

REPORTING SEXUAL ASSAULT

Deciding to report child sexual abuse or sexual abuse as an adult involves a complex decision that is best made knowing the potential legal and emotional consequences. What may be helpful in the healing process for some, can set back and cause great distress to another. This pamphlet will outline some important considerations on which to make an informed decision on whether pursuing criminal charges would be beneficial or detrimental in regards to your life and emotional well-being.

YOU ARE NOT ALONE

- 1 out of 4 girls is a victim of sexual abuse before the age of 18
- 1 out of 5 boys will be sexually assaulted by the age of 18
- 1 out of 2 women have experienced some form of unwanted sexual contact in their lifetime
- 90% of survivors knew their abuser

THE LAW

Sexual Interference:

Every person who sexually touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years is guilty of an offence.

There are **exceptions**:

- if the accused took reasonable steps to ascertain the complainant's age
- where a 12-13 year-old complainant gave consent to an accused, who is not more than 2 years older, so long as the accused is not in a position of trust or authority, in a relationship of dependency or one that is exploitive
- where a 14-15 year-old complainant consented to an accused, who is less than 5 years older, so long as the accused is not in a position of trust or authority, exploitive or dependent relationship
- if the 14-15 year-old complainant consented and is married, in a common law relationship or has with the complainant (or has had) a child
- if the accused is 12-13 years-old and not in a position of trust or authority

Invitation to Sexual Touching:

Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person is guilty of an offence.

Exceptions: same as sexual interference

Sexual Exploitation:

Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency, or who is in a relationship with a young person that is exploitative of the young person, and who

(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.

Incest:

Every one commits incest who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent or grandchild, as the case may be, has sexual intercourse with that person.

Sexual Assault:

Three levels of sexual assault are contained in the *Criminal Code*:

- 1) Assault without a weapon
- 2) Assault with a weapon or bodily harm
- 3) Assault with permanent bodily harm

WHAT SHOULD YOU DO IF AN ASSAULT HAS JUST OCCURRED?

- **Call 911.** The response time can vary depending upon the circumstances and the priority of the call at that time. If you are in immediate danger, due to injuries sustained or because the assailant is nearby, the 911 dispatcher can summon police and medical help.
- If you are under 16 yrs of age, the sexual assault **MUST** be reported to police.
- If the idea of a police officer coming to your home causes anxiety, as you may come under scrutiny of neighbours, inform the operator and discuss other options.
- Do **NOT** change or throw out your clothes, bathe, or shower, as you may destroy valuable evidence.
- The scene should be left alone until the police have had an opportunity to investigate. The court must rely upon evidence to determine innocence or guilt, so it is very important to make every effort to preserve physical evidence.
- Do tell someone you trust
- Write out a detailed description of the event soon after the sexual assault. It can be used as an excellent tool for your future recall of the events.
- Ensure that you are prepared to provide the police with specific details about the assault.
- The Sexual Assault Centre provides trained volunteers to offer support and guidance throughout this process.

WHAT SHOULD YOU DO IF THE ABUSE OR THE ASSAULT OCCURRED IN THE PAST?

- It is recommended that you call the non-emergency police number listed in the front of your local telephone directory. Your call will be transferred to a police officer, who will ask you to come to the station or send someone to speak with you.
- Calling allows for an opportunity to schedule a mutually agreeable meeting time, instead of showing up at a time when it is really busy and no-one is available to take a report, or the staff is too busy to deal with you effectively.
- Procedures can vary depending on the jurisdictions, with larger jurisdictions having more specialized staff. As a result, the police officer that you initially have contact with may not necessarily have training or expertise in sex crimes.
- If the assault occurred recently, make sure this is known as there may be evidence present that the police can collect.
- Take time to figure out specifically and as accurately as possible the details of the event
- You may feel annoyed, diminished, saddened, or even humiliated by the apparent emotional detachment of the police throughout the process. Bear in mind that receiving a sexual assault claim is part of a police officers' job: they are trained to gather information in a neutral and calm manner. If you omit details, refuse to answer questions, lie or mistreat the police officer, your credibility can be negatively affected.
- A victim services worker from the police agency can help you emotionally with this part of the process. Ask for a referral at the earliest opportunity.

The Report:

- When you report sexual abuse to police you are taking the first step in assigning criminal responsibility.
- The reporting process can be a very distressing and anxiety-provoking experience
- Victims of sexual crimes don't always report immediately after an assault for a number of reasons: they feel confused, uncertain, shame, fear, embarrassment, or as children, perhaps they didn't understand what has happened to them until years later.
- Delayed reporting diminishes the chances of a successful prosecution due to the lack of evidence. Be prepared to answer the question of why you are reporting the assault now, as police and lawyers need to understand the reason. Your motives may come under scrutiny but note that the justice system does recognize there are many legitimate reasons why there may be a delay in reporting a sex crime.
- If you do report, and then change your mind at having charges brought, the police can still proceed with charging.
- Third-party reporting is an option, which means that someone other than the victim can report the crime. It can be a friend, family member, or anyone who is concerned. However, where the strength of the case rests primarily with the victim's account, the police will not proceed without a victim statement.
- If there is a problem with the authenticity of a complaint, it will frequently show up during the reporting stage. Therefore complainants should expect the police to test their words and behaviour at this preliminary stage. It is not intended to be a judgment of your character, but rather to test the validity of your claim.
- Note that only very private notes of a personal nature that have minimal relevance to the case can be kept from the defence in a sex crime trial. If you make notes, don't destroy them, and be honest about them.

Can you Have a Support Person During the Interviews?

- Support persons are often not allowed in by police.
- There are good reasons for this: A support person may affect the admissibility or credibility of the statement at trial.
- An appropriate support person is someone who is removed from the facts and the accused, such as a counsellor, women's centre worker, victim assistance person, or someone else who is seen as being neutral.

Police Investigation:

- If the police, based upon your account of events, determine that the offender has likely engaged in criminal behaviour, they will investigate.
- After the initial handwritten statement, an investigation will begin with formal and controlled interviews by police officers assigned to the case.
- The Offender will be given a chance to make a statement.
- Inconsistencies in the course of reporting are common, and can be a crucial factor in the outcome of the legal proceedings. It is best to address it directly and truthfully as soon as it becomes apparent.
- The documents generated in the investigation will be used throughout the trial. It is important to listen and read any instructions carefully. If something is not understood, it is important that you ask for clarification.

- It is recommended that you get the business cards of the people working on your case and begin developing a congenial relationship with them.
- You can request someone of the same gender to interview you. The interview is often done alone with the officer because a third party can influence you in subtle ways.
- The interviewer should audiotape or videotape your response.
- If you are an adult reporting child abuse, the interview poses special challenges as the case depends on your ability to recall historical events. You may have to go through old photo albums, retrieve school records, find old clothing, or sort out names of friends and relatives from the past for interviewing purposes. Being very well prepared, with the written material as a guide when you attend the interview will help you cover all the necessary material.

When Will a Charge be Laid?

- Both the police and Crown have a duty to act in society's best interests, which means that they can proceed with charges against your wishes if it would benefit the public. This would often mean that you will be subpoenaed to testify.
- The police (and sometimes Crown lawyer) decide if they will lay charges & what the charges will be.
- Your case may go all the way to trial or it may be resolved prior to that.

Factors influencing the laying of charges:

- A credible complainant.
- Physical evidence of sexual activity, alleged force, or the suspect's presence at the scene
- Confirming evidence of a third party (especially a neutral third party).

Factors influencing a decision not to charge the suspect:

- The complainant gives a story that suggests there should be obvious physical evidence, and has no explanation when none is found.
- The complainant significantly changes the story over time.
- The investigation reveals evidence of motive to make a false complaint.
- The accused provides a statement of denial that is accepted as reliable.
- You can speak to a senior police officer or crown prosecutor for a review of the decision.
- If a charge is laid, everything you have told police and will tell police becomes evidence. Anything you tell people, who are outside the reporting process, may also become evidence. Be prudent: what you say may arise in the trial.

Trial Process:

- Participation in a legal proceeding should be an informed decision that takes into account your overall well-being: physical, emotional, interpersonal, financial, and spiritual.
- The language used and ritual of the courtroom may make a victim feel like it hinders the telling of her story.

Meeting with the Crown:

- As a complainant you are not a part of all the proceedings. Your main role is to be a witness, and it is crucial to the success of the prosecution that some important facts are kept from you to protect your credibility.

Arraignment:

- The accused has a right to be told exactly what the accusations are when the police lay criminal charges.
- If the accused does not have a defence lawyer, the judge provides an opportunity to the accused to get one.
- Once the judge is satisfied that the accused understands the charges the accused will be asked what he pleads to the charge. If he says "guilty", the court proceeds to the sentencing stage, and if he pleads "not guilty" the case goes to trial.

Guilty Plea:

- Often an accused will plead guilty to one charge and not another, or agree to plead guilty if the charges are reduced to lesser offences.
- The prosecutor will typically negotiate a guilty plea following a preliminary hearing and before the trial.
- The negotiation process happens quickly and complainants may get little attention in the process.
- Crown may consult you with respect to guilty pleas, or they may simply tell you of the intention to do so.
- There is no requirement that the process include complainants at all

Preliminary Hearing:

- Only the accused and Crown have a say in whether there will be such a hearing. It is largely out of the hands of the complainant.
- If a preliminary hearing does go ahead, it will occur before the trial and will allow a judge to hear submissions of evidence from the prosecutor.
- This will be your first opportunity to tell your story, and you will also face questions from opposing counsel.
- The preliminary hearing is not a vehicle to establish guilt or innocence. Its purpose is to determine whether there is sufficient evidence. At the end of the hearing, the presiding judge will determine if there is sufficient evidence for the accused to be put to trial.

Trial:

- The length of time for a trial may take to get to court varies, and it may cause stress. The length of time will depend upon the availability of court time (some courts are busier than others). If the offender is waiting in jail for the trial there is usually less time to wait before the trial, possibly weeks or a few months. If the offender is not in jail it can take several months or even a couple of years.
- You may prepare yourself and arrange your life to meet a scheduled court date, only to have the date moved just as it is nearing.
- Legal proceedings can strain relationships and disrupt relationships with your family and friends.
- There are many variables in a trial, which means there is no way of knowing the outcome. This can be extremely difficult. Sometimes, victims feel victimized all over again when they go through a long, drawn-out, and extremely stressful legal proceeding with an unsatisfying decision or judgment.
- The adversarial nature of the legal system may cause considerable stress: opposing counsel may question your version of events, and question you vigorously. You may feel like the one on trial. However, this is just the defence counsel defending their client to the best of their ability.

- The defence has a right to full disclosure of the Crown's case before the trial begins. This means that they have a list of all exhibits, a description of the alleged perpetrator of the crime, the police reports, copies of all witness statements, and in some circumstances, if the court allows it, they may have copies of your diary, medical files, or other personal records.

Your Role:

- Your role as a complainant is to explain clearly, completely, and accurately what happened to you.
- You should be punctual, and although not required, it is recommended that you should follow a dress code: you should be neat, clean and dressed comfortably.
- Your courtroom role has limits. Legal procedure dictates that complainants cannot be in the courtroom until they testify. If it is a public trial and family or friends attend, it is advised that you don't ask them about the proceedings, as there is a risk that it may compromise your testimony.

Testifying:

- Testifying can be an extremely stressful experience. The more you know about the process, the more at ease you may be.
- You will wait outside the courtroom until someone calls you in to testify.
- Once you have entered the witness box, the court clerk will ask you to remain standing and will give you the choice of swearing an oath, or affirming to tell the truth.
- If at any time during the course of your testimony you feel ill, overly fatigued, or extremely emotional, the court will allow you to have a break if you ask.
- The prosecutor should describe your role in testifying, and explain what types of information you can and cannot say.
- All witnesses are allowed to do is respond to the questions asked. You cannot volunteer any opinions or speak to your own agenda.
- Your direct knowledge and expertise is what the court wants from you as a witness. What someone else has told you is hearsay and it is not admissible.
- One of your tasks will be to positively identify the accused as the person who committed the offence against you.

Cross-examination:

- The defence lawyer will have an opportunity to ask you questions following the Crown's questioning of you.
- This will be more difficult than Crown questioning, as the purpose is to test the validity of your accusations and credibility as a witness.
- Our adversarial system allows the defence to put you under extreme pressure to see if your story will stand up. However, harassment, badgering and intimidation are not allowed.
- If you don't understand a particular question, then you should ask for clarification.
- Language is very important: if you are very sure of something then say so, if you don't know the answer then DO NOT make up an answer: you are allowed to say that you don't know.

Your Memory of the Events:

- Ability to recall often plays a central role; especially in cases with limited physical evidence such as childhood sexual abuse, which often occurred years before the prosecution began. In this type of case,

the primary evidence is often the complainant's description of what they remember of the sexual assault.

- The complainant's testimony is often pitted against the defendant's so the examination of these memories becomes crucial. The judge or jury has the role of determining whose memory is more accurate.
- Whatever the extent of the complainant's memory, recalling sexual abuse often evokes disturbing thoughts and feelings that are emotionally overwhelming:
 - There are changes in memory over time: we may forget details and remember new information. However, if your account of what happened is different in various statements or testimony, the defence is likely to emphasize the inconsistencies in order to put your credibility into question. It is important to be prepared to address inconsistencies. Generally minor inconsistencies can be explained. However, if the magnitude of discrepancy is great, there may be serious problems with the evidence, which could greatly affect your case.
 - Intentionally or not, some of the participants of the criminal proceeding may be insensitive and hurtful when interacting with sexual assault victims.
 - It is inevitable that participation in a criminal proceeding will raise questions that subtly or directly suggest that you are mistaken, lying, or exaggerating your experiences and how they affected you. This may cause feelings of self-blame, inadequacy, anger, or withdrawal.
 - Legal language dictates that the court will refer to the "alleged" sexual crimes.
 - Being the complainant, your motivations and actions will come under scrutiny. This is not a personal attack on you; it simply reflects an attempt to remain fair and impartial toward both the victim and accused.
 - Discussing such private experiences in front of a filled courtroom can cause considerable anxiety.

There are a number of reasons why others may act negatively towards you:

- Lack of experience with traumatic events
- Professional burnout which leads to the inability to respond with the required sensitivity
- Limited psychological resources to provide the psychological and physical resources needed to provide emotional support to a victim
- Cultural beliefs and myths that lead to criticism or blaming of the victim

The process of the trial can be a very difficult time.

Having the support of family, friends, or trained volunteers can be helpful.

Benefits of a Trial:

- It provides an opportunity for an individual to stand up for themselves and to hold accountable those who have wronged them
- Your actions may prevent future assaults by the offender
- Individuals that enter the legal process with realistic expectations and goals, and who obtain what they believe to be an equitable outcome can feel vindicated and empowered by the process. It may restore a sense of personal integrity through enhanced self-esteem, feelings of restitution and increased social acceptability.
- A number of characteristics have been identified in victims who have fared well emotionally:
 - Setting realistic goals
 - Being able to attain and maintain some sense of control in the litigation process
 - Having adequate social support
 - Focusing on addressing psychological concerns and restoring equilibrium in your life independent of the litigation process

- Acknowledging and adequately coping with the inevitable losses, even when litigation has a favourable outcome.

Sentencing:

- An inmate often serves 1/3 of his sentence or seven years, whatever is less
- Sentencing circle requirements: in current practice the community gives input regarding the case, but the judge still imposes the final sentence. The judge often will invite all community and family members to speak in court about the offender, the offence, the impact on the community, and ways to heal the damage.
- The use of sentencing circles is considered appropriate where the offender is not likely to receive a jail sentence. The court views sex crimes as a very serious matter, and the more forceful and violent the offence, the more likely the offender will go to jail. As a result, sentencing circles are less likely to be used when the accused is facing a sexual assault conviction.

Status as a Sex Offender:

Canada has a National Sex Offender Registry. A judge will order the offender to report to the sex offender registry unless there should be an exemption. An exemption will be permitted if an offender can demonstrate that the effect of the order on the offender's privacy and liberty would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature achieved by the registry.

RESOURCES:

- Tamara's House: is a centre dedicated to providing services to support the healing of adult females who have experienced child sexual abuse. Phone: (306)683-8667 or 1-800-626-1222. Website: <http://www.tamarashouse.sk.ca>
- Saskatoon Interval House: is an emergency, temporary shelter for abused women and their children who require safe accommodation. Crisis calls and information are also an integral part of the service provided. Phone: (306) 244-0185; Website: <http://www.saskatoonintervalhouse.org/> (for women abused by partners)
- Sexual Assault & Information Centre: a centre providing information on sexual assault. They have a 24-hour crisis line- 244-2224; Website: <http://www.saskatoonsexualassaultcentre.com/assault.cfm>
- Legal Aid: Legal assistance is available legal assistance for people who cannot afford to pay for a lawyer from their own resources. There is a required form that determines eligibility of an applicant. Website: <http://www.legalaid.sk.ca>
- The Public Legal Education Association of Saskatchewan: PLEA offers legal education programs to community groups, clubs and organizations. Phone: (306) 653-1868; website: <http://www.plea.org/>
- Community Legal Assistance Services for Saskatoon Inner City: CLASSIC provides free, professional and confidential legal services for low-income members of our community who cannot otherwise afford legal advice or representation. Phone: (306) 653-7676 Website: <http://www.classiclawn.ca/>

