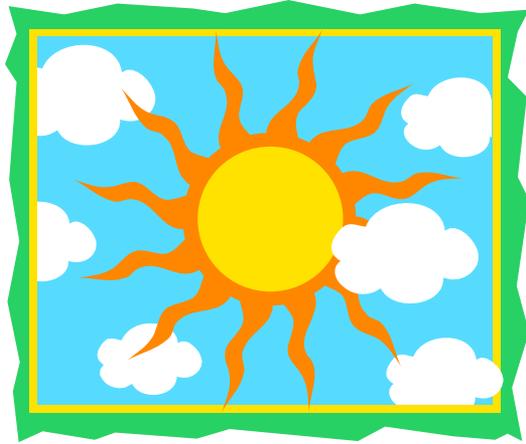


Surviving Sexual Assault and Navigating the Criminal Justice System



*A Guide for Victims and
Those Affected by Sexual Assault*

**Surviving Sexual Assault and Navigating
the Criminal Justice System:
*A Guide for Victims and
Those Affected by Sexual Assault***

Created by the Dutchess County Sex Offender
Management Project, Community Education and
Outreach Services Committee and the Crime Victims
Assistance Program of Family Services, Inc.

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Legal Advocate's Manual

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You Are Not Alone

Have you been raped or sexually assaulted? If so, you may be asking yourself, "Why did it have to happen to me? Is it my fault? Could I have prevented it if I had behaved differently?" The answer is that there are millions of survivors of sexual assault, and none of them, including you, are responsible for what happened. In fact, every two and a half minutes, someone in America is sexually assaulted*. Sexual assault crosses race, class, age, and gender lines. People are not assaulted because of how they look or how they act. If any unwanted sexual experience has taken place, then you have been sexually assaulted, and you are the victim of a crime, plain and simple.

*RAINN calculation based on U.S Department of Justice 2003 National Crime Victimization Survey Data.

Am I To Blame?

Sexual assault can be frightening and traumatic. Every victim has his or her own unique story, yet many may feel similar feelings of shame, fear, anxiety, confusion and even guilt. Sex offenders may orchestrate their crimes in ways that make victims feel responsible. Please don't buy into this idea. It is not your fault; you are not to blame for the crime. It is possible that along your journey toward healing, you may encounter insensitive or uninformed individuals who try to find fault with your behavior in order to explain the crime. Don't listen to them. It is the perpetrator's actions that should be examined and condemned; not yours.

What Now?

As the victim of a sexual assault you probably have lots of questions. There are many decisions to make and many options to consider. Generally speaking, a sexual assault victim has two important decisions to make right after the crime: First, whether or not to receive medical attention; and second, whether or not to report the crime to the police. It may be hard to decide what to do after the assault. Talking with someone who can give immediate support and information, such as a crime victim advocate, a family member or friend, may help with your decision. Crime victim advocates are available by contacting the Family Services Inc. 24 Hour Rape Crisis and Crime Victims Hotline at 845-452-7272.

Medical Attention

It is important that you get medical attention as soon as possible after an assault. A medical exam will ensure that you get the care you need. It also makes it possible to collect physical evidence of the assault, so that if you decide to report to law enforcement, your case will be stronger. In Dutchess County, Sexual Assault Forensic Examiners are available to provide you with medical and evidence collection services. These services are available at no cost and may be obtained by contacting the 24 Hour Rape Crisis and Crime Victims Hotline (845-452-7272). Even if medical evidence is collected, you are not required to press charges, make a report, or release evidence to the police. It is important to avoid changing clothes, showering, urinating or brushing your teeth before an exam so that as much evidence as possible can be collected.

Medical Concerns

In addition to any physical injury you may have sustained during the assault, you may also be concerned about pregnancy or sexually transmitted diseases, including HIV, the virus that can cause AIDS. It is difficult to say how high the risk of HIV infection is in cases of sexual assault. Infection can occur after a single sexual encounter with an infected person, but may not occur even after repeated exposure. After a suspect is convicted of certain offenses a judge can require that they be tested for HIV and that the results of these tests be provided to you. As for pregnancy and other sexually transmitted diseases, when you go for a medical exam the nurse or doctor will ask you if you want "prophylaxis." This means that there are medicines that you can take that may prevent many sexually transmitted diseases and even pregnancy, if you take

after the assault. The medical care professional who examines should explain the possible health outcomes of the assault and tell you what you can do about them, including obtaining testing for yourself.

Some people have flashbacks of the assault during the medical exam. If this happens to you, tell the nurse or doctor. If you need them to stop the exam so you can talk about your feelings, say so. Remember, you are free to ask questions during the exam, and to express your wants and needs. You can stop the exam at any time, and you are free to accept or reject particular procedures. It may help to have a support person, such as a victim advocate, with you during the exam and discussion. It is your decision to get medical care or to pursue legal action. If you think these options may harm you, discuss alternatives (such as Planned Parenthood or the college health center) with your victim advocate.

Getting the Help of a Victim Advocate

One vital source of support for victims of sexual assault are victim advocates. If you are at the hospital, the hospital staff should contact a victim advocate for you automatically. If they do not, please request that one be contacted for you. When talking to the police, you must request that a victim advocate be contacted on your behalf. (A victim advocate can be reached by contacting the Family Services Inc. 24 hour rape crisis and crime victims hotline at 845-452-7272.) A victim advocate will support you through the difficult process you are going through. They will not push you into doing anything you do not want to do. They will support your decisions and offer what help they can. Victim advocates know about the processes that you will have to deal with after a sexual assault,

such as medical and legal procedures. They can guide you through the maze of decisions you may have to make during your journey to recovery. They can also help support you emotionally, and tell you about all the other kinds of help that are available to you as a victim of sexual assault.

If you decide to press charges against the person who assaulted you, you may be dealing with the criminal justice system for the first time ever, and this can be really scary and overwhelming. The victim advocate can help you deal with police, lawyers, prosecutors, and judges. Perhaps the most important role of a victim advocate is to inform you of your rights, and to help make sure that your rights are protected.

Your Rights as a Crime Victim

As a victim of sexual assault in New York, you have a number of rights afforded to you by law. Your victim advocate will talk to you about these rights in more detail.

You have the right:

- To be informed (in writing) of the name, address, and telephone number of the nearest rape crisis center
- To certain kinds of compensation and financial assistance
- To be free from intimidation
- To submit a Victim Impact Statement
- To have restitution

For more information, please contact the NYS Crime Victims Board at 1-800-247-8035 or visit their website at <http://www.cvb.state.ny.us>.

Reporting the Crime to the Police

You may feel afraid to report the crime to the police. What if your name ends up in the newspaper? What if you have to testify in court? What if the person who assaulted you gets angry that you told on them and wants revenge? These fears are valid, and the decision to tell the police what happened is absolutely up to you. However, there are a lot of reasons to report what happened. Police can only help keep you and the community safe if they are aware of the crime. If unreported, the perpetrator may not be held accountable by the criminal justice system and will be free to continue assaulting others. In addition, if you wish to seek financial restitution or reimbursement from the New York State Crime Victims Board, your eligibility will vary based upon whether or not the incident is

Reporting the crime to law enforcement allows them the opportunity to hold the offender accountable for his or her actions. Although it can be a scary step to take, you may feel proud that you are standing up for yourself and working for justice on your own behalf. And you don't have to do it alone. Working with a victim advocate, as well as asking for help from your family and friends, can make reporting the crime easier and make you feel less alone. Keep talking to people about the pros and cons of reporting until you reach a decision you feel you can live with.

If you decide to press charges

If you decide to press charges you will be interviewed by the police. When you call the police, an officer will come to you wherever you are. Or if you like, you can go to the nearest police station. It is the job of the police to ensure your safety, to collect and preserve evidence of the crime, to sort out the facts of the crime, and to catch the offender. When you talk to the police you have the right to have a victim advocate with you. If you choose to have an advocate present, you must inform the police. The police officer may ask you personal and difficult questions about the crime because they have to know what happened in order to investigate and/or arrest the person who assaulted you. Having the support of an advocate during this interview may be

Other Interviews

After you talk to the police (and go for a medical exam if you haven't already) you may be asked to talk to other individuals who can help to build the case against the person who assaulted you. During these interviews you do not have to be alone in a room with the official. You have the right to have an advocate, family, or friend with you.

A detective may talk to you sometime after you speak with the first police officer. The detective will want to get as many details as they can about the crime. Tell the detective everything you can remember about what happened, even if it seems unimportant. If you can't remember some details just say so; if you remember them later, as often happens, report them to the detective as soon as

possible. The detective may ask you to view a lineup of suspects if the person who assaulted you was a stranger. They may also ask you to help someone draw a picture of the offender. Should you be asked to take a polygraph exam, or it is suggested, please know that it is illegal for them to request this of you. You have the right to refuse to comply with any of these requests. It cannot prevent the detective from trying to build a case against the person who assaulted you, but the more information you are able to provide the detective, the more thorough the investigation will be.

Meeting with the Prosecutor

After the detective finishes investigating the case, and if they find enough evidence to file charges, the prosecutor will read the report and make the decision as to whether to take the case to court. The prosecutor is the person who will present the judge with your side of what happened. They will work to convict the person who assaulted you and either incarcerate him or her or have them comply with any other sentence handed down by the judge. First however, the prosecutor must decide if taking the case to court (prosecuting) will result in a conviction. If not, they may decline to prosecute.

The idea that the case may not make it to court may be difficult for victims to understand. It seems unfair that, after the terrible experience you have gone through, your case may not even be heard by a judge.

However, prosecutors have a thorough process to decide which cases have a chance of resulting in a conviction of the offender, and which ones don't. In Dutchess County, prosecution of sex offenses is evidence based, which means if the prosecutor feels the case has evidentiary value, the case will be prosecuted. When you talk to the prosecutor the best thing you can do is to fully cooperate and tell them everything you know. However, you should be aware that anything you tell the prosecutor is information that is available to the defense attorney.

If the prosecutor decides not to prosecute, you may feel angry and confused. It may feel like you are not being believed or that the system doesn't care. You may need help to deal with the feelings that may arise. Use the resources listed at the end of this booklet to find support. Speak with your victim advocate about what you can do. Regardless of the prosecutor's decision, you can be proud of yourself for surviving the assault and coming forward.

Arrest

If there is enough evidence, the person who assaulted you will be arrested. He or she will either say they are guilty or not guilty. Bail will be set, and the offender may be sent to the county jail. You have a right to know when/if the offender is arrested, and if they are released on bail. Victims in New York may obtain information about offenders through VINE—Victim Information and Notification Everyday. To receive information, call VINE at 1-888-VINE-4NY (1-888-846-3469).

You may choose to obtain an order of protection from the district attorney's office if the offender is released from jail. This is a legal document that prevents the offender from coming near you. If they break it and are caught by the police, they may be taken to jail. You may wish to discuss this option

The Defense

You may be contacted by the perpetrator's defense attorney and asked to discuss the case. They may not make it clear that they are working for the person who assaulted you. If anyone other than the detective with whom you are familiar, or the prosecutor, asks to speak to you about the case, do not do it until you ask the prosecutor (district attorney) who the person really is and who they represent. Anything you say to the defense attorney can and probably will be used against you in court. Tell your family and friends that it could damage your case if they talk to the defense about it. Remember, you have the right to have your own legal representation at all interviews.

Going to Court

Depending on whether the crime committed against you is a felony or a misdemeanor, the court procedures will be different. If the crime is a misdemeanor (considered by legal officials to be less serious than a felony) the case will be prosecuted in the local criminal court. If the crime is a felony (considered by legal officials to be more serious), then a trial will take place in the Dutchess County Court. Misdemeanor cases rarely go to trial and they are usually resolved by plea bargaining. In a plea bargain, the prosecutor and the defense attorney will work out what they believe to be an appropriate resolution without you having to testify. You have the right to be informed of what is going on during this process and to be told what decisions have been made.

A felony case has more steps involved. If the case is not plea bargained (plea bargaining

occurs often) there may first be a preliminary hearing in which the prosecutor will present evidence that shows a crime has been committed. This is known as “probable cause,” and often relies on both testimony and physical evidence. You will be questioned by the prosecutor and the defense attorney in front of the judge. Most likely the person who assaulted you will not testify at this hearing although they will be in the courtroom. The preliminary hearing can be a difficult experience because it may be the first time you come face to face with the person who assaulted you. Your victim advocate can help you prepare for the experience. (See Appendix I in this booklet for detailed tips on testifying.) When it is your turn to testify you will be sworn in and asked to take an oath that you will tell the truth. If you give any untrue statements you could be charged with perjury.

Grand Jury Hearing

Within six months of the preliminary hearing the case will be sent to the grand jury. This hearing will take place in the District Attorney's Office. The session is "closed," which means that no one not directly involved with the case is able to be present to hear it. Unfortunately, in New York, victim advocates are not allowed to come with you into a grand jury room. However they can accompany you to the office and sit with you in the waiting area. You will testify, but the offender will not be present unless they have decided to exercise their right to be called as a witness. The grand jury may ask questions of you based on the prosecution's presentation of the case. The grand jury will then make a decision as to whether they will charge the defendant with the crime (or crimes) presented by the prosecution (an "indictment"), reduce the charges, or dismiss the case.

Trial

If the grand jury hands down an indictment, you may have to wait several months for the case to come to trial. This can be one of the most frustrating aspects of the criminal justice process for survivors of sexual assault. You may wish that you could put the entire experience behind you as you wait for the trial to happen. Sometimes survivors begin to feel anxious and depressed. Support from family, friends, your advocate, a counselor, or support group is really important at this time to help you get ready for the trial while at the same time caring for yourself and doing what you need to do to recover from what you've been through.

The trial will begin with jury selection, at which time the jury will be given preliminary instructions by the judge. Opening

prosecutor and defense attorney. Following opening statements, each side will present their case (although defense is not required to do so). As part of the prosecution's case, you will most likely have to testify. Others such as police officers, health care workers, and witnesses to the crime may also be called to testify. It is likely that the person who assaulted you may not take the stand since the burden of proof is on the prosecution, and there is the presumption that the accused is innocent until proven guilty.

After the trial, if the jury comes back with a verdict of "guilty," the offender will be sentenced. The defense may appeal a "guilty" verdict, but the prosecution cannot appeal a "not guilty" verdict due to the way our legal system is designed. Upon a guilty verdict, you can submit a Victim Impact Statement to the court. This statement gives you the chance to tell the court, in writing,

include a description of the emotional and physical injuries you have sustained, financial losses, or major life changes that are a result of the crime. Your victim advocate or the Victim Services Unit through Probation can assist you in preparing a Victim Impact Statement.

A variety of sentences may be given to the offender. They include jail, prison and probation. If the perpetrator is sentenced to prison or jail, they will be incarcerated. Generally speaking, an offender will be incarcerated in jail for a period of less than one year and in prison for a term of one year or longer. If the perpetrator is sentenced to probation, they will serve their time in the community, but will be supervised by specially trained probation officers. Due to your willingness to press charges, the offender will now be held accountable for his or her actions. Take pride in the fact that you were an integral part in bringing the

Not Guilty Verdict

But what about a verdict of “not guilty?” Not every case is resolved the way the victim hopes, or in a way that is fair. If the person who assaulted you is found “not guilty,” you may feel that all the effort you have made has come to nothing. You may feel hopeless, angry, afraid, and lots of other difficult emotions. How can you deal with this after all you’ve been through? The trauma of the assault was bad enough, but to be invalidated by the legal system in this way may feel like a second assault. Don’t be afraid to express your anger, but try to do it in ways that don’t hurt you or anybody else. Get support, and remind yourself that your experience has had meaning. Although the outcome of the trial may not be what you had hoped for, you will have behaved courageously. Ask for support and do everything you can to take care of yourself. You may also want to discuss the option of a civil law suit with your advocate.

Recovering from Sexual Assault

Recovery is something you do through your own efforts, and with the help of support people such as friends, family, advocates, and counselors. Survivors of sexual assault often find it difficult to resume their normal lives and relationships. You may feel overwhelmed about ordinary, everyday activities and may fear that you will never regain control over your life. There is no right way to cope with sexual assault. Everyone's recovery is different, and feeling better may not follow a straight path, but rather, you may have good days and bad days. Abrupt mood changes, overreacting to normal everyday problems, internalized anger, and a variety of other feelings such as embarrassment, fear, distress and helplessness may occur after a sexual assault. You might also find it difficult to regain your sense of sexuality.

Express your feelings to your partner and ask for what you need. Remember, you are not alone, and asking for support and getting help with your recovery is a healthy response to what you are going through.

If a Loved One is Sexually Assaulted

If you are the partner, parent, family member, or friend of someone who has been sexually assaulted, you are an indirect victim of the crime. Like the victim, you may feel incredible anger, helplessness and fear. In addition, you may feel guilty that you did not prevent the assault from happening. Please understand that the offense was not your fault. You are not responsible for the horrible crime that has been committed toward someone you love. The individual who committed the sexual assault is entirely responsible. We cannot control the behavior of others. If your loved one was assaulted, they are the victim of a crime, even if he or she knew the perpetrator. In the majority of sexual assaults, the victim does know their perpetrator (National Crime Victimization Survey, Bureau of Justice Statistics, US Department of Justice).

You may have no idea how to deal with the feelings that are coming up as a result of the assault, let alone know how to be a strong and comforting presence to the victim. You may really want to help but not know what to do. Where do you go from here? How can you begin to help right a world that has been turned upside down? A good first step might be to contact the local Crime Victims Assistance Program and ask for support yourself. (see the Resource List in the back of this booklet for information on the program) Please do not give out information about the victim or the crime without first discussing it with the person who was directly assaulted, however. By talking with an advocate or counselor, you may feel more able to cope with what you are going through, and you may be given very valuable information on how to support your loved one through this crisis.

The advocate or counselor may tell you that victims of sexual assault all respond differently to what happened. The important thing for you to remember is to recognize and support your loved one's feelings, no matter what they might be. Try to demonstrate compassion and acceptance, and let your loved one know that you are willing to listen no matter how sad, scared or angry he or she might be. Sometimes it helps if you can let the victim know that you are not going to leave him/her, either literally or figuratively, if he/she express the intensity of their feelings and reactions in response to the assault. It can also be good to share your own feelings about the assault with your loved one, so he/she can know that he/she are not alone and that they are loved by you unconditionally.

In addition to supporting your loved one, it is important to avoid saying and doing certain things that a victim of sexual assault might

find hurtful. In your own feelings of grief and confusion, you may feel the urge to direct your anger toward your loved one, demand details about the crime, or think about seeking revenge. Please redirect these feelings in a more productive way. Take that energy and use it to listen to the victim and to encourage his/her efforts to respond effectively to the crime. It is important to never imply that the victim of a sexual assault is responsible for being assaulted, or that he/she "asked for it." Believe what the victim says, and behave gently and with consideration towards him/her. Do not tell your loved one "not to think about it," or that he/she "shouldn't feel that way." Processing the thoughts and feelings associated with the assault can help your loved one on his or her path to healing.

Recovery from sexual assault is not necessarily a linear process. Your loved one may seem fine at times, and then abruptly have a mood swing. He or she may overreact to normal, everyday problems, become anxious and depressed, and continue to experience shame, fear, guilt and helplessness. Your relationship will have to evolve in order to accommodate the experience of assault. It may seem easier not to talk about what happened, or to forget that your loved one's mood swings may be related to the crime. Try not to do this. Work through the issues together now, rather than burying them. You and your loved one need each other now more than ever. By facing the trouble rather than hiding from it you will both grow in strength.

Appendix I: Testifying in Court

- Before you testify, try to picture the crime scene, the objects there and what happened as best you can. Do not try to memorize what you are going to say.
- Dress appropriately. Neat, clean, conservative and comfortable clothes are suggested. You should dress as you would for a job interview.
- Always tell the truth. Tell accurately what you recall and what you know. If you do not know the answer, say “I don’t know.” **DO NOT GUESS.**
- Listen carefully to each question before you answer to be sure that you understand it. Take your time and think about your answer. If you do not understand a question, ask to have it rephrased or repeated.
- Speak clearly and address your answers to the judge or jury hearing the case. You do not have to look at the defendant after you identify them for the court.
- Answer only the questions asked and then stop. Do not volunteer information.
- If the question requires a “yes,” or “no” answer, answer “yes” or “no” unless your answer cannot be fully understood without an explanation.
- Answer only one question at a time. Do not answer “yes” or “no” to a long series of questions.

- Be polite, firm and clear in your answers, even if the questions are hostile.
- Stop talking if an objection is made by one of the attorneys or if the judge interrupts. The judge will tell you if you can finish your answer. If you have forgotten the question, ask to have it repeated.
- If you are asked whether you have talked about the case with anyone, answer truthfully. As a victim you probably have spoken to the police, the prosecutor, family and friends.
- Be quiet in and around the courtroom. Talking about the case around jurors or witnesses may cause a mistrial.
- It may be helpful to re-read these suggestions several times before your court date so you will feel more comfortable in court.
- Remember, if you tell the judge or the jury exactly what you know, you will do fine.

Appendix II: Resource List

Crisis/Emergency Help

- Rape Crisis/Crime Victims Hotline—24 Hour Hotline
845-452-7272
- Sexual Assault Forensic Nurse Examiner Program—24
Hour Hotline 845-452-7272
- Suicide Prevention—845-485-9700
- Mental Health Helpline—845-485-9700

Counseling Services /Emotional Support

- Crime Victim's Assistance Program— 845-452-1110
x 3083 or 3121
- Family Services, Inc. Mental Health Clinics—845-452-
1110

Advocacy Services

- Crime Victim's Assistance Program—24 Hour Hotline
845-452-7272 or call during business hours at 845-452-
1110 x 3083 or 3121

Police

- City of Poughkeepsie—845-451-4000
- City of Beacon—845-831-4111
- Town of Poughkeepsie—845-485-3666
- Town of East Fishkill—845-221-2111
- Village of Wappinger's Falls—845-291-1011
- Hyde Park—845-229-9340
- Dutchess County Sheriff—845-486-3800
- NY State Police—845-677-7300

Appendix II: Resource List

Hospitals/Medical Information

- Dutchess County Health Department— 845-486-3400
- HIV/AIDS Hotline—845-486-3408
- Planned Parenthood—845-471-1540
- St. Francis Hospital—Main: 845-483-5000 Emergency Room: 431-8220
- Vassar Brothers Medical Center—Main: 845-454-8500 Emergency Room: 431-5680

Legal Help

- County Attorney's Office—845-486-2110
- District Attorney's Office—845-486-2300
- Legal Services of the Hudson Valley— 845-471-0058

Probation/Parole

- Parole—845-452-0620 or 831-4820
- Probation—845-486-2600

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