

INFORMATION GUIDE FOR VICTIMS OF SEXUAL ASSAULT



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Introduction

Sexual assault is any type of unwanted sexual contact – from touching to intercourse.

Sexual assault is a violent crime, a hostile attack, an attempt to hurt and humiliate.

It can occur without warning, anywhere, anytime, to anyone.

Studies indicate that most victims know their assailants. Most victims are women and most know their assailants. Those who commit an assault can be anyone – strangers, neighbours, spouses, partners, co-workers, classmates, family members and even friends.

According to Statistics Canada, 2003, in cases reported to police, 80% of sexual assault survivors knew their abusers. About 10% were assaulted by a friend and 41% were assaulted by an acquaintance, 28% were assaulted by a family member, while the remaining 20% were assaulted by a stranger.

The Canadian Panel on Violence Against Women found that 38% of sexually assaulted women were assaulted by their husbands, common-law partners or boyfriends. Don't put up with abuse. You deserve better.

This information guide focuses on the details related to sexual assault and is designed to provide you with background about the criminal justice system and the help that is available for victims of sexual assault.

The Law

Assault means the intentional use of force against the victim's will. Examples of assault include touching, slapping, kicking, punching or pushing. It may also be an assault to threaten to use force.

It may not always be possible to fight back and a lack of resistance does not mean you consented to the assault.

If you did fight back, you will not be charged with assault provided you did not use more force than necessary to fight off an attacker. The Criminal Code of Canada has identified three levels of sexual assault based on the degree of force used: Sexual assault, Sexual assault with a weapon, threats to a third party or causing bodily harm and Aggravated sexual assault.

Criminal Code Sexual Assault Offences

Sexual Assault

271.(1) Every one who commits a sexual assault is guilty of
(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or
(b) an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Sexual Assault With a Weapon, Threats to a Third Party or Causing Bodily Harm

272. Every one who, in committing a sexual assault,
(a) carries, uses or threatens to use a weapon or an imitation thereof,
(b) threatens to cause bodily harm to a person other than the complainant,
(c) causes bodily harm to the complainant, or
(d) is a party to the offence with any other person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

Aggravated Sexual Assault

273.(1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.
(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and liable to imprisonment for life.

Spouse May Be Charged

278. A husband or wife may be charged with an offence under section 271, 272 or 273 in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.

If It Happens

If you have been sexually assaulted, assistance is available and you should seek help immediately.

You can...Call the police

The police can take you to the hospital. If you wish, ask a friend or relative go with you.

To help the police gather and protect necessary evidence for their investigation, it is best not to clean or move any items at the scene, wash, change your clothes or even comb your hair.

You should not consume any alcohol, drugs or medication.

You can...Go to the hospital

Once you are at the hospital, tell the person in charge exactly what happened to you.

Some hospitals have sexual assault units with specially trained people to help you.

You can...Call for support services

Victim Services Units exist within most police services.

A Victim Services worker can provide assistance.

If you are not referred for assistance, ask the investigating police officer to put you in contact with Victim Services.

You may also want to call the crisis line or Sexual Assault Centre in your community. Trained counsellors are usually available to provide you with support 24 hours a day.

Write down what happened

It is important that you write down everything you can remember about the incident as soon as possible.

Your written record will be valuable for the police investigation and may be used for court evidence.

The following checklist will help you to record all you can about your assailant including vital details such as:

- | | |
|--|--|
| <input type="checkbox"/> age | <input type="checkbox"/> height/weight |
| <input type="checkbox"/> hair/colour/cut | <input type="checkbox"/> type of hair |
| <input type="checkbox"/> beard/mustache | <input type="checkbox"/> eyes/eyeglasses |
| <input type="checkbox"/> complexion | <input type="checkbox"/> visible scars |
| <input type="checkbox"/> weapon | <input type="checkbox"/> shirt |
| <input type="checkbox"/> coat | <input type="checkbox"/> trousers |
| <input type="checkbox"/> shoes | <input type="checkbox"/> methods of escape/direction |
| <input type="checkbox"/> mannerisms | <input type="checkbox"/> vehicle description |
| <input type="checkbox"/> voice | <input type="checkbox"/> license plate |

What To Expect

It is natural that a variety of questions will arise at the outset of police investigations into cases of sexual assault. Here are some of those questions, along with answers for the common concerns you might share:

Will the police ask me a lot of questions?

- Yes. It is the duty of the police to collect all the evidence they can. They are concerned about you, enforcing the law and finding your attacker. These questions will assist in drawing out further information that will assist with the investigation.

Is a medical examination necessary?

- You should obtain medical attention as quickly as possible. The examination will ensure that you receive prompt and thorough treatment. It will also allow the doctor to conduct tests and obtain samples for use in court.

Can I go to the hospital without calling the police?

- Yes, but you should go to a hospital that has a sexual assault care centre where staff can discuss all of your options.

- You can get medical attention without calling the police. The following is a list of the basic medical care you may receive;
 - Attention to injuries;
 - Option of morning-after pill;
 - Antibiotics to prevent sexually transmitted diseases
 - Blood tests;
 - A tetanus shot.

Will the police want to keep my clothing?

- The police may need to keep your clothing for evidence. They may suggest that you arrange for someone to bring you some other clothes from home.

Will I have to be photographed?

- Photographs may be taken and used as evidence in sexual assault cases. If photographs are necessary you will be given the option of a male or female police photographer.

Why do I have to go to the police station?

- After your medical examination, you will be asked to go to a police facility to make a statement, which is a record of your complaint.
- If you are not well enough to go to the police facility, other arrangements will be made for you.
- Your statement includes everything you can remember about the sexual assault.
- The police will want to know as much detail as possible as your statement is the basis of their investigation.
- Your statement will be videotaped.

Before you leave the police facility, ask the police officers for their names and phone numbers. You may want to call them about details you forgot to give them or you may have questions that later come to mind.

Will I still be involved in the police investigation?

- Yes. If you do not know who attacked you, the police may ask that you look at photos of people, view a lineup of people or describe your attacker's features to a police artist.
- The police may also contact you for follow up, further information and to update you on the investigation. The police may also contact witnesses to gather further information.

If I didn't report the sexual assault when it happened can I still call the police?

- Yes. It is never too late to report a crime.
- An arrest will be made once police are satisfied there is enough evidence to do so. When that happens, there are often further questions:

Will the accused be kept in jail?

- The accused will be released from jail unless the court finds there are good reasons to detain him.
ie; safety concerns, attendance in court.

If the police do not charge the suspect, what steps can I take?

- If the police believe there is not enough evidence to lay a charge, they will let you know. You can ask that this decision be referred to a supervisor for further review. If, after this review, you are still unsatisfied with the result, you can seek independent legal advice for appropriate criminal or civil action. Just because there wasn't sufficient grounds to lay a charge it does not mean the police didn't believe you.
- If there is a lack of information, it may be difficult for the police to find the person responsible for the crime.
- However, the police keep all reports of crimes and it is possible your attacker may be found at a later date.

After The Arrest

The decision to proceed with the charges is based on the Crown Attorney's assessment that there is a reasonable likelihood of conviction on the evidence gathered by the police.

In some cases, the accused pleads guilty and there is no need for a trial and you won't have to testify.

You may, however, be asked to testify at a sentencing hearing to help the judge decide an appropriate punishment. Your Victim Impact Statement will be considered by the judge at the time of sentencing. If you have not been given a Victim Impact Statement form, ask the Victim Services Unit for one.

If you move or change your phone number tell the police or the Crown Attorney. They will want to keep you informed.

If the accused does not plead guilty, the court proceedings will be lengthier which gives rise to questions such as:

Will I need my own lawyer?

- As a witness, you do not need your own lawyer. If you do want legal advice, you can, of course, consult one.

Will my name be on radio, tv or in the newspapers?

- The police will not release your name or any information that may identify you.
- The judge can make a no-publication order, banning the media from giving information about you.
- The first time you go to court ask the Crown Attorney about keeping your name out of media reports.

Court Proceedings

What is the purpose of a Preliminary Inquiry?

- The hearing determines whether there is enough evidence to justify a trial. If the judge decides there is sufficient evidence, the trial will be held in the Court of Queen's Bench. If not, the prosecution of those charges is over.

- If the Preliminary Inquiry is cancelled, it may mean the accused has decided to plead guilty. It could also mean the Defence decided not to hear evidence at this stage and the matter will go directly to trial in the Court of Queen's Bench.

Will I have to attend the Preliminary Inquiry?

- Normally, you will have to attend the hearing. You will receive a subpoena that tells you the date, time and location. It will also have a telephone number you can call if you have any questions.

If there is a trial, will I have to testify?

- Yes. Your testimony is very important and you must testify. You will receive a subpoena that tells you when and where to go to court.

If I'm nervous, who can I talk with?

- A network of police based Victim Services Units has been established throughout the province to provide support. Trained volunteers can provide assistance and information about your case, and criminal justice proceedings. They can help you prepare for court and accompany you to court.
- Sexual Assault Centres also exist in a number of Toronto communities and can also provide crisis intervention, support, education and referrals to appropriate agencies.
- The Crown Attorney and police officers involved, can help by answering any specific concerns you may have.
- You may also want to bring a relative or friend to court with you to provide support.

What will I have to do in the courtroom?

- The Clerk of the Court will call out your name when it is your turn to testify.
- All witnesses give their testimony from the witness stand and are asked to swear to tell the truth.
- You will be asked questions by both the Crown Attorney and the Defence lawyer.

Will I be asked about my sex life?

- There are limitations on what you can be asked in court. The Crown, the police and victim services will be able to explain the specifics of these limitations with regard to your case.
- If the accused is someone you know and someone with whom you've had sexual relations before the assault, you may be asked about those sexual activities.
- You will not be asked about your sexual involvement with anyone else unless the judge rules those questions are relevant to your case.

What else happens before the trial ends?

- Other witnesses such as the police, doctors, nurses or those who saw you after the attack may be required to testify.
- Evidence such as photos, clothing and medical records may be presented.
- The defence lawyer may call the accused and other witnesses to testify, but the accused does not have to testify.
- If a guilty decision is handed down, sentencing may be postponed for a few weeks.

After the trial

You may be asked to testify at a sentencing hearing to help the judge determine an appropriate sentence. Your Victim Impact Statement, will be considered by the judge at this time.

The punishment is based on the law, the circumstances of the crime and whether or not the person found guilty had previous convictions. If the accused is found not guilty, it means that guilt could not be proven.

Financial Compensation

As you are a Crown witness, you are eligible for reasonable travel and accommodation expenses if the trial is in a place other than where you live. Other expenses may be considered upon application to the Clerk of the Court.

Victim services and the police will assist with this process.

Glossary Of Terms

Accused

A person charged with a crime.

Bail

The accused is released with conditions.

le:- no contact with a victim, cannot attend address of victim.

- attend court as directed.

-abstain from alcohol/drugs.

Failure to abide by such conditions may result in the accused being arrested.

Criminal Code of Canada

The codification of most of the criminal offences and procedures in Canada.

Cross Examine

To be cross-examined is the questioning of a witness called by the opposing counsel, crown or defence.

Crown Attorney

The Crown represents the state or Canada. The Crown Attorney is a lawyer that at trial presents evidence of the crime and tries to prove that the accused committed the crime.

Crown Witness

A Crown witness is anyone the Crown subpoenas to court to testify on the Crown's behalf.

Defence Counsel

The Defence Counsel is the lawyer who represents the accused.

Evidence

Evidence in its broadest sense includes anything that is used to determine or demonstrate the truth of an offence.

Preliminary Hearing

A fact finding procedure in court in an attempt to determine if there is enough evidence to proceed to trial

Judge

One invested with the authority to preside and administer the law in a court in Canada.

Jury

A certain number of person, selected and sworn to deliver a verdict upon the evidence presented to them.

Plea

The accused person's answer with regard to the allegations – pleading guilty or not guilty.

Probation

The suspension of a sentence of a criminal court, granted upon the condition of good behaviour and the accused complying with such terms as may be imposed by the court.

Sentence

This is the formal judgement of a court in criminal proceedings which follows the conviction of a person whereby some form of punishment is imposed upon the accused.

Sexual Assault Evidence Kit

Items collected from the victims body by health care professionals for the purpose of being used in court as evidence, ie DNA.

Subpeona

A subpoena is a court order that tells you when and where you are required to attend court. It is a criminal offence not to go to court when you receive the subpoena.

Testimony

The evidence of a witness given orally in a court.

Trial

A court proceeding in which evidence is presented to a judge or judge and jury with regard to the allegations. Witnesses testify and physical evidence is presented.

Victim Impact Statement

The victim impact statement is a form given to survivors so that they can detail the effects that the sexual assault has had on them and other members of their family.

Conclusion

As a victim of sexual assault, this information guide may help you through a difficult time.

It is important for you to remember that support is available in your community.

CONTACTS

For general information about Victims Programs contact:

Victim Services Program of Toronto
40 College Street
Toronto, Ontario
M5G 2J3
416-808-7066
www.victimservicestoronto.com

Ministry of the Attorney General
Ontario Victim Services Secretariat
Victim/Witness Assistance Program
18 King Street East, 7th Floor
Toronto, Ontario
M5C 1C4
416-314-2447
1 (888) 579-2888
<http://www.attorneygeneral.jus.gov.on.ca/english/about/vw/vwap.asp>

For general information about Sexual Assault contact:

Toronto Rape Crisis Centre

416-597-8808

24 hour support

www.trccmwar.ca

Sexual Assault Care Centre

The Scarborough Hospital, Grace Division

3030 Birchmount Road

Scarborough, Ontario

M1W 3W3

416-495-2555 TTY: 416-498-6739

<http://www.sacc.to>

Sunnybrook & Women's College Health Sciences Centre -

Women's College Campus

Sexual Assault / Domestic Violence Care Centre

76 Grenville Street

Toronto, ON - M5S 1B2

Tel: 416-323-6012

<http://www.womenscollegehospital.ca>

Your local police service

Toronto Police Service

40 College Street,

Toronto, Ontario

M5G 2J3

Non emergency 416-808-2222

EMERGENCY 9-1-1

<http://www.torontopolice.on.ca>

