency, it may be time to go back to the basics. What is the status of your community's sexual assault task force or multidisciplinary team? What protocols are in place and how are they working? What steps can be taken to re-establish or revitalize relationships with your system partners?

Sometimes a community's response to sexual assault can change abruptly or over time without us really knowing how it happened. Advocacy agencies may need to be the catalyst for assessing and re-building the foundations of collaboration among community partners.

Additional Resources

- WCSAP's Advocacy Station on *Multidisciplinary Teams*:
<http://www.wcsap.org/multidisciplinary-teams>
- The King County Sexual Assault Resource Center created a resource about supporting survivors when their cases are declined and the purpose of decline meetings with the prosecutor:
http://www.wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/webinars/Legal_Advocacy_CJS/DeclinesandMeetings.pdf
- End Violence Against Women International is a wealth of practical training and resources that promote victim-centered, multidisciplinary collaboration to strengthen the response of the criminal justice system to sexual assault: <http://www.evawintl.org>
- *Washington State Sexual Offense Bench Guide for Judges*:
<https://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=manuals/SexualOffense/index>

Advocacy in the Civil Legal System

Sexual Assault Protection Orders (SAPOs)

In the 2014 legal advocacy assessment, advocates reported that sexual assault survivors experience multiple issues at SAPO hearings. The two most prominent reported issues were that: (1) judges/commissioners don't appoint an attorney for the petitioner when the respondent has one, and (2) SAPO hearings are treated more formally than Domestic Violence Protection Order (DVPO) hearings (more similar to a mini trial). With both issues, it's important to start with what the law says.

The SAPO statute (RCW 7.90.070) provides that "The court may appoint counsel to represent the petitioner if the respondent is represented by counsel." This statute is permissive rather than mandatory (e.g. may appoint vs. shall appoint), which means that it is up to the judge or commissioner's discretion whether to

appoint an attorney for the survivor if the respondent-perpetrator has one. Here are some questions for your agency to consider as you work on this issue in your community:

- Does your judge/commissioner know they can appoint an attorney for the survivor if the respondent-perpetrator has one? If they do know, what are the barriers to doing so?
- Does your court have a list of attorneys willing to be appointed in these cases?
- Do you know attorneys who have represented survivors at SAPO hearings before?
- Or do you know attorneys who understand sexual assault and practice in your community?
- Can you ask these attorneys if they would be willing to volunteer their time to be appointed for survivors in SAPO cases?
- Or does your court have funds for appointing attorneys in other types of cases (criminal defense, guardians ad litem, etc.) that the court would be willing to use to pay an attorney who is appointed to represent a survivor at a SAPO hearing?

In protection order hearings, the court is not required to apply the rules of evidence that they apply in other types of cases (Evidence Rule 1101(c)(4)). The assessment findings indicate that judges/commissioners apply the rules of evidence more often in SAPO hearings than in DVPO hearings. Consider the following:

- The SAPO is a newer protection order. Does the judge/commissioner know that the rules of evidence do not need to be applied in SAPO hearings?
- If the judge/commissioner knows, can you help them understand why the rules should not be applied in SAPO hearings?
 - SAPO hearings are civil proceedings. A respondent cannot be convicted of a sex offense or required to register as a sex offender because of the result of a SAPO hearing alone.
 - Like DVPOs, petitioner-survivors are likely to be representing themselves at SAPO hearings and will not be familiar with the rules of evidence.
- If the judge/commissioner chooses to apply the rules of evidence, it is even more important that an attorney be appointed for the survivor.

Additional Resources

- Sexual Assault Protection Order bench card for judges:
<https://www.courts.wa.gov/content/manuals/SexualOffense/CHAPTER9AppendixB.pdf>
- *The Impact and Application of Washington's SAPO Statute* (recorded webinar and links to the King County Sexual Assault Resource Center's CourtWatch report): <http://www.wcsap.org/impact-and-application-washingtons-sapo-statute-0>

Employment Law & Immigration Legal Issues

Advocates who responded to the legal advocacy survey indicated that they are seeing survivors who are experiencing sexual harassment in the workplace and some are safety planning with survivors about their work places. Many advocates were unsure whether survivors were experiencing issues related to the need to take leave time from work for legal appointments or ongoing medical care. Advocates also indicated that survivors are experiencing immigration legal issues. These are both areas that WCSAP has focused training and resources on in recent years. What can your agency do to be responsive to these needs?

- Consider modifying intake questions to get at employment-related needs.
- Educate yourself about available remedies for survivors with immigration-related issues.
- Expand the scope of your safety planning to encompass the different concerns a survivor may have in these two unique situations.
- Employ systems advocacy in your community when you hear that immigrant survivors are fearful of engaging with the legal system. Immigration status is not relevant when someone has been the victim of a crime and should not have to be a deterrent to seeking remedies available in civil matters either.

Additional Resources

- The Connections issue on *Access to Justice: Civil Legal Advocacy* has an article on Employment issues and remedies:
<http://www.wcsap.org/access-justice-civil-legal-advocacy> (Page 1)
- *What Are the Remedies for Sexual Assault in the Workplace?* (recorded webinar): <http://www.wcsap.org/what-are-remedies-sexual-assault-workplace>
- *Sexual Harassment and Assault in the Workplace, Part 2: What's An Employer Supposed to Do?* (recorded webinar):
<http://www.wcsap.org/sexual-harassment-and-assault-workplace-part-2-whats-employer-supposed-to>

- *Research & Advocacy Review: Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*: <http://www.wcsap.org/immigrant-farmworkers-sexual-violence>
- *Know Your Rights* is an educational WCSAP brochure in Spanish and English that can be given out to community members. It addresses workplace violence and workplace rights, legal and immigration rights, housing, language access, and reproductive rights: <http://www.wcsap.org/conozca-sus-derechos>
- Although not focused specifically on legal advocacy, WCSAP's 2014 bilingual (Spanish/English) issue of *Connections on Advocacy with Latin@ Immigrant Survivors of Sexual Violence*, provides a wealth of information and resources on working with immigrant survivors that will benefit your legal advocacy work: <http://www.wcsap.org/intercesi%C3%B3n-con-latins-sobrevivientes-de-violencia-sexual>
- Crossing Borders Project (partnership with WSCADV) immigration legal resources: <http://cbonline.org/links/tag/legal>

General Legal Advocacy Issues

Judicial Education & Finding Qualified Attorneys

In last year's assessment, advocates indicated in multiple places that they were unsure if there were attorneys in their community that understood sexual violence, or that they knew there were limited attorneys who did.

Building relationships with local attorneys is essential to ensuring that sexual assault survivors have knowledgeable, competent representation available to them. There are a number of resources available to assist you with this work:

- WCSAP's guide, *Developing Attorney Referrals and Pro Bono Resources in Your Community* (link to <http://www.wcsap.org/developing-attorney-referrals-pro-bono-legal-resources-your-community>), was designed to provide you with practical tools to help you cultivate attorney referrals in your own community. It offers a variety of ideas about how to develop pro bono resources and attorney referrals; some may be more appropriate for your community than others. This guide was developed in 2005 and has not been updated. Although much of the information remains accurate, WCSAP's structure has changed and no longer includes a Legal Services Department.
- The Washington State Bar Association maintains an updated list of county bar associations on its website (link to <http://www.wsba.org/Legal-Community/County-Bar-Associations>). If you have not had contact with your local bar association, find out where they are located and set up a

meeting to tell them about your services and find out about any pro bono programs they have.

- WCSAP has developed a list of professional legal resources for advocates. It is updated regularly and can be found on our website: <http://www.wcsap.org/professional-legal-resources-advocates>
- WCSAP's recent issue of Connections, focused on *Access to Justice: Civil Legal Advocacy*, features an article about child sexual abuse allegations in family law cases that you may want to share with any attorneys practicing in this area in your community: <http://www.wcsap.org/access-justice-civil-legal-advocacy> (begins on page 12).

Advocates also reported that they did not feel confident in judges/commissioners' understanding of sexual violence and that survivors encountered negative or victim-blaming attitudes. In 2012 – 2013, WCSAP participated on a statewide work group to develop a bench guide for judges about sexual assault. A recent WCSAP resource explains the guide and describes how it can be used to educate judges/commissioners in your community:

- *Research & Advocacy Review: Washington State Sexual Offense Bench Guide for Judges*: <http://www.wcsap.org/washington-state-sexual-offense-bench-guide-judges>

Responding to Subpoenas

Although it is not happening often, sexual assault programs' records are being subpoenaed or otherwise requested, and advocates are being subpoenaed and requested to testify. Programs indicated that they don't always feel prepared to respond and would like assistance in this area. How can you get prepared for this before it happens?

- Have a policy about responding to subpoenas and specific procedures that detail the steps to take and who will take them.
- If you have not already, identify a neutral attorney (not the Prosecutor or a member of your board of directors) who you trust to help you respond to a subpoena if needed.
- Don't forget to consult with the survivor! Sometimes we are so zealous about protecting a survivor's information that we forget to ask what they want us to do.
- Remember that a subpoena is a formal request, not a court order. You cannot release a survivor's information with just a subpoena, unless they sign a release allowing you to do so.

Additional Resources

- In January 2015, WCSAP co-hosted a webinar with WSCADV about responding to subpoenas. The trainer, Emily Cordo of the YWCA of King and Snohomish Counties' Sexual Violence Legal Services, provided invaluable practical information about subpoenas. Every sexual assault program should listen to this webinar: <http://www.wcsap.org/we-got-subpoena-now-what>
- WCSAP's Accreditation Toolkit contains a sample policy on Responding to Subpoenas: <http://www.wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/Accred%20Toolkit%20August%202014.pdf> (begins page 64).