

Rape Survivors' Legal Guide

Navigating the legal system after rape

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Wellington
Community Law Centre

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This edition is primarily the work of volunteer Julia White. We are grateful to her for her many hours of work and her effective coordination of other generous volunteers.

The cover painting is also by Julia White: "I painted this image for the guide because to me it signifies hope. This image brings together various natural elements to signify the circle of life. To me, each of these elements represents a strand of the New Zealand community. From whānau through to specialised government agencies and support groups, these strands together provide support throughout the transition from what can be the darkest moment in an individual's life to a new beginning. Above anything else, this image makes me feel calm in times of stress."

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Contents

| | |
|--|-----------|
| Introduction to this guide | 5 |
| The language in this guide | 5 |
| Sexual violence | 7 |
| What is sexual violation? | 7 |
| Consent | 7 |
| Sexual violence in New Zealand | 8 |
| Different groups of survivors | 9 |
| Sexual harassment | 14 |
| Options available for survivors of sexual violation | 15 |
| Reporting to the police | 16 |
| The decision to report | 16 |
| Preserving evidence | 16 |
| How to report to the police | 17 |
| Initial contact | 17 |
| Specialist support | 18 |
| Preliminary interview | 18 |
| SAATS medical forensic examination | 19 |
| Your decision | 19 |
| Having an examination without reporting to the police | 20 |
| Having an examination after reporting to the police | 21 |
| At the examination | 22 |
| Aftercare | 22 |
| Police process | 23 |
| Formal police interview | 23 |
| The police investigation | 24 |
| The decision to prosecute | 25 |

| | |
|--|-----------|
| Laying charges | 26 |
| Arrest | 26 |
| Bail | 27 |
| “Committing” to trial | 28 |
| Timeframes | 29 |
| Disclosure | 30 |
| Victim impact statement | 30 |
| The trial | 32 |
| Before the trial | 32 |
| The jury | 32 |
| Being a witness | 33 |
| Examination-in-chief | 34 |
| Cross-examination | 34 |
| Re-examination | 35 |
| Further evidence at trial | 36 |
| The verdict | 36 |
| The sentence | 37 |
| Appeals | 39 |
| Parole | 39 |
| Financial support | 41 |
| Victim Support | 41 |
| Accident Compensation Scheme (ACC) | 41 |
| Compensation from the offender? | 42 |
| Unhappy with the way you have been treated by agencies you’re dealing with? | 43 |
| Useful contacts | 45 |
| Useful resources | 59 |
| Crimes Act 1961 | 61 |

Introduction to this guide



This guide provides survivors of sexual violation with information about your legal and other options. It explains the different stages of the criminal process, from a decision about reporting the incident to the police, to the trial, verdict and sentence of the person who committed the crime. It also outlines other steps you can take instead of, or in addition to, reporting the crime to the police, such as applying for a protection order, getting financial assistance and accessing counselling or Sexual Abuse Assessment and Treatment Services.

The language in this guide

Since the first edition of this guide, the Crimes Act offence of “rape” has changed. Rape used to be a stand-alone crime, but it is now defined as part of the crime of sexual violation (see below). While this guide is still called the Rape Survivors’ Legal Guide, this guide now focuses on the broader offence of sexual violation.

This guide uses language and terms most commonly used in law and by the many community and other organisations working in the area.

The guide addresses “you”, a survivor of sexual violation. In legal terms, survivors are often called “complainants” or “victims”.

The guide describes the person who committed the crime as a “suspect” or “offender”. When charged, and in the early stages of the court process, this person is called a “defendant”. Once they are committed to trial they are described as the “accused”.

We encourage readers to talk to a support agency about your particular circumstances. A list of resources and specialist organisations is included at the back of this guide.

Sexual violence



What is sexual violation?

Under the Crimes Act, the crime of sexual violation can be committed in one of two ways: either by “rape” or by “unlawful sexual connection”.

“Rape” means the penetration of the genitalia by the penis, without consent. It is a man-on-woman offence (although either the offender or victim may have had gender reassignment surgery).

“Unlawful sexual connection” includes a much wider range of offending. “Unlawful sexual connection” includes forcing someone to give or receive anal sex or oral sex, it includes same-sex offending, and it includes offending with an object. It is still a “sexual connection” no matter how slight the contact with the offender’s genitalia or anus, or with the survivor’s genitalia or anus – it includes penetration, and it includes touching.¹

Consent

To convict someone of sexual violation, the prosecutor must first prove that the accused committed one of these acts (that is, rape, or one of the acts defined as “sexual connection”). The prosecutor also has to prove:

- you did not consent
and either
- that the accused knew you did not consent, or
- that if the accused believed you had consented, it was not a

1. See the back of this guide for the Crimes Act definitions of “rape” and “unlawful sexual connection”.

reasonable belief (in other words, there were no “reasonable grounds” for that belief that you consented).

Whether the accused had “no reasonable grounds” to believe that you consented will depend on the facts of your case. Even if you did not protest or physically resist, this does not mean that you consented.

It is not consent if:

- you allowed the sexual activity to happen because you or someone else was threatened with force, or because you were forced
- it happened when you were asleep or unconscious
- you were so affected by alcohol or drugs that you were unable to consent or refuse to consent
- you were affected by an intellectual, mental, or physical condition or impairment so that you were unable to consent or refuse to consent
- you were mistaken about the identity of the person (for example, you were tricked into thinking he was someone else)
- you were mistaken about the nature of the act (for example, you consented only to a medical examination, not to sex – or you consented to vaginal sex but not to anal sex)
- you changed your mind and withdrew consent after giving consent to begin with.

Sexual violence in New Zealand

A 2006 Crime and Safety Survey found that approximately 29 per cent of women and nine per cent of men experience unwanted and distressing sexual contact over their lifetime. Sexual offences were the fifth most common offence disclosed in the survey. Sexual violence is most likely

to be committed by someone known to the victim, with over one-third of sexual offences committed by current partners, a quarter by a friend, one in 10 by a boyfriend or girlfriend, and one in 20 incidents by a work colleague.²

Different groups of survivors

Sexual violence affects people from all ages and backgrounds, regardless of their economic or social status, race, religion or immigration status. The following sections identify issues that may affect different groups of survivors and summarises some options available to them to have their rights recognised.

Survivors of sexual violation by an intimate partner

The crime of sexual violation is often committed within a relationship, or after a relationship breaks down. Marriage is not consent. You can say no to your husband, wife or de facto partner.

The police and the criminal justice system take sexual violation just as seriously whether it happened within a marriage or relationship, or was committed by a stranger. Judges' guidelines for sentencing offenders make it clear that sexual violation within a relationship may actually lead to a more severe sentence, because of the breach of trust involved.

In addition to, or instead of, reporting the crime to the police, you may wish to consider getting a protection order. Any person who is or has been in a domestic relationship with another person can apply for a protection order against that person. A domestic relationship includes spouses or

2. Te Toiora Mata Tauherenga: Report of the Taskforce for Action on Sexual Violence, Incorporating Views of Te Ohaakii a Hine – National Network Ending Sexual Violence Together (Ministry of Justice, 2009), p1.

partners, family members, close flatmates, and others you have a close personal relationship with. Domestic violence includes physical abuse, sexual abuse (including any unwanted sexual contact) and psychological abuse (including intimidation, harassment, threats or damage to property in order to scare you). A protection order helps to protect you and your children against further violence, and prevents that person contacting you, except with your permission.

If you have decided that you want to end your marriage, you may want to consider divorce proceedings or reconsider who lives in the family home.

Survivors of sexual violation by a family member

This guide focuses on adult survivors of sexual violation. If the crime is committed by a family member against a child, there may be other criminal charges that the offender could face – like incest³ or sexual conduct with a dependant family member.⁴ In these circumstances, additional protections may be necessary, and the safety of the child may be a matter involving Child Youth and Family.

Young, Māori and Pasifika survivors

Research suggests that young women and Māori women are almost twice as likely to experience sexual violence, and young Pacific people also report high levels of unwanted sexual contact.⁵ Specialised support services are available, including for Māori and Pacific survivors.

3. Incest, Crimes Act 1961, section 130. Other relevant charges could be sexual violation or sexual conduct with a child under 12, or a young person under 16.

4. Sexual conduct with a dependent family member, Crimes Act 1961, section 131.

5. *Te Toiora Mata Tauherenga*, p1.

Lesbian, gay, bisexual or transgendered survivors

You may have experienced sexual violation within a relationship or within your family. Lesbian, gay, bisexual or transgendered victims have the same rights as heterosexual victims to apply for a protection order in addition to, or instead of, reporting the violence to the police.

Sentencing guidelines recognise that higher sentences might be appropriate for offences motivated by what the offender thinks of the victim's sexual orientation. Offenders motivated by homophobia can receive longer sentences.

Male survivors

Eighteen per cent of Accident Compensation Corporation (ACC) sensitive claims clients are male survivors of sexual violence.⁶ While "rape" is a gendered offence (that is, it can only be committed by a man against a woman), the offence of unlawful sexual connection applies equally to men and women. The Male Survivors of Sexual Abuse Trust offers specialised support services, and many of the other services in "Useful Contacts" at the back of this guide also serve male survivors.

Disabled survivors

The courts and other agencies in the criminal justice system must be accessible for disabled people. This includes providing translators and making rooms accessible.⁷ You may wish to discuss any necessary arrangements with the police or the agency involved.

6. *Te Toiora Mata Tauherenga*, p40.

7. For more information about accessibility and the requirement to make reasonable adjustments contact the Human Rights Commission: www.hrc.co.nz.

The Crimes Act recognises that disability may be relevant to the question of consent: consent means making a free choice about whether to engage in sexual activity. You do not consent to sexual activity if the activity occurred while you were affected by an intellectual, mental, or physical condition or impairment that meant you could not consent or refuse to consent to the activity. If the offender took advantage of your impairment to get your consent, or to get you to submit to or participate in the sexual connection, they may be charged with the separate offence of “sexual exploitation of person with significant impairment”, which carries a maximum sentence of 10 years’ imprisonment.

Survivors working in the sex industry

Even though a client has paid for some sexual activity, this does not necessarily mean that you have given your consent for all activities. You may give your consent to one thing but not another, for example, to vaginal but not anal penetration. Similarly, you may give consent to begin with but then you may withdraw consent. If this happens, and the offender is fully aware that your consent has been withdrawn but continues the sexual activity regardless, this is a crime. Evidence that shows your client was aware you had withdrawn your consent will be important to any police case against the offender.

Survivors with insecure immigration status

The Crimes Act, including the offence of sexual violation, applies to everyone in New Zealand. This means that the criminal justice system has the same obligations to assist and protect you regardless of your immigration status. The Crimes Act also makes it illegal for a New Zealander to have any sexual activity with children or young people outside New Zealand, or to organise or promote child sex tours.

Non-English speaking survivors

If you do not speak English, an interpreter can be provided for you by the relevant agency, for example, the police or the courts. Many support agencies also provide interpreters.

Survivors of historic offending

There is no time limit on investigating or prosecuting any sexual crime. There have been many cases where offenders have been convicted of sexual crimes that occurred years or even decades ago. However, there are additional issues about securing evidence. It may also mean that it takes longer to investigate your case.

Over the years, the Crimes Act has undergone a number of changes and this can influence the charges against an offender – the charges need to reflect the legislation that was in place at the time when the offending occurred. For example, on 20 May 2005 the law changed so that offenders who had undergone gender reassignment surgery can now be found to have committed the act of rape. They were previously unable to be so convicted.

Survivors of sexual violation by young offenders

If the offender was 14, 15 or 16 years old when they committed the offence (and is still under 18 when charged), they will be treated differently from adult offenders. A different process will apply under the Children, Young Persons and their Families Act 1989. The court can, for example, refer the offender to a Family Group Conference. The police or a youth justice coordinator (from your local Child Youth and Family office) will provide you with more information.

Sexual harassment

This guide does not cover sexual harassment. In short, sexual harassment is prohibited under the Human Rights Act 1993 and the Employment Relations Act 2000. Broadly speaking, these Acts prohibit two types of sexual harassment:

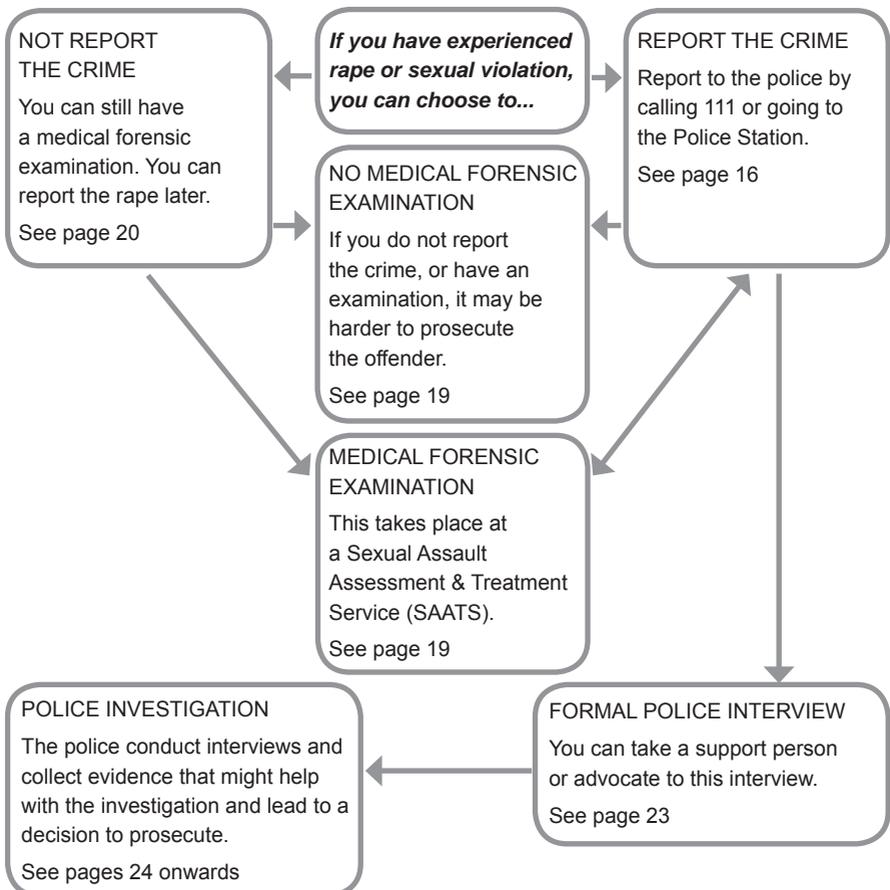
- requesting sexual activity with a promise of special treatment or a threat of harmful treatment
- doing, saying or showing something of a sexual nature, which is unwelcome or offensive, and is either repeated or significant enough to have a detrimental effect.

If you are being harassed, you should keep a record of the incidents you find offensive. You can either confront the person who is harassing you, or seek assistance from:

- a sexual harassment contact person at work, or your manager (your employer should take steps to prevent sexual harassment in the workplace), if the harassment is happening at your workplace
- the Human Rights Commission
- a lawyer
- a professional disciplinary body responsible for the harasser, such as the Medical Association
- the Employment Relations Service
- the police (especially if you have been sexually assaulted).

Options available for survivors of sexual violation

It is important to remember that there is no single way to proceed: what you do is your decision, and there are several agencies which can help with support and advice. The diagram below indicates some of the options available, with page references to where those options are discussed in this guide.



Reporting to the police

The decision to report

It is your decision to report the matter to the police or not. In a recent study, reasons most frequently mentioned for reporting were not wanting offenders to get away with what they had done and not wanting others to be exposed to the risk of re-offending.⁸ If you would like to talk through making the decision about reporting to the police, you can contact a specialist agency in your area.

Even if you go to the police, you do not have to make a complaint. The police can discuss the matter with you, including explaining the reporting process and the options and support agencies available. To do this you should make contact with a detective from your local Criminal Investigation Branch, ideally a detective who specialises in adult sexual assault.

Preserving evidence

If you choose to report the crime to the police, or want to keep this option open, any evidence that you preserve (such as semen and/or other bodily samples) can be collected for DNA analysis and may form an important part of the case against the accused. If the offending was recent, you can take the following steps to preserve evidence before a medical forensic examination:

- avoid drinking or eating anything, including any non-essential medication you might be taking
- avoid washing any part of you, including your hair and teeth
- avoid biting your fingernails

8. *Responding to Sexual Violence: Pathways to Recovery*, Kingi, Jordan, Moeke-Maxwell and Fairbairn-Dunlop, (Ministry of Women's Affairs, 2009) p59.

- avoid brushing your hair
- avoid smoking
- avoid going to the toilet or discarding any tampons or sanitary towels
- avoid removing or washing any clothing worn at the time of the incident or afterwards.

The place where sexual violation took place is a crime scene. If possible, avoid disturbing, moving, washing or destroying anything that might be a useful source of evidence. This may include clothing, bedding, any glass or cup that you or the offender has drunk from, discarded cigarette stubs, condoms or any other object the offender may have touched.

Other evidence that may be useful, and that you should preserve, includes:

- mobile phone evidence, such as call lists, texts and voicemails
- photos
- emails.

How to report to the police

If the matter is urgent or very recent, you can contact the police by dialling 111. You can also ring the local police number listed in the telephone directory and ask the police to come to you, or you can go to your nearest police station and make your complaint. You can take a friend or someone else you trust with you and they can be there while you speak with the police.

Initial contact

The police's first job is to make sure you and any children are safe. When this is achieved, and you are in a private and comfortable location, they will ask for your details and whereabouts (if you are not reporting

in person), brief circumstances of the offence, where it happened, and details of the offender.

If it happened recently, the police may go to the crime scene and collect evidence straight away. If they are going to do this, they will let you know and explain the reasons why.

You may be taken to a police station and referred to an adult sexual assault investigator, who is specially trained in this type of investigation and should be sensitive to your needs. This person is called the “officer in charge” of your case. You can contact them at any time to find out what is happening.

Specialist support

The kinds of available support facilities vary throughout New Zealand. In general, there are three kinds of agencies: crisis intervention, on-going victim support and counselling.

While friends and family can give valuable support, there are real advantages in using a specialist agency. The workers are trained and experienced and will have up-to-date information about the legal process. They will also support and advocate for you throughout the process.

If you agree, the police will call a local specialist support agency and arrange for you to meet a support worker, who will come to the police station. Alternatively, you may already know a support worker if you have gone directly to a specialist support agency and they assisted you to also talk with police.

Preliminary interview

The police officer will do a preliminary interview with you. Unless it is not possible, this will be done by an adult sexual assault investigator with a

specialist support person present. This is done in private. You can ask to speak to either a male or female officer and the police will do their best to accommodate this.

The police officer will ask you some more questions to establish what happened, when and where it took place, and who the suspect is. This will be more detailed than the discussion on initial contact and will help the police focus and prioritise their investigation.

At this stage, police may also need to secure and contain the crime scene, and identify and locate witnesses. Police will also explain the steps they will be taking and the likely timing of each stage.

SAATS medical forensic examination

Your decision

The police will explain the purpose of a medical forensic examination and ask you whether you are willing to have this procedure.

Medical forensic examinations are done at your nearest Sexual Assault Assessment and Treatment Service (SAATS). SAATS is a specialist medical forensic service for victims of sexual assault, and is available 24 hours a day in New Zealand's main centres. SAATS facilities are specially designed for conducting medical forensic examinations in safety, comfort and privacy, and are free and confidential. The examinations are done by a specially trained doctor and nurse. SAATS only has female doctors and nurses.

It is your choice whether you consent to all or only parts of this examination. There are definite benefits in having a full examination, because the doctor can:

- make sure that you have no injuries, or arrange for treatment of injuries as required
- discuss aspects of the assault that are particularly important to you
- give you medication for preventing pregnancy and sexually transmitted infections (if wanted/relevant)
- gather relevant and sometimes important evidence for police
- provide expert evidence at any later court hearing.

Even if the assault happened a long time ago, there are still benefits in consulting with a specialist doctor or nurse.

The forensic part of the examination involves collecting evidence. The total time spent at a medical examination is lengthy (it can take two to three hours), but much of this time is spent gathering an accurate medical history and relevant details to direct the physical examination. The actual physical examination is usually short. Any evidence gathered can be critical to making sure the offender is convicted.

Having an examination without reporting to the police

Whether or not you have decided to report to the police, or are undecided, there are still good reasons to have a medical examination at a SAATS facility. A SAATS clinician can:

- provide emotional support
- examine you to make sure that there are no injuries, or treat any injury if you have been hurt
- discuss aspects of the sexual violation that are particularly important to you
- offer medication to prevent pregnancy as a result of rape.

If you think that you might want to report to the police later, SAATS facilities are able to offer a medical forensic examination, which can be

done straight away, and then the evidence can be stored anonymously by the police for six months. The advantages of this approach are:

- it keeps your reporting option open while giving you time to think about how you would like to proceed
- your medical assessment will be done at the same time as evidence is collected (if SAATS, or someone else, does a medical assessment without a forensic examination, a later forensic examination is impossible, because the medical examination will contaminate the evidence)
- samples are collected when the best evidence of the sexual assault is still available.

However, it is important to be aware that the best police investigations start while the evidence (from the scene of the crime, from witnesses, and from CCTV footage etc.) can still be collected and is not contaminated.

If you do decide to have an examination rather than reporting to the police straight away, contact your local SAATS directly. You can find your local SAATS through www.dsac.org.nz. See “Useful contacts” at the back of this guide.

Having an examination after reporting to the police

The police will contact their local SAATS to make an appointment. The urgency of the examination will depend on the circumstances of your case. The more recent the assault, the more evidence that can be gathered, and SAATS should therefore be contacted promptly.

If the assault happened recently, the police may need to keep your clothes as evidence. At most SAATS clinics, replacement clothing is available, but you may wish to take a change of clothing with you.

At the examination

If police are involved, they will take you to the examination. They will tell the examining doctor what happened and this will be done in a private room. The doctor will also speak with you in private, in order to get details about your medical history as well as other details which are necessary to guide aspects of the examination.

The examining doctor will explain each procedure to you and ask for your consent before starting any new procedure.

Aftercare

You will be given the service coordinator's card and telephone number and she will ring you in the first week to explain follow-up. SAATS offers routine follow-up care. Further tests can be done if necessary, and you have an opportunity to discuss any other issues you are concerned about.

Police process



Formal police interview

The formal interview records full and extensive details of the sexual assault and is your statement and complaint. It is increasingly common that statements are electronically recorded and may be used as your main evidence in court. It is your decision whether to have this interview: including whether you decline a visual recording for privacy reasons.

If you decide not to have a formal interview, it is likely that there will not be enough evidence to investigate or prosecute the offender, because sexual offences are seldom committed in the presence of other people. If you do not want to make a formal complaint, or if you withdraw your complaint at any stage, the police may still need to follow up with the offender, for example where other members of the public might be at risk or the police want to get DNA evidence from the suspect in the case of possible past or future offending. Police will talk to you about this.

If you decide to have a formal interview, the police will make an appointment with you after the medical examination. Police will make sure that the interview is conducted in a way that minimises the trauma in describing what happened by:

- explaining in advance the formal interview process
- encouraging you to have a support person with you at the interview
- having the interview conducted by a specialist adult witness interviewer (police will ask you if you would prefer a female or male interviewer and will do their best to accommodate your choice).

If the police station takes electronically recorded audio-visual statements

(DVD statements), police will explain the process first and ask for your consent to take the recording. If allowed by the judge, this can be your main evidence at any later hearing, so you will not need to re-tell the main aspects of events in court. The judge decides whether to allow DVD statements, on a case-by-case basis.

The police investigation

The investigation of a sexual violence crime is intensive so that as much evidence as possible can be gathered for the case. As well as your formal interview, the police will also talk to others who may know something about the crime, and will collect any evidence such as photos or objects that may help with the investigation. This evidence may include items of your belongings, such as clothing, or items from your house or car.

The police will also approach the suspect. This will be done in a planned way and in accordance with police guidelines. Police will look to interview the suspect and may arrange for a medical examination by a police medical officer (not the same doctor who did your examination). During this examination the police medical officer notes any injuries, considers the suspect's mental condition (a psychiatric report may be necessary), records any relevant comments made by the person, and may take DNA samples.

The police will assess all evidence on an on-going basis. While you should always be truthful, it is common that complaints have elements of inaccuracy and inconsistency due to the trauma that has taken place. Police are to remain objective, empathetic and respectful throughout the process.

Police will make sure that they treat any evidence they gather with sensitivity and understanding. They should explain why any objects have been taken, and when and if they will be returned.

Keeping you informed

Police have a statutory obligation to provide you with clear and understandable information about the progress of the investigation, including expected timeframes for each stage, the decision whether to prosecute, the charges laid or the reasons for not laying particular charges.

If you have any questions during the process you should contact the officer in charge of your case. If you are unhappy with the way you have been treated, see “Unhappy with the way you have been treated?” later in this guide.

The decision to prosecute

Whose decision?

The decision to prosecute is for the police, based on their assessment of the evidence. This is because sexual violation is a crime, and all crimes are considered to be offences against the “state” of New Zealand (not just against the victim).

While the state does not need your consent to prosecute, it is likely to need your cooperation. Unless there is an independent witness, your evidence is vital to any successful prosecution. If the police do decide to continue the investigation or prosecution after you have withdrawn your complaint, the investigator must inform you of this and of the reasons for doing so. This could be due to the seriousness of the crime, the danger that the suspect presents to the community, or other evidence or complaints that are connected to your case.

Criteria for prosecution

The police will decide whether or not to prosecute by assessing your case against the criteria set out in the Solicitor-General's Prosecution Guidelines. The police must weigh up whether there is a reasonable prospect of conviction and if the prosecution is in the public interest. This is quite a high threshold, and if the police find that there is not enough evidence, this does not mean that they do not believe you. If the police do decide to lay a charge, this decision is reviewed by the Crown Prosecutor before the matter is set down for trial.⁹

Laying charges

Once there has been a decision to prosecute, either the police or the Crown Prosecutor will decide which charges should be laid – laying the charges most often coincides with the arrest of the suspect. The charge will depend on the evidence in your case. The charge is actioned by “laying an information”, which means filing a form in the District or High Court nearest to where the offender is arrested.

Arrest

When the defendant is arrested, the police will take him to a police station to be photographed, fingerprinted and to take a DNA sample (if not already obtained). The police will ask the defendant to make a statement, but he does not have to provide one.

After being arrested, it is most likely that the defendant will have to stay in the police cells to get court bail, which may mean they stay there until the next court day (court days are Monday to Saturday).

9. The Crown Prosecutor is a lawyer working with the police and paid for by the government. He or she is in charge of prosecuting the case.

The first time the defendant goes to court, there is usually a “remand without plea”. This means the judge sets a new court date, to give the defendant time to talk to a lawyer. The next time he comes to court he will usually be asked to enter a plea (this means saying guilty or not guilty). The question of whether the defendant gets bail or not, and what bail conditions are set, will be addressed the first time the defendant appears in court, as well as at later hearings if necessary.

Bail

The judge will decide whether the defendant will be kept in custody or given bail. If the defendant is given bail, he is free to go home or elsewhere as permitted by the court until the next court date. In some cases, the defendant is held in custody until a separate bail hearing can be held.

You may have fears about your safety. The police will ask for your views about the defendant getting bail and will bring this in writing to the judge. The bail hearing may be in private – meaning that you can’t attend – however, the judge must take your views into account before deciding whether to grant bail.

In deciding whether to grant bail, the judge will consider whether there is a risk that the defendant:

- may not come back to court next time (skip bail)
- may interfere with witnesses or with evidence
- may offend while on bail.

The judge may also take into account other factors, including the seriousness of the charge. If bail is granted, it is usually granted on conditions such as that the defendant:

- live at a specific place
- be at that specific place between certain hours (a curfew)
- not go near where you live or contact you in any way
- not contact specific people, such as those who may be giving evidence at the trial
- report to the police at certain times (maybe several times a week).

The police, a court registry or a Victim Advisor will contact you as soon as possible to let you know whether the defendant has got bail or has been remanded (kept) in custody.

A defendant who breaks any of the judge's bail conditions can be arrested and taken back to court. The judge may then tighten any bail conditions or cancel bail and order that the defendant be held in custody.

If the defendant pleads guilty, he will be held in prison or will be released on bail ("remanded on bail") and a date will be set for him to appear in court to be sentenced. If he pleads guilty there will be no trial and you will not have to appear in court to give evidence.

Police will also give you an opportunity to be part of the victim notification system. This means you can be notified about events relating to the offender's detention, such as temporary release from prison. Under this system your details will be kept private.

"Committing" to trial

If the defendant does not plead guilty, he will have to go to trial. Before there is a full trial by a jury, the defendant can ask for a "committal hearing". A "committal hearing" is like a mini trial. It is a hearing where the court decides whether there is enough evidence to "commit" the defendant to the full jury trial.

If the defendant wants to have a “committal hearing”, he must apply for an “oral evidence order”. An oral evidence order lets the defendant’s lawyer ask questions (an “oral examination”) of anyone who will give evidence in court, or who has information relevant to the crime.

At a “committal hearing”, the defendant’s lawyer will be trying to convince the judge that there is not enough evidence for a trial, and that the charges should be dismissed and the defendant should go free.

The judge will only make an “oral evidence order” allowing a “committal hearing” to go ahead if they think it is necessary. It is extremely rare for a complainant (you) to have to give oral evidence at a “committal hearing”.

If the defendant does not apply for an “oral evidence order”, or the judge does not think one is necessary, the case will proceed to trial without a “committal hearing”.

Timeframes

The police will tell you when a date has been set for the trial. There is no set timeframe, but it is usually up to 12 months after the defendant has been committed to trial. It depends on a number of factors including the availability of a trial date and how long it takes for the case to be prepared.

After the defendant appears in court for the first time, you may be contacted by a court Victim Advisor. This person can explain the court process, help you understand what is happening and when, and tell you when the defendant will be in court.¹⁰

10. A specialist court service for victims of sexual violence has been implemented in some courts from July 2010. This provides Victim Advisors who are specially trained and experienced in understanding the dynamics of sexual violence.

If you have any questions before the trial you should contact a Victim Advisor or the police. Both will be willing and able to answer your questions and help you prepare for what is likely to happen at the trial.

Disclosure

“Disclosure” involves providing the defendant and his lawyer with key information about the case against him. Proper disclosure is seen as central to a fair and just court process. The Criminal Disclosure Act 2008 requires the Crown Prosecutor to give the defendant certain information, depending on the stage of the court process. The type of information that must be provided includes:

- a summary of facts
- the maximum penalty
- a list of the defendant’s known previous convictions
- witness and exhibit list
- records of police interviews with the defendant
- records of police interviews with prosecution witnesses (including your interview)
- police jobsheets and other relevant police notes
- relevant diagrams/photographs the police have.

Victim impact statement

When a court case begins, you will be offered the opportunity to make a victim impact statement. This will be prepared with the police and a specialist agency or other support agency you may be working with. Because the victim impact statement needs to be updated within 28 days of sentencing, the police will contact you if updates to your victim impact statement are required.

The victim impact statement is an important document and the judge must consider it when sentencing the offender. It is a way for you to let the judge know about the physical and emotional harm you have suffered because of the crime, and the ways the crime has affected you (including, for example, financially).

The victim impact statement must follow a set format that will be explained to you, such as not bringing in new evidence or suggesting a sentence or punishment.

The trial



Before the trial

This can be an extremely stressful time for you and your family. Police will arrange a meeting between you and the Crown Prosecutor in advance of the hearing.

The Crown Prosecutor will talk with you about what you need to do as a witness and what you can expect. The police, a Victim Advisor or the Crown Prosecutor can also arrange for you to visit the courtroom beforehand, so you can see what it looks like and where you will give evidence.

Someone from a specialist agency may be able to attend these meetings with you.

There are special arrangements that can minimise your stress in giving evidence. The court will be closed to the public while you give your evidence. You can also request to have a screen between you and the accused, or to be in another room and give evidence by closed circuit TV. It is important that you discuss this as early as possible with the police or the Crown Prosecutor, so they can ask the judge that you give evidence this way.

On the day, the Victim Advisor may set aside an allocated room for you to wait in before giving evidence.

The jury

The trial will start with 12 jurors being randomly selected from the people called for jury service that day. Both the Crown Prosecutor and the

defence lawyer are able to challenge four jurors each. People who are challenged don't go on the jury. The reason for this is to enable the Crown Prosecutor, or the defence, to have some choice in the jury selection. Any unchallenged juror who knows you, the accused or anyone else connected with the case must also step down.

Being a witness

The Crown Prosecutor starts with an opening speech and presents the prosecution's evidence by calling witnesses. It is important to remember that the Crown Prosecutor represents the "state" and does not represent you personally. This means that they have certain obligations to present the case fairly and dispassionately, while still maximising the chance of conviction.

It is highly likely that you will be called as the main prosecution witness. The police or court Victim Advisor will tell you when and where you need to be at court, and you will also get an official notice, a summons, served on you for this. The police will also organise travel arrangements with you. If the trial is in a different city, the police are responsible for organising your travel and accommodation, and you will not have to pay for this. Victim Support may also cover costs of having a support person/family member travel with you. If you live locally and have no other means of travel, the police may organise for you to be picked up and taken to court.

When you give evidence, the court will be "closed". This means that members of the public cannot be present, only court staff, a support person for you, the police, Crown and defence lawyers, and the accused. You can have a support person of your choice sitting close to you when you give your evidence. Talk to the police or your court Victim Advisor so that this can be arranged.

First you must agree to give truthful evidence by swearing an oath on the Bible or making an affirmation that you promise to tell the truth. Evidence is then given in three parts, as explained below.

Examination-in-chief

This is your main opportunity to say what happened. The Crown Prosecutor will stand and ask you questions so you can give your account to the court. This may take some time, but it is important to try to relax and provide as much detail as necessary to answer the questions that are asked. Remember that the Crown Prosecutor is trying to work with you and to make sure the court hears all the best evidence possible. You may be asked to refer to photographs or other exhibits that are part of the case. Usually you will need to point out the offender, or say who that person is, to the court.

Cross-examination

The Crown Prosecutor will then sit down and the defence lawyer will stand and ask you questions. There are some court rules (law) about what they can and cannot ask you, and it is up to the judge to oversee these. You cannot be asked about your sexual experience with any person other than the defendant, except with the permission of the judge.¹¹ You cannot be asked any question about your sexual reputation.¹²

There is no right or wrong way for you to handle cross-examination because each case is different. Some suggestions are:

- Listen carefully to the question, sometimes there can appear to be more than one question in what is being asked. Make sure you understand what you are answering.

11. Section 44(1) of the Evidence Act 2006.

12. Section 44(2) of the Evidence Act 2006.

- If you don't understand a question, ask for it to be explained.
- If you don't hear a question, ask for it to be repeated.
- Give a focused answer of what you know to be true. Don't try and give information you are not sure of.
- If you can't remember, say so: don't guess.
- If you feel a question is irrelevant or offensive, ask the judge if you have to answer it.
- If you think your answer needs an explanation, ask if you can explain it.
- Try to stay calm and respectful, even if you feel like the defence lawyer is pressuring you.

If you get upset:

- pause
- have a drink of water
- look at a supportive face
- take some deep breaths or do something that helps you relax
- take your time, and, when you are ready, continue. Remember this is the opportunity to tell your account of what happened.

If you need to, you can ask the judge for a break: "Your Honour, may I have a break?"

Re-examination

After the defence lawyer finishes with their questions, they will sit down. Then the prosecutor has a second chance to ask you questions. These questions can only relate to matters brought up by the defence in their cross-examination. This is your opportunity to explain or clarify anything that you or the prosecutor think needs to be made clear.

On some occasions, the judge may also ask you questions. You should

call the judge “Your Honour”, “Sir” or “Ma’am” (pronounced “marm”, as in “marmalade”).

Further evidence at trial

After you have given evidence you will be excused from the court. You may choose to sit at the back of the court and watch the trial. On some occasions, if unexpected matters arise, you may need to be available to give further evidence later, but this is unusual. The Crown Prosecutor then presents the rest of the Crown evidence.

Once the Crown case is finished, the defence have the opportunity to present their evidence. This is not compulsory and the accused is not obliged to give evidence at the trial or call other people to give evidence.

The verdict

When all the evidence has been put before the court, the jury is asked to “retire” to a room to consider the evidence and come up with a verdict of guilty or not guilty. All 12 jurors should agree on the verdict (a “unanimous verdict”), but if they cannot all agree, an 11 to 1 majority verdict is allowed.

To reach a guilty verdict, the jury must be satisfied “beyond reasonable doubt” that the accused committed the crime he was brought to trial for. If the jury has reasonable doubt, they must bring back a finding of “not guilty”. **A not guilty verdict does not mean that the offending did not happen, or that it was your fault, or that the jury did not believe you.** It means that the jury were not able to be presented with enough evidence to be satisfied “beyond reasonable doubt” that the accused committed the offence he was charged with. As the jury’s discussions are confidential, there is no way of knowing the reason for their decision.

If the jury cannot reach a decision, there may be another trial. The Crown will discuss with police whether there should be another trial, and they will be made by the Crown upon discussions with police, who will take your views and circumstances into account.

The sentence

If the accused pleads guilty, or is found guilty by the jury, they will be sentenced at a later date. The police, Crown Prosecutor or court Victim Advisor will tell you when the sentencing is.

You can attend the sentencing hearing, but you don't have to. If the judge agrees, you or someone you choose can read out all or part of your victim impact statement in court at sentencing. Ask the police or court Victim Advisor to make the request to the judge for you. If you choose not to read your statement out, the judge will be given a copy and may refer to some aspects of it during the sentencing.

All acts of sexual violation are serious. The maximum penalty for sexual violation is 20 years in prison. Unless there are exceptional circumstances, someone convicted for this offence will go to jail.

The judge will consider the particular circumstances in deciding the sentence. Some factors are:

- the degree of planning (for example, whether the offender took steps to get you alone or gave you alcohol or drugs)
- the degree of violence (for example, whether the offender used or threatened to use weapons, broke into your home or "detained" you)
- any vulnerability you may have that was known to the offender (for example, your age, health or disability)
- particular harm suffered (for example, physical harm such

as cuts and bruising, whether the sex was unprotected, mental harm, as well as the impact on others, including family members)

- whether it was gang rape or if there was more than one offender
- whether it was one incident or extended abuse over a long time
- whether there was a breach of trust (for example, within a family relationship, a caregiver, or if the offender had some other power or authority which he took advantage of)
- whether the offending was a “hate crime” (for example, because of your ethnicity, religion or sexual orientation)
- whether there was a genuine mistaken belief in consent
- earlier consensual sexual activity
- your views on sentencing.

If the crime is sexual violation, the judge will look at whether the above factors were present. They will then decide a “starting point” for the sentence, within one of the following bands:

- 6–8 years (lower end)
- 7–13 years
- 12–18 years
- 16–20 years (upper end).

The starting point will be adjusted up or down to reflect the circumstances of the offence, as above. At this stage, any “mitigating circumstances” will be taken into account, for example the offender’s youth, mental disability or earlier good character. The judge will also reduce the sentence if the offender pleads guilty (because the offender did not make you go through a trial).

Appeals

Both the Crown Prosecutor and the offender (usually via his lawyer) have the right to appeal the verdict and the sentence. This means a higher court will look at the law of the case again. The police or the Crown Prosecutor will talk to you if this happens. Because it is only about the law, you will not have to give evidence again.

Parole

If the offender is sentenced to a prison term, he will be released at some point. Often, prisoners are released on “parole” – which means they’re released before they have served the full length of their sentence. If they are released on parole, they must still comply with certain conditions. If you want to be notified when parole is being considered, it is very important to have your name and address on the Victim Notification Register. The police will ask you about this.

If you are registered with the victim notification system, you will be notified before the offender’s parole hearings so that you have time to make a submission. You will also be notified about events relating to the offender’s detention (for example, if the offender dies in custody). Your details will be kept private.

If the offender has been sentenced to two years or less in prison, he must be released (with conditions) after he has served half the prison sentence. The offender is allowed back into the community to finish his sentence, under certain conditions. In some cases, the release conditions are set when the offender is sentenced. He may also be ordered to home detention, which means he must live and stay at a nominated address.

If the offender was sentenced to more than two years in prison, he cannot be sentenced to home detention. He is considered for parole after he

has served one third of his sentence, unless there is a longer non-parole period set at sentencing.

Any time the offender spent in custody before conviction and sentencing (for example, while awaiting trial) is counted as part of his final sentence. This means that in some cases, a parole hearing could be soon after the sentencing.

If you have safety concerns about the offender being released on parole, you can make a submission to the Parole Board giving your views. If you decide to make your submission in person, the Parole Board members will hold a special hearing to meet with you. This hearing will not be in prison, and will not include the offender, although the same Parole Board members will see him at a later time.

If the offender is granted parole, he will be released from prison on certain conditions. He must keep to these conditions or his parole can be revoked (cancelled) and he will be returned to prison to finish his sentence. Parole conditions can include:

- where the offender lives and works
- who he is not allowed to contact (almost always the victim)
- counselling or treatment
- regular reporting to his probation officer.

Financial support



Victim Support

Through Victim Support, you can apply for up to:

- \$250 to contribute to costs such as home security, replacement clothing or temporary accommodation, once the crime has been reported to the police (this is for crimes that occurred after 1 January 2010)
- \$3,000 per person to help with the costs of travelling to court for you and a support person (costs can include travel, accommodation, childcare, meals and parking)
- \$1,500 per person to help with the costs of travelling to parole hearings or videoconferencing
- \$2,000 last resort emergency funding for people who qualify for a community services card.

Contact Victim Support to find out more and how to apply (0800 842 846 or www.victimsupport.org.nz).

Accident Compensation Scheme (ACC)

You may also be able to get financial assistance from the ACC, for example, to pay for counselling if it is needed. Call the ACC Sensitive Claims Helpline or ask your support agency to find out more for you.

Compensation from the offender?

There are a range of cases in which offenders are ordered to pay reparation to victims. At sentencing, the judge can also order the offender to pay you “reparation”. The purpose of reparation is to help compensate you for emotional harm or damage to your property.

Unhappy with the way you have been treated by agencies you're dealing with?

If you are unhappy with the way you have been treated by a government agency or a SAATS doctor, you may wish to complain to the person directly, complain to their manager, or use any disputes resolution procedures within that agency. If you still feel that your rights have not been upheld, there are specialist independent agencies that will consider your complaint, as set out below. For contact details and further information see “useful contacts” at the end of this guide.

| Complaint about | Complain to |
|--------------------------|---|
| A member of the police | The person directly, their manager, use the dispute resolution procedures within police, or the Independent Police Conduct Authority |
| A breach of your privacy | The manager of the agency that you feel breached your privacy, use the dispute resolution procedures within that agency, or the Privacy Commissioner |
| An ACC decision | The Office of the Complaints Investigator at the ACC |

| Complaint about | Complain to |
|--|--|
| The medical examination | The agency you dealt with using their dispute resolution procedures, or the Health and Disability Commissioner |
| Discrimination because of your sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, or sexual orientation | The manager of the agency that you feel discriminated against you, use the dispute resolution procedures within that agency, or the Human Rights Commission |
| Other complaint about a government agency | The person directly, their manager, use the dispute resolution procedures within that agency, or Office of the Ombudsmen |

Useful contacts



Local services are also listed in the front of your local phone book, under “Personal Emergencies” services (on the green pages).

Abuse & Rape Crisis Support (ARCS) Manawatu

Provides support and advocacy, counselling, an after-hours support line, and women’s and children’s programmes. Services available to women, men and children.

Street address: 10 Linton Street, Palmerston North

Postal address: PO Box 673, Palmerston North

T: (06) 356 5868

E: admin@arcsmanawatu.org.nz

www.arcsmanawatu.org.nz

ACC Sensitive Claims Unit

A specialised unit in ACC that assesses and manages claims for physical and/or mental injury suffered as a result of sexual abuse or sexual assault.

T: 0800 735 566 (free)

www.acc.co.nz

AIDS Hotline

A 24-hour information and referral service. Information available about HIV and AIDS, testing, transmission, safe sex, sexually transmitted diseases and contact numbers for New Zealand AIDS Foundation support services around the country.

Street address: 31 Hargreaves Street, St Mary’s Bay, Auckland

Postal address: PO Box 6663, Auckland

T: 0800 802 437 (0800 80AIDS, free)

E: contact@nzaf.org.nz

www.nzaf.org.nz

Auckland Sexual Abuse Help

A community counselling agency offering support and therapy for women, young adult women and children who have experienced sexual assault.

To visit, phone for directions.

Postal address: PO Box 10345, Dominion Road, Mt Eden, Auckland

T: (09) 623 1700 (24-hour confidential phone line)

E: crisisteam@sexualabusehelp.org.nz

www.sexualabusehelp.org.nz

Awhina Whānau Services

A Māori Counselling and Therapy Service for family violence and youth programmes.

722 Ngaio Street, Mahora, Hastings

T: (06) 878 4827

Child Abuse Prevention Service New Zealand (Jigsaw)

Jigsaw is a network of 42 organisations working to stop child abuse, neglect and family violence.

PO Box 7285, Wellington

T: (04) 385 7983

www.jigsaw.org.nz

Citizens Advice Bureau (CAB)

Your local bureau will be able to provide you with information about services and support agencies in your community.

T: 0800 FOR CAB (0800 367 222, free)

www.cab.org.nz

Community Law Centres

Your local Community Law Centre provides a range of free legal services including legal information, advice, assistance and law-related education.

www.communitylaw.org.nz

Counselling Services Centre

A counselling service working with victims of sexual abuse and sexual assault. Also provides services to those whose lives are affected by domestic and family violence, homicide, relationship difficulties, grief, addiction, depression or anxiety.

Street address: 22 Alexander Avenue, Papatoetoe

Postal address: PO Box 76473, Manukau City

T: (09) 277 9324 (24 hours)

www.csc counselling.org.nz

Doctors For Sexual Abuse Care (DSAC)

A professional organisation of doctors and nurses from many disciplines, whose prime focus is education and support of medical practitioners, to ensure best practice in the medical and forensic management of sexual assault.

Street address: 5/4 Warnock Street, Grey Lynn, Auckland

Postal address: PO Box 90723, Victoria Street West, Auckland 1142

T: (09) 376 1422

E: dsac@ihug.co.nz

www.dsac.org.nz

Family Planning Association

Promoting a positive view of sexuality and enabling people to make informed choices about their sexual and reproductive health. There are clinics throughout the country.

National Office street address:

Level 6, Southmark House, 203-209 Willis Street, Wellington 6142

Postal address: PO Box 11515, Wellington 6142

T: (04) 384 4349

www.familyplanning.org.nz

Hamilton Rape and Sexual Abuse Healing Centre

Street address: 22A Clarence Street, Hamilton

Postal address: PO Box 1560, Hamilton

T: (07) 839 4433 and 0800 839 4433 (free)

E: hamrapecrisis@xtra.co.nz

Hawera Rape Crisis Family Counseling Services

Street address: 6 Furlong Street, Hawera

Postal address: PO Box 196, Hawera

T: (06) 278 6399 and 0800 472 496

E: hrcfc@xtra.co.nz

Healing and Rape Crisis Inc

Mahuika House operates as the base for Healing and Rape Crisis. Mahuika House is a social justice resource centre, with community access for meeting rooms, periodicals, resources. Support people are available via a 24-hour phone service. Staff are Rape Crisis trained advocates.

Street address: Mahuika House, 114 Downes Street

Postal address: 114 Downes Street, Te Awamutu 3800

T: (07) 871 8132 and 021 718 132

E: mauikahouse@ihug.co.nz

Human Rights Commission

You can complain to the Human Rights Commission if you have been discriminated against because of your sex, marital status, religious or ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, or sexual orientation.

T: 0800 496 877 (free infoline)

E: infoline@hrc.co.nz

TXT: 021 0236 4253

Language Line (an interpreting service) and the New Zealand Relay Service (for use by people with hearing and speech impediments) are available. An appointment with a sign language interpreter is available.

www.hrc.co.nz

Hutt Rape Counselling Network (Sexual Abuse Healing Centre)

PO Box 31468, Lower Hutt

T: 026 363 9421 (24-hour crisis pager) and (04) 566 5517

Independent Police Conduct Authority

An independent body that considers complaints against New Zealand Police and oversees police conduct.

Street address: Level 8, Baldwins Centre, 342 Lambton Quay, Wellington

Postal address: PO Box 5025, Lambton Quay, Wellington 6145

T: 0800 503 728 (free) and (04) 499 2050

E: enquiries@ipca.govt.nz

www.ipca.govt.nz

Kaitaia Women and Children Fresh Start Support Group Inc

Street address: 11 Melba Street, Kaitaia

Postal address: PO Box 406, Kaitaia

T: (09) 408 0212

E: freshstart@xtra.co.nz

Male Survivors of Sexual Abuse Trust

Offers confidential, one-to-one support, peer support, group meetings around the country, workshops, retreats and an introduction to ACC approved counsellors and therapists.

Postal address: PO Box 22 363, Christchurch

T: (03) 377 6747

E: mssat@survivor.org.nz

www.survivor.org.nz

Mid North Family Support Rape Crisis and Youth Services

Free confidential counselling, advocacy, youth and budgeting services, education, information and resources.

Street address: Upstairs at Kingston House, 123 Hone Heke Rd, Kerikeri

Postal address: PO Box 624, Kerikeri

T: (09) 407 7511 and (09) 407 4298

E: Womens-Support@xtra.co.nz

National Network of Stopping Violence Services

Te Kupenga Whakaoti Mahi Patunga

A national network of services and advocacy agencies. Works to enable all people in Aotearoa/New Zealand to live free of all forms of violence, abuse and oppression.

National office postal address:

PO Box 6721, Marion Square, Wellington 6141

T: (04) 802 5402

E: info@nnsvs.org.nz

www.nnsvs.org.nz

Nelson Rape and Sexual Abuse Network Inc

Street address: 44 Trafalgar Street

Postal address: PO Box 830, Nelson

T: (03) 548 2407

New Zealand Prostitutes Collective

Provides peer support to all sex workers, including referral services to other agencies, and provides sexual health clinics. Branches throughout New Zealand.

National office street address: Fourth Floor, 204 Willis Street

Postal address: PO Box 11412, Wellington

T: (04) 382 8791

E: info@nzpc.org.nz

www.nzpc.org.nz

Office of the Ombudsmen

Receives and investigates complaints about government agencies.

Postal address: PO Box 10152, Wellington

T: 0800 802 602 (free)

E: complaint@ombudsmen.govt.nz (complaints)

E: office@ombudsmen.govt.nz (inquiries)

www.@ombudsmen.govt.nz

Privacy Commissioner

Receives and investigates complaints about breaches of privacy.

Street address: Level 4, Gen-i Tower, 109-111 Featherston Street

Postal address: PO Box 10094, The Terrace, Wellington 6143

T: 0800 803 909 (free phone) and (04) 474 7590

www.privacy.org.nz

Rape and Abuse Support Centre Southland Inc. (RAASC)

Provides non-judgemental information, advice, education programs, support, advocacy and counselling to survivors of rape and abuse.

Street address: 26 Nelson Street, Invercargill

Postal address: PO Box 7040, South Invercargill, Invercargill 9844

T: (03) 216 2079

E: raasc@xtra.co.nz

www.rapeandabuse.co.nz

Rape and Sexual Abuse Support (West Coast) Inc.

Street Address: 37 Peel Street, Westport

Postal Address: PO Box 412, Westport

T: 0800 274 747 (crisis phone) and (03) 789 7700

E: w.coast.r.c@xtra.co.nz

Rape Crisis Dunedin

A non-profit, community agency run by a number of dedicated women – paid workers and volunteers who support female survivors of sexual violence progress towards healing.

Street address: 1st floor, Corso Building, 111 Moray Place, Dunedin

Postal address: PO Box 5424, Dunedin

T: 03 474 1592

E: rcrisis@xtra.co.nz

www.rapecrisisdunedin.org.nz

Rape Crisis Gisborne

Postal address: PO Box 1398, Gisborne

T: 06 867 9967

E: whaiora@xtra.co.nz

Rape Prevention Education Whakatu Mauri

Working to eliminate rape and sexual abuse through education and community work. Also provides support and information to survivors of sexual abuse and their whānau/friends through a telephone information, referral and support-line.

Postal address: PO Box 78307 Grey Lynn, Auckland

T: (09) 360 4001

E: info@rapecrisis.org.nz

Relationship Services/Whakawhanaungatanga

Counselling services are available throughout the country. Relationship Services have a range of counsellors and will match the counsellor to the sexual abuse survivor's preferences and specific needs.

National office street address: Level 8, 203-209 Willis Street, Wellington

Postal address: PO Box 2729, Wellington 6011

T: (04) 472 8798

E: reception@relationships.org.nz

www.relate.org.nz

Sexual Abuse Centre (Rotorua) Inc

A community resource providing free support, information and advice about anything to do with sexual abuse. Professionally trained counsellors work with men and women, parents, partners and anyone affected by sexual abuse or going through abuse related court cases. Also offers tailored education programmes.

Street address: Level 1, Community House, 1115 Haupapa Street, Rotorua

Postal address: PO Box 2137, Rotorua

T: (07) 348 1555

E: help@sexualabuse.org.nz

www.sexualabuse.org.nz

Sexual Abuse Healing Centre Whanganui Inc

Provides free counselling, education, home-based social and advocacy services to those directly or indirectly affected by sexual abuse.

Street address: Level 2, 53 A Ridgway Street, Wanganui City Centre, Whanganui

Postal address: PO Box 102, Whanganui

T: (06) 345 4744

E: SexualAbuseHealing@xtra.co.nz

Sexual Abuse Survivors Trust

Provider of SAFECARE24-hour rape/sexual assault crisis service.

T: (03) 377 5401

www.sast.org.nz

Shakti Asian Women's Helpline and Safe House

Provides information, support, advocacy, education and accommodation for Asian, African and Middle Eastern women experiencing violence.

Postal Address: PO Box 24417, Royal Oak, Auckland

T: (09) 6368 512 and 0800 742 584 (24 hour crisis line)

E: sawc@shakti.org.nz

www.shakti.org.nz/safehouse.html

SOS Kaipara

Provides a range of free services to women and children who are survivors of sexual abuse and domestic violence, including crisis counselling and family therapy by NZAC qualified counsellors; support and advocacy, emergency housing and education programmes available to the whole community.

Street address: 153 Victoria Street, Dargaville

T: 09 439 6070

E: sos@win.co.nz

START

A specialist agency providing counselling for sexually abused children, youth and adults alongside support for their whānau, and consultations and education for the wider community.

Postal address: PO Box 21022, Edgware

T: (03) 355 4414 and (03) 355 8143

E: starthealing@xtra.co.nz

Taranaki SAFER Family Centre

Provides counselling, education and social support services to individuals and families across all of Taranaki. We are nationally recognised for our particular expertise in the areas of sexual violence, sexual offending and counselling of children.

Street address: 199 Devon Street, East New Plymouth

T: (06) 758 4178

E: info@saferecentre.org.nz

www.saferecentre.org.nz

Victim Support

Offers a free, nationwide 24-hour service.

T: 0800 VICTIM (842 846) (free helpline)

www.victimsupport.org.nz

Wairarapa Rape and Sexual Abuse

Postal address: PO Box 286, Masterton

T: (06) 370 8446

E: rape.crisis@xtra.co.nz

Wakatipu Abuse Intervention Network

Street address: 63 Ballarat Street, Queenstown

Postal address: PO Box 302, Queenstown 9348

T: (03) 442 7105 and (03) 442 7145 (free crisis phoneline)

E: wapn@xtra.co.nz

Wellington Rape Crisis

Provides free and confidential support, counselling, information and advocacy to survivors of rape and sexual abuse, and their families, friends and whānau.

Street address: Level 3, 203-209 Willis Street, Wellington

Postal address: PO Box 11731, Manners Street, Wellington

T: (04) 801 8973 (support) and (04) 801 8974 (office)

E: office@wellingtonrapecrisis.org.nz

E: support@wellingtonrapecrisis.org.nz

www.wellingtonrapecrisis.org.nz

Wellington Sexual Assault Assessment and Treatment Service (SAATS)

For medical and forensic services after sexual assault – acute and historic.

T: (04) 805 0522 (8:30am-5pm)

Wellington Sexual Abuse Help Foundation

Provides support, information and counselling for children, young people, men and women and their families where there has been any experience of sexual abuse, sexual assault or family violence.

Wellington office:

Street address: Level 2, James Smith Building, 55 Cuba Street, Wellington

Postal address: PO Box 11160, Wellington 6042

T: (04) 499 7530

Porirua office:

46 Mungavin Avenue, Porirua East

T: (04) 237 8822

T: (04) 499 7532 (24-hour crisis line)

E: support@wellingtonhelp.org.nz

Whangarei Rape Crisis

Provides a 24-hour crisisline service for womyn survivors of sexual violence and their whānau. Provides a drop-in centre, advocacy, and police and court support. Wahine Māori and whānau are offered support by a Kaiawhina Māori.

Street address: 114A Robert Street, Whangarei

Postal address: PO Box 913, Whangarei

T: (09) 438 6221

E: whgrcrisis@xtra.co.nz

Wellington Sexual Health Service

Specialises in sexual health, including testing and treatment for all STIs, counselling and specialist medical care. Sexual and reproductive health services, including contraception, are also provided at no charge by many area GPs. Contact your GP for more information.

Street address: 275 Cuba Street, Ground Level, Te Aro, Wellington

T: (04) 385 9879 and 0800 188 88 (free)

E: sexualhealth@compasshealth.org.nz

Women's Refuges

Provide a range of residential and community-based support services for women and their children experiencing family violence including: 24-hour crisis line; 24-hour access to emergency accommodation; confidential support; advocacy; information on legal issues; safety options; and referrals. Some refuges operate education and support groups for women and/or children. There are 45 affiliated refuges around New Zealand including 12 Māori women's refuges. For your local refuge, see the front of your telephone directory under "Personal Help Services" .

T: 0800 REFUGE (0800 733 843)

www.womensrefuge.org.nz

Youth Law

Free legal service for children and young people.

Street address: Level 1, 219 Federal Street, Auckland

T: 0800 UTHLAW (0800 884 529)

E: info@youthlaw.co.nz

www.youthlaw.co.nz

YWCA of Aotearoa New Zealand

Addresses a wide variety of issues concerning women, especially young women, and advocates from a practical base of programmes and activities in the community.

Street address: Level 3, 75 Ghuznee Street, Te Aro, Wellington 6011

T: (04) 384 8117

www.ywca.org.nz

Useful resources

A Guide to Applying for a Protection Order (Whitireia Community Law Centre booklet, available online at www.communitylaw.org.nz)

Applying for a Protection Order: Information for people applying for protection orders under the Domestic Violence Act (Ministry of Justice pamphlet, available online at www.justice.govt.nz/family)

Applying for a Restraining Order (Ministry of Justice pamphlet, available online at www.justice.govt.nz/civil)

Giving Evidence (New Zealand Law Society pamphlet, email pamphlets@lawsociety.org.nz)

Introduction to the Domestic Violence Act (Ministry of Justice pamphlet, available online at www.justice.govt.nz/family)

Legal Aid for Protection Orders (Ministry of Justice pamphlet, available online at www.justice.govt.nz/publications)

Legal Information for Pregnant Teenagers (Wellington Community Law Centre pamphlet, available online at www.communitylaw.org.nz)

Medical Care for Adults after Sexual Assault (Doctors for Sexual Abuse Care pamphlet, available online at www.dsac.org.nz/patient/adults.html)

Moving through the criminal justice system: what happens and how to get support. For victims of sexual violence. (Ministry of Justice pamphlet, available online at www.victiminfo.govt.nz)

One Path Ahead: Reporting the Abuse/Assault (Auckland Sexual Abuse HELP pamphlet, available online at www.sexualabusehelp.org.nz)

Parole (Information available online at www.paroleboard.govt.nz)

Rape Prevention Education (Rape Crisis online resource, available at www.rapecrisis.org.nz)

The Ripple Effects of Sexual Abuse: Impacts on Survivors and Families – How to Help (Auckland Sexual Abuse HELP pamphlet, available online at www.sexualabusehelp.org.nz)

Understanding Sexual Abuse: Who, Why, How? (Auckland Sexual Abuse HELP pamphlet, available online at www.sexualabusehelp.org.nz)

Crimes Act 1961

This is the exact language the Crimes Act 1961 uses to define the crime of rape.

Section 128: Sexual violation defined

- (1) Sexual violation is the act of a person who –
 - (a) rapes another person; or
 - (b) has unlawful sexual connection with another person.

- (2) Person A rapes person B if person A has sexual connection with person B, effected by the penetration of person B's genitalia by person A's penis, –
 - (a) without person B's consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.

- (3) Person A has unlawful sexual connection with person B if person A has sexual connection with person B –
 - (a) without person B's consent to the connection; and
 - (b) without believing on reasonable grounds that person B consents to the connection.

- (4) One person may be convicted of the sexual violation of another person at a time when they were married to each other

Section 2: interpretation

sexual connection means –

- (a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of –

- (i) a part of the body of another person; or
 - (ii) an object held or manipulated by another person; or
- (b) connection between the mouth or tongue of one person and a part of another person's genitalia or anus; or
- (c) the continuation of connection of a kind described in paragraph (a) or paragraph (b)

Section 128A: Allowing sexual activity does not amount to consent in some circumstances

- (1) A person does not consent to sexual activity just because he or she does not protest or offer physical resistance to the activity.
- (2) A person does not consent to sexual activity if he or she allows the activity because of –
- (a) force applied to him or her or some other person; or
 - (b) the threat (express or implied) of the application of force to him or her or some other person; or
 - (c) the fear of the application of force to him or her or some other person.
- (3) A person does not consent to sexual activity if the activity occurs while he or she is asleep or unconscious.
- (4) A person does not consent to sexual activity if the activity occurs while he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to the activity.
- (5) A person does not consent to sexual activity if the activity occurs while he or she is affected by an intellectual, mental, or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity.

- (6) One person does not consent to sexual activity with another person if he or she allows the sexual activity because he or she is mistaken about who the other person is.
- (7) A person does not consent to an act of sexual activity if he or she allows the act because he or she is mistaken about its nature and quality.
- (8) This section does not limit the circumstances in which a person does not consent to sexual activity.
- (9) For the purposes of this section, –
 - allows** includes acquiesces in, submits to, participates in, and **undertakes sexual activity**, in relation to a person, means –
 - (a) sexual connection with the person; or
 - (b) the doing on the person of an indecent act that, without the person’s consent, would be an indecent assault of the person.

OTHER RESOURCES PUBLISHED BY THE WELLINGTON COMMUNITY LAW CENTRE



LEGAL INFORMATION FOR PREGNANT TEENAGERS

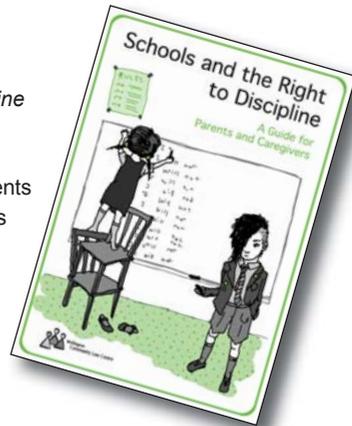
This booklet, although written for pregnant teenagers and their family and whānau, also provides legal information for all pregnant women and their families. Although there are no laws which say when someone can and can't become pregnant, there will be times throughout a woman's pregnancy when she will have to make "legal decisions".

48 pages

SCHOOLS AND THE RIGHT TO DISCIPLINE

This new edition of *Schools and the Right to Discipline* is a comprehensive guide to legal rights and responsibilities involving school issues. It provides information on suspensions and stand-downs; students with disabilities; bullying; school rules; privacy; rights to education; truancy; uniforms; fees; punishments; making complaints; and enrolments and zoning.

80 pages



Orders to:
Wellington Community Law Centre
PO Box 24005, Wellington 6142
Tel (04) 499-2928
Email: info@wclc.org.nz

www.communitylaw.org.nz



Rape Survivors' Legal Guide

Navigating the legal system after rape

This guide provides rape survivors with information about their legal options. It explains the different stages of the legal process, from a decision to report the crime to the police, to the trial and sentence of the offender.

It also outlines other steps which may be taken instead of, or in addition to, reporting the crime to the police, such as applying for a protection order, getting financial assistance, and accessing counselling or sexual health services.

In addition to using this guide, readers are encouraged to talk to a support agency about their particular circumstances. Further resources and specialist organisations are listed in this guide.



Wellington
Community Law Centre