



Community Legal Information Association of Prince Edward Island, Inc.

Sexual Assault

Sexual assault is a serious crime. For the victim it can be the ultimate violation of both body and mind. It is the experience of being helpless in the hands of an enemy and carries with it the implied threat of death.

Following are some of the questions most often asked about sexual assault. The answers will give you basic information. At the end of the pamphlet we tell you where you can get more information.

This pamphlet provides information on sexual assault. Sexual offences against children and young persons, and incest are not covered in this pamphlet.

In the pamphlet the term "the accused" refers to a person who is accused of an offence but who has not been convicted of the offence. The term "the offender" refers to a person who has been convicted.

Q. What is sexual assault?

Sexual assault is any action involving some form of sexual contact – from touching breasts to sexual intercourse - if it is done without consent. It is an act which violates the sexual integrity of the victim. There are three types of sexual assault listed and defined in the *Criminal Code*:

Sexual Assault - examples are touching, fondling, kissing or any other bodily contact for a sexual purpose.

Sexual Assault with a Weapon, Threats to a Third Party or Causing Bodily Harm - examples are where the offender uses or threatens to use a weapon, where the offender threatens to hurt another person, or where you are hurt or injured in some way.

Aggravated Sexual Assault - examples are where you are wounded, maimed or disfigured. (Wounding is a serious kind of cut or bruise, maiming is a

crippling injury, and disfigurement is visible disfiguring damage.) This section is also used if your life is endangered by the sexual assault.

The penalties and procedures for dealing with sexual assault depend on the extent of the assault and the amount of violence used.

Q. Where can I get help after a sexual assault?

You can get immediate medical attention through a hospital emergency department or from your doctor.

You can get immediate support and counseling through the Rape and Sexual Assault Crisis Centre's 24 hour crisis line: for local calls telephone 566-8999, toll-free long distance call 1-800-289-5656.

People who have been sexually assaulted need support and information to help them to deal with the effects of the assault. Many continue to experience fear, depression, lack of confidence, inability to relate to others, flashbacks, and disruption of their sex life. The trauma of sexual assault is not something that just goes away. Following are some agencies that can provide help:

Rape Crisis Line --

Local calls 566-8999,
Toll free long distance 1-800-289-5656
(24 hours toll-free service)

Victim Services --

Charlottetown 368-4582
Summerside 888-8218

Community Mental Health Clinics --

Charlottetown 368-4430
Montague 838-4094
Summerside 888-8180

Also Family and Community Service Agencies and private counselors in your community.

Q. Do I have to report the assault to the Police?

No, you do not have to report the assault if you don't want to. See a doctor so that you can be examined for injuries. The doctor will explain the risk of pregnancy, venereal disease (VD) and AIDS. The doctor should also tell you about sexual assault services in your area such as the Rape and Sexual Assault Crisis Centre.

It is up to you to decide whether to tell the police about the assault.

Q. How soon do I have to report the assault to the police?

There is no set time. However, the sooner the report is made, the sooner the police will be able to investigate the offence. They will be able to talk to witnesses while the evidence is fresh in their memory and collect evidence before it is destroyed. Also, if the accused says that you made up the assault, an early report adds to the credibility of your complaint.

Q. What happens when I report the assault?

If you report the assault, the police will take a statement from you. The police will also want a medical report and may want to photograph any injuries. They may also contact the Rape Crisis line on your behalf for support through the medical examination. Depending on the circumstances, the police may visit the scene of the crime to collect evidence and interview witnesses and others who may have information about the assault. Most sexual assaults are committed by a person known to the victim. The police will therefore usually be able to question the accused and may arrest him or her. During their investigation, the actions of the police are governed by their operational guidelines and policies.

These cover medical examinations; referral to professional counseling (Victim Services and other support agencies); interviews with you and possible witnesses; crime scene analysis and collection of evidence; identifying and interviewing the suspect; and reviewing the evidence to decide on appropriate action and charges. If the police do not refer you to Victim Services, ask for the phone number or call one of the numbers listed in this pamphlet.

The police will charge the accused if they have enough evidence.

Q. Will everyone know that I've been assaulted?

The police are often in contact with the media to give them information about current investigations and other information thought to be in the public interest. They do not always release information about incidents of sexual violence and assault and they don't release the name of the victim.

If your case goes to court you can ask the Crown attorney to request a nonpublication order. If you ask for the order, the judge will order that your name, or anything else which would identify you, is not published or broadcast by the media.

Q. Is there anyone to help me once I tell the police I've been assaulted?

Yes, Victim Services, a province-wide programme based in the criminal justice system, is designed to help victims of crime during the criminal justice process. Victim Services workers work closely with the police to give you information

about court dates, times and procedures. They also provide emotional support, short-term counseling and referrals to counseling agencies on request. This service is free and confidential. The Rape and Sexual Assault Crisis Centre also offers free and confidential counseling to victims of sexual assault.

Prince Edward Island also has a designated Crown attorney (called the Crown) who oversees the prosecution of sexual offences. In many cases this Crown attorney personally conducts the actual prosecution. The Crown attorney is not your personal lawyer, as victims of crime do not need a lawyer to take their case to court. You are needed as a witness for the Crown. Remember, **you are not on trial**, it is the accused person who is on trial. The Crown Attorney's Office has adopted a victim-oriented approach to the prosecution of sexual offences and staff try to prepare cases in ways that do not cause further trauma to victims. The Crown will meet with you and make decisions about your case after talking to you, the investigating police officer and the Victim Services worker. How much time the Crown spends with you will depend on the complications of your case. Before your first meeting, prepare yourself to give a detailed account of what happened and answer all of the questions you are asked (even if they are embarrassing).

Q. Can my spouse be charged with sexual assault?

Yes, your spouse can be charged if he or she assaults you. Married spouses can testify against each other if they want to. Common law spouses can be required to testify against each other. Married and common law spouses can also be required to testify in cases of assault or other physical abuse against a victim under the age of 14.

Q. What if I agreed to the sexual activity with the accused?

If you agree (consent) to the sexual act or to the use of force there is no assault. However, there is no consent if you submit only because the accused used or threatened to use force against you or some other person such as a child.

Also, there is no consent if it was obtained by fraud or by a person in a position of trust over the victim such as a teacher, youth group leader or guardian. Generally, a person under 14 cannot consent to the sexual act.

If the accused mistakenly believed that you consented, even if you did not, and the mistake was honest and reasonable - there will not be a conviction. The judge or jury must decide whether the mistake was honest and reasonable.

Q. Does there have to be a witness to the assault?

No, the accused can be convicted on your evidence. There does not have to be an independent witness to the assault. Sometimes there is other evidence such as medical evidence indicating that you were assaulted. The judge or jury must

be satisfied beyond reasonable doubt that the accused assaulted you; otherwise the accused will not be found guilty.

Q. Will I have to give evidence in court?

If the accused pleads not guilty you will usually have to give evidence in court. If the accused pleads guilty you will not have to give evidence. Often, the victim is the only witness to the sexual assault because most sexual assaults take place when the victim and the accused are alone. Therefore, you are an important witness.

You may have to give evidence at a preliminary inquiry and at the trial. A preliminary inquiry is a hearing where a judge decides whether there is enough evidence to send the case to trial. The accused has a right to have a preliminary inquiry only in serious types of sexual assault. If the judge decides there is enough evidence to go to trial, the case will go to Supreme Court where a date will be set for plea and trial. There may be several months from the time charges are laid to the preliminary hearing and several more months between the preliminary hearing and the trial.

Our pamphlet **A Guide for Witnesses** tells you about being a witness in a criminal trial.

If charges are laid against the accused you may wish to prepare a victim impact statement. This describes the harm done to you by the assault and may include information about physical injuries, the emotional impact, and any financial loss you may have suffered. The purpose of the victim impact statement is to give the judge information for use when sentencing an accused who has been found (or pleaded) guilty. Victim Services staff will explain victim impact statements to you so that you can make a properly informed decision about whether to prepare one. They will also help you with the preparation and filing of the document with the court.

Victim Services staff will arrange appointments with the Crown attorney, take you to visit the courtroom before the trial, arrange for transportation to court if needed and answer your general questions about the criminal justice process.

Q. Will the accused be kept in jail until the trial?

Usually the accused will be released until the trial. If you are afraid that the accused will visit you or harm you, you can ask the police to request the Justice of the Peace to set conditions on the accused. These conditions can include that the accused not go near your home or your work and that the accused not speak to you or contact you by phone. This is called "an undertaking to refrain from contact". In certain cases - if the accused has a previous record, is not likely to

show up in court, or presents a danger to the public - the Crown may ask for a "show cause" hearing to hold the accused in custody until the trial.

Q. Can I change my mind and withdraw charges or refuse to give evidence in court?

If the police have laid charges against the accused you cannot withdraw them. If you get a subpoena you must come to court to give evidence. A subpoena is a court order telling you to come to court and the date and time you must be there. If you do not obey a subpoena, the judge can issue a warrant for your arrest and you will be brought before the judge to explain why you disobeyed the subpoena.

If you are afraid or you do not want to give evidence in court talk to a Victim Services worker and the Crown attorney.

Q. Will my sexual history be discussed in court?

Before deciding whether to allow such evidence the judge will hold a hearing in private (without the jury or the public present). Evidence of your sexual history may be allowed where:

- it has already been raised by the prosecution
- there is a dispute as to the identity of the person who committed the assault or
- the accused wants to provide evidence of sexual activity in which you took part and agreed to on the same occasion as the alleged assault. Such evidence may be relevant if the accused claims that you consented to the sexual activity

In May, 1997 An Act to Amend the Criminal Code (production of records in sexual offence proceedings) came into force. This law is intended to ensure that only relevant documents from the victims' and witnesses' personal and confidential records are made available to the accused. The Act sets out the procedures to determine the release of records. These include a review process in which the accused must show that:

- the records exist
- they are held by a named record holder and
- they contain information which is relevant to the issue at trial.

The trial judge then examines the records or part of the records in private to decide whether any part of the record should be given to the accused. These two areas have been controversial for courts to deal with and these procedures are intended to prevent unwarranted invasion of a victim's history and private and confidential records. If you are at all concerned about the accused raising your sexual history or accessing your medical records or counseling records tell the Victim Services worker and the Crown attorney about your worries.

Once the trial is over, there may be more court dates for sentencing or appeals. If you do not wish to go to court for these, ask the Victim Services worker to go and bring you information about the discussions and decisions of the court.

Q. What type of sentence will the offender get?

If found guilty, the offender will be sentenced. Usually the judge will not sentence the offender immediately. The judge will set a date for sentencing and may ask for a pre-sentence report on the offender. The pre-sentence report is done by a probation officer. The probation officer will find out about the offender's background, family, education, employment record, and previous criminal record. The judge will also read your victim impact statement if you have written one and it has been filed with the court.

The judge has many sentencing options including fines, discharges, probation or a jail term. The judge may choose one or more of these penalties. For example, the judge may fine the offender and place him/her on probation.

In deciding what sentence to give the judge looks at:

- the seriousness of the offence;
- the circumstances surrounding the offence;
- the harm to the victim;
- the amount of force used by the offender;
- the offender's attitude towards the crime;
- the offender's previous criminal record;
- the kinds of sentences that have been given for similar offences; and
- the prevalence of the crime in the community (general deterrence).

The Community Legal Information Association pamphlet [Sentencing](#) provides more information on sentencing procedures.

Q. What happens after the trial is over?

After the court process is over Victim Services will continue to give you information and support. They will help you with information about orders to refrain from contact, release dates and conditions, letters to the National Parole Board and anything else you may need to help you with regard to the criminal justice system. Contacts may include probation officers, parole officers and correctional staff.

Q. Can I get financial compensation for the pain and suffering of being sexually assaulted?

Yes, the judge may order the offender to pay restitution to cover actual financial costs to you. Victim Services staff can also help you to apply for criminal injuries compensation if you have suffered physical injuries and/or emotional trauma as a result of being sexually assaulted if the crime happened

after September 30th. 1989. They will give you an application form and information sheet and will help you to make the application.

A Victim Services worker will also document evidence during court proceedings and gather medical, hospital, police and other reports to support your claim. When the investigation of your application for compensation has been completed the Victim Services worker will write a case analysis and forward all of the documents to an adjudicator who will assess your claim.

You may also wish to speak to a lawyer to get legal advice about launching a civil case against the person who sexually assaulted you. Lawyers' names and the names of law firms are listed alphabetically in the yellow pages in the PEI phone book under "Lawyers". Another way to find a lawyer is through the Lawyer Referral Service run by the Law Society of Prince Edward Island. If you call this service you will be given the names of two lawyers. You may see one of the two named lawyers for a 30 minute interview. The cost is \$10.00 plus tax. You can reach the [Lawyer Referral Service](#) by phoning 1-800-240-9798 (892-0853 local) week days from 9:00 a.m. to 4:00 p.m.

Q. If I was sexually assaulted as a child, is there anything I can do now?

It may be possible to lay criminal charges against the person who abused you. If you wish to lay charges you can discuss your situation with the police. You may also wish to think about a civil case; a lawyer can help you decide about this. There are also counseling services available for survivors of incest and other forms of sexual abuse. The agencies listed at the end of the pamphlet may be able to help you.

Q. Where can I get more information?

Community Legal Information Association (CLIA) has pamphlets on other criminal law matters such as **Women, Assault and the Law**; [Sentencing](#); **A Guide for Witnesses**. CLIA also provides information about the law and the justice system through a telephone information line, booklets, pamphlets, speakers' bureau, and workshops. Telephone, toll free, 1-800-240-9798 (892-0853 local).

Crown attorneys are employed by the provincial government with offices in both Charlottetown, telephone 368-4595 and Summerside, telephone 888-8213.

Victim Services, which is also part of government, has offices in both Charlottetown, telephone 368-4582 and Summerside, telephone 888-8218.

Rape and Sexual Assault Crisis Centre has both information and materials available, telephone 566-1864.

We try to keep our materials legally accurate and up-to-date. However laws do change. You can check with the Office of the Attorney General, Victim Services, a lawyer, the police, or Community Legal Information Association for changes to laws mentioned in this pamphlet. The Community Legal Information Association of PEI, Inc. (CLIA) is a charitable organization that provides the public with information, education, and resources on the law. CLIA receives funding from the Department of Justice Canada, the Government of Prince Edward Island, and the Law Foundation of Prince Edward Island. The CLIA office is on the first floor of the Sullivan Building, 16 Fitzroy Street, Charlottetown. Telephone 892-0853 locally or toll-free long distance 1-800-240-9798. Our mailing Address is P.O. Box 1207, Charlottetown, PEI, C1A 7M8.

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