

Sexual Assault & the Criminal Justice System

Criminal Justice for Sexual Assault

This handout is written for victims and their family members to give basic information about what happens when sexual assault is reported to the police. The Harborview Center for Sexual Assault and Traumatic Stress (HCSATS) can help you if you decide to report to the police or cooperate with prosecution by explaining what will happen, answering questions, and helping you prepare for interviews or testifying.

Criminal Prosecution of Sexual Offenders

Sexual assault is a crime. The criminal justice system is responsible for the investigation and prosecution of people accused of crimes. Reporting and prosecution are effective ways of countering sexual assault. Holding sex offenders accountable for their criminal acts can give victims a sense of justice and helps protect the community by lowering the chances of sex offenders re-offending.

The Role of the Victim

As the victim of a crime, you are the most important witness for the prosecution. By reporting the crime and participating in the investigation and prosecution of your offender you are helping society hold the person accountable and giving the courts a way to protect the community. Without your help this would not be possible. Your only responsibility is to tell what happened. The police, the prosecutor and the courts are responsible for how the case turns out.

The Role of Law Enforcement

After a police report has been filed, police officers and detectives are responsible for investigating crimes. This includes interviewing victims and witnesses, gathering evidence, preparing the case against the offender, and making an arrest. Once the investigation is finished, the case is presented to the prosecutor.

The Role of the Prosecuting Attorney

Under our legal system, the prosecutor is the lawyer for the case and represents the government. The victim does not need a lawyer because the prosecutor will represent the victim's interest.

The prosecutor reviews the statements and evidence and decides whether charges can be filed. The prosecutor must consider whether a case meets legal standards before filing charges. This means that sometimes even when the prosecutor believes a crime was committed, charges cannot be filed. The prosecutor files the charges and is responsible for handling the legal case until it is finished.

The Role of the Legal Advocate

Victims are allowed to have an advocate who can explain what is happening, give support and be with the victim during interviews and court proceedings. Advocates may work for community agencies or for the police or prosecutor. The State of Washington gives victims of crime certain rights to be informed of what is happening and have the chance to be part of the process. The legal advocate can help make sure that this happens.

The Stages of the Process:

Reporting

To report a crime, call the police emergency number available 24 hours a day (911). In most cases a uniformed police officer will come and take the initial report. The uniformed officer may also gather evidence from a crime scene. In some cases, the police officer will take a report over the phone. The police officer will give this information to a detective.

Investigation

Detectives with specialized training conduct the follow-up investigation including interviewing witnesses, gathering evidence such as the medical report, and sending specimens to the crime lab. The victim will almost always be interviewed. A special child interviewer usually conducts the interview of young children. Sometimes there will be a joint interview with the detective and prosecutor. If the accused person is known the detective will usually interview him or her. If the suspect is unknown detectives will try to

figure out who it might be. If a suspect is identified, the victim may have to identify the person by looking at pictures or going to a line-up. It can take anywhere from a few weeks to a few months for the investigation to be done depending on the case.

Filing Charges

Once the prosecutor receives the information from the police, the material is reviewed. Sometimes the prosecutor meets with the victim. In order for the case to be prosecuted, it is almost always necessary for the victim to be able and willing to testify in court if necessary. If charges are filed, the particular charges depend on exactly what happened and if the charges can be proven in court. The victim will be informed about the charges to be filed against the offender. If charges are not filed, the prosecutor explains the reasons for this decision to the victim. Sometimes there is not enough evidence for the case to be proven in court, even though a crime occurred. It usually takes a few months for the decision to be made.

Arresting the Offender

The police may arrest the offender if they have “probable cause” to believe a crime was committed, even before charges are filed. However, this does not always happen. When offenders are arrested and put in jail, there is a hearing to determine whether the suspect should be released, and if released, what conditions are on the offender. Many offenders are released on bail if they promise to return for court appearances. The judge tells the offender not to contact the victim(s) or witness(es) in any manner – in person, by telephone or by mail. *If the offender or anyone connected to the offender bothers the victim, the detective and/or prosecutor should be notified immediately. After hours call 911.*

The Defendant

Once charges are filed, the offender is called a **defendant**. He or she hires a lawyer or has one appointed if he or she cannot afford one. The defendant’s lawyer is called a defense attorney and represents the interests of the offender. The defense lawyer’s job is to make sure that the defendant’s rights are protected. Under our legal system, the prosecutor has to prove that the crime happened because the defendant is considered legally innocent until proven guilty in court.

The defense lawyer is allowed to talk with all witnesses, including the victim, before the trial. But the victim should *never* discuss the case with the defense lawyer unless the prosecutor is present. No matter what a defense lawyer or someone working for the defense lawyer says, the victim has a right to have the prosecutor and a legal advocate there and should not agree to talk alone with the defense lawyer. The prosecutor can schedule the appointment.

The defendant has to appear in court several times for hearings. The victim does not have to be present. At these hearing the defendant is informed of the charges or decisions are made about pleading guilty or going to trial.

Pleading Guilty

Defendants have to plead not guilty at first so the court can make sure they have been given all their rights. But after that, defendants can decide to plead guilty any time up until the trial. In most cases defendants do plead guilty. The prosecutor and the defense lawyer come to an agreement about what charges the defendant will plead guilty to and the recommendation for the sentence. The prosecutor informs the victim about plea-bargaining and considers the victim’s (and family’s, if the victim is a child) opinion.

Going to Court

A trial is held only if the defendant is pleading “not guilty” (not admitting the offense). The prosecutor then has to prove the charges to a jury or a judge beyond a reasonable doubt. If there is a trial, the victim will get a subpoena (a legal document ordering attendance in court), which will include a trial date. Since most cases do not start on the day noted on the subpoena, the victim will need to call and find out when he or she will be needed. The subpoena lists a name and a telephone number to call. The legal advocate can help with finding out about the case schedule.

The prosecutor contacts the victim before the trial to go over the questions that will be asked, explain court procedures, and prepare the victim for testifying in court. The victim is the main witness, but other witnesses or evidence may be brought into court. The victim must testify in almost all cases and be cross-examined by the defense attorney. The defendant may or may not testify, but must be in court.

After all the testimony and arguments by the lawyers are heard, the judge gives instructions to the jury. The jury then has to decide unanimously on the verdict. If they cannot agree, it is called a hung jury and the defendant is not convicted. The prosecutor then decides whether to try the case again.

If the jury decides that the defendant's guilt has not been proven beyond a reasonable doubt, the defendant is acquitted (found not guilty). The defendant is set free from the charges and the case cannot be tried again.

If the defendant is convicted (found guilty) by a jury or pleads guilty, a date is set for sentencing.

Sentencing the Defendant

Victims do not have to be present at the sentencing but are encouraged to attend and/or to write a letter to the judge telling how the experience has affected them and their families. In the letter victims can state what they recommend for sentencing. The prosecutor, the defense attorney, and the Department of Corrections all make recommendations to the judge about what the sentence should be. The offender may have been evaluated by a sexual offender treatment specialist who will give an opinion as to the level of risk this person is to the community and if he or she will benefit from sex offender treatment.

The State of Washington has a determinate sentencing system, which means that there is a standard range of time to which a judge can sentence a convicted offender. The standard range is based on the seriousness of the crime and whether the offender has any other convictions. The judge may go outside the standard range (called an exceptional sentence) but there are legal rules about the reasons they can use. Most sex offenders who go to prison will be supervised after they get out and have restrictions placed on them. Very dangerous offenders can be civilly committed at the end of the prison term.

In Washington, there is an option available for certain convicted sex offenders called the Special Sexual Offender Sentencing Alternative (SSOSA) for adults and the Special Sexual Offender Disposition Alternative (SSODA) for teenage offenders. In these cases, the judge may suspend the standard range and allow the offender to participate in counseling in the community under the supervision of the Department of Corrections or Juvenile Rehabilitation. Only certain sex offenders are eligible for this counseling option and the judge must take into account the victim's interests in making the decision. It is the judge who makes the final sentencing decision. The judge announces the sentence to the offender in court.

Victim Contribution

Participating in the legal process takes time, and can be inconvenient and upsetting. But victims are doing a great service for the community because it is the best way we have to stop offenders from offending again. Advocates are there to help with the process and counselors can help with the feelings and reactions.

Our mission is to prevent and counter the harmful effects of traumatic experiences on victims, families and our community. These experiences include sexual and physical abuse and neglect of children, rape, sexual harassment, violent crime, accidents and disasters. Services reflect the values, beliefs and traditions of our community and are available to people of all ages. We strive to create a society free of interpersonal violence.

Founded in 1973, the Harborview Center for Sexual Assault and Traumatic Stress is a Washington state accredited Community Sexual Assault Program