

*Toward Healing and Justice*

# Empowering

**SEXUAL ASSAULT SURVIVORS**



## Definition of Frequently Used Terms

**Survivor:** The individual who was assaulted. In this handbook, this word is used to describe the victim. Many rape crisis centers use this word as well. The word survivor is meant to focus on the strengths of those who have been sexually assaulted.

**Victim:** The individual who was assaulted. This word is used in the criminal justice system.

**Sexual Assault or Rape:** In this handbook, the words sexual assault and rape are used interchangeably.

**Rapist, Perpetrator, Assailant, Attacker:** The person who committed the assault. In this handbook, the words perpetrator and assailant are used interchangeably.

**Defendant:** The alleged perpetrator is referred to as the defendant in the criminal justice system.

## Introduction

This handbook is intended for adult survivors of sexual assault. It has been prepared by the Michigan Coalition Against Domestic and Sexual Violence as a general guide in dealing with sexual assault. More specific information about local ordinances, reporting procedures, emergency room procedures, and community services are available at the Beacon Center, your local rape crisis center. The handbook was prepared with the purpose of providing you with accurate information regarding the medical and legal concerns that you may be having, as well as to discuss issues regarding your physical and emotional healing. We thank the Michigan Coalition Against Domestic and Sexual Violence for allowing us to adapt this handbook to our local area.



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## **Immediate Response**

### **Getting help**

If you have been sexually assaulted:

- Get to a safe place
- To preserve evidence, do not shower, bathe, douche, eat or drink, wash your hands, go to the bathroom or brush your teeth.
- If you have already done any of these things, evidence may still be present for collection. Do not change or destroy your clothing.
- Do not clean or disturb anything in the area where the assault occurred.
- Get medical attention as soon as possible.

For free, immediate care after a sexual assault go to your local hospital emergency department:

#### **Prairie Lakes Healthcare System**

**401 9th Ave NW  
Watertown, SD 57201  
(605) 882-7000**

#### **Sanford Clear Lake Medical Center**

**701 3rd Ave S.  
Clear Lake SD 57226  
(605) 874-8484**

#### **Milbank Area Hospital Avera**

**901 E. Virgil Avenue  
Milbank, SD 57252  
(605) 432-453**

Tell them you are there for a sexual assault exam

-OR-

Go to a safe place and call the Beacon Center 1-800-660-8014 or 605-886-4300

Our free services are available at any time

## **Common questions**

### **Why go to the hospital?**

- Even if you don't have obvious physical injuries, it's important to make sure you're OK and to discuss any risks of pregnancy or sexually transmitted infections from the sexual assault.
- If you think you may have been given a "rape drug," you can have a urine sample taken to test for it.
- Having a medical exam also allows you to preserve physical evidence of the sexual assault (see below).

### **What will happen at the hospital?**

- Once you arrive at the Emergency Department and tell them you're there for a sexual assault exam, you'll be given a private room.
- If available, a specially-trained Sexual Assault Nurse Examiner (SANE) will be called in to see you and talk over your options for care and evidence collection.
- A victim advocate from Beacon Center will be available at the hospital to support you and, if you wish, to speak with family and friends. You can talk with the advocate at any time during or after your care.
- A law enforcement officer will talk with you if you decide to report the crime.

### **Why collect evidence? I can't deal with pressing charges right now.**

- That's OK, you won't have to. Having evidence collected just keeps your options open. The evidence can be stored anonymously for up to one year until you're ready to choose what to do.
- Evidence needs to be collected within 96 hours (4 days) of the assault. Many people decide days or weeks after their assault, once they make it through the initial trauma, that pressing charges is important to them. Having evidence available strengthens their ability to bring their attacker to justice, if that's what they decide to do.

### **Can I choose whether or not to involve the police?**

- If you are 18 or older, reporting to law enforcement is entirely your decision. An advocate will be available to discuss this option with you. If you are under 18, or in cases where physical, mental or age-related disability requires a mandatory report, law enforcement will be contacted.

### **Are there reasons to consider making a police report?**

- Yes, although you'll want to make the decision that's best for you. If you like, a victim advocate can help you talk through pros and cons. Here are a few positive results to consider:
- Regaining your sense of control. Making a police report is one way of taking control after your assault. Sometimes just knowing that law enforcement has heard you and taken the crime seriously can help you in your recovery, whatever the outcome of the investigation.
- Protecting others. You need to make doing what's best for you your first priority, but statistics show most rapists are repeat offenders. Your report may help the police arrest and prosecute a perpetrator before they hurt somebody else.

**I'm worried I'll get in trouble. (I was doing drugs, I don't have immigration papers, etc.)**

- If you are a crime victim, the police will not use your immigration status or drug use against you. Their concern is getting a violent criminal — your attacker — off the streets.

**I'm scared my attacker will come after me again.**

- There are ways for you to stay safe, and a victim advocate can discuss these with you.

Chapter One  
**THE FACTS**

Several myths exist about sexual assault. These myths often shift responsibility and blame from the assailant to the victim. Understanding the myths surrounding sexual assault may help you in your recovery. What happened to you was a crime. You are not to blame for the assailant's behavior.

MYTH: Rape is caused by the perpetrator's uncontrollable sexual urge.

**FACT: Rape is an act of power and control, not sex.**

MYTH: Individuals who commit rape are mentally ill or psychotic, and cannot help themselves.

**FACT: Very few perpetrators are mentally incompetent and/or out of touch with reality. Rapes may be planned or carried out by acquaintances, intimate partners, family members or strangers.**

MYTH: The victim must have "asked for it" by being seductive, careless, drunk, high, etc...

**FACT: No one asks to be abused, injured, or humiliated. This line of thought blames the victim for what happened instead of the perpetrator who chose to commit the crime. Individuals of all ages, from all walks of life, have been the targets of sexual assault. Not one of them "caused" their assailant to commit a crime against them.**

MYTH: If women would just stop drinking so much, they wouldn't be sexually assaulted.

**FACT: Alcohol is a weapon that some perpetrators use to control their victim and render them helpless. As part of their plan, an assailant may encourage the victim to use alcohol, or identify an individual who is already drunk. Alcohol is not a cause of rape; it's only one of many tools that perpetrators use.**

MYTH: If the victim did not physically struggle with or fight the assailant, it wasn't really rape.

**FACT: Assailants are not looking for a fight and they use many forms of coercion, threats and manipulation to rape. Alcohol and other drugs such as Rohypnol are often used to incapacitate victims. South Dakota law defines sexual assault by the action of the perpetrator, not the victim. In fact, there is a specific law that says that the victim need not have resisted the perpetrator in order for it to be considered rape. In addition to our basic instincts of fight and flight there is a third option, freeze. When the brain determines fight and flight aren't possible it releases chemicals which freeze the body and manage pain to endure the assault.**



MYTH: Most perpetrators are strangers to their victims.

**FACT: Most rapes are committed by someone that the victim knows: a family member, neighbor, friend, acquaintance, co-worker, classmate, spouse, partner, or ex-partner.**

MYTH: Serial rapists are uncommon.

**FACT: Most every perpetrator is a serial rapist, meaning that they choose to use coercion, violence, threats of force, etc., to assault on a repeated basis.**

## Chapter Two

### **YOUR FEELINGS & RECOVERY**

Survivors of sexual assault experience a wide range of reactions. Some have said that after the assault their emotions go up and down or from one extreme to another. It is important for you to know that what you are feeling and thinking right now is OK. Your reactions are your own way of coping with the crime that has been committed against you. There is no standard response to sexual assault.

#### **What You May Be Feeling**

There is no standard response to sexual assault. You may experience a few, none, or all of the following:

**SHOCK AND NUMBNESS:** Feelings of lack of mental clarity, confusion, being easily overwhelmed, not knowing how to feel or what to do. You may react in a way that is similar to your reactions during other crises in your life (for example with tears, irritability, nervous laughter, withdrawing).

**WHAT YOU CAN DO:** Be aware that these are normal reactions to trauma. Each person handles crisis differently, so think of things that helped you get through crises in the past. Get help to sort out what you would like to do and how you may want to organize your time, thoughts, and decisions. Be compassionate toward yourself; give yourself time to heal.

**LOSS OF CONTROL:** Feeling like your whole life has been turned upside down and that you will never have control of your life again. Your thoughts and feelings seem out of control.

**WHAT YOU CAN DO:** Try to get as much control over your life as you possibly can, even over small things. Ask for information that may help you sort out your thoughts and feelings. Use outside resources, such as counselors and legal professionals. Ask how other people have handled similar situations. Try to make as many of your own decisions as possible. This may gradually help you regain a sense of control over your own life.

**There is no right or wrong way to react to sexual assault.**

**FEAR:** Fear that the assailant may return; fear for your general physical safety; fear of being alone; fear of other people or situations that may remind you of the assault.

**WHAT YOU CAN DO:** If you want company, do not hesitate to ask people who you trust to be with you day and night. You may want to make your physical environment feel more safe (making your home more secure, change your locks, carry a cell phone, apply for an order of protection, getting to know your neighbors better).

**GUILT AND SELF-BLAME:** Feeling like you could have or should have done something to avoid or prevent the assault; doubts regarding your ability to make judgments.

**WHAT YOU CAN DO:** No matter what the situation was, you did not ask to be hurt or violated. Blaming yourself is sometimes another way to feel control over the situation, thinking that if you avoid similar circumstances, it will not happen to you again.

**ISOLATION:** Feeling that this experience has set you apart from other people; feeling that other people can tell you have been sexually assaulted just by looking at you; not wanting to burden other people with your experience.

**WHAT YOU CAN DO:** Recovering from an assault can be a very lonely experience and is unique to each person. However, you are not alone in what you are feeling. You may find it reassuring to talk to others who have been assaulted, or to a counselor at Beacon Center who has worked with other sexual assault survivors.

**VULNERABILITY, DISTRUST:** Feeling that you are at the mercy of your own emotions or the actions of others; not knowing who to trust or how to trust yourself; feelings of suspicion and caution.

**WHAT YOU CAN DO:** Trust your instincts about who you want to talk with about what happened to you. Try to talk with people whom you have found to be the most dependable in the past; select those who have been good listeners and non-judgmental. Feelings of general suspicion may subside as you begin to find people you can trust.

**SEXUAL FEARS:** Feeling that you do not want to have sexual relations; wondering whether you will ever want or enjoy sexual relationships again; fears that being sexually intimate may remind you of the assault.

**WHAT YOU CAN DO:** Try to tell your partner what your limits are. Let your partner know if the situation reminds you of the assault and may bring up painful memories. Let

your partner know that it is the situation, not him/her, that is bringing up the painful memories. You may feel more comfortable with gentle physical affection. Let your partner know what level of intimacy feels comfortable for you.

**ANGER:** Feeling angry at the assailant. You may find yourself thinking about retaliation. You may be angry at the world since you no longer feel safe. If you are religious, you may feel angry that your faith did not prevent this.

**WHAT YOU CAN DO:** Be accepting of your anger. Thoughts of being violent toward the assailant do not mean that you are a violent or bad person. You have the right to feel angry about the violation you have experienced. You may want to talk to people who understand this.

**DISRUPTION OF DAILY ACTIVITIES:** During the first few days or weeks after the assault you may feel preoccupied with intrusive thoughts about the assault. You may experience difficulty-concentrating, nightmares, sleep disturbances, changes in appetite, ‘startle reactions,’ phobias, general anxiety or depression. You may have memories of a prior crisis.

**WHAT YOU CAN DO:** Although these are common reactions, they can be quite disturbing. Take things very slowly. Some people find it helpful to keep a notebook at hand to write down feelings, thoughts, ideas, or details of the assault; keeping the thoughts and feelings in one place may make them feel more manageable.

### **Recovery**

Experiencing so many different emotions is a part of working through what has happened to you. Right now, you may wonder when you will “get your life back.” Or, perhaps, you are not feeling much at all. There is no right or wrong way to react to sexual assault. Many survivors have found that patience, time, and support from others has helped them recover. Beacon Center has worked with many who have had similar experiences. A good counselor will understand and help you work through the emotional roller coaster that you may be on.

Those who work with assault survivors often use a response model, similar to the one below, to outline how people commonly react to traumatic events. However, there is no “recovery calendar.” Individuals pass through recovery stages in their own way, sometimes skipping back and forth between stages. This model merely offers you a framework for understanding the emotions and reactions you may have as you heal from the assault. For more information or support, contact Beacon Center.

### **Common Reactions to Traumatic Events**

**Initial Crisis:** For the first few days or weeks, the assault may seem unreal. You may feel numb or you may experience intense or heightened emotions. You might even have physical symptoms of shock: feeling weak, nauseated, moving slowly, nightmares or inability to sleep. There is

nothing wrong or unusual about these kinds of reactions.

**Outward Adjustment:** This is a time when pressure to “get on with your life” might come from within or from others in your life. Many survivors may appear, on the outside, to have forgotten about the rape or be satisfactorily “dealing with it” as they deal with practical matters such as returning to school, work, or other normal routines. Sometimes well-intentioned family members, friends, or significant others encourage this. You may find yourself trying to block the experience out of your memory. This can be an important and self-protective coping mechanism for the short term.

**Secondary Crisis:** For many people, something happens in their life (a trigger) which may make their previous coping mechanisms ineffective, causing them to face the assault. Acknowledging the assault may be quite painful. What formerly seemed unreal or was denied may become very real to you. Survivors of sexual assault describe feeling depressed and/or having flashbacks or obsessive thoughts about the assault. You may replay the assault or parts of the assault in your mind many times. You may also experience intense anger. Again, it is important to remember that these responses are completely normal.

**Integration:** You are changed by the assault, but have integrated the experience as one event among many life experiences. You may feel as though you have survived the assault and have dealt with the thoughts and emotions of the trauma. You may still spend time thinking about and talking about the assault, but may find that when triggers and flashbacks occur, the feelings surrounding the experience do not last long and may become less intense over time. Healing is possible; however, it will take work. You may need the support of loved ones or the help of caring professionals. Remember that others have gone through this and **YOU ARE NOT ALONE.**

**The recovery process has neither a timeline nor a sequence. Individuals often move back and forth between phases.**

### **Talking with Significant Others**

You may be wondering who you should tell or what you should say to significant people in your life. Parents, friends, employers, neighbors, and partners can be sources of support and solace. Follow your own heart when deciding who to turn to. You may worry that you are relying on others too much. It is okay to ask for help in times of crisis. People who truly care about you will want to help; people who truly care about you may need to be told how to help you. It is okay to tell people what you need from them. It is okay to say:

**“I don’t want to be touched.”**

**“I need to be held.”**

**“I would like to talk about what happened.”**

**“I don’t want to discuss that.”**

If someone close to you is having a difficult time being supportive or coping with your assault, you might ask him or her to read the following section.

## **How to Help a Survivor of Sexual Assault**

- Believe them!
- Reinforce that the assault was not their fault.
- Validate their experience.
- Be supportive, don't overreact.
- Be patient. The survivor may express a range of strong emotions.
- Allow the survivor to offer or not offer the details of the assault, **DON'T PRY**.
- Don't gossip. Allow the survivor to choose with whom they share the details of the assault.
- Understand that the survivor might not want to be touched.
- Consider that this experience is only **ONE** part of this person's life. Don't let it overshadow other aspects and experiences.
- Avoid being overly protective or attentive. The survivor may want safety and company, but not necessarily want to be the center of attention.
- Don't take decision-making power away from the survivor.
- It is okay for you to have needs as well! Find support for yourself.

## **Beacon Center Services**

Individuals outside your immediate circle of loved ones can also provide support and acceptance that may aid in your recovery. You are the person to determine the type of help that is most useful for you. Please consider the services of the Beacon Center that offers advocacy and counseling. Don't hesitate to seek help.

**An advocate** is a professional who is trained to assist sexual assault survivors in medical and legal matters. The advocate has an understanding of "the system" and how it works. They have likely served numerous other survivors. Many programs offer legal advocacy, which will include accompanying a survivor to court, the police station, or meetings with the prosecutor. An advocate is a source of practical, useful information and emotional support.

**A sexual assault counselor** is a professional who is trained to address your emotional needs. Many who have experienced sexual assault find that a counselor offers compassion and help. Some find that they can more easily discuss their assault with a professional who has worked with other survivors. You will benefit most from counseling when you decide that you want it.

Support groups are helpful recovery tools for many survivors. You may develop a supportive network with others who have had experiences similar to your own. Many survivors find support groups a valuable part of their healing process. A support group may be an alternative to counseling if you do not want one-on-one interaction.

- **24 HOUR CRISIS LINE** for victims of domestic violence and sexual assault
- **TRAINED ADVOCATES** to provide information, support and referral
  - **COURT ADVOCACY**—assistance with protection orders and accompaniment to legal hearings
  - **MEDICAL ADVOCACY**--accompany sexual assault victims during medical exam
- **SHELTER** for victims of domestic violence and sexual assault, providing for victims that are fleeing a dangerous situation and need a safe place to live as well as planning for your safety
- **COUNSELING SERVICES**
  - **CRISIS COUNSELING** - adult individual and group counseling; including rape crisis services
  - **PERSONAL COUNSELING** - specializing in working with victims of trauma, domestic violence and sexual assault
  - **PLAY THERAPY** – specialized counseling for children who have experienced trauma
  - **SUPPORT GROUPS** - Provides a safe, supportive place for discussion and healing from past or present trauma and abuse
- **EDUCATION and OUTREACH** — tours and presentations available
  - ALL THE SERVICES ABOVE ARE AT NO CHARGE**-
- **FAMILY VISITATION CENTER** offers a facility where supervised visits and safe exchanges of children between parents where children will not be exposed to parental conflicts can occur.
  - **Visitation service fees are calculated on a sliding scale**
- **COMMON SENSE PARENTING CLASS** – for parents of children 3 – 17 years old. This program is a proven, step-by-step guide for raising responsible children and provides skills to help parents build strong, healthy families.

“And finally, to girls everywhere, I am with you. On nights when you feel alone, I am with you. When people doubt you or dismiss you, I am with you. I fought every day for you. So never stop fighting, I believe you. **Lighthouses don’t go running all over an island looking for boats to save; they just stand there shining.** Although I can’t save every boat, I hope that by speaking today, you absorbed a small amount of light, a small knowing that you can’t be silenced, a small satisfaction that justice was served, a small assurance that we are getting somewhere, and a big, big knowing that you are important,

unquestionably, you are untouchable, you are beautiful, you are to be valued, respected, undeniably, every minute of every day, you are powerful and nobody can take that away from you. To girls everywhere, I am with you. Thank you.”

*-From the Stanford Sexual Assault Survivor Victim Impact Statement*

## **Chapter Three**

### **MEDICAL CONCERNS**

Receiving immediate and follow-up medical attention is one of the most important things that you can do for yourself if you have been sexually assaulted. You may have injuries that need to be treated, and you may want to be tested for pregnancy and sexually transmitted diseases (STIs).

The Beacon Center will have information about local hospital procedures. A friend, relative, or advocate from the Beacon Center can accompany you to the hospital. You do not have to do this alone!

**A Sexual Assault Nurse Examiner (SANE)** program includes the use of a clinician (usually a registered nurse or nurse practitioner) with advanced education and clinical preparation in forensic examination of sexual assault victims who conducts the forensic exam of the sexual assault survivor. SANE programs assist survivors of sexual assault in receiving the most specialized treatment available.

### **If You Were Assaulted Recently**

You are encouraged to go to an emergency room. The most important reason to do this is to check for injuries. Shock, and general aches and pains from the assault may be difficult to distinguish from a serious injury. Although it will not be easy, an exam may help set your mind at ease. You will also be given important information about STIs and pregnancy.

If you are not already using contraception, you may want to ask your doctor or nurse about emergency contraception, known as the “morning after pill.” This treatment is a high dose of progesterone that has proven effective as a prophylactic if taken within 72 hours of the assault. Your doctor or nurse will be able to discuss the risks and benefits of such a treatment. The hospital may also give you antibiotics for gonorrhea and chlamydia. You may be started on a vaccination series for the prevention of hepatitis B and referred for testing for HIV and syphilis. If baseline tests for pregnancy and STIs are completed, they will only tell you if you were infected or pregnant before the assault.

Another important reason to receive immediate medical attention is to collect physical evidence for a criminal investigation. Evidence is best collected within 6 hours of the assault but can be collected up to 96 hours after the assault. You are not required to have the kit completed, and the hospital cannot refuse to use the kit if you are undecided about prosecuting your perpetrator. Specially trained staff at hospital emergency departments or nurse examiner programs can complete a sexual assault evidence collection exam. This standardized exam is a series of lab tests that are designed to collect physical evidence for use in the prosecution of a sexual assault.

Your nurse, doctor or an advocate from Beacon Center can explain exactly what the exam entails. You have the right to know exactly what is happening during the exam and you should ask questions if you have concerns

### **Will I need to make a police report?**

Many hospitals interpret the law mandating hospitals and physicians to report all injuries due to violence as a mandate to report all sexual assaults to the police. Being treated at an emergency department or having a sexual assault evidence collection kit completed does not mean that you have to talk to the police. You can choose not to speak to the officers. If you are currently unsure about participating in criminal prosecution, having the sexual assault evidence collection kit completed will help keep your options open. Typically, evidence may be kept for a few weeks as you consider your options. Hospital personnel should inform you of how long the evidence will be stored prior to destruction. The sexual assault evidence collection kit cannot be released to the police without your signature on an authorization form.

### **Who pays for the hospital visit?**

In the state of South Dakota, the cost of a sexual assault exam is paid for by the county in which the assault occurred. There is no cost to the victim!

“Rape Drugs” Some assailants use drugs (Rohypnol, also known as Roofies: Gamma hydroxybutrate, also known as GHB; Ketamine also known as Special K; to name a few) to physically control their victim and render them defenseless. If you believe you were drugged, inform your doctor. Blood or urine tests may detect the drug in your system. Testing should be done as soon as possible as some drugs can only be detected within 12 hours of ingestion.

### **What about a private doctor?**

Although you may feel more comfortable with your family doctor, he or she will not be available 24 hours a day, and will most likely send you to the hospital to have the sexual assault evidence collection exam completed. Private doctors do not have access to the kit. The hospital that treats you after the assault can send your discharge information to your private doctor and you can complete your follow-up care with her or him.

### **If You Were Assaulted In the Past**

It is still very important to receive medical attention. You may want to have pregnancy and STI tests done. Although a sexual assault evidence collection exam can be performed at any time, the chances of collecting evidence decrease significantly, when more than a few days have gone by. However, you can still report the crime to the police and prosecution is still possible.

### **Follow-up Medical Care**

Follow-up care is vitally important. Any sexually transmitted disease that you may have contracted from the offender will not show up until later. A follow-up test for pregnancy is also recommended. Even if you were given preventative medication, it is very important that you are re-tested a few weeks after the assault. A follow-up exam will also give you the opportunity to check your injuries and discuss any new physical symptoms that may have developed since the



assault.

The follow-up exam may bring back memories of the assault. This may be difficult for you and you may want extra support and counseling. If you are uninsured or have financial concerns, you can get pregnancy and STI tests at a local Family Planning or your local health department. Family Planning will charge you based on your ability to pay.

### **Testing for STIs**

You may want to keep track of STIs for which you have been tested or treated. Ask your doctor or nurse exactly which tests are being completed. It may take several years for the symptoms of some STIs to show up. Information and testing could potentially save your life. The table on the following page contains information about the eight most common STIs. Ask your health care professional for more information.

### **HIV/AIDS**

While sexual assault survivors are at a low risk for HIV infection, an HIV test may help you feel more comfortable. It is recommended that you are tested 2-6 weeks following the assault and again at 3, 6 and 12 months following the assault. Most county health departments will have information about free, anonymous HIV testing. You can ask a health care professional or sexual assault counselor for more information.

If it is determined by your doctor that you are at high-risk for HIV infection (i.e. your assailant is HIV positive or engages in high-risk behaviors such as injecting drugs), you may be a good candidate for HIV post exposure anti-retroviral therapy. Your doctor will be able to discuss the risks, potential benefits and cost of this treatment with you. A person may be charged with a felony if he or she knows that he or she has been diagnosed with HIV, or know he or she is HIV infected and engages in sexual penetration with another person without having first informed him or her of their HIV/AIDS diagnosis.

22-18-31. Intentional exposure to HIV infection a felony. Any person who, knowing himself or herself to be infected with HIV, intentionally exposes another person to infection by:

- (1) Engaging in sexual intercourse or other intimate physical contact with another person;
- (2) Transferring, donating, or providing blood, tissue, semen, organs, or other potentially infectious body fluids or parts for transfusion, transplantation, insemination, or other administration to another in any manner that presents a significant risk of HIV transmission;
- (3) Dispensing, delivering, exchanging, selling, or in any other way transferring to another person any nonsterile intravenous or intramuscular drug paraphernalia that has been contaminated by himself or herself; or
- (4) Throwing, smearing, or otherwise causing blood or semen, to come in contact with another person for the purpose of exposing that person to HIV infection; is guilty of criminal exposure to HIV.

Criminal exposure to HIV is a Class 3 felony. (15 years and/or 30k fine)

22-18-34. Actual transmission of HIV not required for criminal exposure. Nothing in §§ 22-18-31 to 22-18-34, inclusive, may be construed to require the actual transmission of HIV in order for a person to have committed the offense of criminal exposure to HIV.

### **Venereal Disease and HIV Testing of the Defendant**

23A-35B-3. Victim's request for testing of defendant or juvenile--Hearing--Search warrant for blood sample--Time for testing. A victim or a law enforcement officer may request in writing to the state's attorney that the defendant or the juvenile be tested for blood-borne pathogen infection by the Department of Health and that a search warrant be obtained for the purpose of taking a blood sample from the defendant or the juvenile for testing for such infection. The written request shall state that the victim or law enforcement officer believes there was an exchange of blood, semen, or other bodily fluids from the defendant or the juvenile to the victim or law enforcement officer and shall state the factual basis for believing there was such an exchange. The court shall hold a hearing at which both the victim or law enforcement officer and the defendant or the juvenile may be present. If the court finds probable cause to believe that the defendant or the juvenile committed the offense and that there was an exchange of blood, semen, or other bodily fluids from the defendant or the juvenile to the victim or from the defendant or the juvenile to the law enforcement officer, the court may order a search warrant for the purpose of taking a blood sample from the defendant or the juvenile for testing for blood-borne pathogen infection. If the court orders a search warrant, the Department of Health shall initiate the test for blood-borne pathogen infection within forty-eight hours after the department receives the blood sample.

23A-35B-4. Testing procedure--Notification of victim as to results--Payment for testing. A health professional licensed or certified to do so shall take the blood samples required for testing for blood-borne pathogen infection and forward them to the Department of Health for testing. The testing shall take place under a test protocol determined by the Department of Health. A licensed physician designated by the victim or the law enforcement officer to receive the results of the test shall notify the victim or the law enforcement officer of the results of the victim's or law enforcement officer's test and shall notify the victim or the law enforcement officer and the defendant or the juvenile of the results of the defendant's or the juvenile's test within forty-eight hours after receipt. The county in which the alleged crime of violence, assault, sexual assault, or equivalent juvenile offense occurred shall pay for the services of the licensed or certified health professionals involved in the counseling and the testing, and a defendant, if convicted, shall reimburse the county for the costs of the testing. If the defendant is an inmate under the jurisdiction of the Department of Corrections, the costs of the testing shall be taken from the inmate's account pursuant to § 24-2-29.

### Eight Common STIs

INFECTION	SYMPTOMS	POSSIBLE PROBLEMS	TREATMENT
Gonorrhea	May show no symptoms. Discharge. Painful urination. Similar symptoms as Chlamydia.	Repeated pelvic infections. Damage to newborns. If untreated, can cause disease.	Curable with antibiotic treatment.
Chlamydia	May show no symptoms. Discharge. Painful urination and intercourse. Dull pelvic pain. Bleeding between menstrual periods for women.	Infertility in men and women. Eye and lung infections in newborns.	Curable with treatment.
Herpes	Blister like sores. Swollen glands. Not always painful. Achy flu-like feelings. Symptoms may go unnoticed or go away.	Can cause severe damage in newborns if mother has an active infection.	Caused by a virus. Can be treated but not cured.
Syphilis	A sore. Usually painless. Later rash may develop on other parts of the body.	Heart, spine and brain may be affected. Severe threat to developing fetus.	Cured with antibiotics.
Hepatitis B	Symptoms may vary a great deal.	May cause liver cancer. May be fatal. Can be transmitted to newborns.	A vaccine is available to prevent Hep. B.
AIDS/HIV	Night sweats, shortness of breath. dry cough, swollen glands, rapid weight loss, increase in severity and number of illnesses.	Potentially fatal.	No cure has yet been found. Some experimental treatments available.
Genital Warts	Warts around genital area or rectum.	Can grow large and become obstructive.	Can be treated by a doctor.
Trichomoniasis	Itching. Heavy discharge. Frequent and painful urination.	Partners can pass back and forth, leading to repeated infections.	Curable with treatment.

## Chapter Four

### CRIMINAL AND CIVIL JUSTICE SYSTEM

#### Sexual Assault Laws

##### Definitions

By the South Dakota Statutes 22-22-7.1. Sexual contact defined--Exception when within the scope of medical practice. As used in this chapter, the term, sexual contact, means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party.

Definition provided to jury: "Sexual contact" means any touching, not amounting to rape, whether or not through the clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either person.

22-22-2. Sexual penetration defined--Acts constituting sodomy--Medical practitioners excepted. Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body.

Definition provided to jury: "Sexual penetration" means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. Genital penetration does not require proof of vaginal penetration. It includes penetration of the exterior of the labia majora.

"Cunnilingus" is defined as oral stimulation of the female genitalia vulva or the clitoris.

"Fellatio" is defined as oral stimulation of the penis.

"Vulva" is defined as the external parts of the female genital organs.

"Labia majora" is defined as the outer fatty folds of the vulva.

South Dakota Codified Law states Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- If the victim is less than thirteen years of age
  - 1<sup>st</sup> Degree Rape
  - Class C Felony – Punishable by up to life imprisonment in the state penitentiary and a fine of up to \$50,000
- Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power

of execution; or

- 2<sup>nd</sup> Degree Rape
- Class 1 Felony – Punishable by up to fifty (50) years imprisonment in the state penitentiary and a fine of up to \$50,000
- If the victim is incapable, because of physical or mental incapacity, of giving consent to such act
  - 3<sup>rd</sup> Degree Rape
  - Class 2 Felony – Punishable by up to twenty-five (25) years imprisonment in the state penitentiary and a fine of up to \$50,000
- If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis
  - 3<sup>rd</sup> Degree Rape
  - Class 2 Felony – Punishable by up to twenty-five (25) years imprisonment in the state penitentiary and a fine of up to \$50,000
- If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.
  - 4<sup>th</sup> Degree Rape – Commonly referred to as “Statutory Rape”
  - Class 3 Felony – Punishable by up to fifteen (15) years imprisonment in the state penitentiary and a fine of up to \$30,000

**Statute of Limitations** – A statute of limitation is a law establishing a time limit for prosecuting a crime, based on the date when the offense occurred. The purpose of such a law is to require diligent prosecution of violations in order to provide finality and predictability for all parties involved. Statutes of limitations also ensure that violations will be resolved while evidence is reasonably available and fresh, encouraging law enforcement officials to promptly investigate suspected criminal activity.

There is no statute of limitations to any charge of 1<sup>st</sup> degree or 2<sup>nd</sup> degree rape.

Any charge of 3<sup>rd</sup> degree rape or 4<sup>th</sup> degree rape may be commenced at any time prior to the time the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

## **Filing a Police Report**

With accurate information about the law and support from friends and family, many sexual assault survivors choose to report the crime and participate in a criminal case against the perpetrator. It is not an easy process for survivors, but some have found it to be helpful in their journey to healing. If you decide to speak to the police, you can have a friend or advocate present to support you. You may want to write down everything you can remember about the assault and the perpetrator prior to filing a report. This will help you when you meet with a police officer. The police will interview you about what happened. Some questions might seem personal or

embarrassing but it is important for the police to get as much information as possible.

After the police report is made, a detective will be assigned to investigate the crime and submit the case to the prosecutor or city attorney's office. The decision to prosecute belongs to the state's attorney. This decision is based on the evidence that is available to the prosecutor. Sometimes cases are not prosecuted. This is usually because it is believed that there is not enough evidence to prove to a jury or a judge that the defendant is guilty, not because the prosecutor does not believe you.

### **The Court System**

There are two basic types of cases that go to court: criminal and civil.

A criminal case is one in which the state of South Dakota is seeking to hold accountable a person who has committed a crime. A crime is an act committed in violation of the law and is punishable by imprisonment or fines. In a criminal court case, the prosecuting attorney, acting on behalf of "the people," brings charges against the individual accused of perpetrating the crime known as the defendant. The survivor of a sexual assault is considered a witness to the crime, not a party in the criminal case. Criminal sexual conduct or rape is a criminal offense. Information about the criminal justice process is included in this handbook.

The civil justice system involves any case that is not a criminal prosecution. Civil cases involve one person, the plaintiff, bringing a legal action against another person, the respondent. Divorce, custody, and personal protection orders are examples of civil matters. Survivors of sexual assault have successfully sued perpetrators for emotional distress, physical injury costs and other monetary damages. Information about the civil justice process is included in this handbook.

### **Your Role in the Criminal Justice Process**

You are a witness in the state's case against the assailant. You will be subpoenaed to testify during the criminal process. The state's attorney will present the case on behalf of the "people of the State of South Dakota" and does not represent you specifically. However, as the victim of a crime, you do have certain rights. You can contact the state's attorney's office to find out which prosecutor is working on the case. You can contact that attorney with any questions you have about the criminal case. The state of South Dakota has Victim Witness Assistants/Victim Witness Specialists to assist you through the criminal justice proceedings. The Beacon Center can help you contact the Victim Witness Assistants/Victim Witness Specialists that work in your area.

**Victim Witness Assistants/Victim Witness Specialists:** Under SDCL 23A-28C-7 and SCL 23A-28C-8, several counties within the State of South Dakota have, under resolution, appointed Victim Witness Assistants. Under the Office of Attorney General, Division of Criminal Investigation, the State has three Victim Witness Specialists covering the Northeast, West, and South Central parts of South Dakota. The Department of Public Safety, under the Highway Patrol, has two crash assistant/victim specialists serving the eastern and western parts of South Dakota. The FBI, and BIA also have Victim Witness Specialists throughout the State. These individuals help to assure the rights of crime victims are being upheld, assist victims throughout the criminal justice process, help victims prepare for court testimony, attend court and meetings

with law enforcement and prosecutors, assist with victim impact statements, notification paperwork, SAVIN program, and crime victim's compensation paperwork. They provide community resource information, including referrals to advocacy centers, medical facilities, and counseling services.

Statutory Duties are as follows:

23A-28C-8. Victim or witness assistant--Duties. The victim or witness assistant shall:

- (1) Advise the victim about the legal proceedings in which the victim will be involved;
- (2) Advise the victim concerning any required appearance at any proceeding and if the proceeding is continued or postponed;
- (3) Assist the state's attorney, court services officer, and the victim to determine the amount of monetary damages suffered by the victim and advise the victim about restitution;
- (4) Advise, if the victim is less than sixteen years of age and the victim of certain crimes, the victim and one of the victim's immediate family that the preliminary hearing or deposition testimony of the victim may be videotaped pursuant to § 23A-12-9;
- (5) Advise the victim or one of the victim's immediate family if the defendant is released from custody and the defendant's bail conditions.

The victim or witness assistant may accompany the victim in any criminal proceeding.

South Dakota state law provides for specific rights for victims of sexual assault and victims of domestic violence or stalking. Specifically, South Dakota law provides that victims have the following rights:

### **Victim Constitutional Rights Marsy's Law FAQ**

#### **What rights do I have?**

**See #1-19.** In order to receive these rights you must request them. The State's Attorney's office can help with this.

#### **Do I have to give an interview?**

**No, see #6.** However, you can be required to testify at trial, motion hearing, or Grand Jury if subpoenaed.

**Will I receive notice of proceedings in my case?**

**Yes, see #7, 8, 9, 16, 17, 18.** To ensure you receive notice, do the following:

- Contact your State’s Attorney Office
- Register on SAVIN at [savin.sd.gov](http://savin.sd.gov)

**Can I talk to the prosecutor?**

**Yes, see #10.** Please call the State’s Attorney’s office or stop by anytime.

**Will I have input on sentencing?**

**Yes, see #11.** You can be present at sentencing and speak or provide a letter to the Judge. The Victim/Witness coordinator in the SA office will help you with this.

**Can I review the Presentence Report?**

**No, see #12.** Even though you were given this right, there is a law in place (SDCL 23A-27-47) making the record confidential. The State’s Attorney’s office, although we cannot provide you a copy, would be happy to discuss the presentence report with you prior to sentencing, just make an appointment with our office.

**Can I object to a continuance?**

**Yes, see #15.** If a party files a motion for continuance, the Judge should consider a victim’s position before entering a continuance. Talk to the SA office about this.

**What information will I get?**

**See #19.** Law Enforcement will provide you with a Marsey’s Card explaining your rights. If you have any questions about these right, please feel free to talk to the State’s Attorney or Victim Witness Specialist about this.

**Can I waive my rights?**

**Yes,** the State’s Attorney’s office will have a form you can sign waiving all or some of your rights.

**If a person is arrested is there always a Bond Hearing?**

**No,** in a lot of cases persons are released on a PR Bond without a hearing. If person is released you should receive notice of the release. If a Bond Hearing is set, you should receive notice of time and place for hearing.

**Can I prevent disclosure of private information?**

**Yes, see #5.** You are given the right to prevent disclosure. If you are concerned about information about you getting out, please talk to us about that. We will take steps to protect this information. If Defense make a request for private information you or the prosecuting attorney can object to disclosure.

**How do I get my property back?**

A form for return of property is available at the State’s Attorneys office. Keep in mind, if property is needed as evidence against the Defendant, return of property may be delayed.



**Will I receive restitution for my loss?**

**Yes, you will be paid.** However, restitution is dependent on the Defendant making restitution payments as ordered by the court.

**MARSY'S RIGHTS (ABRIDGED)**

1. The right to due process and to be treated with fairness and respect;
2. The right to be free from intimidation, harassment and abuse;
3. The right to be protected from the accused and any person acting on behalf of the accused;
4. The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions;
5. The right to prevent the disclosure of information or records that could be used to locate or harass the victim or would disclose confidential or privileged information;
6. The right to privacy, includes the right to refuse an interview, deposition or other discovery request, and to set reasonable conditions on the conduct of any such interaction;
7. The right to timely notice of, and to be present at, release, plea, sentencing, adjudication and disposition, and any proceeding during which a right of the victim is implicated;
8. The right to be promptly notified of any release or escape of the accused;
9. The right to be heard in any proceeding involving release, plea, sentencing, adjudication, disposition or parole, and any proceeding during which a right of the victim is implicated;
10. The right to confer with the attorney for the government;
11. The right to provide information regarding the impact of the offender's conduct on the victim;
12. The right to receive a copy of any pre-sentence report except if made confidential by law;
13. The right to the prompt return of the victim's property when no longer needed as evidence in the case;
14. The right to full and timely restitution;
15. The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related post-judgment proceedings;

16. The right to be informed of the conviction, adjudication, sentence, disposition, place and time of incarceration, detention or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody;

17. The right to be informed in a timely manner of all post-judgment processes and procedures;

18. The right to be informed in a timely manner of clemency and expungement procedures; and

19.0 The right to be informed of these rights, and to be informed that a victim can seek the advice of an attorney with respect to the victim's rights. This information shall be made available to the general public and provided to each crime victim in what is referred to as a Marsy's Card.

\* The victim may assert and seek enforcement of these rights.

## **WHO IS THE VICTIM?**

Amendment S Marsy's Law expanded the definition of a victim to include:

1) Primary Victim - a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed.

2) Ancillary Victim - a victim also includes any spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship, or a lawful representative of a victim who is deceased, incompetent, a minor, or physically or mentally incapacitated. A victim is not the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor or incapacitated victim.”

The State's Attorney's office will make all efforts to directly contact primary victims and any ancillary victims identified. If you believe you are an ancillary victim of a crime, you should contact the State's Attorney's office immediately if you want to receive information and notice about the case. Upon request of ancillary victims, the State's Attorney's office will make all reasonable efforts to consider and fulfill said requests. However, the primary victim can prevent disclosure of certain private information under #5 above. If you believe you are a victim in any of these cases, feel free to contact your State's Attorney.

**Crime Victims' Rights**  
**SDCLA23A-28C-1**

1. To be notified of scheduled bail hearings and release from custody, to be notified by the prosecutor's office when the case is received and to whom the case is assigned, and to be notified in advance of the date of preliminary hearing and trial;
2. To be informed of what the charges mean and the elements necessary for conviction;
3. To testify at scheduled bail or bond hearings regarding any evidence indicating whether the offender represents a danger to the victim or the community if released;
4. To be protected from intimidation by the defendant, including enforcement of orders of protection;
5. To offer written input into whether plea bargaining or sentencing bargaining agreements should be entered into;
6. To be present during all scheduled phases of the trial or hearings, except where otherwise ordered by the judge hearing the case or by contrary policy of the presiding circuit judge;
7. To be prepared as a witness, including information about basic rules of evidence, cross-examination, objections, and hearsay;
8. To provide to the court a written or oral victim impact statement prior to sentencing regarding the financial and emotional impact of the crime on the victim and his or her family as well as recommendations for restitution and sentencing and § 23A-28-8 notwithstanding, the right to appear at any hearing during which a change in the plan of restitution is to be considered;
9. To receive restitution, whether the convicted criminal is probated or incarcerated, unless the court or parole board provides to the victim on the record specific reasons for choosing not to require it;
10. To provide written input at parole and clemency hearings or with respect to clemency by the Governor, should those options be considered;
11. In a case in which the death penalty may be authorized, to provide to the court or to the jury, as appropriate, testimony about the victim and the impact of the crime on the victim's family;
12. To be notified of the defendant's release from custody, which notice includes:
  - (a) Notice of the defendant's escape from custody and return to custody following escape;
  - (b) Notice of any other release from custody, including placement in an intensive supervision program or other alternative disposition, and any associated conditions of release;
  - (c) Notice of parole; and
  - (d) Notice of pending release of an inmate due to expiration of sentence;

13. To be notified of the victim's right to request testing for infection by blood-borne pathogens pursuant to § 23A-35B-2;
14. To be provided a copy of any report of law enforcement that is related to the crime, at the discretion of the state's attorney, or upon motion and order of the court. However, no victim may be given the criminal history of any defendant or any witness; and
15. To be notified of a petition by the sex offender for removal from the sex offender registry and to provide written input with respect to the removal request.



<https://savin.sd.gov/portal/>

**South Dakota SAVIN** stands for Statewide Automated Victim Information & Notification. The South Dakota SAVIN program is a free, automated service that provides crime victims with vital information and notification 24 hours a day, 365 days a year. This service will allow you to obtain offender information and to register for notification of a change in offender status, such as offender release.

**All registrations through South Dakota SAVIN are kept completely confidential.**

There are no costs for these services and citizens can register now.

South Dakota has several laws that are designed to make participation in the prosecution of the assailant easier for the victim in cases of sexual assault.

One such law, often known as the “rape shield law” (SDCL § 19-19-412) limits a defendant's ability to introduce evidence or question a victim about their past sexual behavior. There are two exceptions to this general limitation: (1) Evidence offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence, and (2) evidence of specific examples of a victim's sexual behavior with the defendant, if offered by the defendant to prove consent.

In these exceptions, the defense must specifically request the court to allow this type of testimony or questioning. Such a request must be filed with the court no later than 14 days before trial. The court must conduct a hearing to review the potential evidence and allow the victim and the prosecutors the right to attend and to be heard.

Additional laws favorable to victims of sexual assault include the following:

- The prosecutor does not need to prove that you resisted sexual advances or sexual intercourse by physical force.
  - The South Dakota Supreme Court has repeatedly stated that lack of consent in a rape case need not be established by physical resistance. (State v. Jones, 521 N.W.2d 662, (S.D. 1994) at 671-72).
- Your testimony does not need to be corroborated or supported by other witnesses.
  - As a general rule, it is not essential to a sexual offense conviction that the testimony of the victim be corroborated by other evidence. (State v. Blalack, 434 N.W.2d 55 (S.D. 1988) at 59
- A law enforcement officer should not ask and cannot require you to take a polygraph (lie-detector) test.
  - The manual “Law Enforcement Response to Domestic Violence & Sexual Assault” specifically states that victims “should NOT” be given such tests
  - The results of any polygraph examination are inadmissible in court in South Dakota

The law does not specify the sexes or limit the relationship of the parties involved. It is possible to bring criminal sexual conduct charges against a same sex assailant or an assailant to whom you are or have been married to or involved with in previous consensual sexual activity.

## Stages in the Criminal Process

**Warrant Request and Authorization:** The detective/officer assigned to your case will forward a report to the prosecuting attorney’s office. The prosecutor may want to interview you. Because sexual assault is a crime against the citizens of South Dakota, the prosecutor represents the people of the State of South Dakota and not you specifically. The prosecutor will make the decision about whether or not to prosecute. If you haven’t heard from the prosecutor, you can call the prosecuting attorney’s office and ask to speak with him/her. If the decision to prosecute is made, there will be an arrest warrant issued for the defendant (perpetrator). As part of the warrant, an initial bond will be set. Bond is an amount of money that needs to be paid to ensure that the perpetrator will show up for court again. Sometimes no bond or a very high bond is set so that the perpetrator is forced to stay in jail. If the defendant is released, the judge may order conditions of bond. The prosecuting attorney may request a condition of bond that orders the defendant not to come near you or contact you. You can talk with the prosecutor and have him/her request this type of bond condition, usually referred to as a “no contact condition.”

The prosecutor may initiate Bond Revocation proceedings if at any time there is evidence the defendant has violated the terms of his bond, such as a no contact violation. In South Dakota, a violation of a no contact bond condition is its own crime. A no contact violation is a Class 1 misdemeanor punishable by up to a year in county jail and up to a \$2000 fine.

The local police are required to make a mandatory arrest of the perpetrator, if he/she violates a

protective condition of bond. If you are experiencing harassment, intimidation or threats by the perpetrator, contact the local police and notify the prosecutor assigned to the case.

**Arraignment in Magistrate Court:** An arraignment is the time at which a defendant's formal charges are read and he has the opportunity to enter a plea to the charges. The magistrate court judge or the prosecutor will formally read the charges filed against the defendant and the defendant will be given the opportunity to plead. A defendant cannot plead guilty to a felony charge in front of the magistrate. Typically, a defendant will plead not guilty at this appearance and a jury trial will be set for a future date. If the defendant is in custody, they will remain in custody unless they post the bond set by the court.

**Probable Cause Determination:** A defendant charged with any felony has a right to a probable cause determination prior to being arraigned on any charge. A probable cause determination is a hearing in which either a judge or a grand jury hear evidence to determine if it is probable that a crime was committed and that the defendant was the one who committed the crime. If the court or a grand jury finds probable cause, a case is "bound over" to circuit court for trial. Sometimes the defendant may waive the right to a probable cause determination, but it is rare.

- Preliminary Hearing – A preliminary hearing is a public hearing, held in open court, where a judge determines whether probable cause exists permitting the state to proceed against the defendant. At this hearing, the defendant would be personally present and his attorney would have the chance to question any witnesses called to testify. In a sexual assault case, the victim would be one of the primary witnesses called by the state to testify. The state may ask you to identify the perpetrator and will ask you questions regarding the crime, which was committed.
  - Typically, this is not how sexual assault cases are presented for probable cause determinations
- Grand Jury – A grand jury is a confidential proceeding where no less than six and no more than ten citizen jurors determine whether probable cause exists permitting the state to proceed against the defendant. The defendant and his/her attorney are not present and they have no right to question any witnesses called by the prosecutor. At the end of the production of evidence, the grand jury will be asked to vote on whether to sign a formal legal document known as an indictment. An indictment is the statutory method by which a grand jury asserts whether probable causes exists. If at least six of the grand jurors vote in favor of the indictment, it is declared to be a "true bill" and is signed. If at least six grand jurors do not agree, the indictment is signed "not a true bill" and the charges will not be bound over and are dismissed.
  - When a grand jury dismisses a charge, that does not prevent the charge from being presented to a new grand jury on a different date nor does it prevent the state from presenting the case in the form of a preliminary hearing to a judge.
  - Because of their confidential nature, grand jury proceedings are the preferred method used to determine probable cause in sexual assault cases.

**Arraignment in Circuit Court:** A defendant may choose to be arraigned in circuit court after having been bound over from magistrate court. The charges will again be read to the defendant by either the circuit court judge or the prosecutor. The defendant will be again given the opportunity to plead, if the defendant pleads guilty or no contest, a sentencing date will be set. If

the defendant pleads not guilty, a trial date will be set.

**Plea Bargaining:** The prosecutor and the defense attorney may negotiate about the degree and type of the final charge. This is called plea-bargaining. The defendant may agree to plead guilty to a lesser charge to avoid a more severe punishment. A plea may be entered to the judge at any time during the court process. The judge does not have to accept the plea, but usually will if the defendant, the defendant's attorney, and the prosecutor agree. The prosecutor should discuss any pleas with you. If you feel strongly about the plea, speak to the prosecutor and let your opinions be known.

**Pretrial Conference and Motions:** The court may hear motions to determine what evidence will be admitted. The defense attorney and the prosecutor may discuss a plea bargain.

**Trial:** The prosecutor will try to prove beyond a reasonable doubt that the defendant committed the crime. The victim has the right to be present throughout the entire trial of the defendant, unless the victim is going to be called as a witness. If the victim is called as a witness the court may for good cause, order the victim to be sequestered until the victim first testifies. When a witness is sequestered, they are not allowed in the courtroom or to view the testimony of other witnesses until they are permitted by the court. As the accused, the defendant has the right to stay in the courtroom throughout the entire trial. The trial could take several days to complete. If the defendant is convicted, a sentencing date will be set.

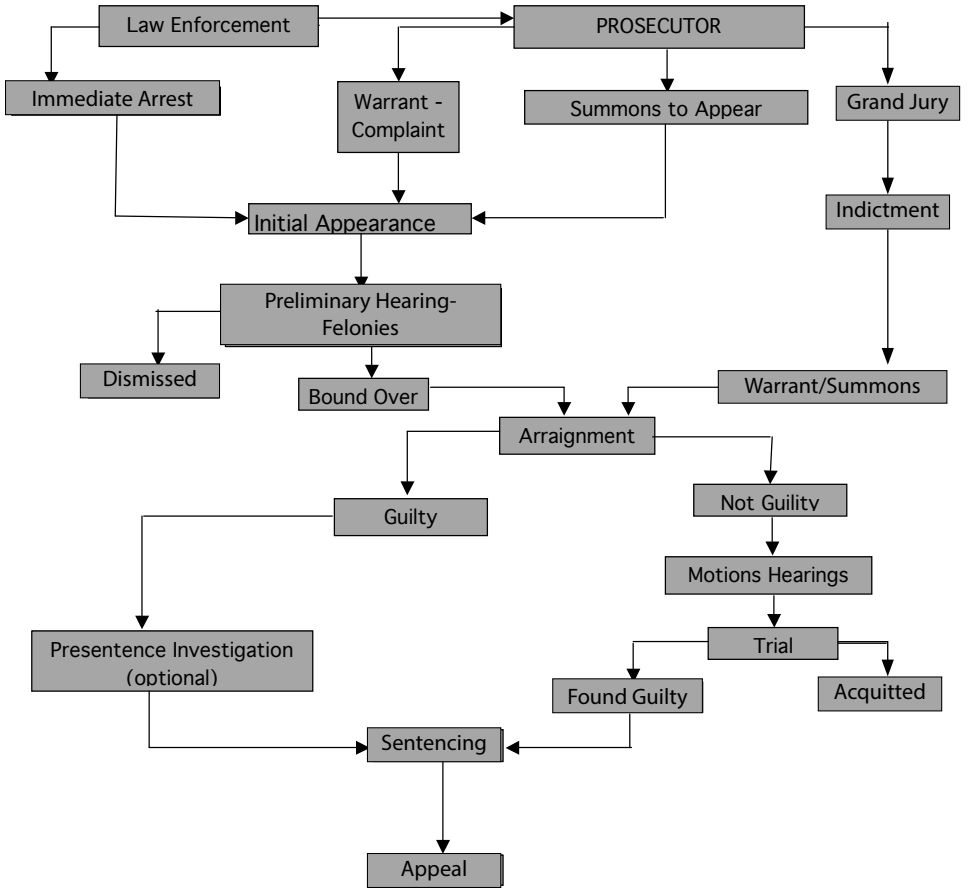
**Sentencing:** If the defendant is convicted or pleads guilty or no contest, the court will order that a presentence investigation be completed. A court services officer will be assigned to assist in the completion of the presentence investigation. You have the right to submit a written impact statement to the officer, which will be included in the report and become part of the file. This means that the defense attorney will have access to it and will share it with the perpetrator. If the defendant is convicted of a Class A, B, or C felony, you as the victim have a right to address the court orally at sentencing. If the defendant is convicted of any other level of felony or misdemeanor, a request can be made to the court permitting you to make an oral statement at the time of the sentencing proceedings.

Your Victim Impact Statement may include, but is not limited to the following:  
emotional, physical, and monetary impact of the defendant's crime upon the victim and the victim's family, and may comment upon the sentence which may be imposed upon the defendant.

[SDCL 23A-27-1.3]

**Appeal:** The defendant has the right to appeal the decision of any felony proceeding to the South Dakota Supreme Court and to additional courts if such appeal is granted. Appeals may be based upon errors made by the defense attorney, prosecuting attorney, judge, or jury. Because appeals are typically complex questions regarding the law, you should contact the prosecuting attorney for an explanation of the appeal process and any basis for the appeal. The appeal process typically takes longer than the initial trial process and is usually handled by the office of the attorney general on behalf of the prosecuting attorney.

# ADULT CRIMINAL COURT PROCESS



Updated 3/24/2016



## **Crime Victims Compensation**

As a victim of crime or secondary victim, you may be eligible for monetary assistance. The South Dakota Crime Victims' Compensation (CVC) Program provides monetary assistance to victims and secondary victims of violent crimes – which include felony sexual assault crimes. This program, administered by the Department of Social Services, can pay victims of state, tribal, or federal crimes, a maximum of \$15,000 for expenses incurred as a direct result of personal injury or death. Assistance may include: medical expenses, mental health counseling expenses, mileage, funeral and burial expenses, loss of earnings or support, dental and prosthetic devices, eyeglasses or corrective lenses, homicide scene cleanup expenses, replacement costs for personal property used as evidence, and other similar expenses. Claims should be filed within one year; however, there are exceptions for child victims of sexual abuse and upon petition for good cause. You can get a claim form from Crime Victim Services Commission, the local Prosecuting Attorney, any State Police post, or the Beacon Center.

The program is a last resort for payment. In most cases, payments can only be made if there is no other source of payment including private health insurance for the victim or other public programs such as Medicaid or Medicare, etc. However, there are no income requirements. Compensation cannot be paid for property losses, attorney's fees, or pain and suffering.

Compensation can be paid for expenses for the primary victim as well as limited compensation for secondary victims including family members of a homicide victim, the spouse of a rape victim and parents of a child who has been physically or sexually abused.

Not all victims qualify for assistance. Program staff determine if the victim is eligible for assistance after the victim or claimant has filed an application and the information verified

Below are the law enforcement considerations that must be met to receive victim's compensation:

- The crime must have been reported within 5 days of when a report could reasonably have been made. Examples of circumstances justifying delayed reporting include delayed disclosure by a juvenile victim, and safety concerns. However, the program must be informed of the reason for the delay in reporting.
- The victim must be willing to cooperate with law enforcement agencies, the Prosecutor, and the Commission. The victim's cooperation must be reasonable under the circumstances. Therefore, depending on the circumstances, the program may find the victim's refusal/failure to cooperate was reasonable. An example of a situation where a refusal to cooperate may be reasonable is threats by the offender or others. However, as with the note above, the program must be informed of the reason(s) for the victim's decision in order to find that his/her cooperation, or lack thereof, was reasonable.
- Regardless of the outcome of the criminal case, the victim may qualify for compensation if the program can find the crime occurred and the victim meets all eligibility

requirements.

If you have difficulties completing the paperwork, the Beacon Center or the State's Attorney's Victim's Assistant may be able to assist you.

### **Civil Suit**

You have the option of filing a civil lawsuit. By doing this, you could possibly be awarded monetary damages. Here are some key points to keep in mind about this option:

- You will need to hire an attorney.
- You do not have to pursue criminal charges in order to file a civil lawsuit.
- You will be the Plaintiff and the perpetrator will be the Defendant.
- The process can take a significantly longer period to complete than the criminal case.
- If the defendant is found guilty in the criminal trial, typically the only issue in the civil trial would be over the type and amount of damages you should receive.
- If the defendant was found not guilty in a criminal proceeding, or if there was no criminal proceeding, then the plaintiff only needs to prove that the defendant committed wrong by a "preponderance of the evidence" rather than beyond a "reasonable doubt".
- Your sexual history may be brought into the trial.

The goal of a civil suit is to compensate the survivor for injury caused by the action of the defendant. If the defendant is found responsible in the civil action, an award of damages may be compensatory, punitive, or both. The goal of compensatory damages is to pay for the losses suffered by the victim.

The primary purpose of punitive damages is to punish and deter criminals or third parties.

### **Stalking**

If you were raped by someone that you know, you may be at risk of being stalked or harassed by the perpetrator or by friends or family of the perpetrator. If the person who raped you was a stranger, the chances of being stalked by him/her are less, but still possible.

### **South Dakota's Anti-Stalking Laws**

#### **Stalking:**

22-19A-1. Stalking as a misdemeanor-Second offense a felony, No person may:

- (1) Willfully, maliciously, and repeatedly follow or harass another person;
- (2) Make a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or
- (3) Willfully, maliciously, and repeatedly harass another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.

Stalking is a Class 1 misdemeanor. However, any second or subsequent conviction occurring within ten years of a prior conviction under this section is a Class 6 felony.

#### **Aggravated Stalking:**

This is a crime that includes the factors listed above plus one of the following aggravating

factors: making credible threat of injury, violating a personal protection order, violating a bond condition, or having a previous conviction for stalking. 22-19A-7. Stalking a child twelve or younger, -Felony. Any person who willfully, maliciously, and repeatedly follows or harasses a child twelve years of age or younger or who makes a credible threat to a child twelve years of age or younger with the intent to place that child in reasonable fear of death or great bodily injury or with the intent to cause the child to reasonably fear for the child's safety is guilty of the crime of felony stalking. Felonious stalking is a Class 6 felony.

**What to Do If You Are Being Stalked**

Report harassing/uninvited contact to your local police department, even if the police cannot take any action at first, reporting the incident will begin to document the history of stalking. Plan for your safety. Tell your co-workers and neighbors what is going on. Get a cellular phone if you can. Teach your children how to call 911. Consult Beacon Center for safety planning that is specific to your situation.

Keep a log of all harassing incidents. Include the time, place, and description of the incident, as well as any witnesses to the incident.

Get a Protection Order. You can fill the paperwork out on your own, have someone at the Beacon Center assist you, or retain an attorney. A PO is an order from the court to the respondent that prohibits certain activity.

South Dakota has two different types of protection orders, Domestic Abuse and Stalking. The following are the instructions for filling out either a domestic or stalking protection order taken directly from the protection order application and outlines the requirements to file a protection order.

**SOUTH DAKOTA PROTECTION ORDER FROM ACTS OF DOMESTIC ABUSE,  
ACTS OF STALKING, OR ACTS OF PHYSICAL INJURY**

**APPLICATION INSTRUCTIONS FOR THE VICTIM OF DOMESTIC ABUSE,  
STALKING, OR PHYSICAL INJURY**

**REQUIREMENTS OF THE LAW.** You may seek a protection order from “domestic abuse” or from “stalking.” If you do not qualify for a domestic abuse protection order, you may still qualify for a protection order for stalking. In order for the judge to grant a protection order, you must meet certain criteria.

**SHOULD BE A RESIDENT OF THE COUNTY.** You should file in the county where one of you resides.

**IF YOU ARE SEEKING A PROTECTION ORDER FOR DOMESTIC ABUSE**

**MUST HAVE A PERSONAL RELATIONSHIP WITH THE RESPONDENT.** You must have a personal relationship with the person against whom you are seeking an order of protection

from (the alleged abuser). An alleged abuser can be a (1) spouse, 2) former spouse, (3) parent or child, (4) sibling, (5) person with whom I have had a significant, romantic relationship, or (6) person with whom I have had a child or am expecting a child with. If your relationship is not one of the above, you cannot seek a protection order for domestic abuse. You may, however, be able to receive a protection order for stalking as defined later in these instructions.

**MUST ALLEGE PHYSICAL HARM.** The person against whom you seek an order (1) **must have caused you physical injury or harm, (2) must have attempted to cause you physical injury or harm, or (3) you are afraid that the person is about to cause you physical injury or harm.** If the person has not done any of these things, you cannot seek a protection order for domestic abuse. You may, however, be able to receive a protection order for stalking as defined later in these instructions.

### **IF YOU ARE SEEKING A PROTECTION ORDER FOR STALKING OR FROM PHYSICAL INJURY**

**MUST ALLEGE STALKING.** The person's acts of harassment must **seriously alarm, annoy or harass** you. The person against whom you seek a stalking order must have: (1) **followed or harassed** you in a willful and malicious manner and have done so **more than once**; or (2) made believable **threats** against you **with the intent to make you fearful of great bodily injury**; or (3) **harassed** you in a willful and malicious manner by means of verbal, electronic, digital media, mechanical, telegraphic, or written communication and have done so **more than once**. The person must intend to carry out the threats and have the apparent ability to do so, or (4) **you, as the petitioner, have suffered physical injury** as a result of an assault or a crime of violence.

(5) **A crime of violence** is murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree, arson, kidnapping, felony sexual contact or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device. It also includes an attempt or conspiracy to commit the above-described crimes.

### **HOW PROTECTION ORDERS WORK AND BEST PRACTICES**

#### **OBTAINING A PROTECTION ORDER:**

- The Clerk of Court's office in each County has the forms needed to apply for a PO/Stalking PO (also available online: [ujs.sd.gov](http://ujs.sd.gov))
- Some shelters and or Advocacy Centers have the forms needed to apply for a PO/Stalking PO

*Advocates are always willing and able to help victims apply for a PO/Stalking PO and can be contacted at any time day or night. Most counties in SD are covered by DV advocates.*

### **AFTER THE PAPERWORK IS COMPLETED:**

- Return the forms to the Clerk of Courts
- The Clerk of Courts will have a Judge review the petition
- Judge can do one of the following three things after reviewing the forms:
  1. Decline to grant a Temporary Protection Order (TPO) and not set a hearing
  2. Not grant TPO but still set hearing to determine if a permanent PO should be granted (*just because you do not get TPO does not mean a permanent PO will not be granted*)
  3. Grant TPO set hearing for permanent PO

### **DURING THE HEARING:**

- Judge will generally explain the rules prior to the hearing.
- Petitioner goes first and presents their evidence by calling witnesses and giving testimony (telling the Judge why they need the Order)
- The Petitioner if they testify is subject to cross-examination by the Respondent. The Judge will not allow the Respondent to badger, argue with or intimidate the Petitioner during this questioning.
- The Respondent will then be given an opportunity to present evidence by witnesses or their own testimony.
- The petitioner will be given opportunity to cross-examine the Respondent and/or the Respondent witness. The Judge will not allow the Petitioner to badger or argue with the Respondent during this questioning.
- The Judge is free to and often does ask any party or witness questions during the hearing.

**TIP:** Bring a notebook with a list of reasons why you need the PO

### **AT THE HEARING:**

The petitioner must appear at the hearing and be prepared to present evidence and witnesses telling the Judge why they need the Order.

- If the Respondent fails to appear, the PO is not automatically put in place. The Judge must still ask questions and take evidence in support of the PO.
- If Respondent appears, the Judge will generally ask for Respondents position on the PO
- Respondent does not object, the Judge may then enter the Order. The Judge may still ask the Petitioner questions to support the granting of the order.
- If Respondent opposes Order the Judge will conduct a full hearing
- The Judge should rule on the Order at the conclusion of the hearing.

### **AFTER THE HEARING:**

- Judge determines how long, if at all, the PO should be granted for
- If kids are involved this must be addressed by the court

*It is best to have the contact between the Petitioner and Respondent regarding the kids electronically (e.g. text, email and not on the phone)*

### **IF AN ATTORNEY IS INVOLVED:**

If either party is represented by an attorney:

- Hearing is handled the same
- However, if an attorney is involved, they may try to work out an agreement to avoid the hearing or resolve other outstanding issues, and it is not uncommon that the Judge may grant them an opportunity to do this
- At the end of the hearing, a Judge must enter Findings of Fact, which outline why the order was entered.

### **AFTER THE ORDER IS GRANTED:**

- Once a Judge enters the PO/Stalking PO and Respondent knows about the Order, the Order is in place and the Respondent must follow the Order
- Upon a Judge signing the Order it should be taken to the Sheriff for service on the Respondent
- **THE JUDGE IS THE ONLY PERSON THAT CAN MODIFY OR DISMISS THE ORDER**
- Petitioner should not contact Respondent after the Order is in place
- Once the Order is served, Petitioner should be notified by Law Enforcement

### **MODIFICATIONS:**

- Any party, at any time, can ask the Judge to modify the Order
- Requests to modify the order should be made in writing and filed with the Clerk
- After a Judge is provided with a request to modify an Order the Judge will decide if he will have a hearing on the modification request.
- It is not required that a Judge have a hearing.

**BEST PRACTICE:** *It is best for a Judge to hold a hearing in order to gather new information, prior to deciding if the order is no longer required or should be modified to maintain the Petitioner's safety.*

- The Judge will only modify the Order after a hearing on the modification request.
- At modification hearing, the party asking for the modification must present evidence to the Judge in support of the modification request.

**FIREARMS: BEST PRACTICE: a Judge should order "NO FIREARMS" so it can be enforced by local Law Enforcement**

- A Judge can order in a PO/Stalking PO that the respondent not possess any firearm
- It is a federal violation for any Respondent to possess a firearm while subject to a permanent protection order

**JURISDICTION:**

- The Clerk of Courts will assign PO application to the same Judge as other civil litigation between partners (e.g. divorce, child custody)
- Parties should make Judges aware of other litigation and /or proceedings
- If the PO conflicts with a valid Child Custody Order the PO controls and will be enforced by law enforcement

**DISMISSAL OF THE ORDER:**

- Any party at any time can ask the Judge to dismiss the Order
- Requests to dismiss the order should be made in writing and filed with the Clerk
- A form is available from Clerk of Courts
- After a Judge is provided with a request to dismiss an Order the Judge will decide if he will have a hearing on the dismissal request
- The Judge may require a hearing before deciding on a request to dismiss
- At the dismissal request hearing the party asking for the dismissal must present evidence to the Judge in support of the dismissal request

**BEST PRACTICE: It is best if a Judge holds a Hearing before entering a Dismissal to ensure victim safety**

**ENFORCEMENT:**

- Any and all violations should be immediately reported to Law Enforcement
- **ALWAYS** keep a copy of the Order with you

Law Enforcement in SD should enforce Orders from other states and Tribes

*\*Protection Order information provided by the South Dakota Network Against Family Violence and Sexual Assault. For more information, [www.sdnafvsa.com](http://www.sdnafvsa.com).*

## Law Enforcement and State's Attorney Contact Information

**Clark County Sheriff**  
200 N. Commercial St.  
Clark, SD 57225  
605-532-3822

**Clark Police Department**  
120 N Commercial St  
Clark, SD 57225  
605-532-3112

**Clark County State's Attorney**  
200 N Commercial St.  
Clark, SD 57225  
605-532-3712 or 605-532-3805

**Codington County Sheriff**  
14 1st Ave SE  
Watertown, SD 57201  
605-882-6280

**Watertown Police Department**  
128 N. Maple St.  
Watertown, SD 57201  
605-882-6210

**Codington County State's Attorney**  
14 1st Ave SE  
Watertown, SD 57201  
605-882-6276

**Deuel County Sheriff**  
400 4th St. W  
Clear Lake, SD 57226  
605-874-8212

**Deuel County State's Attorney**  
408 4th St.  
Clear Lake, SD 57226  
605-874-2840

**Grant County Sheriff**  
222 E 5th Ave  
Milbank, SD 57252  
605-432-5853

**Milbank Police Department**  
222 E 5th Ave  
Milbank, SD 57252  
605-432-5650

**Big Stone City Police Department**  
225 3<sup>rd</sup> St NW  
Ortonville, MN 56278  
320-839-6161

**Grant County State's Attorney**  
210 E 5th Ave  
Milbank, SD 57252  
605-432-7500

**Hamlin County Sheriff**  
300 4th St.  
Hayti, SD 57241  
605-783-3232

**Lake Norden Police Department**  
600 Main Ave  
Lake Norden, SD 57248  
605-956-1402



**Estelline Police Department**

117 Main St  
Estelline, SD 57234  
605-873-2200

**Hamlin County State’s Attorney**

300 4th St.  
Hayti, SD 57241  
605-783-3751

Thank you to the Watertown Area Sexual Assault Response Team and Deuel County Sexual Assault Response Team for lending their expertise to this handbook.



**Watertown Area Sexual  
Assault Response Team**

*Empower · Support · Heal*

Beacon Center

Clark County Sherriff’s Office

Clark County State’s Attorney Office

Codington County Sheriff’s Office

Codington County State’s Attorney Office

Hamlin County State’s Attorney Office

Hamlin Sherriff’s Office

Prairie Lakes Healthcare System

SD Division of Criminal Investigation

Watertown Police Department



**Deuel County Sexual  
Assault Response Team**

*Making a Difference Together*

Beacon Center

Deuel County Sheriff’s Office

Deuel County State’s Attorney Office

Sanford Clear Lake Medical Center

SD Division of Criminal Investigation



## **BEACON CENTER**

*Supporting Victims of Domestic  
Violence and Sexual Assault*

For Clark, Codington, Deuel, Grant & Hamlin Counties

801 Jenson Avenue SE

Watertown, South Dakota 57201

Crisis Line: 605-886-4300 / 1-800-660-8014

Business Line: 605-886-4304

Fax Line: 605-878-2045

[beaconcentersd.com](http://beaconcentersd.com)