

Connections

A Biannual Publication of
Washington Coalition of
Sexual Assault Programs

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Access to Justice: Civil Legal Advocacy

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Protections for Survivors of
Sexual Assault

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Child Sexual Abuse Allegations
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Resources



A study of Washington women found that only 15% of women who were sexually assaulted reported their assault to the police and 50% of those reports resulted in charges being filed.

Letter from the Editor

Kelley Richardson – Advocacy Specialist, WCSAP

Sexual assault is a pervasive problem, but few survivors choose to report their assault to the police. They decide not to engage with the criminal legal system for a variety of reasons. Often, survivors fear that they will not be believed or will be blamed for the assault.

In addition, only a tiny fraction of reported sexual assaults result in convictions. A study of Washington women found that only 15% of women who were sexually assaulted reported their assault to the police and 50% of those reports resulted in charges being filed. A comprehensive national study confirms that this phenomenon, known as the justice gap, is a national problem. The National Violence Against Women Survey found that just over 19% of rapes of women and about 13% of rapes of men were reported to the police. Of the women whose rapes were reported, just under 8% of said their rapist was criminally prosecuted, about 3% said their rapist was convicted, and just over 2% said their rapist was incarcerated.

Aside from the very real possibilities of negative treatment and a lack of results, survivors may simply not be able to get what they need from the criminal justice system. The purpose of the criminal justice system is to punish wrongdoers, but punishment may not be what a survivor wants for her or his healing process. For survivors who have other priorities, wants, or needs, the civil legal system may offer a remedy.

This issue of Connections focuses on civil legal advocacy. As advocates, when we think of legal advocacy, we may focus on activities such as

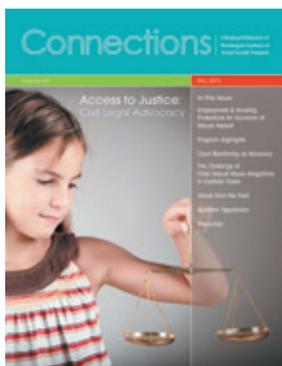
supporting a survivor at a defense interview, or accompanying a survivor to trial. Let's challenge ourselves to think outside of the criminal justice box and consider other remedies that may meet survivors' needs. This issue of Connections explores those remedies, focusing on employment and housing protections for survivors, court watching as an alternative to traditional legal advocacy, and the complexities of child sexual abuse allegations in custody cases. In addition, we highlight six Washington programs' outstanding legal advocacy work and provide a list of Washington-specific professional legal resources for advocates to access when the advice of a legal professional is needed. We hope that this issue will encourage you to consider alternative avenues for legal advocacy and support you in your existing civil legal advocacy work.

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WCSAP
Washington Coalition of
Sexual Assault Programs



Access to Justice:
Civil Legal Advocacy

The mission of the Washington Coalition of Sexual Assault Programs is to unite agencies engaged in the elimination of sexual violence through education, advocacy, victim services, and social change.

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Legal Voice works to advance women's rights in the Northwest.

Employment & Housing Protections for Survivors of Sexual Assault

David Ward – Legal & Legislative Counsel
Legal Voice

WCSAP: For those who are not familiar, can you tell our readers a bit about your organization, Legal Voice, and what you do?

Ward: Legal Voice works to advance women's rights in the Northwest. We were founded in 1978 as the Northwest Women's Law Center and we are based in Seattle. We seek to advance women's rights through ground-breaking litigation, legislative advocacy, and the provision of legal information and referral services.

Legal Voice believes that all women have these fundamental rights: (1) the right to be safe wherever they are; (2) the right to equal treatment and to be free from discrimination; (3) the right to decide when and how to form and maintain their families; (4) the right to economic equality and independence; and (5) the right to be healthy and active.

Employment

WCSAP: How is sexual harassment defined by Washington State and/or federal law?

Ward: The courts have defined two types of sexual harassment: Quid pro quo and hostile environment.

"Quid pro quo" literally means "something for something." In the workplace, quid pro quo sexual

harassment occurs when a supervisor or higher-level manager asks for or demands sexual favors from an employee in exchange for employment benefits. For example, if a supervisor told an employee that she must have sex with him to keep her job or get a promotion, that would constitute quid pro quo sexual harassment.

"Hostile environment" sexual harassment has been defined by Washington courts as workplace harassment that is: (1) unwelcome; (2) because of the person's gender; (3) sufficiently pervasive that it affects the terms and conditions of employment; and (4) is imputable to the employer (that is, the employer knew or should have known of the harassment and failed to take reasonably prompt and adequate corrective action).

Both types of sexual harassment can also occur in rental housing. For example, if a landlord tells a tenant that he will raise her rent unless she has sex with him, that would constitute quid pro quo sexual harassment. Similarly, if a landlord repeatedly subjects tenants to harassment based on their sex, it could constitute hostile environment sexual harassment.

WCSAP: What are the possible civil legal remedies for someone who has been sexually harassed or sexually assaulted at work?

Washington law allows survivors of sexual assault (as well as survivors of domestic violence and stalking) to take leave from work (RCW 49.76).



Ward: A person who is sexually harassed at work can pursue civil remedies under both federal and state law. In some respects, Washington state law provides broader protection against sexual harassment than federal law. Persons who can prove sexual harassment may be entitled to receive lost wages (both past and future), job reinstatement, restoration of job benefits, promotion, damages for mental anguish and emotional distress, and litigation costs and attorney fees.

WCSAP: What should sexual assault advocates know to better help someone who is being sexually harassed or sexually assaulted at work?

Ward: Sexual harassment law can be complicated. Here are a few important guidelines:

- It's very important to meet the deadlines for filing claims of sexual harassment. Failing to act in a timely manner can result in employees losing their right to bring a complaint.
- If it is safe, the employee should make it clear to the harasser that the offensive behavior is not welcome.
- It is important for employees to report complaints of ongoing harassment to management and to ask that steps be taken to eliminate the abuse. If the employer has established a procedure for reporting complaints, follow them. Workers should also be aware that their complaint probably will not be kept confidential.

Legal Voice has a publication called "Sexual Harassment in the Workplace" that discusses many other common sense guidelines for individuals who are considering bringing a sexual harassment claim. You can get a copy of the publication on our website

(legalvoice.org/tools/employment-rights.html), or by calling Legal Voice's Legal Information and Referral line at 206-621-7691 (toll free: 866-259-7720).

WCSAP: Can survivors of sexual assault take leave from work? If so, for what purposes can they take leave?

Ward: Washington law allows survivors of sexual assault (as well as survivors of domestic violence and stalking) to take leave from work (RCW 49.76). The law applies to all employers, regardless of their size. The employee is allowed to take leave that is reasonable in duration. The law specifies that survivors can take leave for these purposes:

- To seek legal or law enforcement assistance or remedies to ensure their health and safety, including (but not limited to) preparing for or participating in any civil or criminal legal proceeding related to or derived from sexual assault, domestic violence, or stalking.
- To seek treatment by a health care provider for physical or mental injuries caused by sexual assault, domestic violence, or stalking.
- To obtain services from a rape crisis center, a domestic violence shelter, or other social services program for relief from sexual assault, domestic violence, or stalking.
- To obtain mental health counseling related to an incident of sexual assault, domestic violence, or stalking.



Under the law, the employee must notify her or his employer that the employee intends to take leave.

- To participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee from future sexual assault, domestic violence, or stalking.

The law also allows an employee to take leave to help a family member obtain these services or to participate in these activities.

WCSAP: What is required of someone who wants to take leave under this law?

Ward: Under the law, the employee must notify her or his employer that the employee intends to take leave. The law provides:

- The timing of the notice shall be consistent with the employer's stated policy for requesting such leave, if the employer has such a policy. If the employer does not have a stated policy for requesting leave, the employee must give advance notice as soon as practicable for the leave requested.
- If advance notice can't be given because of an emergency or unforeseen circumstance due to sexual assault, domestic violence, or stalking, the employee (or a designee of the employee) must give notice to the employer no later than the end of the first day that the employee has taken such leave.

The law also provides that an employer may require that the request for leave be supported by verification that the employee (or the employee's family member) is a victim of sexual assault, domestic violence, or stalking, and that the leave is taken for one of the purposes discussed above.

An employer can't request that an employee submit a specific type of document to verify the need for leave. Instead, the law provides that an employee

may submit her or his choice of any of the following documents to satisfy an employer's request for verification: (1) a written statement by the employee; (2) a police report; (3) a court order, such as an order for protection or a criminal no-contact order, or another kind of court document showing that the employee or the employee's family member appeared in court; (4) a written statement or document from a professional who helped the survivor, such as a sexual assault or domestic violence victim advocate, a member of the clergy, an attorney, or a health care provider.

WCSAP: Can an employer require a survivor to provide details about the sexual assault?

Ward: No. Although the employer may require verification that the employee or the employee's family member is a survivor of sexual assault, the employee cannot be required to provide details about the sexual assault. In addition, the law requires the employer to maintain the confidentiality of the verification information provided by the employee.

WCSAP: What can a survivor do if an employer refuses to allow him or her to take leave under this law?

Ward: The survivor can file a complaint with the state Department of Labor and Industries, which will investigate the complaint. If the Department finds that the employer violated the law, it must impose a penalty on the employer. The survivor can also file a complaint against the employer in Superior Court. The employee can file a complaint in court without first filing a complaint with the Department of Labor and Industries. The survivor can seek to recover the actual damages that she or he sustained, an injunction to stop further violations, and attorney fees for the costs of bringing the lawsuit.

Washington law allows survivors of sexual assault, domestic violence, stalking, or unlawful harassment to terminate a lease without penalty (RCW 59.18.570 – RCW 59.18.585).



WCSAP: Is there anything else advocates can do to help a survivor who needs to take leave from work or is experiencing problems with taking leave?

Ward: It is very important to let survivors know about the notice requirements for taking leave, and that their employer may require them to provide verification to support their request for leave. An employee who does not comply with the notice or verification requirements in a timely manner may lose the right to take leave.

Legal Voice has a publication called “Leave from Work for Survivors of Domestic Violence, Sexual Assault, and Stalking” that provides more information about this law. Advocates and survivors may obtain this publication on our website (www.legalvoice.org/tools/violence.html) or by calling our Legal Information and Referral line at (206) 621-7691 (toll-free: 866-259-7720).

The Department of Labor and Industries also has information about the law on their website. (www.lni.wa.gov/WorkplaceRights/LeaveBenefits/FamilyCare/DomViolence/default.asp).

Housing

WCSAP: What can survivors of sexual assault do if they are no longer safe in their home but they have a rental agreement/lease?

Ward: Washington law allows survivors of sexual assault, domestic violence, stalking, or unlawful harassment to terminate a lease without penalty (RCW 59.18.570 – RCW 59.18.585). To terminate a lease, a survivor must take the following steps within 90 days of a sexual assault:

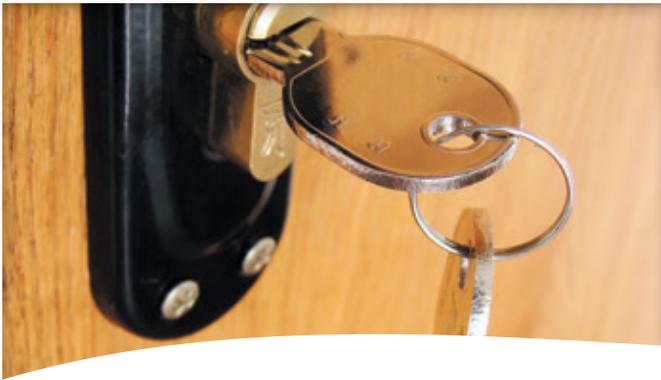
- Either obtain a valid protection order or obtain a record that the survivor reported the sexual assault to a “qualified third party.” The qualified third party may be a law enforcement officer, a state court employee, a health care professional, a licensed mental health professional or counselor, a clergy member, or a crime victim/witness program advocate.
- Notify the landlord in writing that the survivor is a victim of sexual assault, domestic violence, stalking, or unlawful harassment and attach a copy of the protection order or the record of the report to a qualified third party.

WCSAP: Can survivors of sexual assault change the locks on their rental home/apartment for safety reasons? If so, what is required?

Ward: In some circumstances, survivors of sexual assault can change the locks on their rental units. However, they must follow certain requirements.

First, if a survivor has been sexually assaulted by another tenant in her or his unit and has obtained a valid court order that excludes the other tenant from the home, the survivor may request that the landlord change the locks. The survivor must provide the landlord with a copy of the court order. The landlord can require the survivor to pay the cost of the lock change. The law also provides that the landlord cannot give a copy of the new key to the other tenant.

Second, Washington law allows a survivor who is sexually assaulted or unlawfully harassed by the survivor’s landlord (or by an employee of the landlord) to change or add locks to her or his unit. In such cases, the tenant must comply with these requirements:



Within 7 days of changing or adding locks, the tenant must deliver to the landlord a written notice that the tenant has changed/added locks, AND . . .

- Within 7 days of changing or adding locks, the tenant must deliver to the landlord a written notice that the tenant has changed/added locks, AND either (a) a copy of a protection order the tenant obtained against the landlord; or (b) a record that the tenant has reported the assault or harassment to a “qualified third party” (see the description of who may be a “qualified third party” under question 10).
- If a tenant changes or adds locks under these circumstances, the tenant’s lease will automatically terminate 90 days after giving notice of the lock change/addition to the landlord. The tenant may also choose to terminate the lease earlier than 90 days after giving notice. If the tenant later decides not to terminate the lease, the tenant can stay in the unit if she or he notifies the landlord within 60 days of providing notice of adding/changing locks that the tenant does not wish to terminate the lease. However, if the tenant decides not to terminate the lease after changing or adding locks, the tenant may have to provide the landlord with a copy of the new key to the unit, unless the tenant has obtained a valid protection order against the landlord.

WCSAP: What else can be done about sexual harassment or sexual assault by a landlord?

Ward: The survivor may also want to consider filing a civil complaint against the landlord. A tenant who is sexually assaulted or sexually harassed by her or his landlord may be able to seek civil remedies against the landlord under the federal Fair Housing Act or the Washington Law Against Discrimination. The survivor should consult an attorney to discuss those options. The survivor may contact Legal Voice’s Legal Information and Referral line to seek more information or to obtain a referral to an attorney. The number again is (206) 621-7691 or toll-free at 866-259-7720.

WCSAP: Is there anything else sexual assault advocates should know in order to better help a sexual assault survivor with these housing issues?

Ward: It can be complicated for survivors to comply with the requirements to terminate a lease or change/add locks to their units. To assist survivors and advocates, the Northwest Justice Project has written a publication called “Landlord/Tenant Issues for Survivors of Domestic Violence, Sexual Assault, and/or Stalking.” This publication describes how survivors can terminate a lease or change locks. It also provides sample letters and forms that survivors can use to comply with the requirements of the law.

The publication is available on the Washington Law Help website ([washingtonlawhelp.org](http://www.washingtonlawhelp.org)). Here is a link to the publication: <http://www.washingtonlawhelp.org/documents/1694016304EN.pdf?stateabbrev=WA/>

David Ward has spent his career working for equal justice, both in the courts and in the legislature. After graduating from Yale Law School in 1998, he joined the Seattle office of Heller Ehrman and later served as a staff attorney at the Access to Justice Institute at Seattle University School of Law, managing a program for survivors of domestic violence and stalking. David joined Legal Voice in 2008, where his work focuses on gender violence, family law, and LGBT rights. He has also been appointed to serve on the Washington State Gender and Justice Commission and the Board of Directors of the GLBT Bar Association of Washington Foundation.



New Hope Domestic Violence and Sexual Assault Services Serving Grant and Adams Counties

Suhail Parrish – Legal and Community Advocate & Protection Order Clinic Coordinator

WCSAP: Could you tell me a bit about the community that New Hope serves?

Parrish: We are an agricultural community; a majority of work is farming. We serve mostly low income clientele.

WCSAP: What kind of civil legal issues are the survivors you serve experiencing?

Parrish: Most of our clients have the same needs. They are in need of a protection order, divorce, parenting plan and residential schedule; the undocumented clients need help with immigration and immigration status.

WCSAP: How do you advocate for survivors who are experiencing these issues?

Parrish: We assess their situation and figure out their needs. For legal issues we have a partner in the community—Northwest Justice Project. One of the attorneys comes once a month and helps us with divorces, parenting plans, and residential schedules. I help the victims with the protection order and the hearings. For the immigration issues we also have Northwest Immigrant Rights Project that we can refer them to.

WCSAP: What do you do if you think a survivor you are working with needs an attorney?

Parrish: We have the Northwest Immigrant Rights Project [attorney], but because he is working with different counties it is extremely difficult for the attorney to actually represent them in court, unless it is a severe case. So what we do is a lot of calling to find an attorney that is willing to do pro bono work, or find an attorney that is willing to guide you into finding an attorney that can give you legal advice. We are in need of legal aid attorneys.

WCSAP: What would you tell a program in a similar community to yours that may be struggling with providing civil legal advocacy services?

Parrish: You need to get out and meet these people who provide these services, work with them, let know how much their services are needed, and tell them about the people that need their services; take the client with you so that they can meet them.



Court Monitoring as Advocacy

COURTWATCH
Reflections on Justice 

Laura Jones, JD – Program Manager, CourtWatch
A program of the King County Sexual Assault Resource Center

WCSAP: For those that are not familiar, could you tell our readers what CourtWatch is?

Jones: CourtWatch is a court monitoring program of King County Sexual Assault Resource Center (KCSARC) based in Renton, Washington. Court monitoring is a way to gather information about the courts that includes the real-time observation of court proceedings, as well as conducting research on individual cases. Our program engages volunteers from the community to observe civil and criminal proceedings related to sexual assault and child abuse, and the data collected by CourtWatch monitors is used to make recommendations that will improve the justice system. Benefits of court monitoring include:

- The presence of community volunteers promotes transparency in court proceedings.
- Monitors represent the public perception of the justice system, and their observations and feedback can support policy efforts that address gaps in the system.
- Court monitoring increases public understanding of the justice system and the unique issues surrounding sexual assault cases.

WCSAP: What prompted KCSARC to start the CourtWatch program?

Jones: We saw the value in having data to identify patterns and trends of behavior that could be used to raise awareness about issues in, and to support improvements to, the legal system. Our program wasn't founded in response to any specific problems. Once it was established in early 2010, the Sexual Assault Protection Order process revealed itself as a good subject for a monitoring project because they are a relatively new order and there seemed to be inconsistencies and accessibility issues in how the cases were handled.

WCSAP: What was your process for analyzing the impact and application of the Sexual Assault Protection Order (SAPO)?

Jones: In order to compile data on the SAPO process, we reviewed electronic court records of all the SAPO cases filed in or transferred to King County Superior Court in 2010. Our staff and volunteers also observed and took notes on 51 hearings in 41 different SAPO cases.

WCSAP: Could you summarize some of the key findings thus far?

Jones: The good news about SAPOs is that they filled a gap that had previously existed for many sexual assault victims. A large majority of victims did not have a family/household relationship with the respondent, and as there was usually “only” one assault in each case, those victims wouldn’t have qualified for a Domestic Violence Protection Order or Anti-Harassment Order. Additionally, we found that SAPOs appeared to be an effective means to protect victim safety as a search of public records in 2010 cases did not reveal violations by the respondents after the protection orders were issued.

Despite these positive findings, we noted several access to justice issues with the process. I’d like to highlight a few here:

- The rules of evidence were inconsistently applied, with some judges running SAPO hearings more informally and relaxing the rules of evidence, very similar to the format of a Domestic Violence Protection Order hearing. Other judges ran hearings as mini-trials, even referring to the proceedings as “trials” where they enforced the rules of evidence and/or required witnesses to testify on the stand.
- When legal advocates were involved with a case, there was an 80% success rate in getting the order granted, compared with a 34% success rate for petitioners without an advocate. We attribute the higher success rate to advocates keeping petitioners engaged in the process, conveying what to expect at court, and determining whether a SAPO is the appropriate remedy.
- In cases where the respondent had an attorney, but the petitioner did not, even when the petitioner had an advocate, the SAPO was always dismissed. Similarly, if the petitioner had an attorney and the respondent did not, the order was granted in almost all the cases. This shows that a party without an attorney is at a huge disadvantage if the other side is represented.

You can access a copy of the report at: <http://www.kcsarc.org/courtwatch> to see all of our findings and recommendations.

SEXUAL ASSAULT PROTECTION ORDERS

- ⇒ The rules of **evidence** need not be applied. ER 1101(c)(4).
- ⇒ The respondent must be **personally served** at least 5 days prior to the hearing. If personal service has not been made, the court shall continue the hearing and reissue the temporary SAPO for up to 14 days to allow personal service. The temporary SAPO may be renewed one or more times, as required. RCW 7.90.050, 7.90.120(3).
- ⇒ Evidence of a petitioner’s **prior sexual conduct or reputation** is generally inadmissible, and should not be admitted without holding an in camera hearing after the respondent files a written motion 14 days before the hearing. RCW 7.90.080, ER 412.
- ⇒ If the court finds by a **preponderance of the evidence** that the petitioner has been a victim of nonconsensual sexual conduct or nonconsensual sexual penetration by the respondent, the court shall issue a sexual assault protection order. RCW 7.90.090(1)(a).
- ⇒ The court can order that a respondent under age 18 **transfer schools** after weighing the safety of the petitioner against the burden on the respondent. RCW 7.90.090(3).

COURTWATCH
Reflections on Justice 



A PROGRAM OF KING COUNTY SEXUAL ASSAULT RESOURCE CENTER . KCSARC.ORG

Editor’s Note: Cut this out and take it with you to court!

SEXUAL ASSAULT PROTECTION ORDERS

HEARING BENCH CARD

- ⇒ A **final SAPO** may be granted for up to two years. RCW 7.90.120(2).
- ⇒ **Mutual protection orders are disfavored** due to enforcement concerns.
- ⇒ **The court must not deny an order due to any of the following:** the minor status of either party; the petitioner did not report the assault to law enforcement; there is no proof of physical injury to the victim; either party was voluntarily intoxicated; or the petitioner engaged in limited consensual touching. RCW 7.90.090.
- ⇒ All continuances and final orders should be issued **on the record**. RCW 7.90.120.
- ⇒ Best practice is to hold SAPOs until the **end of the calendar** to protect the parties' privacy when a full hearing will be held due to the sensitive nature of the proceedings.
- ⇒ The court should **minimize contact** between the parties by clearly instructing them where to sit/stand before, during, and after their hearings.
- ⇒ A **legal advocate** must be allowed to accompany the victim to court. RCW 7.90.060.
- ⇒ If the respondent is represented, the court may **appoint an attorney** for the petitioner. RCW 7.90.070.



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Editor's Note: Cut this out and take it with you to court!

WCSAP: Do you have an example of how you have used your findings in King County?

Jones: Our report was sent out to all King County Superior Court judges, and we have noted some improvements, such as judges reading the statute aloud prior to hearings and calling SAPOs at the end of the calendar when the courtroom is less crowded. Based on our findings, we have created a bench card which can be used as a quick reference guide for judges on SAPO law, and that recently was given to all district and superior court judges in King County.

We have used the findings internally so that our advocates can better prepare their clients for what to expect when going before a certain judge, and to determine when it would be most effective for a client to be represented by an attorney.

WCSAP: How could an advocate use the findings from your report to advocate for the court to appoint an attorney for a survivor in a SAPO hearing when the perpetrator has an attorney (RCW 7.90.070)?

Jones: A petitioner could request that the court appoint an attorney for them under RCW 7.90.070 when the respondent has an attorney, and make the argument that such an appointment is necessary to "level the playing field," and ensure that the petitioner understands the process, and that his/her interests are adequately represented and conveyed to the court.

Advocates may also find it useful to use the bench card we created for judges for other issues that arise during SAPO hearings. Having it available may help to ensure that the law is properly enforced, as the card summarizes several key provisions of the statute and cites to those sections in the RCW. [Editor's Note: a copy of this bench card has been reprinted here for your use]

WCSAP: I know that CourtWatch provides confidential feedback to Judges. How receptive have Judges been to this?

Jones: Judges seem to be very receptive to receiving confidential feedback which contains both positive and negative observations about decorum and treatment of parties in their courtrooms. As Judge Regina Cahan stated, "You always want to do the best

you can... What I would be sensitive to is if people felt I wasn't treating them respectfully and fairly—and I'd want to know that from all sides." Currently, nearly 40% of all King County Superior Court judges are signed up to receive feedback.

WCSAP: Sexual assault programs in other counties may be interested in starting their own CourtWatch program. Could you provide a few tips or strategies that may be helpful for programs, from your experience?

Jones: Our first step was gathering information. We spoke with other court monitoring programs around the country and justice system personnel in King County, as well as spending a significant amount of time in court. We also worked closely with a program based out of Minneapolis called WATCH. Their staff provided technical assistance to us, and was a great resource in getting our program off the ground. I would highly recommend that anyone interested in starting a court monitoring program or project contact them. Their website, www.watchmn.org, also has really great (and free) resources available.

Groups that are interested in monitoring can focus on a particular aspect of the system to monitor, instead of creating an entire program dedicated to monitoring. Focusing on a specific type of hearing, similar to what we have done with SAPOs, and tracking data for a certain amount of time, is a very effective way to draw attention to issues within the system.

Similarly, court monitoring does not necessarily need to be done in person; reviewing public records and conducting data analysis is also a great way to identify trends within the justice system. For example, we do this to track the number of sexual assault cases filed in a year, and the average time that it takes a sexual assault case to progress through the system from filing to sentencing.

I think one of our greatest successes has been getting the program off the ground and our name out there in a relatively short amount of time. Also, we have been able to attract wonderful, committed, and smart volunteers; their excellent observations have been critical to helping us to identify patterns and trends of behavior.

One challenge that we initially faced was how to manage the volume of information that we received from various sources (e.g. court calendars, probable cause certifications, dockets, and notes from our volunteers). We created a database to track criminal and civil cases as well as volunteer hours and activities, and are able to run reports based on this information.

WCSAP: Could you tell me about your use of volunteers for CourtWatch?

Jones: Our CourtWatch Monitors are all volunteers and we have a half-time CourtWatch Services Coordinator whose primary responsibility is volunteer management. We recruit from a variety of sources: local colleges and universities, the Retired Senior Volunteer Program (RSVP), VolunteerMatch, KCSARC supporters, Idealist.org, local community centers, and United Way. We typically ask that volunteers commit to a minimum of six months with CourtWatch.

Prior to their first court monitoring shifts, our volunteers complete a mandatory 6-hour orientation where they learn about the dynamics of sexual assault, an overview of the criminal justice and protection order processes, and how to take effective monitoring notes. The volunteers are trained to be unobtrusive observers, and are identifiable in court by their yellow clipboards. During their first shift, volunteers are given a courthouse tour, and CourtWatch staff or veteran volunteers accompany them to answer questions and to debrief afterward. We also host quarterly continuing education seminars to enhance our volunteers' knowledge of the system, as well as to provide a forum for everyone to come together.

Laura Jones, JD, joined King County Sexual Assault Resource Center (KCSARC) in February 2010 as the CourtWatch Manager. In that role, she analyzes the data collected by CourtWatch volunteers and follows up with community and professional stakeholders to the justice system to improve the process for victims. Laura earned a BA in Spanish and Political Science from the University of Washington and her juris doctor from Seattle University School of Law.



The Challenge of Child Sexual Abuse Allegations in Custody Cases

An Interview with Seth Goldstein – Attorney at Law, and Melissa Hilton – Paralegal
Kelley Richardson – Advocacy Specialist, WCSAP

[Editor's Note: Mr. Goldstein uses the words "mother" and "protective parent" interchangeably during this interview, to indicate the parent who is seeking to protect the child from abuse. In his practice, he primarily represents mothers.]

WCSAP: In your experience, when do allegations of child sexual abuse arise in custody litigation?

Goldstein: Well, the literature, as well as my own experience, tells us that the allegation can come in one of basically five stages of divorce:

- Before the divorce, and the person files for divorce as a result of discovering the abuse.
- Inadvertent discovery when the child has been with the abusive parent for visitation during the course of the litigation. The child comes home, and as the result of being in a safe environment, away from the offending parent, blurts out what happened. A very young child may reenact [the abuse] or may do something else that is consistent with integrating the abuse into their life experience.
- During a discussion or argument with the protective parent, as a result of being angry at the abusive parent, the child tells about the abuse.
- The child is afraid to return to visitation with abusive parent and makes disclosure.

The fifth way, which we see very commonly now, is where the father has been a batterer and decides that he is going to punish mom by abusing the child, and uses the child as a missile to carry the hurt back to the mother. He is also intentionally creating an allegation of abuse, so that he can discredit the mother, get custody away from the mother, to destroy her financially, emotionally, and take her kid away; punishing her in every way that he can using the court system as a new way to batter her. Unfortunately, the courts have judges, custody evaluators, professionals, law enforcement, and social services that don't recognize that is what this is.

WCSAP: What can a parent do to ensure that the attorney he or she hires is competent to handle a case involving child sexual abuse allegations?

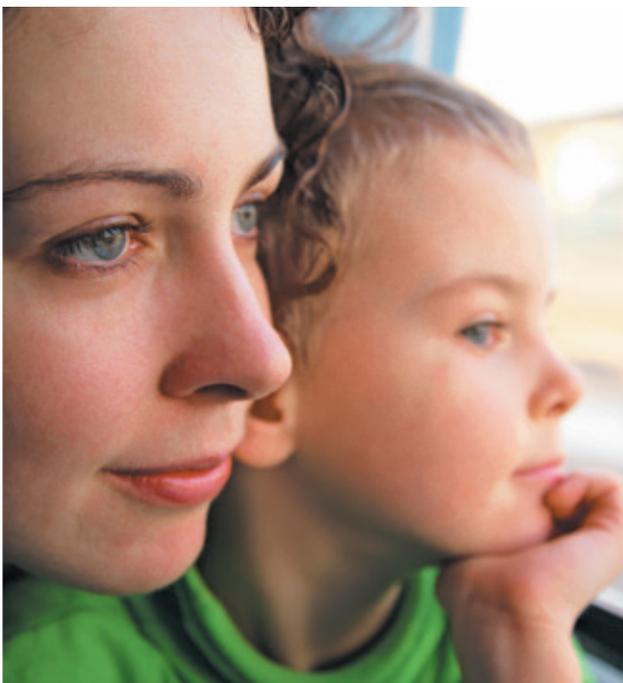
Goldstein: What often happens is the unwary mother goes to the family lawyer, and the family lawyer is either not experienced or not willing to admit that they really don't know what they are doing, and they take the case, and unfortunately they send it down the wrong path. This is one of the reasons why [advocates] are so important. They really need to be able to create a network of referrals to lawyers who have experience in dealing with sexual assault, domestic violence, and in particular child sexual abuse in custody cases.

Hiring the right lawyer is a critical element to success in these cases. The lawyer needs to be someone that has a good working knowledge of the particular judge

and the system. That lawyer can anticipate how the judge is going to rule based on previous experiences. But the other way of looking at it, from the bench, is that the judge is going to be more willing to listen to someone that they know. So, it's really important to find a good local lawyer and, if necessary, hire somebody [else] who has the expertise who can help that lawyer put the case on. The way these cases can be won is by going into the courtroom with evidence that is admissible and convincing; that the judge is willing to listen to.

When considering hiring an attorney, the parent needs to ask:

- What is your experience in dealing with child custody in the context of child abuse allegations?
- What is your knowledge around sexual abuse?
- Can you provide me with references to your previous clients who can vouch for the work you have done for them?
- Do you have experience with litigation involving child sexual abuse in family court or in juvenile court?



WCSAP: When these allegations arise, what is the response from the abusive parent?

Goldstein: The best defense in these cases is a good offense. They immediately attack the mom and anyone who comes to the support of the mom or the child. They say that the child can't really have experienced these things; it has to be that somebody has influenced the child. They accuse the mom of making up the allegations to win an advantage in the custody case.

Hilton: Also, abusive parents will do lots of things to create diversions. So, you can have them doing four or five different things to get the mother off kilter, so she is constantly having to defend everything that she is doing, and it gets to the point where everybody is focusing on her rather than on what the child says or what is happening in the dad's home. They are very good at spinning anything. It could be the mother doesn't take the kid to school on time. They will just bombard the mother with accusations about anything. A scraped knee will turn into a need for stitches; the list goes on.

Protective parents' instincts are to defend themselves, but the abuser will get them defending themselves in regard to every little thing that they do. It's a way of emotionally overwhelming the protective parent to the point where she doesn't know where to go or what to do because she is constantly defending herself, and she gets exhausted. She can't really be there for the child, either, because she is having to run around and prove all the allegations against her aren't true and in the meantime the case is beginning to escalate.

The tests that are part of custody evaluations are not set up to look at the fact that the mother is a victim of domestic violence. So, on some of her responses in the testing, she could look impulsive or defensive, when in fact, these are common characteristics of someone who has been battered or has experienced other trauma, rather than someone who is mentally unstable.

Goldstein: And the abusive parents bring it to the court as "this mother cannot be parenting this child properly, and therefore that's why this accusation can't be believed. She can't do anything else." They are extremely good at gaming the system. The court has become the battering ram.



WCSAP: So, in cases where there is a judge who doesn't understand child sexual abuse, what kind of action can an attorney take to create the opportunity for more education?

Goldstein: It is difficult to get a judge who has already started down a path to see the alternative and see that the alternative is a reasonable one. Often there are cases where temporary orders are issued that are contrary to protecting the child, and discredit the allegation. So, what the lawyers need to do is find an expert that the judge is willing to listen to, and has previous experience with. The judge will be more willing to accept the evidence that expert presents.

Other than expert testimony, the best way to educate the court is through the use of convincing and accurate case precedents, as well as articulation of the research and policies that are behind the law. So, I often file and cite policies or procedures [in my briefings] that are recommended by organizations such as the National Council of Juvenile and Family Court Judges, the American Psychological Association, the American Professional Society on the Abuse of Children, the American Bar Association, and the National Judicial Education Project's "Adjudicating Child Sexual Abuse Allegations in Custody Cases" curriculum.

WCSAP: How long do custody cases involving child sexual abuse allegations take?

Goldstein: Well, some of them can take about 20 minutes if there is the right evidence and there is no way of refuting it. Other cases can go on for years. We are in a case where closing arguments will be offered in a couple weeks and it's been going on since 2005. Getting to a trial can be very difficult even if it's something that has just recently happened. So, you can expect that the case is not going to get through the system in any quick fashion, for a number of reasons. Chief among them is that the offending parent is going to delay and delay and delay until the kid's memory [fails] and the mom's actions in the interim give them something to raise the [rug] and [pull it] out [from] underneath them.

Hilton: The saddest thing is that everybody has the perception that there are all these things set up to help someone in this situation, but that doesn't necessarily mean that's the case.

Hilton: Basically, when you are talking about family court judges, they are sitting in a room, listening all day to people bickering over small, little things. So, they get worn down because they are only human. Because of this, when an abuse case comes up, they may mistakenly see it as two people bickering over a child.

Goldstein: Unfortunately, they are seeing such a small snapshot of what's going on in the family, that they really have no way of knowing, and they rely largely on the recommendations of custody evaluators, the police, social workers, because they cannot make a determination by simply watching the parents in the courtroom and listening to the evidence there. They are often faced with very, very difficult decisions based on very, very little information.

WCSAP: What are some options, generally, for a parent seeking to increase his or her child's safety while a custody case is pending?

Goldstein: A protective parent needs to be very circumspect about what they say and what they do without first talking to a lawyer, if they can afford one. In California, I'm told that almost 70 to 80 percent of litigants in family court are not represented. The many problems with family court are compounded by the difficulties a parent faces when trying to protect their

kid. It's important to go to the right resources, to have the internet as your friend – there is a lot of good stuff out there. The one website that I know of that is really good in terms of trying to protect children in these situations is leadershipcouncil.org. There is a whole section on how protective parents can represent themselves. Then, they need to find the right local resources to help them marshal their evidence.

There's a book that I highly recommend, written by a law professor named John E. B. Myers, called "A Mother's Nightmare – Incest." He is the most often quoted legal authority on intervention in child abuse cases in the country (i.e. the United States Supreme Court). His book is insightful, it talks specifically to the parent trying to protect his or her kids, gives them a roadmap to follow, and, more importantly, talks about the danger signs, pitfalls they may encounter if they don't go down the right path.

Pending the final hearing, temporary custody orders are the norm. That's one of the most difficult parts of these cases. Once the child has made an accusation, and the court still allows [the abusive parent] unfettered access to the child, the evidence is going to evaporate.

Hilton: Unfortunately, sometimes the protective parent has to do things [like allow the child to go to visitation with the abusive parent]. It's horrible and it is counter to what a parent expects she should do. [If a parent submits a] request for a restraining order, it's very important to spell out exactly what has occurred, what has been said. Don't be wishy-washy. A lot of [people] think that the judge will get angry if you write this, or he won't believe it. But, you have to write down literally everything that you have heard, that the child has said, that you have witnessed, or else later on down the line when you say, "This is what happened," and it's not in that document, they will say, "Well, now she is really making up stories. If that happened, she would have put that in the papers in the first place." It's very important to make sure every piece of information is in that document, regardless of how explicit it is.

WCSAP: What are some common outcomes for custody and parenting time in these cases?

Goldstein: There is a wide spectrum, from "mom loses custody and never sees her kid again" to "the court intercedes and issues an order that is sufficient to protect the child from future abuse and gives the

child an opportunity to still engage in some kind of relationship with the parent " [if that is in the child's best interest]. Unless the burden is met to demonstrate that the parent is a danger to the child, the parent is going to have access to the child, and that can be anywhere from some kind of supervised visitation to outright mutual access to the child. Supervised visitation is very seldom a successful option because the offending parent manipulates the situation to his advantage. Especially with young children, it's very difficult to establish that there is a need for protection. If the protective parent is seen as making accusations that are motivated by the need to gain an advantage, the court may issue a punitive custody order that restricts the protective parent's rights of access, which is detrimental to the child, because the child is placed with the offending parent.

Hilton: It's really important for protective parents to be aware that even if you get an order that [says] the parent definitely shouldn't have any access to the child and they are ordered to get treatment, that five years down the line, after he jumps through all of his hoops, he can show up again and say, "I want custody," and it starts all over again. Custody cases are never "over" until the child is 18.

We need to give hope for women in this situation. The truth is that knowledge is power. So, empowering women to have the ability to continue keeping the rest of their life as normal as possible is really the key to not falling apart and giving up.

Women also need to know they are not alone. It is important, even without having a positive outcome, for a woman to become empowered by looking at her situation in a different way.

WCSAP: Do you think that the outcome improves if the allegations are substantiated by a CPS finding or criminal conviction?

Goldstein: Well, I think that it certainly helps. The fact that you have an allegation that has been sustained by the law enforcement agency or social service agency is no guarantee that you will prevail in family court. Most importantly, you should not become overconfident if that is the case.

WCSAP: What are some areas where sexual assault advocates can have an effective role?



“What can I do to make sure that this parent is supported in what she does and gets to the right resources, moves in the right direction?”

Goldstein: Most mothers in these situations are caught between a rock and a hard place, because they are condemned for almost anything that they do. The strategy the mother employs for getting assistance for her and her child has to be very carefully thought out, so that the efforts that are made in the beginning are not turned against her. It's a matter of knowing the right resources, having the right contacts, sending the person to those people in such a way that the evidence that comes out is, (1) admissible, (2) credible, and (3) doesn't discredit or cast a shadow over the mother or the allegations made by the child.

The advocate, from the very beginning, especially when it first happens, when it's first reported, has to have the resources at his or her fingertips to point protective parents to the people who can best help them. Advocates need to be supportive and know their resources, but also know their boundaries and not overstep those boundaries. I think the most important thing that advocates have to be careful of is making recommendations to parents, because many advocates set up expectations for the parents that will be taken to heart. I'll give you an example. The advocate will say, "This is a really good case, you'll have no problems, just go talk to the police officer or go talk to the social worker and they will believe you." And, of course, just because of the nature of the case, that ends up not being what happens. Then, the parent loses trust in the system, in the people that are there to protect them, and they go off on their own doing things that are counterproductive. One of the key things that needs to be at the forefront of the advocate's thoughts, is "What can I do to make sure that this parent is supported in what she does and gets to the right resources, moves in the right direction?" That system advocacy, being on a first-name basis

[with the people who can help] is very important. The rape crisis advocate is one of the first individuals who may be able to point the family in the right direction.

Seth Goldstein was a police officer and prosecutor's investigator. He is now an attorney, expert witness, and trial consultant in California. He has been working to protect children from abuse for 37 years, with 17 years as an attorney. He now represents parents in cases wherein child abuse allegations have arisen. His practice concentrates on child abuse arising in the context of dissolution, custody, and visitation matters. He is a frequent lecturer on this subject, and his writing on the specific topic of child sexual abuse has been published nationally, and recognized by the American Bar Association. He is on the editorial review boards of the Journal of Child Custody and the Journal of Child Sexual Abuse and he was a founding board member of the National Center for Missing and Exploited Children.

Melissa Hilton is a former victim of domestic violence. When her children were abducted by their father to another country, she successfully filed for their return under the Hague Convention. She was eventually awarded sole custody of her children. She has worked with Mr. Goldstein for over 7 years.

Voices from the Field

Civil Legal Advocacy at Stand-Alone Sexual Assault Programs

Megan Allen – Legal Advocacy Program Manager
King County Sexual Assault Resource Center

Kim Foley – Executive Director
Yakima Sexual Assault Program

Julia McFarland – Legal Advocate
Providence Intervention Center for Assault and Abuse (Everett)

WCSAP: What do you think is unique about providing civil legal advocacy services in the context of a stand-alone sexual assault (SA) advocacy program?

Allen: I feel in a stand-alone SA program we often have to advocate for the imminent needs of victims. SA that is without the high level of physical violence that comes with domestic violence (DV) often is minimized. Sexual offenders often present very well—no or limited criminal history, well maintained job history, family and community ties, etc. They are viewed as less threatening, and the courts often view the concern for safety to be more the victim's perception. The sexual assault itself is often not interpreted by the court [to be] as "violent" as physical DV cases. A sexual assault victim's options are often based on how credible she presents. All of her actions or lack of action is analyzed.

Foley: The fact that we do not have dedicated funding for a legal advocate puts victims of sexual assault at a greater disadvantage; especially the children. It also limits the program in that the legal community sees us as less credible due to the lack of funding and support it affords DV programs.

McFarland: It is nice to focus solely on sexual assault resources/support for adult survivors. It keeps the two issues [domestic violence and sexual assault] separate and provides specialized resources and support for each. Recovery is different for each.

WCSAP: Is there anything else that you think is important for sexual assault advocates to know about providing civil legal advocacy services?

Allen: I find advocates are not trained well enough in how to assess for this [possible civil action] as they are working with clients. Advocates need to know that with the right training and confidence they are the best frontline resource for victims getting access to civil legal services. Many clients do not even realize they have options or that they might be able to do something about losing their job because of the sexual assault or a school requesting the victim to change schools because it's easier, etc.

Foley: We learn more all the time. For example, if the respondent comes to court with an attorney, the victim can ask for a continuance or that the court appoint [an attorney]. No guarantee what the judge will say but it is worth it if only to buy some time.

McFarland: The legal system can be confusing and intimidating for survivors/victims. Breaking it down to the easiest explanations and repeating the information is sometimes necessary. Plus, each county has a different way of dealing with civil court matters, which is why it's important for advocates to help support clients.

PROGRAM HIGHLIGHTS



SafePlace



Natalia Palomino – Legal Advocacy Specialist

WCSAP: Could you tell me a bit about the community that SafePlace serves?

Palomino: Last year SafePlace celebrated its 30th year of service to our community. SafePlace serves Thurston County as the only dual DV/SA agency providing free, confidential advocacy services to a broad community of survivors. We're not limited to working with folks from just Thurston, as we often provide support to survivors from neighboring counties and we endeavor to address the broad spectrum of survivors in our community, recognizing that we are also neighbored by Joint Base Lewis-McChord and the Tribal Nations of Nisqually, Chehalis, and Squaxin, which have their own respective support services and programs.

WCSAP: What does SafePlace's legal advocacy program look like?

Palomino: Our legal advocacy program is small in staff, yet broad in scope and breadth. While my title is Legal Advocacy Specialist, all of our advocates who either answer our 24-hour helpline or provide walk-in support to survivors are knowledgeable in general legal advocacy practices. Folks meet with me specifically for assistance with preparing for their DVPO and SAPO hearings; in-court support; relevant safety planning; and resources and referrals to other relevant legal aid, be it civil, family law, immigration, or criminal. Fortunately, we also count on the support of volunteers and interns to provide in-court advocacy. Our Community Services (CS) Program [staff], which includes myself as a bilingual in Spanish Legal Advocate, a full-time and part-time Spanish Speaking Community Specialist, an Asian Culture Advocate, and our Sexual Assault Advocacy Specialist, are often providing intersecting or concurrent services to a client, so while each one of us is a "specialist," we by

and large are collaboratively supporting survivors through our CS Program. Last year alone, 637 people received 909 hours of legal advocacy services through our agency.

WCSAP: How do you advocate for survivors who are experiencing these civil legal issues?

Palomino: We build the capacity of all our advocates, so we're better prepared to support survivors in navigating civil legal processes. As advocates with survivors, supporting their efforts to keep themselves and their family safe, that's ultimately the objective.

In protection order hearings, we use our experiences in court to inform petitioners about what they can expect and guide them through the process of paperwork, testimony preparation. We problem-solve service and transportation issues, and ultimately accompany them through their full hearings. We are always addressing survivor safety and comfort level throughout the process and sometimes that looks like supporting people in dismissing petitions.

With survivors seeking relief through VAWA and with landlord/tenant issues, our advocacy often looks like writing and gathering support documents and creating referrals to appropriate legal organizations. Advocacy often looks like helping survivors organize to address their many legal barriers, according to their own priorities and feelings of safety.

WCSAP: What strategies do you use to address these needs with resources available in your community?

Palomino: For many years we have partnered with our local legal aid organization, Thurston County Volunteer Legal Services, to provide services to survivors. Twice

a month, SafePlace hosts their attorneys in our offices and we have drop-in clinics specifically for those experiencing domestic or sexual violence. Attorneys can review paperwork, give legal advice, talk about procedural issues, etc. We also make direct referrals to the Northwest Justice Project, through their CLEAR DV program, or directly.

We also have some connections with local attorneys that are knowledgeable in the dynamics of DV and SA – without this particular legal experience, clients may find themselves even more disempowered and confused. I love to remind survivors that during the initial consult, they can also interview the attorney. Now, with folks that can't afford legal counsel, I strategize with them to make sure they can at a minimum receive consistent legal consultations, and, in particular cases, advocate for pro bono assistance.

More recently I have been involved in a team created to work with survivors across disciplines. I work with

a prosecutor, detective, and family law attorney to try and create more wrap-around services for survivors with criminal, civil, and advocacy needs. Relying on our partnerships and connections is essential—and the plan is to continue building upon those connections.

WCSAP: What would you tell a program in a similar community to yours that may be struggling with providing civil legal advocacy services?

Palomino: Connect with your local civil legal aid organization, and if there isn't one, establish some working relationships with civil and family law attorneys in your area experienced in working with survivors. Ask survivors about their experience with local attorneys; talk with Northwest Justice Project; and build a pool of trusted contacts. Lastly, collaborate with those trusted contacts, and other legal advocates, and remember to familiarize yourself with how the law is practiced in your community.

Question Oppression



Exploring the Connections Between Sexual Violence & Oppression

Use these questions to explore the connections between sexual violence and oppression with staff, volunteers, or board members. Try discussing one or more at a staff meeting, in-service, volunteer training, or board retreat.

How does the issue of access to justice for sexual assault survivors uniquely affect particular members of your community?

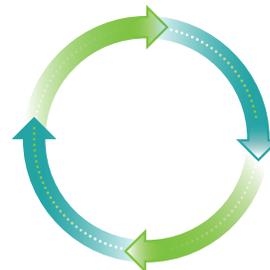
Why might a sexual assault survivor who is a member of a particular cultural group be reluctant to access the legal system for assistance?

What unique challenges might a Native American survivor of sexual assault face when trying to access civil legal remedies?

Resources



Please review these organizations' websites and inform yourself about their specific services, to ensure that the referrals you provide to survivors are appropriate. If a survivor you are working with has a legal need that cannot be addressed by these organizations, please contact WCSAP for technical assistance and to connect with other legal service providers and technical assistance providers.



- **Sexual Violence Law Center** provides consulting, technical assistance, and training for attorneys and rape crisis center advocates; free and confidential Legal Information and Referral Helpline for survivors (or people assisting survivors); resources and publications for attorneys, advocates, and survivors. In King County, SVLC also provides holistic legal services, including direct legal representation, for survivors.
Visit www.svlawcenter.org
- **Washington LawHelp** provides free legal information and a guide to free and low-cost legal help to low-income persons in Washington, including a directory of legal aid programs by county.
Visit www.washingtonlawhelp.org
- **Northwest Justice Project** provides free legal information, advice, limited assistance, representation, community education, outreach, and other community-based advocacy throughout Washington.
Visit www.nwjustice.org
- **Coordinated Legal Education, Advice and Referral (CLEAR)** is Washington's toll-free, centralized intake, advice, and referral service for low-income people seeking free legal assistance with civil legal problems.
Visit <http://nwjustice.org/get-legal-help>
- **Legal Voice** works to advance legal rights for women in the Northwest. They take on court cases with the potential to improve the quality of life for women; they advocate to elected and appointed officials to ensure that women receive fair treatment; and they have a telephone line people can call for free legal information.
Visit <http://www.legalvoice.org/tools/>
- **Northwest Immigrant Rights Project** promotes justice for low-income immigrants by pursuing and defending their legal status. They focus on providing direct legal services, supported by education and public policy work.
Visit www.nwirp.org
- **County bar associations** may have a list of attorneys willing to take on pro bono cases. For a list of county bar associations, Visit <http://www.wsba.org/Legal-Community/County-Bar-Associations>
- **Washington State Bar Association's Moderate Means Program** is a statewide reduced-fee lawyer referral program. The program is for people who would not be eligible for legal aid services but cannot afford to hire a private attorney.
Visit <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program>
- **TeamChild** provides free legal representation and advice to youth, as well as legal education, resources, and trainings to community partners.
Visit www.teamchild.org
- **Street Youth Legal Advocates for Washington** provides information and education to homeless and at-risk youth in the areas housing, education, employment, family law, consumer law, and public entitlements.
Visit sylaw.org
- **Center for Child and Youth Justice** advances justice for and enhances the lives of children and youth through juvenile justice, child welfare, and related systems reform.
Visit <http://www.ccyj.org>



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