

Sexual Assault

in West Virginia:

An

Informational Handbook

www.fris.org



West Virginia Foundation for Rape Information and Services
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Preface

Sexual assault is a brutal crime of hate, rage and violence. It can result in mental anguish and suffering for the victim. It can also cause physical trauma from bruises, abrasions, internal injuries, sexually transmitted diseases or unwanted pregnancy.

Sexual assault continues to be one of the most under-reported crimes. No one knows for certain how many actual assaults take place each year. Victims choose not to report sexual assault for a variety of reasons, including fear, trauma and embarrassment. Victims may also be reluctant to undergo the ensuing medical, investigative and prosecutorial procedures that may be embarrassing and intimidating. Data indicates that nearly 2/3 of all sexual assaults are committed by someone known to the victim, rather than by a stranger.

Traditionally, the successful prosecution of sexual assault cases has been difficult. Since the victim is often the only witness to the crime, the collection of physical evidence as well as the documentation of medical trauma may be necessary either to substantiate an allegation or to help strengthen a case for court.

The chance of finding physical evidence decreases in direct proportion to the length of time that elapses between the assault and the examination.

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Introduction

This handbook has been developed to provide information about sexual assault. It includes general information on the medical, legal, and court procedures that sexual assault victims may experience.

The handbook also contains information on the emotional impact of sexual assault. Each victim will have a unique response to sexual assault. There is no “normal” or “correct” reaction. It is our hope that this information will reduce the sense of isolation and helplessness that many victims feel. This handbook is not intended to give advice on specific medical, legal or emotional situations.

To learn more about the victim services offered in your area, call the National Sexual Assault Hotline at 1-800-656-HOPE. You will be connected to the rape crisis center nearest you for free, confidential help and support.

The West Virginia Foundation for Rape Information and Services, Inc. (WV FRIS), was established in 1982 as a private, non-profit corporation. FRIS serves as the network for sexual assault centers in West Virginia. FRIS receives funds through the West Virginia Department of Health and Human Resources, the Division of Criminal Justice Services, and the U.S. Department of Justice.

FRIS, in addition to coordinating statewide prevention and awareness activities on sexual assault, has facilitated a variety of projects.

These include:

- the development of a multidisciplinary protocol for responding to sexual assault victims,
- the development of a prevention curriculum, R.E.S.P.E.C.T., for school systems throughout West Virginia,
- the West Virginia Intercollegiate Council Against Sexual Violence,
- the implementation of an annual statewide awareness campaign,
- providing technical assistance and training in the development of statewide Sexual Assault Nurse Examiner (SANE) programs,
- annual state and regional trainings,
- development of the Rural Advocate Network,
- the WV Sexual Assault Free Environment (WV S.A.F.E.) for the disability community.

STATISTICS

Sexual Assault In West Virginia: One In Nine
Data from Sexual Assault In West Virginia: A Report to the State released in August, 2003 indicates that one out of every nine adult women, or about 85,000 adult women in West Virginia, has been the victim of forcible sexual assault sometime in her lifetime.

1 in 9

This estimate of the magnitude of sexual assault in West Virginia is conservative because it does not include women who have never been forcibly sexually assaulted but who have experienced attempted sexual assaults, alcohol or drug facilitated sexual assaults, incapacitation sexual assaults, or statutory rapes (i.e., sexual assaults in which no force or threat of force was used but the perpetrator had sex with an underage child or young adolescent). Nor does this estimate include any types of sexual assault that have been experienced by female residents of West Virginia who are currently under the age of 18. Nor does the estimate include male sexual assault victims of any age. This estimate also does not address possible changes in sexual assault prevalence or in disclosures of sexual assault cases to interviewers that may have occurred over time.

At the state and local level, most of the information about rape comes either from police reports or from agencies such as rape crisis centers that provide services to sexual assault victims. By their very nature, police reports only include information about recent cases of sexual assault that have been reported to law enforcement. Yet, research suggests that only 1 in 6 sexual assaults are reported to law enforcement (Kilpatrick, Edmonds & Seymour, 1992). Likewise, a significant percentage of sexual assault victims do not seek services from rape crisis or other sexual violence agencies. Therefore, data from police reports or sexual violence agencies clearly cannot provide a comprehensive picture of the new cases of sexual assault that occur each year within a state.

The effects of sexual assault on women's physical and mental health can last for years, for decades, or even for a lifetime. Any attempt to measure the magnitude of sexual assault in a state should not be limited to an estimate

of how many recent sexual assault cases have occurred or how many women have been recently sexual assaulted. It is important to determine how many women within a state have ever been sexual assaulted because many of these women may still be having problems that require services.

Of the 85,000 adult women in West Virginia who have been forcibly sexual assaulted, over 26,000 have developed Post Traumatic Stress Disorder (PTSD) at some time in their lives, and over 9,000 currently meet full criteria for PTSD. Several other mental health problems often affect sexual assault victims, including:

- Major depression at some time in their lives, experienced by 30% of sexual assault victims (nearly 26,000 victims in West Virginia) but only 10% of women never victimized by violent crime;
- Current major depression, which is experienced by 21% of sexual assault victims (nearly 18,000 victims in West Virginia) but only 6% of women who were never victimized by violent crime;
- Serious suicidal thoughts at some time in their lives, experienced by 33% of sexual assault victims (over 28,000 victims in West Virginia) but only 8% of women who were never victimized by violent crime;
- Suicide attempt at some time in their lives, reported by 13% of sexual assault victims (about 11,000 victims in West Virginia) but only 1% of nonvictims of crime;
- Marijuana use at some time in their lives, reported by 52% of rape victims (over 44,000 victims in West Virginia) but only 15.5% of nonvictims;

Posttraumatic Stress Disorder, or PTSD, is a psychiatric disorder that can occur following a life-threatening event like rape. Victims who suffer from PTSD often relive the experience through nightmares and flashbacks, can have difficulty sleeping, and feel detached or estranged. These symptoms can be severe enough and last long enough to significantly impair a person's daily life. PTSD is complicated by the fact that it frequently occurs in conjunction with depression, substance abuse, and problems of memory and cognition. PTSD is also associated with impairment of a person's ability to function in social or family life, including occupational instability, marital problems and divorces, family discord, and difficulties in parenting.

- Cocaine use at some time in their lives, reported by 15.5% of rape victims (over 13,000 victims in West Virginia) but only 2.6% of nonvictims;
- Use of hard drugs other than cocaine at some time in their lives, reported by 12.1% of rape victims (over 10,000 victims in West Virginia) but only 1.2% of nonvictims.

Rape poses a threat even to women's continued survival, as indicated by the increased risk of attempting suicide reported by rape victims compared to nonvictims.

Kilpatrick, D.G., & Ruggerio, J. (2003). Rape In West Virginia: One In Nine.

The national statistics are staggering:

- In the United States, a woman is sexual assaulted every 6 minutes.
- 1 in 4 girls and 1 in 6 boys will be sexually victimized before their 18th birthday.
- 1 in 4 female college students have been the victim of sexual assault or attempted sexual assault.
- Every year, approximately 132,000 women report that they have been victims of sexual assault or attempted sexual assault, and more than 80% of these victims knew their attackers. It is estimated that 2 to 6 times as many women are sexual assaulted, but do not report it. The number of actual sexual assaults may be as high as 792,000 per year in the United States.
- Nearly 1.2 million women are forcibly sexual assaulted by their current or former male partners 1 or more times each year.
- In acquaintance sexual assault, 75% of men and 55% of women had been drinking or taking drugs prior to the sexual assault.
- Persons with disabilities are at a substantially higher risk of a sexual assault. Research indicates that more than 50% of persons with disabilities will be victims of sexual assault at some time in their lives.

SEX CRIMES—DEFINITIONS & WV LAWS

West Virginia laws are very specific about sexual abuse and sexual assault. Sexual abuse occurs when a person subjects another person to sexual contact without their consent, and that lack of consent is due to physical force, threat or intimidation. In West Virginia, sexual assault includes sexual intercourse and sexual intrusion.

§61-8B-1. Definition of terms.

In this article, unless a different meaning plainly is required:

- (1) “Forcible compulsion” means:
 - (a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or
 - (b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or
 - (c) Fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

For the purposes of this definition “resistance” includes physical resistance or any clear communication of the victim’s lack of consent.

(2) “Married,” for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.

(3) “Mentally defective” means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.

(4) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.

(5) “Physically helpless” means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.

(6) “Sexual contact” means any intentional touching, either directly or through clothing, of the anus or any part of the sex organs of another person, or the breasts of a female or intentional touching of any part of another person’s

body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(8) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(9) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition.

(10) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(11) "Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

(12) "Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.

§61-8B-2. Lack of consent.

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion; or

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim

does not expressly or impliedly acquiesce in the actor's conduct.

- (c) A person is deemed incapable of consent when such person is:
- (1) Less than sixteen years old; or
 - (2) Mentally defective; or
 - (3) Mentally incapacitated; or
 - (4) Physically helpless.

§61-8B-3. Sexual assault in the first degree.

- (a) A person is guilty of sexual assault in the first degree when:
- (1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:
 - (i) Inflicts serious bodily injury upon anyone; or
 - (ii) Employs a deadly weapon in the commission of the act; or
 - (2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve (12) years old and is not married to that person.
- (b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen (15) nor more than thirty-five (35) years, or fined not less than one thousand (\$1,000) dollars nor more than ten thousand (\$10,000) dollars and imprisoned in a state correctional facility not less than fifteen (15) nor more than thirty-five (35) years.
- (c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen (18) years of age or older and whose victim is younger than twelve (12) years of age, shall be imprisonment in a state correctional facility for not less than twenty-five (25) nor more than one hundred (100) years and a fine of not less than five thousand (\$5,000) dollars nor more than twenty-five (\$25,000) thousand dollars.

§61-8B-4. Sexual assault in the second degree.

- (a) A person is guilty of sexual assault in the second degree when:
- (1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or
 - (2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten (10) nor more than twenty-five (25) years, or fined not less than one thousand (\$1,000) dollars nor more than ten thousand (\$10,000) dollars and imprisoned in the penitentiary not less than ten (10) nor more than twenty-five (25) years.

§61-8B-5. Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

- (1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or
- (2) The person, being sixteen (16) years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen (16) years old and who is at least four (4) years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one (1) year nor more than five (5) years, or fined not more than ten thousand (\$10,000) dollars and imprisoned in a state correctional facility not less than one (1) year nor more than five (5) years.

§61-8B-7. Sexual abuse in the first degree.

(a) A person is guilty of sexual abuse in the first degree when:

- (1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or
- (2) Such person subjects another person to sexual contact who is physically helpless; or
- (3) Such person, being fourteen (14) years old or more, subjects another person to sexual contact who is younger than twelve (12) years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one (1) year nor more than five (5) years, or fined not more than ten thousand (\$10,000) dollars and imprisoned in a state correctional facility not less than one (1) year nor more than five (5) years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen (18) years of age or older and whose victim is younger than twelve (12) years of age, shall be imprisonment for not less than five (5) nor more

than twenty-five (25) years and fined not less than one thousand (\$1,000) dollars nor more than five thousand (\$5,000) dollars.

§61-8B-8. Sexual abuse in the second degree.

(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve (12) months, or fined not more than five hundred (\$500) dollars and confined in the regional jail not more than twelve (12) months.

§61-8B-9. Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen (16) years old.

(b) In any prosecution under this section it is a defense that:

- (1) The defendant was less than sixteen (16) years old; or
- (2) The defendant was less than four (4) years older than the victim.

(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety (90) days, or fined not more than five hundred dollars (\$500) and confined in the county jail not more than ninety (90) days.

§61-8B-9a. Mandatory sentence for person committing certain sex offenses against children.

(a) Notwithstanding the provisions of section one-a, article eleven-a, section four, article eleven-b and section two, article twelve of chapter sixty-two of this code, a person shall not be eligible for probation, home incarceration or an alternative sentence provided under this code if they are convicted of an offense under section three, four, five, seven, eight or nine, article eight-b, chapter sixty-one of this code, are eighteen (18) years of age or older, the victim is younger than twelve (12) years of age and the finder of fact determines that one of the following aggravating circumstances exists:

- (1) The person employed forcible compulsion in commission of the offense;
- (2) The offense constituted, resulted from or involved a predatory act as defined in subsection (m), section two, article twelve, chapter fifteen of this code;
- (3) The person was armed with a weapon or any article used or fashioned

in a manner to lead the victim to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the victim to submit; or

- (4) The person removed the victim from one place to another and did not release the victim in a safe place. For the purposes of this section, “release the victim in a safe place” means release of a victim in a place and manner which realistically conveys to the victim that he or she is free from captivity in circumstances and surroundings wherein aid is readily available.
- (b) (1) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the existence of an aggravating circumstance shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.
- (2) Insofar as the provisions of this section relate to mandatory sentences without probation, home incarceration or alternative sentences, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.

(a) Notwithstanding any provision of this article to the contrary, any person who has been convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, against a victim under the age of twelve (12) years old and thereafter commits and thereafter is convicted of one of the following offenses shall be subject to the following penalties unless another provision of this code authorizes a longer sentence:

- (1) For a violation of section three of this article, the penalty shall be imprisonment in a state correctional facility for not less than fifty (50) nor more than one hundred fifty (150) years;
- (2) For a violation of section four of this article, the penalty shall be imprisonment in a state correctional facility for not less than thirty (30) nor more than one hundred (100) years;
- (3) For a violation of section five of this article, the penalty shall be

imprisonment in a state correctional facility for not less than five (5) nor more than twenty-five (25) years;

- (4) For a violation of section seven of this article, the penalty shall be imprisonment in a state correctional facility for not less than ten (10) nor more than thirty-five (35) years; and
- (5) Notwithstanding the penalty provisions of section eight of this article, a violation of its provisions by a person previously convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, shall be a felony and the penalty therefor shall be imprisonment in a state correctional facility for not less than three (3) nor more than fifteen (15) years.

(b) Notwithstanding the provisions of section two, article twelve, chapter sixty-two of this code, any person sentenced pursuant to this section shall not be eligible for probation.

(c) Notwithstanding the provisions of section one-a, article eleven-a and section four, article eleven-b of chapter sixty-two of this code, a person sentenced under this section shall not be eligible for home incarceration or an alternative sentence.

§61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties.

(a) Any person employed by the division of corrections, any person working at a correctional facility managed by the commissioner of corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the division of juvenile services pursuant to contract or as an employee of a state agency, any person employed by a county jail or by the regional jail and correctional facility authority or any person working at a facility managed by the regional jail and correctional facility authority or a county jail who engages in sexual intercourse or sexual intrusion with a person who is incarcerated in this state is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the commissioner of corrections for not less than one (1) nor more than five (5) years or fined not more than five thousand (\$5,000) dollars.

(b) Any person employed by the division of corrections as a parole officer or by the West Virginia supreme court of appeals as an adult or juvenile probation officer who engages in sexual intercourse or sexual intrusion with a person said parole officer or probation officer is charged as part of his or her

employment with supervising, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the commissioner of corrections for not less than one (1) nor more than five (5) years or fined not more than five thousand (\$5,000) dollars, or both.

(c) The term “incarcerated in this state” for purposes of this section includes in addition to its usual meaning, offenders serving a sentence under the provisions of article eleven (11)-b, chapter sixty-two (62) of this code.

§61-8C-1. Definitions.

For the purposes of this article:

- (a) “Minor” means any child under eighteen (18) years of age.
- (b) “Knowledge” means knowing or having reasonable cause to know which warrants further inspection or inquiry.
- (c) “Sexually explicit conduct” includes any of the following, whether actually performed or simulated:
 - (1) Genital to genital intercourse;
 - (2) Fellatio;
 - (3) Cunnilingus;
 - (4) Anal intercourse;
 - (5) Oral to anal intercourse;
 - (6) Bestiality;
 - (7) Masturbation;
 - (8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage;
 - (9) Excretory functions in a sexual context; or
 - (10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual context.
- (d) “Person” means an individual, partnership, firm, association, corporation or other legal entity.

§61-8C-2. Use of minors in filming sexually explicit conduct prohibited; penalty.

(a) Any person who causes or knowingly permits, uses, persuades, induces, entices or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct shall be guilty of a felony when such person has knowledge that any such act is being photographed or filmed, and upon conviction thereof, such person shall be fined not more than ten thousand (\$10,000) dollars, or imprisoned in the penitentiary not more than ten (10) years, or both fined and imprisoned.

(b) Any person who photographs or films such minor engaging in any sexually explicit conduct shall be guilty of a felony and, upon conviction thereof, shall be fined not more than ten thousand (\$10,000) dollars, or imprisoned in the penitentiary not more than ten (10) years, or both fined and imprisoned.

(c) Any parent, legal guardian or person having custody and control of a minor, who photographs or films such minor in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices or coerces such minor child to engage in or assist in any sexually explicit act shall be guilty of a felony when such person has knowledge that any such act may be photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand (\$10,000) dollars, or imprisoned in the penitentiary not more than ten (10) years, or both fined and imprisoned.

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty.

Any person who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary, not more than two (2) years, and fined not more than two thousand dollars (\$2,000).

§61-8C-4. Payments of treatment costs for minor.

In addition to any penalty provided under this article and any restitution which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this article to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the minor resulting from the act or acts for which the person is convicted, whether or not the minor is considered to have sustained bodily injury.

§61-8C-5. Limits on interviews of children eleven years old or less.

(a) In any prosecution under this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven (11) years old or less must submit for law enforcement or discovery purposes. The rule shall to the extent possible protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven (11) years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying

§61-8D-1. Definitions.

- 1) “Abuse” means the infliction upon a minor of physical injury by other than accidental means.
- (2) “Child” means any person under eighteen (18) years of age not otherwise emancipated by law.
- (3) “Controlled substance” means controlled substance as that term is defined in subsection (d), section one hundred one, article one, chapter sixty-a of this code.
- (4) “Custodian” means a person over the age of fourteen (14) years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding. “Custodian” shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian.
- (5) “Guardian” means a person who has care and custody of a child as the result of any contract, agreement or legal proceeding.
- (6) “Neglect” means the unreasonable failure by a parent, guardian, or any person voluntarily accepting a supervisory role towards a minor child to exercise a minimum degree of care to assure said minor child’s physical safety or health.
- (7) “Parent” means the biological father or mother of a child, or the adoptive mother or father of a child.
- (8) “Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.
- (9) “Sexual exploitation” means an act whereby:
 - (A) A parent, custodian, guardian or other person in a position of trust to a child, whether for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or
 - (B) A parent, guardian, custodian or other person in a position of trust in relation to a child persuades, induces, entices or coerces the child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, person in a position of trust or a third person, or to

display his or her sex organs under circumstances in which the parent, guardian, custodian or other person in a position of trust knows such display is likely to be observed by others who would be affronted or alarmed.

- (10) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.
- (11) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.
- (12) A "person in a position of trust in relation to a child" refers to any person who is acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities concerning a child or someone responsible for the general supervision of a child's welfare, or any person who by virtue of their occupation

§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and upon conviction thereof, shall be imprisoned in the penitentiary not less than ten (10) nor more than twenty (20) years, or fined not less than five hundred (\$500) nor more than five (\$5,000) thousand dollars and imprisoned in the penitentiary not less than ten (10) years nor more than twenty (20) years.

(b) If any parent, guardian, custodian or other person in a position of trust in relation to the child shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control

of such parent, guardian, custodian or person in a position of trust when such child is less than sixteen (16) years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five (5) years nor more than fifteen (15) years, or fined not less than one thousand (\$1,000) nor more than ten thousand (\$10,000) dollars and imprisoned in the penitentiary not less than five (5) years nor more than fifteen (15) years.

(c) If any parent, guardian, custodian or other person in a position of trust in relation to the child shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is sixteen (16) years of age or older, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony upon conviction thereof, shall be imprisoned in the penitentiary not less than one (1) year nor more than five (5) years.

(d) The provisions of this section shall not apply to a custodian or person in a position of trust whose age exceeds the age of the child by less than four (4) years.

§61-8D-6. Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct.

Any parent, guardian or custodian who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses, displays or transports, any material visually portraying a child under his or her care, custody or control engaged in any sexually explicit conduct, is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than two (2) years, and fined not less than four hundred (\$400) dollars nor more than four thousand (\$4,000) dollars.

§61-8-12. Incest; penalty.

(a) For the purposes of this section:

- (1) “Aunt” means the sister of a person’s mother or father;
- (2) “Brother” means the son of a person’s mother or father;
- (3) “Daughter” means a person’s natural daughter, adoptive daughter or the daughter of a person’s husband or wife;
- (4) “Father” means a person’s natural father, adoptive father or the husband of a person’s mother;
- (5) “Granddaughter” means the daughter of a person’s son or daughter;
- (6) “Grandfather” means the father of a person’s father or mother;
- (7) “Grandmother” means the mother of a person’s father or mother;
- (8) “Grandson” means the son of a person’s son or daughter;
- (9) “Mother” means a person’s natural mother, adoptive mother or the wife of a person’s father;
- (10) “Niece” means the daughter of a person’s brother or sister;
- (11) “Nephew” means the son of a person’s brother or sister;
- (12) “Sexual intercourse” means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person;
- (13) “Sexual intrusion” means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party;
- (14) “Sister” means the daughter of a person’s father or mother;
- (15) “Son” means a person’s natural son, adoptive son or the son of a person’s husband or wife; and
- (16) “Uncle” means the brother of a person’s father or mother.

(b) A person is guilty of incest when such person engages in sexual intercourse or sexual intrusion with his or her father, mother, brother, sister, daughter, son, grandfather, grandmother, grandson, granddaughter, nephew, niece, uncle or aunt.

(c) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five (5) years nor more than fifteen (15) years, or fined not less than five hundred (\$500) dollars nor more than five thousand (\$5,000) dollars and imprisoned in the penitentiary not less than five (5) years nor more than fifteen (15) years.

(d) In addition to any penalty provided under this section and any restitution which may be ordered by the court under article eleven-a of this chapter, the court may order any person convicted under the provisions of this section where the victim is a minor to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the person is convicted, whether or not the victim is considered to have sustained bodily injury.

(e) In any case where a person is convicted of an offense described herein against a child and further has or may have custodial, visitation or other parental rights to the child, the court shall find that the person is an abusing parent within the meaning of article six, chapter forty-nine of this code, and shall take such further action in accord with the provisions of said article.

§61-8-13. Incest; limits on interviews of children eleven years old or less; evidence.

(a) In any prosecution under the provisions of section twelve of this article, the court may provide by rule for reasonable limits on the number of interviews to which a victim who is eleven (11) years old or less must submit for law-enforcement or discovery purposes. To the extent possible the rule shall protect the mental and emotional health of the child from the psychological damage of repeated interrogation and at the same time preserve the rights of the public and the defendant.

(b) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is eleven (11) years old or less to use anatomically correct dolls, mannequins or drawings to assist such child in testifying.

(c) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent:

Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(d) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(e) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

WEST VIRGINIA SEX OFFENDER REGISTRY

The intent of the Sex Offender Registration Act is to assist law enforcement agencies in their effort to protect the public from sex offenders by requiring sex offenders to register with the WV State Police Detachment in the county where they reside, and by making certain information about sex offenders available to the public. The Registry provides a broad range of information about these offenders, including identifying information, photographs, residence, and a brief description of the types of crimes committed. This Registry is maintained by the WV State Police and is accessible at www.statepolice.com/sexoff.

The West Virginia State Police has no legal authority to direct where a sex offender may or may not live, and additionally, unless specific court ordered restrictions exist, offenders are constitutionally free to live wherever and with whomever they choose.

The information available on this site is updated on a daily basis. If you do not find an individual with your initial search, you should check the site again in the future. If you have information regarding an individual not listed, and who you believe should be a registered sex offender, please contact the Registry via e-mail or by phone at (304) 746-2133.

Offenses That Require Registration As A Sex Offender

- §61-2-14 Abduction of persons; Kidnapping or concealing a child
- §61-3C-14b Soliciting, etc. a minor via computer
- §61-8-6 Detention of person in place of prostitution
- §61-8-7 Procuring for house of prostitution
- §61-8-12, 13 Incest
- §61-8B-3 1st degree sexual assault
- §61-8B-4 2nd degree sexual assault
- §61-8B-5 3rd degree sexual assault
- §61-8B-7 1st degree sexual abuse
- §61-8B-8 2nd degree sexual abuse
- §61-8B-9 3rd degree sexual abuse
- §61-8C-2 Use of minors in filming sexually explicit conduct
- §61-8C-3 Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct

§61-8D-5 Sexual abuse by parent, guardian or custodian

§61-8D-6 Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct

In addition to the offenses mentioned above, registration as a sex offender is required when someone is convicted of attempt to commit any qualifying offense and someone is found not guilty by reason of mental illness, mental retardation or addiction of any qualifying offense.

A 10 year registration is required if an offender is charged with one conviction, the offense is non-violent and the victim is an adult.

Lifetime registration is required if an offender:

- 1) Is convicted of a sexually violent offense that is a 1st degree sexual assault, 2nd degree sexual assault or 1st degree sexual abuse.
- 2) Has one or more prior sexual offense convictions or was previously found not guilty by reason of mental illness, mental retardation or addiction.
- 3) Is convicted or found not guilty by reason of mental illness, mental retardation or addiction of a qualifying offense and the court finds that the offense involved multiple victims or multiple offenses.
- 4) Is convicted or found not guilty by reason of mental illness, mental retardation or addiction of a qualifying offense and the victim was a minor.
- 5) Has been determined by the Circuit Court to be a sexually violent predator.

SEXUAL HARASSMENT

What Is Sexual Harassment?

Sexual harassment is unwanted sexual or gender-based conduct (any unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature) that interferes with an individual's ability to perform or advance, especially in a work or school setting. Sexual harassment can be committed by someone of the opposite sex, or by someone of the same sex. Victims can be either male or female.

Sexual harassment laws are violated when submission to or rejection of this conduct:

- Explicitly or implicitly affects an individual's employment or education,
- Unreasonably interferes with an individual's performance or promotion, or
- Creates an intimidating, hostile or offensive work or learning environment.

Sexual harassment
is
against the law.
It takes away the
right to be
in a safe,
comfortable environment.

Forms of Sexual Harassment:

Quid Pro Quo ("This For That"): Employment or educational decisions that are made on the condition that a person accept unwelcome sexual behavior. A quid pro quo harassment behavior is chargeable even if it happens only once.

Hostile Environment: Pervasive sex-related verbal or physical conduct that is unwelcome or offensive, and that has the purpose or effect of unreasonably interfering with the employee's or the student's work or school performance. In order to be chargeable, hostile environment must either be extreme or "sustained and non-trivial".

Sexual Harassment Constitutes a Civil Rights Violation.

Title VII of the Civil Rights Act of 1964: Title VII applies to all organizations with more than 15 employees. Title VII forbids discrimination in employment based on race, color, religion, national origin, handicapped status or sex. Sexual harassment is a form of discrimination.

Title IX of the Federal Education Amendment of 1972: Title IX applies to all educational institutions who receive, or whose students receive, any federal funding. Title IX forbids discrimination on the basis of sex.

Sexual
Harassment
is a form
of
discrimination.

Supreme Court Decisions:

A hostile environment has been created if a reasonable person in the victim's situation would find the behavior offensive, and the sex of the victim is a relevant variable in making this judgment.

The intent of the perpetrator is not a factor in determining whether or not harassment has occurred. The impact of the behavior is the critical factor.

A person no longer has to demonstrate that he or she was harmed by the harassment, only that the perpetrator created a hostile environment or committed quid pro quo offenses.

Institutions and organizations can be held legally responsible for sexual harassment if they knew, or should have known, that it was occurring and did not take all reasonable measures to remedy and prevent it.

Even if the organization did not know about the harassment, it is liable for damages if the harasser is a supervisor.

When Is It Sexual Harassment?

Sexual harassment is a form of discrimination. Sexual harassment happens when one person uses sexual words, gestures, looks, or touches that may make another person feel uncomfortable or unsafe. It means that someone is treated differently because of his or her gender. It may be repeated or it may be very offensive on a one-time basis. It is usually intentional, but sometimes people don't know that they are sexually harassing another person. Anyone can be harassed. Anyone can be a harasser.

Harassment is NEVER the fault of the victim. Some people harass others when they feel badly about themselves or need to have power and control over others.

Even if the person experiencing the behavior does not appear to be upset, it is sexual harassment if it makes others feel unsafe or uncomfortable.

Ignoring sexual harassment will not make it stop. In some cases, ignoring it will only make it worse because the harasser may think that the behavior is okay.

What Is the Difference Between Sexual Harassment and Flirting?

Sexual harassment and flirting are NOT the same. Flirting feels good. Sexual harassment does not.

Flirting happens when both people agree to flirt and both people enjoy it. Flirting makes a person feel attractive, is a compliment, is two-way and is an enjoyable experience.

Sexual harassment makes a person feel uncomfortable and unsafe. Sexual harassment, makes a person feel threatened, is degrading, is one-way and is a negative experience.

Sexual harassment
can be
unwelcome contact
with another person,
unwelcome words
directed at another
person or
unwelcome
visual displays
that make you feel
unsafe and
uncomfortable.

To determine if your behavior is considered sexual harassment, ask yourself these questions:

"Do my words or actions show respect for the other person?"

"Would I say or do this if my parents, girlfriend or boyfriend were present?"

"How would I feel if I were at the receiving end of those words or actions?"

A good rule to remember is this: If it makes someone feel uncomfortable in any way, then don't do it.

Sexual harassment happens when a person uses sexual words, gestures, looks or touches that are unwelcomed and may make a person feel uncomfortable or unsafe.

Examples of Sexual Harassment

Physical

- Pinching, fondling, gesturing
- Grabbing, cornering, mauling
- Touching or rubbing against a person
- Standing too close
- Patting, hugging, kissing
- Bumping into someone on purpose
- Blocking a person's path or hindering a person's movements
- Standing closer than appropriate or necessary

Visual

- Sexually explicit or derogatory photos, drawings, cartoons, magazines, posters, graffiti, novelties, mugs, statues or trinkets
- Making sexually suggestive gestures
- Staring at someone's body or looking a person up and down
- Maintaining flirtatious eye contact
- Leering, winking, throwing kisses or licking lips
- Sexually oriented e-mails, letters or notes
- Touching or rubbing oneself sexually in view of another person
- Exposing oneself
- Graffiti about a person's sexuality

Verbal

- Threats or sexual bribery
- Insults
- Sexually offensive jokes or comments
- Pressuring someone for a date, drinks or sexual relations
- Whistles or rude noises
- Spreading sexual rumors
- Comments about a person's body
- Lewd or suggestive remarks
- Asking about sexual experiences, fantasies or preferences
- Conversation with sexual overtones
- Telephone calls of a sexual nature
- Calling people sexually oriented names such as hunk, doll or babe
- Name calling, such as "bitch", "whore" or "slut"

It takes **courage** to talk about sexual harassment.

What Can You Do If You Experience or Witness Sexual Harassment?

1. Stand up for yourself. Look the person in the eye and speak in a strong clear voice.
2. Say “NO!” Clearly tell the harasser to stop. If possible, do so both verbally and in writing.
3. Let the harasser and others know that the conduct is offensive. This may be especially important if you did not previously object to the behavior.
4. Get support from family, friends, and/or a local rape crisis center. Don’t remain silent. Don’t carry the burden alone.
5. Know your business or school’s sexual harassment policy, which should outline how complaints are to be made and to whom. **THIS IS CRITICALLY IMPORTANT!**
6. Tell the harasser that you will report the behavior to an authority figure, such as a supervisor, teacher, personnel department or human resource manager.
7. Document everything being sure to include details of what happened, who did it, what the person did, when it happened, where it happened and who saw it. Be sure to keep any written communications and, if possible, record any calls. Keep a diary of your efforts to stop it.
8. Report the behavior and/or file a formal complaint according to your organization’s policy. Be sure to keep a copy.
9. Keep reporting and or filing complaints if the sexual harassment continues.
10. If necessary, move up the “chain of command”, especially if the harasser is your teacher or a supervisor and if your teacher or supervisor is not helpful.
11. Take legal action. When no other recourse exists, you may choose to file a lawsuit under federal law Title IX.
12. File a criminal complaint if the harassment includes criminal conduct, such as sexual or physical assault, stalking or harassing communications.

The difference between good-natured harmless fun and sexual harassment is how it makes the other person feel.

Depending on the situation, you may have the right to file a complaint with one of the following:

West Virginia Human Rights Commission
(304) 558-2616

U.S. Department of Education
Office of Civil Rights
(215) 656-8541

West Virginia Department of Education
(304) 558-3401

How Can You Help Someone Who is Being Harassed?

It takes courage to talk about sexual harassment. If someone confides in you, please listen and show understanding and support. Encourage them to tell the harasser to stop. Encourage them to make a report. Offer to go with them for support. It is illegal for a harasser to try to stop someone from reporting harassment.

Frequently Asked Questions About Sexual Harassment

Can men be sexually harassed?

Yes, men are victims of sexual harassment, although much less frequently than women.

Can someone be sexually harassed by a member of their same sex?

Yes. If the behavior is unwelcome, offensive, and of a sexual nature, it is sexual harassment regardless of the sex of either the perpetrator or the target of the behavior.

Can a person be sexually harassed when he or she is not at work or school?

Yes. Events that occur outside of school or the workplace can have an enduring impact on the victim. If the behavior has an unfair and negative impact on the victim, it meets the definition of sexual harassment.

Why are the majority of sexual harassers male?

There are at least three major reasons. First, males are more often socialized to be aggressive and to be sexual initiators. Second, males are more frequently in positions of power, which is a major factor in sexual harassment. Third, sexual harassment is defined as behavior that is unwelcome and offensive. In other words, one must make a judgment about another person's emotional reaction, something that males are not often encouraged to do.

Can a person be charged with sexual harassment for an isolated, inadvertent comment or behavior?

It could happen in rare instances when the behavior is extreme, such as in quid pro quo harassment, or when a harassing behavior is so profoundly offensive that it has a lasting negative impact. In the majority of cases, behaviors like comments, staring and visual displays must be repetitive in order to be chargeable. The courts have defined these instances as hostile environment harassment if they are "severe, persistent, pervasive, sustained and/or non-trivial". At the same time, it is advisable that a person be confronted and asked to apologize for isolated, inadvertent, insensitive comments or behaviors, since

the behaviors can have a negative impact on the workplace even if they are not legally chargeable.

Can a bystander who is offended by a verbal exchange of a sexual nature between two co-workers claim sexual harassment?

Yes. Sexual harassment occurs when a behavior of a sexual nature adversely affects an employee's or student's ability to do his or her work. An offensive verbal exchange can have this effect, whether or not the person was directly involved in the exchange. Again, the behaviors must be "severe, persistent, pervasive, sustained and/or non-trivial" in order to be legally chargeable.

How frequently are sexual harassment complaints fabricated in order to retaliate against someone in power?

While this sometimes happens, most sexual harassment experts agree that it is very rare (less than two percent of all cases). Recent works of fiction depicting this scenario have left many people with gross exaggerations of its likelihood.

How are most sexual harassment complaints settled?

Most sexual harassment complaints are settled informally, either by merely asking the harasser to stop or by coming to an agreement through a third party.

Isn't the best reaction to offensive behavior to ignore it or laugh it off?

No. If one does so, the behavior is likely to continue and possibly escalate. The best reaction, if the victim feels comfortable enough to do so, is to tell the harasser to stop. However, a victim is under no obligation to confront the harasser before bringing a formal complaint. Often, harassers are so intimidating (as is often the case when the harasser is a supervisor, a teacher or other person in power) that the victim does not think that he or she can safely say anything to that person.

Why do so many victims do nothing about sexual harassment?

Most often, victims fear retaliation by the harasser. Other reasons include doubting that anything would be done about the harassment, not wanting to "make trouble" for the harasser or the organization, or merely being unaware of their right to work or go to school in a harassment-free environment.

Can you call the police if you are harassed?

The police need to be notified in the following extreme circumstances: sexual assault (sexual intercourse or sexual intrusion without consent), stalking (as defined by state law) and sexual extortion (offering a reward in exchange for

sex or threatening a punishment for sexual non-cooperation). In these cases, the behaviors are the basis for other criminal charges in addition to the civil rights violation of sexual harassment.

How common is sexual harassment on college and university campuses?

Most studies estimate that at least 20% to 30% of undergraduate women have been sexually harassed by faculty or staff members. When student-to-student harassment is included, as many as 90% of undergraduate women report at least one harassing experience, and the figure is 97% for women at the military service academies. In addition, 20% to 50% of women faculty members report an experience of at least one incident of sexual harassment.

Does behavior have to be intentional in order to be considered sexual harassment?

The law is clear that sexual harassment is a matter of impact on the victim, not one of intent by the harasser. Harassers typically do not think of themselves as breaking the law. They do not see themselves as annoying, aggressive or offensive. Rather, they tend to see themselves as cute, witty, clever, charming and sexy. Nonetheless, they are committing a crime if their behavior meets the legal definition of sexual harassment.

What is the best course of action to take if someone is being harassed?

If the victim feels comfortable enough to do so, telling the harasser to stop is often an effective course of action. If the harasser does not stop upon such a request, or if the victim is not comfortable telling the harasser to stop, some form of complaint is warranted. Any victim has the option of doing nothing, however, this strategy usually results in continued harassment.

Can someone be harassing without even saying anything?

Yes, a person can sexually harass another by staring, leering, displaying sexually explicit photographs, making sexually suggestive eye contact or making sexual gestures.

What is a college's role in providing remedies or preventing sexual harassment?

By law, the college (or any other organization) must take all reasonable steps to prevent sexual harassment and to provide a swift remedy to it when becoming aware of its occurrence. If

Important Note to EMPLOYERS

Employers can be held responsible for the behavior of their employees, regardless of whether or not they encouraged the behavior.

Ultimately, the employer can be liable for any wrongful conduct involving sexual harassment.

any agent or responsible employee of the college (including a faculty member) receives notice, the college is considered to have received notice. According to the EEOC, organizations must adopt a proactive stance against sexual harassment by:

- Affirmatively raising the issue;
- Defining sexual harassment and giving examples;
- Expressing strong disapproval;
- Informing employees and students of their rights;
- Establishing appropriate sanctions;
- Clarifying complaint procedures;
- Reviewing resolution options;
- Sensitizing all employees;
- Enforcing consequences for harassment.

Can employers be held liable for the harassment of an employee by a non-employee?

Yes, if the employer knew or should have known that harassment was occurring and took inadequate steps to prevent or remedy it.

Does a sexual harassment victim have to inform a perpetrator that his or her behavior is unwelcome and offensive in order to later charge sexual harassment when the same behavior is repeated?

No. There are many cases in which doing so could jeopardize the victim's physical safety, emotional well-being or career success. However, it is advisable and often effective to inform the harasser that the behavior is unwelcome if the victim feels comfortable enough to do so.

Can a person sexually harass someone with whom he or she was formerly sexually involved?

Yes, and this happens fairly often. The standard for sexual harassment is that behavior in the context of a workplace or educational relationship is of a sexual nature and that it is unwelcome. This standard applies even if there has been a time when the behavior was welcome. Permission for sexual behavior can always be withdrawn regardless of how many times permission was given in the past. Sometimes a former romantic partner's sexual attention is extremely unwelcome.

Important Note to SCHOOLS

Schools can be held liable for many forms of sexual harassment, including student-on-student harassment when personnel have knowledge of the harassment and do not take action to stop it.

(Adapted from the Sexual Harassment Prevention Training Manual, Christopher Kilmartin, Ph.D., Professor of Psychology, Mary Washington College)

Golden Rules for Avoiding Sexual Harassment

1. Rely on courtesy rather than contact. Verbal praise and encouragement are as effective as hugs and pats on the back.
2. Use the same sex standard. Ask yourself, “Would I make the same comment to someone of the other sex?” As a man, would you tell another man that you like the way he does his hair? As a woman, would you make a comment about another woman’s muscles?
3. Try the candid camera test. Would you feel comfortable having a videotape of the behavior shown to your spouse or co-workers?
4. Compliment on merit, not appearance. Praise someone’s work, not his or her looks.
5. Think of how it would look in print. Before telling a joke or story, imagine it would be printed in a popular magazine. Would it be offensive because of gender, race, occupation, ethnicity or sexual orientation?
6. Back off. Avoid invading other people’s personal space by leaning over their desks or standing too close.
7. Speak up. If you are offended by a behavior, tell the person that the behavior bothers you and ask him or her to stop it. It is important to focus on the behavior rather than the person and to be specific.
8. Take responsibility for your behavior. Don’t think saying “I’m sorry” is enough. An apology doesn’t make up for offensive language or behavior. You should also add, “It won’t happen again,” and then make sure it doesn’t.
9. Put yourself in the other person’s shoes. If you were in another group (gender, race, ethnicity, or sexual orientation), how might you feel?

(Source: Adapted from Parade Magazine, March 20, 1994, pp. 10-11.)

STALKING

What Is Stalking?

Stalking is a crime. The National Center for Victims of Crime's Stalking Resource Center defines stalking as a course of conduct directed at a specific person that would cause a reasonable person fear.

Under this definition, stalking can include a variety of behaviors. A stalker might repeatedly follow a victim when she/he drives to work. He or she might repeatedly wait for the victim outside her/his home or office. A stalker might call the victim on the phone and make threats or hang up each time the victim answers. Some stalkers slash tires, vandalize homes and threaten their victims with weapons. Some stalkers send flowers, gifts and cards to solely to intimidate their target.

In West Virginia, to be charged with the crime of stalking, someone must repeatedly (two or more times) follow another person knowing or having reason to know that the conduct causes the person followed to reasonably fear for his or her safety or suffer significant emotional distress.

West Virginia's stalking law addresses additional threatening behaviors in the category of harassment. Someone can be charged with harassment if they repeatedly (two or more times) harass or repeatedly make credible threats against another person.

Can Stalking Be Dangerous?

Yes. While a stalker's harassment and threats might at first seem just annoying or a little scary, they can quickly escalate to serious violence. Someone who stalks is someone who could be dangerous. Stalkers have

STALKING in WV includes repeatedly following a person knowing that the behavior causes the person being followed to fear for her/his safety or suffer emotional distress.

HARRASSMENT can be charged when someone makes repeated credible threats against another person.

beaten, sexually assaulted and murdered the people they stalked. Threats should be taken seriously.

Although there is no standard way to assess the seriousness of a case, there are some factors that should be considered:

- History of violence exhibited by the stalker;
- Presence of physical abuse or domestic violence;
- Presence or absence of threats;
(Verbal or written threats very frequently precede acts of violence)
- Obsession with the same or similar victim over a period of time;
- Destruction of property;
- Access and approach behaviors of the stalker (Letter writing or face-to-face contact);
- Knowing the mental status of the stalker;
- Meaning or value the stalker places on the victim;
- Knowledge of the relationship between the stalker and the victim.

Who Is Stalked?

The majority of stalking victims are women (80%), but men are also stalked. Contrary to popular opinion, stalking does not just happen to celebrities or to someone estranged from their partner. Stalking can occur during a relationship, after a relationship or without a relationship.

4 out of 5 stalking victims are women.

50% of stalking victims were between the ages of 18 and 27.

90% of stalkers identified were male.

59% of female victims report being stalked by a former intimate partner.

Who Are Stalkers?

Stalking is considered gender neutral as both men and women can be stalkers. Generally speaking, in the majority of cases, the stalker is male (90%). Stalkers cross all racial, economic, gender, age and other demographic lines.

Some danger signs in a relationship that should trigger precautions include:

- Extreme jealousy and controlling behavior;
- A belief that destiny led him/her to you so you belong to them in some way;
- Few close friendships and an over-dependence on you as a link to the world;
- Failure to accept responsibility for his/her own behavior;
- Refusing to accept 'no'.

What Are West Virginia Laws on Stalking and Harassment?

West Virginia Code §61-2-9a addresses stalking, harassment, penalties and definitions. (The code was amended in 2008.)

Subsection (a) Any person who repeatedly follows another knowing or having reason to know that the conduct causes the person followed to reasonably fear for his or her safety or suffer significant emotional distress, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six (6) months or fined not more than one thousand (\$1,000) dollars, or both.

Subsection (b) Any person who repeatedly harasses or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six (6) months or fined not more than one thousand dollars (\$1,000), or both.

Subsection (c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court or family

court judge, in effect and entered pursuant to part 48-5-501, et seq., part 48-5-601, et seq. or 48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not less than ninety (90) days nor more than one (1) year or fined not less than two thousand (\$2,000) dollars nor more than five thousand (\$5,000) dollars, or both.

Subsection (d) A second or subsequent conviction for a violation of this section occurring within five (5) years of a prior conviction is a felony punishable by incarceration in a state correctional facility for not less than one (1) year nor more than five (5) years or fined not less than three thousand (\$3,000) dollars nor more than ten thousand (\$10,000) dollars, or both.

Subsection (e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order for injunctive relief is in effect pursuant to the provisions of section five hundred one, article twenty-seven, chapter forty-eight of this code who has been served with a copy of said order or section six hundred eight, article five, chapter forty-eight of this code who is convicted of a violation of the provisions of this section shall be guilty of a felony and punishable by incarceration in a state correctional facility for not less than one (1) year nor more than five (5) years or fined not less than three thousand (\$3,000) dollars nor more than ten thousand (\$10,00) dollars, or both.

Subsection (f) for the purposes of this section:

- (1) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition;
- (2) “Credible threat” means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;
- (3) “Harasses” means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress

(4) “Repeatedly” means on two (2) or more occasions.

Subsection (g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, including, but not limited to: Any labor or employment relations issue; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States.

Subsection (h) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended is to have as a condition of probation or suspension of sentence that he or she participates in counseling or medical treatment as directed by the court.

Subsection (i) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

Subsection (j) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

Subsection (k) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

Subsection (l) The Governor's Committee on Crime, Delinquency and Correction, after consultation with representatives of labor, licensed domestic violence programs and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency

rules pursuant to article three, chapter twenty-nine-a of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

What Are the Federal Statutes on Stalking?

Apart from state statutes, stalking victims should be aware of federal legislation that makes it a crime to cross a state line in order to stalk another person, a spouse or partner.

Federal Laws

18 U.S.C. §2261A Interstate Stalking (1996; 2000)

§2261A(1) makes it is a federal crime, punishable from five (5) years to life in prison, to travel across state, tribal or international lines to stalk another person. The stalker must have the intent to harass, or intimidate the victim, or to place the victim, a family member, or a spouse or partner of the victim, in fear of death or serious bodily injury.

§2261A(2) makes it a federal crime, punishable from five (5) years to life in prison, to stalk another person across state, tribal or international lines, using regular mail, e-mail, or the Internet (i.e., cyberstalking). The stalker must have the intent to kill or injure the victim, or to place the victim, a family member or a spouse or intimate partner of the victim in fear of death or serious bodily injury.

2261A (1) and §2261A (2) make it a federal crime to stalk someone within the special maritime or territorial jurisdiction of the U.S. This includes federal lands such as national parks and military bases.

18 U.S.C. §2261 Interstate Domestic Violence (1994; 2000)

§2261(a) (1) makes it a federal crime, punishable from five (5) years to life in prison, to travel across state, tribal or international lines with the intent to kill, injure, harass, or intimidate a spouse or partner and to commit, or attempt to commit, a crime of violence against that spouse or intimate partner.

§2261(a) (2) makes it a federal crime, punishable from five (5) years to life in prison, to cause an intimate partner to cross state, tribal, international lines, by force, coercion, duress, or fraud and commit, or attempt to commit, a crime of violence against that spouse or intimate partner.

18 U.S.C. §2262 Interstate Violation of a Protective Order

§2262(a)(1) makes it a federal crime, punishable from five (5) years to life in prison, to travel across tribal or international lines with the intent to violate a protective order and to subsequent conduct that violates that order.

§2262(a)(2) makes it a federal crime, punishable from five (5) years to life in prison, to cause a person to cross state, tribal, or international lines by force, coercion, duress, or fraud and subsequently engage in conduct that violates a protective order. The protective order must state that the abuser cannot threaten, harass or cause bodily injury.

Federal anti-terrorism laws may also apply in some stalking cases, allowing victims to bring charges in federal court as an alternative to the state criminal court of their jurisdiction.

18 U.S.C. §2261(b): Penalties for Violating Federal Laws

18 U.S.C. §2261, §2261A or §2262

Penalties are either a fine, imprisonment, or both. There are no minimum sentences, but there are maximums based on the extent of the victim's injuries. Following are the maximum sentences are listed along with the corresponding injury:

- Life imprisonment if the victim dies
- 20 years if the victim is permanently disfigured
- 20 years if the victim suffers life threatening bodily injury
- 10 years if the victim suffers serious bodily injury
- Penalties set forth in Chapter 109A (18 U.S.C. 2241 et seq.-sex offenses) if offender's conduct meets the elements of any of those offenses (conduct does not have to occur in federal prison or within special/maritime jurisdiction of U.S.) or
- 5 years for any other situation

(The maximum sentence is 10 years if the offender uses a dangerous weapon.)

18 U.S.C. §875(c) Interstate Communications

This statute makes it a federal crime, punishable by up to five (5) years in prison, to transmit in interstate or foreign communications, any threat to kidnap or injure another person.

47 U.S.C. §223(a) (1) (C) Harassing Telephone Calls in Interstate Communications

This statute makes it a federal crime, punishable by up to two (2) years in prison, to use a telephone or other telecommunications device to annoy, abuse, harass or threaten another person at another number.

How Does A Victim of Stalking Get a Protective Order?

First, the victim must show that the stalker has knowingly and repeatedly harassed her/him or made the victim afraid that she/he would be hurt. If that has happened, the victim should go to Magistrate Court and file a petition for a protective order. In the petition the victim will need to explain exactly what the stalker has done to make her/him afraid and how she/he was harassed. The magistrate may give the victim a temporary protective order until the hearing. A hearing will be held in the next ten (10) days, and the family court judge will issue a final order for 90 or 180 days. If the stalker disobeys a protective order by making further contact with the victim, the police can arrest him or her.

Can a Stalker Be Arrested?

Yes. If someone is being stalked, that person should call the police or go to the police department and make a report. It is important to keep a detailed journal of what the stalker says and does. That information should be shared with the police when a report is made. The victim can also file a criminal complaint with the prosecutor's office. The prosecutor's office sends the complaint to the police. The complaint is investigated. If the police determine probable cause, a warrant would be issued for the arrest of the stalker.

Stalking is often not the only crime a stalker can be arrested for. The stalker is also breaking the law if he or she hurts the victim, threatens to hurt the victim, sexually assaults the victim, destroys that person's

belongings, breaks into the victim's home, trespasses on the victim's property or harasses the victim on the telephone, on the computer or through the mail. If the stalker does any of these things, the victim should call the police immediately.

If the police make an arrest, the stalker must not call the victim, write to the victim, go to see the victim or harass her/him in any way when out on bail. If the stalker contacts the victim, she/he should call the police or prosecuting attorney. The prosecuting attorney can make a motion to have bond revoked and to have the stalker taken back to jail and held until the trial.

What Kinds of Preventive Measures Should a Victim of Stalking Consider?

While a victim may not be in imminent danger, the potential always exists; therefore, a contingency plan (a safety "escape" plan) may be appropriate. Suggested considerations include:

- a. Knowledge of, and quick access to, critical telephone numbers, including:
 - Law enforcement numbers and locations;
 - Safe places (such as friends, domestic violence shelters, etc.); and
 - Contact numbers for use after safety is secured (such as neighbors/family, attorney, prosecutor, medical care, child care, pet care, etc.).
- b. Keeping an accessible reserve of necessities, including:
 - A small packed suitcase in the trunk of the car, or at another readily accessible location, for quick departure;
 - Cash;
 - Other necessities—such as creditor's numbers and personal welfare items such as medication, birth certificates, social security information, passports, etc.—should be readily available;
 - Miscellaneous items—maintaining a full tank of gas in the car, backup keys for neighbors, etc. are practical; and
 - Toys, books, or other special items belonging to the child(ren) of the victim.

- c. Alerting people to the situation who may be useful in formulating a contingency plan, such as:
 - Law enforcement
 - Employers
 - Family, friends, or neighbors
 - Security personnel
- d. Installing solid core doors with dead bolts. If all keys cannot be accounted for, then change locks and secure spare keys. Consider installing a security alarm system.
- e. Installing adequate outside lighting. Trim back bushes and vegetation around residence.
- f. Maintaining an unlisted phone number. Be selective about giving out your number. If harassing calls persist, notify local law enforcement, but also keep a written log of harassing calls and any answering machine tapes of calls with the stalker's voice and messages.
- g. Getting a cell phone and keeping it with you at all times.
- h. Treating any threats as legitimate and informing law enforcement immediately.
- i. Varying travel routes, stores and restaurants, etc. which are regularly used. Limit the amount of time walking, jogging, etc. unless in a safe environment.
- j. Informing a trusted neighbor, roommates and/or colleagues about the situation. Provide them with a photo or description of the stalker and any possible vehicles she/he may drive.
- k. If residing in an apartment building with an on-site property manager, provide the manager with a picture of the stalker.
- l. Having co-workers or roommates screen all calls and visitors.
- m. Avoiding travel alone if at all possible. Stay in public areas. If assistance is needed, yell "FIRE" to get immediate attention. People more readily respond to this cry for assistance than to any other.
- n. If you are being followed, do not go home. Go to the police station or a very public place.

- o. Using a “dummy” answering machine connected to a published phone line. A private unlisted number can be reserved for close friends and family. The stalker may not realize you have another line.

What Resources Are Available to a Victim of Stalking?

Assistance may be obtained from local sources, such as:

- a. Rape crisis program or counselor
- b. Domestic violence shelter or counselor
- c. Victim assistance coordinator in the prosecutor’s office
- d. Law enforcement

Victim advocates may either give a referral number to the stalking victim, offer to make the call or have someone from the referral organization or program contact the victim directly. If there is no appropriate referral in the victim’s vicinity, the local law enforcement agency should still be contacted.

Is Stalking More Common Between Acquaintances or Strangers?

Although in the majority of reported cases the stalker and the victim did know each other, it can be misleading to assume that there has been a close relationship. Additionally, the incidence of stranger stalking is significant enough that it should not be overlooked.

Is There a Link Between Stalking, Domestic Violence and Sexual Assault?

There is a strong link between stalking and other forms of violence in intimate relationships. National statistics show that 81% of women who were stalked by a current or former partner were also physically assaulted by that partner. 31% of those women were also sexually assaulted by that partner.

How Often Do Victims Report Incidents of Stalking to the Police?

It is estimated that police are informed in roughly one-half of stalking cases. Those not reporting said they did not think stalking was a police matter. They doubted that the police could do anything to help.

How Often Do Criminal and Civil Sanctions Occur?

Only a small percentage of stalking victims obtain protective orders. Even so, however, the majority of male and female victims have these orders violated. Only a small percentage of all stalking cases result in criminal prosecution.

Do Protective Orders Help Discourage Stalking?

In some cases protective orders do discourage the unwanted contact. At the same time, these orders assist law enforcement in building the strongest possible case. However, a protective order should be obtained as part of an overall safety plan. Most stalkers do NOT respect boundaries. Be aware that for some stalkers a protective order can escalate the situation for the victim.

How Does Stalking Affect Victims?

Many stalking victims seek psychological counseling as a result of their victimization. Stalking victims are significantly more likely than others to live in fear of their personal safety.

Victims of stalking report feelings of powerlessness, jumpiness, shakes, panic attacks, hyper vigilance, exaggerated startle response, chronic sleep disturbances, appetite disturbances, persistent nausea and excessive fatigue.

When and Why Does Stalking Stop?

Stalking often does not stop if ignored. If anything, it tends to escalate. It often does not stop unless the stalker's focus moves to someone else.

The average stalking case lasts 1.8 years. Many stalking victims have moved, sometimes more than once, to get away from their stalkers.

What Is Cyberstalking?

Cyberstalking refers to the use of the Internet, e-mail, or other telecommunication technologies to harass or stalk another person. It is not the mere annoyance of unsolicited e-mail. It is methodical, deliberate, and persistent. The communications, whether from someone known or unknown, do not stop even after the recipient has asked the sender to cease all contacts, and are often filled with inappropriate, and sometimes

disturbing, content. Cyberstalking is an extension of the physical form of stalking.

It is estimated that there may potentially be tens or even hundreds of thousands of cyberstalking victims in the United States. A cyberstalker only needs access to a computer and a modem. Due to the enormous amount of personal information available through the Internet, a cyberstalker can easily locate private information about a potential victim with a few mouse clicks or key strokes. Information is power, and stalking of any kind is about power and control. There is little security on-line. Turning on a computer can expose anyone to harassment. Everyone who receives e-mail or uses the Internet is susceptible to cyberstalking.

Cyberstalkers use a variety of techniques. They may initially use the Internet to identify and track their victims. They may then send unsolicited e-mails, including hate, obscene or threatening mail. Live chat harassment abuses the victim directly or through electronic sabotage (for example, flooding the Internet chat channel to disrupt the victim's conversation). With newsgroups, the cyberstalker can create postings about the victim or start rumors that spread through the bulletin board system. A cyberstalker may also set up a web page on the victim with personal or fictitious information or solicitations to readers. Another technique is to assume the victim's persona on-line, such as in chat rooms, for the purpose of discrediting the victim's reputation, posting details about the victim,

Although the term "cyber" usually refers to the Internet, cyberstalking refers to more than just the use of computers. Exercise caution in attempting to make cyberstalking more comprehensive in the face of the many new and constantly emerging forms of technology. It would be inappropriate, even inaccurate, to describe stalking with GPS and/or cameras as cyberstalking in a legal sense. The use of technology to stalk may be a more accurate way to avoid confusion and provide more clarity when anything other than the Internet is involved.

(© Eliminating "Cyber-Confusion," Stalking Resource Center, 2003)

or soliciting unwanted contacts from others. Cyberstalking is a course of conduct that takes place over a period of time and involves repeated, deliberate attempts to cause distress to the victim.

(Information for this section came from the U.S. Department of Justice. August 1999. Cyberstalking: A New Challenge for Law Enforcement and Industry—A Report from the Attorney General to the Vice President. Washington, D.C.: U.S. Department of Justice.)

The rapidly advancing technology also makes it possible for abusers to use Spyware which is computer software or possibly a hardware device that allows someone to monitor and get information about someone else's computer use. The presence of the Spyware is usually totally unknown to the victim. Once installed, the Spyware can allow the abuser to monitor what is done on the computer, cell phone or other handheld devices. This is usually done remotely, so that the victim remains unaware that she/he is being monitored.

Additionally, technology continues to produce cameras that can be hidden in smaller and less obvious places, such as a child's toy, the bedroom lamp or smoke detector. This makes it possible for abusers to obtain photographs which can then be enhanced and/or modified using various programs. A victim might find these pictures on offensive websites, posted on the victim's own webpage or distributed throughout the Internet. Some of the cameras also have built-in microphones so the abuser can hear what is being said as well as taking pictures.

(This information was provided by the Safety Net project of the National Network to End Domestic Violence with funding from the Mary Kay Ash Charitable Foundation, 2006)

What Are the Effects of Cyberstalking?

The fact that cyberstalking does not involve physical contact may create the misperception that it is less threatening or less dangerous than physical stalking. Cyberstalking is just as frightening and potentially as dangerous as a stalker at the victim's front door. The psychological torment is very real, even in the absence of a distinct physical threat. It totally disrupts a victim's life and peace of mind. Cyberstalking presents a range of physical, emotional, and psychological trauma for the victim, who may begin to develop or experience:

- Sleep disturbances
- Recurring nightmares
- Hyper vigilance
- High levels of stress

Are There Laws to Protect a Victim From Cyberstalking?

West Virginia Code §61-3C-14A. This addresses obscene, anonymous, harassing and threatening communications.

- (a) According to West Virginia Code §61-3C-14A it is unlawful for any person, with the intent to harass or abuse another person, to use a computer to:
 - Make contact with another without disclosing his or her identity with the intent to harass or abuse;
 - Make contact with a person after being requested by the person to stop from contacting them;
 - Threaten to commit a crime against any person or property;
 - Cause obscene material to be delivered or transmitted to a specific person after being requested to stop sending such material.
- (b) It is unlawful for any person to knowingly permit a computer under his or her control to be used for any purpose prohibited by this section.
- (c) Any offense committed under this section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.
- (d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred (\$500) dollars or confined in a county or regional jail not more than six (6) months, or both. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand (\$1,000) dollars or confined in a county or regional jail for not more than one (1) year, or both.

As part of the 2000 Violence Against Women Act, Congress extended the federal interstate stalking statute to include cyberstalking.

18 U.S.C. §2261A(2). It is a federal crime, punishable from five years to life in prison, to stalk another person across state, tribal or international lines using regular mail, e-mail or the internet. The defendant must have the intent to kill or injure the victim, or to place a family member or a spouse or intimate partner of the victim in fear of death or serious injury.

In 2000, Congress also passed the Amy Boyer's Law, 42 U.S.C. Section 1320 B-23 (P.L. 106-553), which prohibits the sale or display of an individual's social security number to the public, including sales over the Internet, without the person's expressed consent, submitted either electronically or in writing. The law allows a person harmed by wrongful release of a social security number to sue the seller or displayer for equitable relief and monetary damages in a U.S. District Court. In addition, the Social Security Commissioner can impose on any such violator a civil penalty of \$5,000 for each violation, with increased penalties (maximum of \$50,000) if the violations constitute a general business practice. This new law applies to violations effective on December 21, 2002, two years after its enactment. (Amy Boyer's Law is named after a young woman who was murdered after her stalker purchased her social security number over the Internet.)

What Should You Do If You Are A Victim of On-line Stalking?

If you are being harassed on-line, there are several things you should do.

1. Trust your instincts. If you suspect that someone knows too much about you and/or your activities, it is possible that you are being monitored.
2. Plan for safety. Advocates at your local rape crisis center or domestic violence shelter are available to help you develop a safety plan. You can also use national hotlines such as 1-800-656-HOPE, the National Sexual Assault Hotline, the Stalking Resource Center (1-800-FYI-CALL) or a website such as www.nnedv.org.
3. Be extra cautious if your abuser is very technologically savvy. Again trust your instincts. You may want to talk to an advocate or to the police.
4. Use a safer computer. If you suspect that your computer is compromised, use a computer at the public library, church, or a community center.
5. Create a new email account(s). Look for free web-based email accounts. Use an anonymous name and don't provide too much information in the profiles. An abuser could use the information to find you.
6. Check your cell phone settings. Consider turning the phone off when not in use. If your phone is GPS enabled, consider turning it off when not traveling.

7. Change passwords and pin numbers. Use gender neutral passwords. Try to avoid using birthdates, numbers or phrases that your abuser may recognize. Don't give your passwords to anyone and keep them in a safe, not easily accessible place.
8. Minimize the use of cordless phones and baby monitors. Turn these devices off if you do not want your conversation overheard. Use a corded telephone whenever you want your conversation to be more private.
9. Use a donated or new cell phone. If the local rape crisis center or shelter provides cell phones or if you can obtain a new phone, do so. Consider the use of a prepaid phone or phone cards as well.
10. Ask about your records and date. Many court systems and government agencies are publishing records to the Internet. Ask agencies about their policies regarding publishing and protection of victim records. Find out if there are ways that your records can be sealed or if access can be restricted in some way to protect your safety.
11. Get a private mailbox and don't give out your real address. This will give you a safer address to give out to doctors, businesses, etc. Try to keep your actual address out of national databases.
12. Search for your name on the Internet. This can help you determine what information is online and whether search engines have access to your contact information.

(This information was modified from information created June 2003, Revised May 2004 by Safety Net: the National Safe & Strategic Technology Project at the National Network to End Domestic Violence www.nnedv.org)

What about Sexual Exploitation of a Child on the Internet?

There is always the possibility that a child will be exposed to the dangers of sexual exploitation. Predators use the Internet to identify and cultivate relationships with children who are potential victims. Generally, these individuals target children and begin to seduce them in stages. The predators' willingness to invest large amounts of time into the relationship and their patience allows them to successfully seduce children, first with words and ideas, and then physically.

Predators begin by cultivating relationships with children—giving attention those children may not feel they are getting at home.

The predator listens, sympathizes with complaints about family or friends or trouble at school and encourages the child to share fears. The predator responds in ways that reinforce feelings of alienation for the child. The predator will converse with the child about music, hobbies and interests, and about the child's friends and enemies. If there is some problem between the child and parent, the predator will use that to his advantage. He will encourage feelings that the child's parents are wrong, no matter what the problem is. He will always be on the child's side. He will put the child's parents down and may even tell the child that he is the only one who really loves or cares for her/him.

As time progresses and the predator feels that the child is comfortable with him, he will start to be more affectionate and will probably begin to give small gifts to the child. During this part of the grooming process, the predator will invest large amounts of time being available to the child and encouraging dependence on this relationship to the exclusion of others. Keep in mind that thus far, the child still probably believes he is talking to a peer, or if she/he knows that it is an adult, he probably feels that this is a sympathetic "Uncle" type of friend. Children love to be taken seriously by adults, and this is one adult who makes the child feel very special.

As the relationship progresses, the predator may work to lower the child's natural inhibitions—asking innocent sounding questions at first like, "What are your favorite clothes?" or "When do you usually shower, morning or night?". By working questions such as these into conversations about busy schedules or shopping for the right clothes at the right shops, the predator introduces concepts that he can build on in future conversations that can slowly evolve into "What are you wearing right now?" or "What do you sleep in?". Even a description of a child's favorite shirt or outfit can lead to an "I'd love to see a picture of you in that Chicago Bulls jersey!" kind of request.

Progressing further into the relationship, sexual themes will begin to develop with starting points as various as "My parents were having

sex last night, and I heard them! Disgusting!” or “My friend brought a Playboy magazine to school yesterday and got caught with it!” There are ways that the predator can introduce sexual themes into the conversation.

The predator may at some point begin sending pornographic pictures to the child, sometimes of other children, to further lower their resistance to what is commonly referred to as “cybersex”. Cybersex can be defined as sexual relationships using text and pictures as the stimuli. During cybersex, the predator will use words to explain what he would be doing if he were with the child, or what he is doing while he talks to the child. During this verbal intercourse, the predator may be masturbating and telling the child how he feels while doing so. He may also tell the child what he wants him/her to say back. He may ask the child to do things to his or her own body and verbalize how it feels.

Once the predator has built a relationship with the child, there are three avenues the predator might choose:

- If the child begins to withdraw (uncomfortable with the progression of the relationship), the predator may try to use some form of blackmail to force the child to continue or to progress. He may request nude photographs of the

Did You Know That...

- Over 50 million children and teens have access to the Internet. Only 1/3 of the households that have Internet access are proactively protecting their children and teens by using filtering or blocking software.
- An alarming 75% of children share personal information about themselves willingly over the Internet in exchange for goods and services.
- Only 25% of children will tell a parent about an encounter with a predator who approached or solicited sex while on the Internet.
- In the United States, 1 out of 5 teens who regularly log on to the Internet have received unwanted sexual material through the web. This material includes requests to have sex, to have sexual conversations, and to give personal sexual information.
- Online predators will contact 77% of youths by the age of 14, and 22% of children ages 10 to 13 will be approached.

These statistics are alarming, but parents do have tools to help prevent problems when their children are on-line.

child, and threaten to tell the parents about the relationship if the child refuses. If he already has photographs of the child, he may threaten to publish them or share them if the child doesn't agree to meet.

- If the child has successfully been drawn into this relationship, the predator will usually try to arrange a meeting. Children often know that what they are doing is in some way “wrong”, but the practiced pedophile can often overrule this feeling with massive amounts of affection and affirmation. It is important to remember that no matter what the child does, or even if there are feelings of affection (love) for the predator, it is because she/he is, indeed, a child, and has been victimized by a person who was deceitful.
- Some children will put a stop to the relationship before it gets too dangerous. If a child has been approached by a predator, and even allowed some behaviors to continue that they knew were wrong, it is important for the child to trust her/his parents enough to be able to tell them what has happened. Parents must make sure that their children understand that they can come to them at any time, with any problem. Remember that the child was victimized. Children will be less likely to be blackmailed into doing further acts if they are not afraid to tell their parents what has already happened.

What Can Parents Do To Reduce the Risk of Child Sexual Exploitation on the Internet?

There are many things parents can do to reduce the risk that their child will fall victim to sexual exploitation on the Internet. Parents should talk to their children while they are on-line and do the following:

- Explain the dangers that they might come across while on the Internet.
- Put the computer in an accessible place and set limits on Internet use.
- Check in with your children while they are on-line; read what they write and receive.
- Know your child's screen name.
- Enforce a list of “Do Nots”, including:
 - Do not give out personal information.

- Do not complete personal profiles.
- Do not plan to meet face-to-face with someone you met on-line.
- Do not allow your child to upload their picture.
- Talk with your children about potential on-line dangers. Some sites, such as www.NetSmartz.org, have interactive lessons about on-line safety.
- Tell your children if they come in contact with someone suspicious or feel uncomfortable about something they are sent via e-mail or while in a chat room, they should tell you immediately. Keep the lines of communication open at all times.
- Check the computer for any downloads from on-line sources or e-mails. This can be a warning sign that a child is in contact with a pedophile.
- Screen phone calls a child is getting from people that you don't know. Have caller ID put on the phone line. Find out about call blocking. There are also devices that can be purchased to show what numbers are being dialed from a home phone.
- Use the parental controls that are supplied by your Internet Service Provider. It will make it more difficult for the offender to have access to a child if the monitor can be seen by someone, and the parental controls will block most pornography.
- Find out what other computers the child has available (i.e. school, school library, public library and the child's friends. Check the safeguards that are on those computers.) The predator could get access through these computers if the computer safe guards are not utilized.

Never blame a child if she/he is a willing participant in any form of sexual exploitation. The child is not to blame or at fault. The offender always bears the complete responsibility for his or her actions. The child is the victim and should be treated as such.

If you suspect that a child is being groomed by a pedophile, try not to panic. Call and report all facts or circumstances to the National Center of Missing and Exploited Children (800-THE-LOST) to receive an identification

number and password that will enable you to log on to the “Cyber Tipline” to report all instances of apparent child pornography.

The “Cyber Tipline” will have a specialized electronic reporting form requesting information from the provider about the suspected violation of child pornography laws. The National Center for Missing and Exploited Children website is <http://www.CyberTipline.com>.

West Virginia Law Regarding Child Pornography §61-8C-3)

Any person who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not more than two (2) years, and fined not more than \$2,000.

UNDERSTANDING SEXUAL ASSAULT

What Is Sexual Assault?

Sexual assault is the legal term for rape. It encompasses other behaviors beyond forced sexual intercourse (vaginal, oral or anal). It can be committed by the use of threats or force or when someone takes advantage of circumstances that render a person incapable of giving consent, such as intoxication.

Sexual abuse can be any unwanted sexual contact, such as unwanted touching, fondling or groping of sexual body parts.

Consent is an agreement that two people must make if they want to have sex. The use of alcohol or other substances can interfere with one's ability to make clear decisions about the level of intimacy they are comfortable with. The more intoxicated a person is, the less they are able to give conscious consent.

Rape
is
never
the victim's
fault.

The decision to be sexually intimate must be made without coercion. Both partners must have the option to choose to be intimate or not and to change "yes" to "no" at any time. Just because a person fails to resist sexual advances does not mean that she/he is willing to have sex. Consent is not the absence of the word "no."

Sexual assault can happen to anyone at any age, at any place, at any time. The way a person dresses or behaves doesn't cause sexual assault. Research shows few convicted rapists remember how the victim was dressed or what the victim looked like.

Sexual assault is a crime of violence and power. It is prompted by an urge to control another human being in the most personal way. It is not prompted by sexual desire.

No one "asks" or "deserves" to be sexually assaulted. Offenders surprise their victims by catching them off guard, by tricking them, by taking advantage of daily activities of life or by lying.

What Is Acquaintance Rape?

Acquaintance sexual assault occurs when someone you know or trust forces you to have sexual intercourse. The rapist can be a friend, family member,

Sexual assault includes:

- Rape—sexual intercourse against a person’s will;
- Forcible sodomy—anal or oral sex against a person’s will;
- Forcible object penetration—penetrating someone’s vagina or anus, or causing that person to penetrate her or himself, against that person’s will;
- Marital rape;
- Sexual contact with minors, whether consensual or not;
- Incest (Sexual intercourse or sexual intrusion between family members);

Other sexual crimes include:

- Sexual harassment
- Solicitation of minors through the Internet
- Possession of child pornography

neighbor, or a co-worker. Acquaintance sexual assault can happen on a first date, at a party or when you have been going out for a long time. It can happen in any relationship, including:

- friends, classmates or co-workers
- boyfriends and girlfriends
- Internet friends and contacts
- teachers and students
- coaches and athletes
- religious leaders and parishioners
- doctors and patients

What Is Drug Facilitated Sexual Assault?
You’re at a party, a club, or a social event. You’re with people you know, people you think you have no reason to fear. Someone secretly drops a drug like roofies or ecstasy in your drink. When the drug dissolves, it is odorless. It may be colorless, or may leave a bluish colored residue. It may also be tasteless. As you consume the drink, the drug takes effect. You may experience drowsiness, dizziness, confusion, lack of coordination, slurred speech, loss of inhibition, impaired judgment and reduced levels of consciousness. You are incapacitated. You cannot escape, resist or even call out for help. You are sexually assaulted.

After the sexual assault, you may not remember what happened or who participated because the drug often causes amnesia. These drugs can produce an anesthesia-like effect, rendering the victim unconscious or unable to give consent.

What Should You Do If You Think You've Been Drugged and Sexually Assaulted?

Get help immediately.

Get to a safe place.

Ask a trusted friend to stay with you and assist you in getting the help you need.

Call 911.

Preserve as much physical evidence as possible. Do not urinate, shower, bathe, douche or throw away the clothing you were wearing during the incident. If possible, save any other materials that might provide evidence, such as the glass that held your drink.

Go to a hospital emergency department as soon as possible for a forensic medical examination.

Request that the hospital take a urine sample for drug toxicology testing to be done by the WV State Police Forensic Laboratory. A special test must be conducted to detect a sexual assault drug in a urine specimen. The first urine after the assault needs to be saved in a clean container. Preferably the urine should be collected at the hospital. The likelihood of detecting drugs used to commit the sexual assault lessens each time you urinate.

Call your local rape crisis center or the National Sexual Assault Hotline (1-800-656-HOPE) for information and support.

(Additional information on this topic can be found in the Drug Facilitated Sexual Assault section of this handbook.)

What Is Child Sexual Abuse?

Child sexual abuse is any sexual act with a child by a parent, an adult or someone who is older and/or more powerful than the child. It involves forcing, tricking, bribing, threatening or pressuring a child into sexual activity. Abuse often begins gradually and increases over time.

The Law

Simple possession of drugs used to facilitate rape is punishable by up to 3 years in prison and a fine.

Administering these drugs to another person without their knowledge and with the intent to commit a violent crime (including rape) is punishable by up to 20 years in prison and a fine.

In 85% of reported cases, the abuser is a relative, close family friend or an adult the child knows and trusts.

The abuse can be physical, verbal or emotional and includes:

- Sexual touching and fondling of a child's sexual body parts;
- Forcing a child to touch another person's sexual body parts;
- Exposing a child to adult sexual activity or pornographic material;
- Having a child undress, pose or perform in a sexual manner;
- Taking pornographic pictures of a child;
- "Peeping" into bathrooms or bedrooms to watch a child (voyeurism);
- Exposing oneself to a child;
- Attempted or actual oral, anal, or vaginal penetration.

West Virginia law is very specific concerning child sexual abuse. The law considers such factors as the victim's age, the relationship of the offender to the victim and the degree of force and violence involved. West Virginia sexual assault laws can be found in Chapter 1 pages 4–20 or viewed at www.fris.org/laws.

What Are Signs of Possible Child Sexual Abuse?

A child may display any number of these symptoms:

- Physical complaints
- Sleep disturbances or nightmares
- Excessive clinging or crying
- Bedwetting
- Depression
- Anxiety
- School problems
- Running away
- Hostility or aggression

Common Emotional Responses of a Sexually Abused Child Are:

Fear
Guilt
Shame
Confusion
Anger
Sadness
Isolation

- Sexually transmitted diseases
- Change in eating habits
- Fear or dislike of particular adults or places
- Withdrawal from family, friends or usual activities
- Frequent touching of private parts
- Sexual behavior inappropriate to the age of the child
- Drug or alcohol problems
- Physical symptoms involving the genital, anal or mouth area
- Any dramatic change in behavior or development of new behaviors

What Can Parents Do?

It is important for parents to discuss sexual violence with their children without scaring them. For younger children let them know the difference between “safe”, “unsafe” and “confusing” touches. Many abused children are confused because the “unsafe” and “confusing” touches can feel pleasurable.

Parents can help by:

- Teaching children the proper names for sexual body parts. Many children are not able to tell about the abuse because they don't know the words to use.
- Teaching children the difference between safe, unsafe and confusing touches. Talk about appropriate touches and physical affection.
- Telling children that it's okay to say “no” to touches or behaviors that make them feel uncomfortable.
- Reminding children that safety rules apply to all adults, not just strangers.
- Teaching children not to keep secrets about touching, no matter what another person says. Encourage children to tell immediately if someone touches them or behaves in a way that is not okay.

How Can You Support a Child If Abuse Has Occurred?

- Stay calm. Don't panic or overreact.
- Believe the child.
- Assure the child that she/he is not to blame for what has happened.
- Do let the child know it was very brave to tell.
- Let the child know you are glad she/he told.
- Protect the child immediately from the suspected offender.
- Report the abuse at once to the Department of Health and Human Resources, Child Protective Services (1-800-352-6513), the police or your local rape crisis center.
- Get a medical exam even if the child appears to be unhurt.
- Help the child work with a counselor who can help with the case.

Who Can Be a Victim?

Sexual assault is a crime that hurts people from all backgrounds. Victims of sexual assault include: men and women, old and young, rich and poor, heterosexuals and homosexuals, persons with disabilities and persons from racial or diverse ethnic backgrounds.

The victim can be anyone, but females between the ages of 12–34 are most likely to be targets of sexual assault. Risk peaks in the late teen years. Girls 16 to 19 years of age are 4 times more likely than the general population to be victims of sexual assault, attempted sexual assault or sexual assault [2000 NCVS].

From information obtained from the West Virginia State Police Incident Based Reporting System (WVIBRS), there were 1,250 victims of reported sex offenses to law enforcement as of April 2007.

- The average age of the victim was 17 years old.
- The most frequently reported age was 15.64% of the victims were juveniles.
- The majority of victims were female (85.4%) and nearly 2/3 of those victims were not related to the offenders,
- 14.2% of the victims were males.
- 8.2% of the victims were strangers to the offender. In these cases, 52.2% of the offenses were forcible rape.
- 44.7% of the juvenile victims suffered forcible fondling offenses.
- The majority of the adult victims (51.24%) were subject to forcible rape.
- 93.9% of the adult female victims were white.

In West Virginia more than one out of nine adult women or about 85,000 adult women in WV, have been the victim of forcible rape sometime in their lifetime.

Who Is the Offender?

Despite stereotypes of a stranger in a dark alley, over 80% of sexual assaults are committed by someone known to the victim. The offender in sexual assault cases is typically male. Men can also be victims of sexual assault. In these cases, the offender is usually another man. Approximately 10% of all adult sexual assault victims are men.

There are no clear characteristics to identify sex offenders. Most sex offenders identify themselves as being heterosexual. They can be of any age, race, economic class or religion. They are married, single, divorced, live in all communities, and come from all types of families. Over 90% of offenders sexually assault someone who is of the same race.

According to information obtained from the April 2007 West Virginia Incident Based Reporting System (WVIBRS), 1,330 offenders were reported to have committed sex offenses.

- 94% of the offenders were males, while 6% were females.
- The majority of the offenders were white (78.57%), 9.4% were black, 0.3% were Asian and 0.15% were Indian/Alaskan natives.
- 23.9% of the offenders were between the ages of 18 and 25.
- Juveniles accounted for 12.4% of sex offenders for this reporting period.

Most sex offenders will continue to commit sexual offenses until they are caught. In cases that involve sexual abuse of children, the offenders are often people the child knows and trusts—family members, surrogate parents, other relatives or caregivers. Most offenders in child sexual abuse cases are male.

When Does It Happen?

Stranger sexual assault can occur at any time of the day. Acquaintance sexual assault occurs most frequently on weekends between 10 p.m. and 2 a.m.

Where Does It Happen?

Three out of five sexual assaults occur in the victim's home or the home of an acquaintance.

In WV 66.5% of the reported sex offenses occurred at a residence or in a home. Of the remaining 33.5% locations included highways, alleys, fields or wooded areas, parking lots and garages.

Why Does It Happen?

Sexual assault is an act of violence which uses sex as a weapon. It is not an act of romance or lust. The motive for sexual assault is the need of the offender to feel powerful and in control. Studies of convicted rapists have found that the majority have consenting sexual partners.

It is not uncommon for a survivor of sexual assault to ask “Why me?”. That is a question no one can really answer. What is known is that the victim did not do anything to cause the attack. Sexual assault is prompted by an urge to control another human being.

Rapists surprise their victims by catching them off-guard, by tricking them, and taking advantage of the situation when they have gained trust.

The victim is not to blame. The victim did not cause this to happen. No one would ask to have their life threatened, to be humiliated or degraded. The rapist is responsible.

What Are Ways Someone Can “Force” You to Have Sex?

Most sexual assaults involve some type of force, but force does not always mean physical violence (such as hitting or using a weapon). Force can happen in many ways. Here are some ways someone can force you into sex without using a weapon or physical violence:

- using threats to scare or intimidate you
- having sex with you when you're too drunk or high to say “no”
- not taking “no” for an answer
- threatening to harm a friend or family member
- manipulating or tricking you by not telling the truth or leading you on
- overpowering you physically because their body size is so much larger
- implying that something even worse will happen if you don't give in

- using a position of authority and trust (such as a teacher, a coach or a personal care attendant) to get you to agree to do something sexual
- threatening to withhold medications or other assistive devices such as specialized computer programs or hardware.

What Are Ways to Reduce the Risk Of Being Sexually Assaulted?

Stranger Sexual Assault

- Use dead bolt locks on your doors.
- Make sure sliding glass doors and windows are locked.
- Lock your car doors when traveling.
- Don't leave mail on the seat of your car disclosing your home address.
- Avoid hitchhiking and picking-up hitchhikers.
- If you are followed, do not drive home. Drive to a busy lighted area or law enforcement agency.
- Carry a cell phone.
- Yell to attract attention if you need help.

Acquaintance Sexual Assault

- Trust your instincts. If you don't feel comfortable in a situation, leave.
- Be careful when you're in a situation where you have to rely on other people to take care of you.
- Be cautious about inviting someone into your home or going to someone else's home.
- Do not mix sexual decisions with drugs and alcohol.
- Be cautious of accepting beverages from open containers and don't leave your drink unattended.
- Go out with a group of friends or meet in a public place when dating someone you do not know well.
- Think about and communicate clearly your limits before you get into a sexual situation.

- Be cautious of people who ignore your personal space and boundaries.
- Do not go off alone with someone you do not know well or who makes you feel uncomfortable.
- Pay attention to your surroundings. Avoid isolated situations. Monitor drinking and drug use. In reported sexual assaults 75% of males and 55% of females had been drinking or taking drugs.
- Staying in charge means saying what you want, what you don't want and knowing what you are doing.
- Always take money for cab fare and carry a cell phone with you.
- Call your family or a trusted friend to come get you if you feel unsafe.
- Remember, it is better to get into trouble for being somewhere you shouldn't be than to be sexually assaulted.
- Say "no" and "stop" firmly if someone tries to intimidate or pressure you.

Drug Facilitated Sexual Assault

- Don't drink beverages that you did not open yourself.
- Don't share or exchange drinks with anyone.
- Don't take a drink from a punch bowl.
- Don't drink from a container that is being passed around.
- If possible, bring your own drinks to parties.
- If someone offers you a drink from the bar at a club or a party, accompany the person to the bar. Order your drink, watch the drink being poured and carry the drink yourself.
- Don't leave your drink unattended while talking, dancing, using the restroom or making a phone call.
- If you leave your drink unattended, discard it.
- Don't drink anything that has an unusual taste or appearance (e.g., salty taste, excessive foam or unexplained residue).
- Do not mix drugs and alcohol.

- Be alert to the behavior of friends and ask them to watch out for you. Anyone extremely intoxicated after consuming only a small amount of alcohol may have been a victim of a drugging.
- Limit alcohol consumption so you are better able to assess your surroundings, especially if you are in a group setting or with someone you do not know well or trust.
- Eat substantive food before consuming alcohol.
- When drinking alcohol in social settings, make arrangements with friends to leave together.

If You Are a Victim of Sexual Assault, What Should You Do?

If you are sexually assaulted...

- Go to a safe place. Get help immediately.
- Call a trusted friend, relative, and/or the local rape crisis center to assist you in getting the help you need. (The numbers for the rape crisis centers in West Virginia can be found in the Resources section of this handbook, or call 1-800-656-HOPE).
- Call 911 or the police.
- Go to the hospital for medical care.
- Preserve as much physical evidence as possible. Do not urinate, shower, bathe, douche or throw away the clothing you were wearing during the sexual assault.
- If you think that you were drugged and sexually assaulted, save your first urine in a clean container and take it with you to the hospital for testing. If possible, save any other materials that might provide evidence, such as the glass that held your drink. The likelihood of detecting drugs used to commit the sexual assault lessens each time you urinate.
- Go to a hospital emergency department as soon as possible for a forensic medical examination. Tell them if you think you were given drugs. A special test must be conducted to detect the drugs in your urine.

Why Is It Important to Receive Medical Care After a Sexual Assault?

It is important to seek medical care as soon as possible after a sexual assault. Taking care of your health at this time is an important step in the healing process. You can be examined for injuries, some of which you may not be

aware of, given antibiotics to prevent bacterial sexually transmitted infections and receive medication to protect against pregnancy. In addition, evidence can be collected which may help lead to the conviction of the assailant in the event that the crime is prosecuted.

Immediately after the sexual assault, it is important not to shower, bathe, eat or drink, douche or change your clothes. These activities can destroy important physical evidence.

When you go to the hospital, take a change of clothes with you. If you have already changed your clothes, bring the ones you were wearing at the time of the sexual assault with you in a paper bag. The clothes will be needed for evidence. Do not put the clothing in a plastic bag because plastic can destroy evidence.

At the hospital you will be asked why you are seeking medical attention. You will be asked to give your name, address, and other personal information. You will be asked to give permission for a forensic medical examination to collect evidence. Many hospitals will automatically call a victim advocate for you, or they may ask if you wish one to be called. With your permission, the advocate will help you, answer your questions, provide support and resources.

Many hospitals now have specially trained nurses to provide care and collect evidence after an assault. These nurses are called Sexual Assault Nurse Examiners (SANEs). SANEs document evidence of injuries and determine treatment for the patient. SANEs do a head-to-toe examination to note any trauma. Depending on the type of assault, a pelvic examination may be necessary to check for injury.

If you believe that you were drugged and sexually assaulted, tell the attending medical staff or SANE and ask that you be screened to detect the presence of any drugs or other substances used to commit sexual assault. The first urine after the sexual assault needs to be collected. The likelihood of detecting drugs used to commit the sexual assault lessens each time you urinate.

With your permission, a forensic medical exam will be conducted. Should you decide to involve law enforcement, the sex crime kit will be sent to the WV State Police Forensic Laboratory for analysis and be used as evidence if the case is prosecuted.

If a kit is collected and you decide NOT to make a report to law enforcement, the sex crime kit will be mailed by private carrier to Marshall University Forensic Science Center (MUFSC). The evidence will be stored for eighteen months at MUFSC if an investigation has not been initiated by you. At the end of that time the evidence will be destroyed or used for training or research purposes once all identifying information has been removed.

The cost of the forensic medical examination will be paid by the Forensic Medical Examination Fund administered by the West Virginia Prosecuting Attorneys Institute.

What If Someone You Know Has Been Sexually Assaulted?

It is difficult to see someone you care about hurting. You may feel helpless, angry or depressed. Please remember that you can help by giving your unconditional support to that person by listening. Healing takes time, even with support.

Tell the victim that what has happened is not her/his fault. Do not judge her/his actions.

Allowing the victim to make her/his own decisions about whether to report or who to tell is very important. Support those decisions.

Encourage the victim to get a medical check-up. Offer to go with her/him to the emergency department.

Encourage the victim to seek help from the local rape crisis center.

How Can You Support Someone You Love Who has Been Sexually Assaulted?

One of the most important steps in healing from sexual assault for the victim is regaining a sense of power and control over choices and actions in her/his own life. Let your loved one decide when to return to work or school, who to tell about the assault or when to see a counselor. Trust that the person you love, knows what is and is not best.

What About the Families and Friends of Someone Who Has Been Sexually Assaulted?

Sexual assault is a devastating experience for both victims and those close to them. Family members and friends experience a wide range of emotions and reactions after someone they love is sexually assaulted.

It is not uncommon for families and friends to feel angry, confused and helpless. They may feel out of control. One of the most common feelings for victims is the loss of who they were and what life was like before the sexual assault. Those close to the victim also feel this loss. The person you love has been changed by the experience, and life as you knew it may also be changed for a while.

Many people focus on ways the sexual assault could have been avoided by attempting to find something that the victim did wrong. Be careful not to blame the victim. The only person responsible for the sexual assault is the perpetrator.

Families and friends go through crisis too, and your concerns for the victim's well being and safety are understandable. Outside support may be needed to get through this period even if the victim is not ready at this time. Turning to other friends or family members, clergy or a counselor to get the help you need may be necessary.

If you would like to talk to someone about how you feel and how to be helpful to your loved one, call 1-800-656-HOPE for the rape crisis center nearest you.

You can best help by:

- Allowing someone who has been raped to take back control of her/his life.
- Giving support when choices and decisions are made.
- Showing you care. Even if you don't know what to do or say, let her/him know you want to help.
- Being flexible and available.
- Listening without judging.
- Not telling her/him what to do or how to feel.
- Not saying to forget it happened and to get on with life.
- Not pressuring your family member or friend to open up to you. It may be more helpful for her/him to talk to someone who is not emotionally involved.
- Reminding her/him that rape is never the victim's fault.

Rape Crisis Centers in West Virginia

CONTACT Rape Crisis Counseling Team
Huntington
304-399-1111 / 304-523-3447

Family Refuge Center
Lewisburg
304-645-6334

Family Counseling Connection—REACH Program
Charleston
304-340-3676

Rape and Domestic Violence Information Center
(RDVIC)
Morgantown
304-292-5100

Shenandoah Women's Center
Martinsburg
304-263-8292 / 304-725-7080 / 304-258-1078

Task Force on Domestic Violence, "Hope, Inc."
Fairmont
304-367-1100

Upper Ohio Valley Sexual Assault Help Center
Wheeling
304-234-8519 / 1-800-884-7242

Women's Aid In Crisis
Elkins
1-800-339-1185 / 304-636-8433

Women's Resource Center
Beckley
304-255-2559 / TTY 1-888-825-7835

or

The National Sexual Assault Hotline
1-800-656-HOPE

Against
Your Will
is
Against
The Law!



West Virginia Foundation for
Rape Information and Services, Inc.

304-366-9500 FAX 304-366-9501
www.fris.org

DRUG FACILITATED SEXUAL ASSAULT

In West Virginia someone who is drunk or drugged cannot give consent to sex. If someone has sex with another person while she/he is in such an incapacitated condition, it is sexual assault. Simple possession of these drugs (described below) is punishable by up to 3 years in prison and a fine. Administering these drugs to another person without their knowledge and with the intent to commit a violent crime (including sexual assault) is punishable by up to 20 years in prison and a fine.

75% of all acquaintance sexual assaults involve alcohol and/or drugs. Drugs, when used with alcohol, can result in a loss of consciousness and a loss of the ability to consent. The effects of all drugs are enhanced when taken with alcohol. Victims who have been given alcohol and/or these sedating drugs often do not remember the assault itself and therefore may not immediately report it.

What Drugs Are Being Used to Facilitate Sexual Assault?

Sexual assaults can be facilitated by the use of drugs, both “street” and legal. While alcohol is often a factor in sexual assaults, illegal drugs (also called “club drugs”) can also be a factor. Some victims are drugged without their knowledge when the drugs are slipped into their drink.

Drugs often used in drug facilitated sexual assault have included: Rohypnol, Gamma Hydroxybutyrate (GHB), Ketamine and Ecstasy. Some of these drugs are tasteless, odorless, act as a quick sedative, and usually cause amnesia and/or a loss of consciousness that may last anywhere from several hours to several days. These drugs have been misused to involuntarily sedate individuals in order to commit sexual assault. These drugs are often referred to by a number of street names.

Facts About Rohypnol

- Street names are Roofies, R-2s, Roches, the Forget-Me pill, Whiteys, and Mind-Eraser.
- A benzodiazepine called flunitrazepam (10-20 times more potent than valium).

- Illegal in the United States, however Rohypnol is used legally by prescription in 80 countries for short term treatment of severe sleep disorders and as a surgical sedative.
- Available only in pill form that is tasteless and odorless.
- Dissolves quickly in liquids (soft drinks, alcohol, etc.).
- Effects begin within 20 to 30 minutes of ingestion. Strongest effects occur within one to two hours.
- Can cause amnesia for up to 8 hours after one dose along with slurred speech, decreased pulse and increased blood pressure, memory impairment, motor coordination, loss of inhibitions, loss of consciousness, visual disturbances and nausea.
- Has been used as a recreational drug at raves.
- Is no longer in the blood after 4-6 hours. Can remain in the urine up to 48 hours because of the way the body metabolizes the substance.
- On October 16, 1997 Hoffmann-LaRoche announced a new color-releasing formulation of the prescription medication Rohypnol. The new formulation has been approved in 4 countries where the prescription use is legal. The new pill is an oval shape and is olive-green in color. When dissolved in liquid, the pill produces a blueish-green dye.

Facts About GHB (Gamma Hydroxybutyrate Acid)

- Street names are Grievous Bodily Harm, Liquid G, Easy Lay, Liquid Ecstasy, Georgia Home Boy and Great Hormones at Bedtime.
- Used as a steroid alternative by body builders. Thought to produce slow-wave sleep which occurs when the muscle building hormone is secreted into the body.
- Colorless, odorless liquid that can have a salty or plastic taste. Can easily be disguised in margaritas and other fruity drinks.
- Potency varies due to its production.
- Is manufactured illegally. Often found in containers that can be emptied and refilled.

- Illegal for any person to produce and/or sell GHB in the United States.
- Effects of the drug begin within 15–20 minutes after ingestion; peaks by 60 minutes, plateaus by 90 minutes.
- Works as a sedative. It has a dose-response effect. Lowered dosages can decrease inhibitions. Higher dosages can cause nausea, drowsiness, muscle stiffness, respiratory problems, seizures, loss of consciousness, coma and death.
- Can cause the victim to make a loud, chainsaw-like snoring sound.
- Often causes sudden vomiting and involuntary muscle jerking.
- Can cause breathing to slow to only six breaths per minute.
- Gives a rapid onset of intoxication, comparable to alcohol but with a euphoric high and a sought after out-of-body experience.
- Is no longer in blood after 4–5 hours. Remains in urine up to 12 hours.
- Long-term use causes addiction.

Facts About Ketamine

- Street names are Special K, Vitamin K, KitKat and Purple Bump.
- General anesthetic used in veterinary surgery and for burn dressing changes.
- Typically this drug is a colorless, odorless, tasteless liquid. May be a light white powder substance.
- Takes effect in as little as 5–20 minutes. Effects may last 2–8 hours.
- Can cause slurred speech, unsteady gait, mechanical movements, monotone speech and hallucinations.
- Close relative of PCP and can create similar violent behavior effects.
- Can be liquid in pharmaceutical form, may also be in powder form.
- Street cost is \$20–\$100 per vial.
- Is no longer in blood after 24 hours. Remains in urine up to 48 hours.

Facts about Ecstasy (MDMA—Methylenedioxyamphetamine)

- Street names are Adam, E, Essence, Hug Drug, Love Drug and X.
- Originally developed as an appetite suppressant.

- Is rarely used with alcohol. Users drink large amounts of water to prevent side effects.
- Stimulant that has psychedelic effects that last between 4–6 hours.
- Typically is a small colored pill with an imprint.
- Reduces sexual inhibitions.
- Can cause teeth grinding, sweating or chills, dehydration, and heart or kidney failure due to increased heart rate and blood pressure.
- Can damage parts of the brain that are critical to thought and memory.
- Common at all night dance parties known as “raves”.
- Users suck on pacifiers at raves to prevent teeth grinding.
- Alters perceptions.
- Users are drawn to lights, thus glow sticks are common at raves.
- Suppresses the need to eat, drink or sleep.

Although public awareness of the use of these drugs to facilitate sexual assaults has increased, it is important to note that these substances are also used recreationally to achieve a high just like other drugs. Recent laboratory tests on the urine of survivors of substance-related sexual assault showed traces of an even greater number of substances, including alcohol, amphetamines, barbiturates, benzodiazepines, cocaine, marijuana and opiates. These drugs may come in any form, including powder, pill, tablet or liquid.

Slipping a drug to someone without her/his knowledge is an illegal act. Committing a sexual assault against a person who has been intentionally drugged carries criminal penalties for both the sexual assault and the drugging. The only way to be sure that a person has been drugged is by testing their urine or blood. Every hour matters. Chances of getting proof are best when a urine/blood sample is obtained soon after the substance has been ingested. If it has been more than 24 hours since the sexual assault, only urine should be collected.

What Are the Physical Effects of Drug Facilitated Sexual Assault?

Individuals may react differently to sedating substances depending on the dosage, their metabolism and sensitivity to the substance and the presence of alcohol and/or other drugs.

There are several signs that indicate an individual may have been given a sedating substance.

- If the victim thinks she/he may have been assaulted, but is not sure (unexplained soreness or injuries, woke up in a different place and can't remember how she/he got there, etc.).
- If the victim's recollection of the sexual assault is patchy and confused; she/he may remember only parts of the sexual assault, or none at all.
- If the victim remembers the sexual assault, but was unable to move or speak. ("It was like I was watching the whole thing. I tried to scream, but no words came out...").
- If the victim felt her/his intoxication level did not correlate with the amount of alcohol consumed.
- If the victim woke up feeling "fuzzy", very hung over, experienced a memory lapse and can't account for periods of time.

Depending on the substance and the presence of alcohol and other drugs in the person's system, more dangerous and sometimes life-threatening side effects may occur.

Whenever drug facilitated sexual assault is suspected, blood and/or urine samples should be collected as soon as possible. Most substances can be detected through appropriate drug testing. The findings of such tests can provide valuable evidence in a court of law if the case is prosecuted. It is important to determine whether ingestion of the drug occurred within the last 96 hours (4 days).

What Should You Do If You Think You've Been Drugged and Sexually Assaulted?

Get help immediately.

Go to a safe place.

Ask a trusted friend to stay with you and assist you in getting the help you need.

Call 911.

Preserve as much physical evidence as possible. Do not urinate, shower, bathe, douche or throw away the clothing you were wearing during the incident. If

possible, save any other materials that might provide evidence, such as the glass that held your drink.

Go to a hospital emergency department as soon as possible for an examination and evidence collection.

Request that the hospital take a urine sample for drug toxicology testing to be done by your law enforcement agency's crime lab. A special test must be conducted to detect a sexual assault drug in a urine specimen. The first urine after the assault needs to be saved in a clean container. Preferably the urine should be collected at the hospital. The likelihood of detecting drugs used to commit the assault lessens each time you urinate.

Call your local rape crisis center or the National Sexual Assault Hotline (1-800-656-HOPE) for information and support.

What Information Would Be Helpful For Law Enforcement When Interviewing a Victim of Drug Facilitated Sexual Assault?

It is important to find out as much information as you can. Ask the following types of questions:

- What does the victim remember about other individuals present?
- Does the victim remember any symptoms before passing out?
- Did the victim wake up during the incident? If so, for how long?
- Does the victim have any memory of the sexual assault?
- What did the victim have to drink that night? Did she/he ingest any other prescription or recreational drugs?
- What does the victim remember before receiving the drink or suspected drugs?
- Who gave the victim the drink? Who mixed it? Who handed the drink to her/him? If it was the bartender, is she/he friends with the suspect?
- Was there a special effort made to see that the victim got that particular drink?
- Was the drink left unattended?
- Did the victim experience any unusual side effects the day after the sexual assault?

- Were any of the victim’s belongings stolen?
- How did the victim get home? Was there anyone home when the victim arrived?
- Who was the first person the victim told about the incident?
- Did the victim speak to anyone who was present at the scene/party/bar?

What Issues Should Law Enforcement Consider In the Follow-Up Investigation?

With drug facilitated sexual assault, there is a strong possibility that the offender is a serial rapist. Law enforcement should make a determined effort to identify and interview any other possible victims of the same rapist.

Consider including the following items when drafting search warrants: innocuous looking containers, such as squeezable water bottles or eye-drop type containers, cooking utensils (for GHB), video or camera equipment, videotapes, photographs, or CD ROMs of the victim.

Identify and interview the persons with whom the victim first discussed the incident. The victim’s statements to these persons may be admissible at trial under an exception to the hearsay rule and may corroborate the victim’s trial testimony.

Be aware that some drugs may induce “drug submission”. During the investigation, witnesses may report that they observed the victim and the suspect leaving the party together, and that the victim appeared to accompany the suspect voluntarily. Remember that benzodiazepines can cause a victim to become passive and submissive, and that under the influence of such drugs, a victim may do things that she normally would not do, such as leave a party with someone that she just met. Moreover, because of memory impairing effects of such drugs, the victim may have little or no recall of the events.

In assessing the validity of a possible “consent” defense to a charge of sexual assault, law enforcement officials should consider whether the victim’s actions—actions that the defense may argue support a “consent” defense—are, in fact, consistent with evidence that the victim was “drugged”.

THE CHILD VICTIM

What Is Child Sexual Abuse?

For the purpose of this section, the term “sexual abuse” will refer to all sex crimes perpetrated against children including but not limited to: sexual intercourse, sexual intrusion and sexual contact.

“Child” means any person under 18 years of age. “Abused child” means a child whose parent, other family member, guardian, custodian or other person inflicts or attempts to inflict or allows to be inflicted as a result of inadequate supervision, physical injury or substantial, emotional injury upon the child which endangers the present physical or mental health of such child or inflicts, attempts to inflict or knowingly allows to be inflicted sexual abuse upon the child.

(Refer to WV Code Section §49-1-3)

Sexual abuse of children falls into the following categories:

- Sexual abuse of a child by a family member or other person known to the child whom the child trusts to some degree.
(Refer to WV Code Section §61-8D-5)
- Sexual abuse of a child through the use of pornographic materials and exploitation. Many of those involved are “runaway” children who are dependent upon the exploiters for physical survival, and in some cases, even affection.
(Refer to WV Code Section §61-8C-2)
- Sexual abuse of a child through the use of the Internet, e-mail or other telecommunication technology. (Refer to WV Code Section §61-8C-3)
- Sexual abuse of a child by a stranger, many times involving kidnapping and/or the use of a weapon. These assaults are more likely to result in severe physical injuries to the child and account for a growing number of sex-related deaths of children. (Refer to WV Code Section §61-8B-3)

The abuser in intra-familial child sexual abuse is related to the child victim through blood, marriage, adoption, or common living arrangement. Parents may be prosecuted for procuring another person to inflict sexual abuse upon a child.

The abuser in extra-familial child sexual abuse is not considered a part of the child's family; however, this person usually has an opportunity for frequent contact with the child and/or represents an authority figure that the child may believe to be trustworthy.

Many children are sexually abused in some way over a period of years. Long-term abuse in intra-familial situations may begin when the child is three or four years of age or younger, and continue well into adolescence or even after the child leaves home.

In some instances, child sexual abuse may be restricted to fondling or genital touching; other instances may begin that way and escalate to penetration or full intercourse after an extended period of time. Some children become adolescents before realizing, through normal discussions with friends about family life and events, that the sexual contact they have experienced is wrong and does not occur in most households. By this time, however, the child may have assumed a great deal of guilt about the sexual activities and may be even more reluctant to reveal the situation to an adult or other family member.

When an attempt is made to talk to someone about the abuse, many children are unable to communicate what is happening. Even when the child is quite verbal, the listener may dismiss the story or accuse the child of lying. If no action is taken to protect the child from further abuse, the child may not initiate the subject again.

How Do You Report a Disclosure of Child Sexual Abuse?

For a child, disclosing sexual abuse is especially difficult. A child may be embarrassed about what is happening to her/him, or simply lack the vocabulary to express it. While some children may tell you privately and directly about the abuse, more often than not, the child may disclose the abuse in the following ways:

Indirect Hints

"Daddy wouldn't let me sleep last night."

"My babysitter keeps bothering me."

"Mr. Jones wears funny underwear."

Gently encourage the child to be more specific without suggesting more than she/he is willing to tell. When making a report, you don't need to know exactly what form the abuse took, merely that there is a strong likelihood that abuse did indeed take place.

Disguised Disclosure

"My friend's daddy likes to play doctor."

"My dolly doesn't like Uncle Jim anymore."

By removing her/himself from the act, the child can feel safer in disclosing the information. Encourage the child to tell you more. It is likely that the child will tell you what she/he is talking about.

Disclosure If You Promise Not To Tell

"I have a secret but if I tell you, you have to promise not to tell anyone else."

Some children believe that something bad will happen if they break the secret of abuse. Often the offender uses threats to keep the child silent. The offender may tell the child that no one will believe him if he tells or the offender may physically threaten the child or his family.

No matter how a child tells you of the abuse, it is important to remember that the child has placed trust in you. Don't try to decide for yourself whether or not the allegation is true. Don't try to investigate the matter. Child Protective Services and your local law enforcement are trained to do that.

Let the child know you want to help, that you will, and the law requires that you report it.

When any mandated reporter has reasonable causes to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than 48 hours after suspecting this abuse, report the circumstances to cause a report to be made to the WV Department of Human and Health Resources. (Refer to WV Code §49-6A-2)

In any case where the mandated reporter believes that the child has suffered serious physical abuse, sexual abuse or sexual assault, the reporter shall also immediately report or cause a report to be made to a law enforcement agency having jurisdiction to investigate the complaint.

Any person required to report under this article shall immediately notify the person in charge of such institution, school, facility or agency or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

Reports of abuse and neglect shall be made immediately by telephone (1-800-352-6513) to the local WV Department of Child Protective Service agency and shall be followed by a written report within 48 hours, if so requested, by the receiving agency. The WV Department of Health and Human Resources maintains a 24 hour, 7-day-a-week telephone number to receive such calls reporting suspected or known child abuse or neglect. (Refer to West Virginia Code §49-6A-5)

All reports under this article shall be confidential and unless there are pending proceedings with regard thereto shall be destroyed six years following their preparation.

Persons mandated to report suspected abuse and neglect:

- Any medical, dental or mental health professional
- Christian science practitioner
- Religious healer
- School teacher or other school personnel
- Social service worker
- Child care or foster care worker
- Emergency medical services personnel
- Peace officer or law-enforcement official
- Member of the clergy
- Circuit Court Judge
- Family Court Judge
- Employee of the Division of Juvenile Services or Magistrate

West Virginia Protocol—The Child Victim

1. Medical Evaluation of the Child Victim

A. Presentation to a Medical Facility

Because of the inability of most children to secure medical treatment on their own, the majority of sexually abused children do not receive immediate medical attention. When medical attention is received, it is usually at the request of a third party. This request is frequently made by a parent who notices genital soreness, discharge or urinary problems, by a teacher who sees a sudden change in the child's behavior, by a relative who suspects physical abuse or by a physician who discovers gonorrhea from a vaginal, urethra or throat culture. Sometimes a request is made by a child protective service worker who is seeking a medical evaluation as part of an on-going investigation.

Ideally, each medical facility designated to treat adult victims of sexual assault will also have a multidisciplinary team available on an on-call basis for the evaluation and examination of child sexual abuse cases. This team should consist of a pediatrician or Pediatric Sexual Assault Nurse Examiner (SANE) for the physical examination, a victim advocate and/or social worker to provide patient support and coordination with law enforcement and a Child Protective Service (CPS) worker. An obstetrician/gynecologist should also be available to provide consultation and follow-up when necessary. Each team member should be trained in the management and psychodynamics of the sexually abused child. In the absence of such a specialized team, a physician or Pediatric SANE, trained in the medical and psychodynamics of child sexual abuse, should be readily available.

B. Intake

a. If a Child Is Brought By a Parent or Guardian

When a child is brought to the medical facility by the child's parents or guardian, they should be directed immediately to the Emergency/Pediatric Department so that a brief history of the suspected abuse may be provided to the attending medical personnel.

The child's parents or guardian should be asked to provide any additional information about the event that should be shared with

the attending medical personnel. In cases involving young children, the parent/guardian should also be asked to provide the attending medical personnel with the child's medical history.

Since children will often tell health professionals things they may not say in the presence of parents or other adults, adolescents and older children should be encouraged to provide much of their own medical history, but not specific information about the abuse. This medical history interview should be conducted in a private area, and information regarding sexual history (of both males and females), menstrual history and the use of birth control should be recorded.

The child's parents/guardians and the child, if old enough, should be informed about and prepared for the physical examination by the physician, or Pediatric SANE. They should also be told what specific lab tests will be done, the purpose of each test, and when the results will be available. The child's parents/guardian and the child, if old enough, should be informed that a report must be made to Child Protective Services.

b. If a Child Is Brought By Child Protective Services or Law Enforcement

CPS or law enforcement will often schedule a medical evaluation of a child sexual abuse victim with a trained physician or Pediatric SANE, as part of their ongoing investigation. As when a child is brought by the parent, a brief history of the suspected abuse should be provided. Adolescents and older children should be encouraged to provide much of their own medical history, but not specific information about the abuse.

C. Mandatory Reporting Requirements

West Virginia Code §49-6A-2 requires that when any medical, dental or mental health professional, Christian science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster care worker, emergency medical services personnel, peace officer or law-enforcement official, member of the clergy, Circuit Court Judge, Family Court Judge, employee of the Division of Juvenile Services or magistrate has reasonable cause to suspect that a child

is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than 48 hours after suspecting this abuse, report the circumstances to cause a report to be made to Child Protective Services. This means that when a person under the age of 18 presents to a medical facility with a history of sexual abuse, the attending medical personnel MUST call CPS immediately. If the attending medical personnel suspects sexual abuse at any time, a report must be made to CPS.

In any case where the reporter believes that the child has suffered serious physical abuse or sexual abuse or sexual assault, the reporter must immediately report or cause a report to be made to CPS and to State Police or any law enforcement agency having jurisdiction to investigate the complaint.

D. Reporting Procedures

West Virginia Code §49-6A-5 requires that reports of abuse and neglect be made immediately by telephone to the local WV Department of Health and Human Resources during regular hours. This report should be followed by a written report within forty-eight hours if so requested by the receiving agency. Suspected or known child abuse or neglect can be reported by calling 1-800-352-6513 twenty-four hours a day, seven days a week. The law requires only a reasonable cause to suspect child abuse for a report to be made. It is important to note that the law specifically protects the reporting person or institution against any civil or criminal proceedings when the initial report was made in good faith. (Refer to WV Code §49-6A-6)

A copy of any report of serious physical abuse, sexual abuse or sexual assault should be forwarded by the Department to the appropriate law enforcement agency, the prosecuting attorney, the coroner or the medical examiner's office. All reports are confidential.

E. Support Personnel

Under no circumstances should the child be left alone. Arrangements must be made to provide a support person who can establish a good rapport with the child. Each rape crisis center has an advocate specially

trained to provide support to children. As with adults, an important first step in intervention is to help children regain a sense of control over their bodies. For adolescents, this may often be accomplished by allowing them a choice of the support person to be present during the physical examination. The support person could be a victim advocate, a family member, or a hospital social worker. A support person of the same gender as the child may provide needed assurance.

F. Consent For Examination

Consent to conduct a forensic medical examination and to collect physical evidence should be obtained from parents/guardians of all children under the age of 18. If consent cannot be obtained from the parent or guardian of the child, and if the child is in danger from his or her surroundings and requires immediate attention, that situation should be reported to CPS. The Circuit Court may direct the appointment of a special guardian for the purposes of consenting to medical treatment. (Refer to West Virginia Code §49-6B-1.)

In the event that a child presents to an ED without a parent/guardian, the attending medical personnel should consult the hospital's policies and procedures regarding conducting a medical forensic examination without parental consent.

2. Medical And Evidentiary Examination Of The Child

A. Medical History Interview

The sexual abuse of children can be difficult to identify and evaluate. The child victim usually presents to the medical facility non-acutely. In most cases of child sexual abuse there is no physical evidence that the abuse has occurred. Lack of physical findings should not rule out sexual abuse. This is a critical point for sexual abuse cases involving children.

The medical history interview can be extremely helpful in the diagnostic, therapeutic and legal aspects of child sexual abuse. The most experienced professional medical staff person available should obtain a preliminary medical history interview of the child. Ideally, a trained Pediatric SANE should be available.

The purpose of the medical history interview is to obtain information necessary to conduct a proper medical examination and possible collection of evidence. The interview should be held in a private room adjacent to the Emergency or Pediatrics Department and must be free from interruptions. Medical personnel should explain what procedures will be done. She/he should use simple terms, including the child's vocabulary for body parts, acts and people.

The West Virginia Legislature enacted a requirement of all statements taken from child victims of a sexual offense who are under fourteen (14) years of age. The new law requires, if conducted as part of a criminal investigation, any law enforcement officer, physician, psychologist, social worker or investigator to either audio or video tape the statement of the child victim or make a contemporaneous written notation and recitation of the statement. The failure to either tape or transcribe the statement of the child victim creates a presumption that the statement is inadmissible in court.

The requirements of this law are inapplicable to social workers conducting an abuse and neglect investigation, statements made by a victim to medical personnel performing a forensic medical examination and to prosecuting attorneys counseling a child in preparation for eliciting the child's testimony in court.

Care must be taken by medical personnel to prevent undermining the child's credibility by improper questioning. Questioning to find out exactly what happened to the child and by whom is best left to the forensic interviewer, law enforcement personnel or child protective service worker. An exception to this is if the child makes spontaneous statements about the suspected events. Those statements should be documented verbatim if possible.

a. **Attending Personnel**

As few persons as possible should be present during the medical history interview and forensic medical examination. Attending personnel should consist of the attending physician or Pediatric Sexual Assault Nurse Examiner (SANE) and an authorized support person if requested. Those persons involved in the investigation,

such as law enforcement or a child protective service worker, should not be in attendance during these procedures.

b. Presence of Parent/Guardian

In all cases of known or suspected child sexual abuse, the attending physician or Pediatric SANE should decide whether the presence of a parent or guardian during the evaluation or medical examination is desirable. Some issues that should be considered are:

- whether the presence will cause further confusion and additional trauma;
- whether the presence will result in censorship of the information sought during the medical history interview;
- whether to risk an emotionally distraught or disbelieving response that will negatively impact the child and the medical history interview/examination process;
- whether the parent or guardian is the suspected perpetrator.

If the child expresses a need for support from a parent/guardian, and the parent/guardian is not suspected of being the assailant, his/her presence is appropriate if she/he is supportive to the child.

The interview or examination should never be done in the presence of a parent/guardian who is suspected of being the perpetrator.

B. Examination Procedures

The medical examination should consist of a general physical examination, a genital examination, and when appropriate, the collection of forensic evidence.

Familiarity with the normal genital anatomy of infants and preadolescent children is a crucial skill for the physician or Pediatric SANE asked to evaluate the child suspected of having been sexually abused.

A substantial number of children are not physically injured because the abusive act often involves touching, fondling, genital contact without vaginal or anal penetration.

It is important to note that a normal examination is a common finding in cases of child sexual abuse. It is important that documentation summarizes and integrates the physical findings in light of the history of sexual abuse. A normal genital examination can neither confirm nor negate sexual abuse incidents. In cases with obvious physical findings, medical personnel should document that the examination is consistent with the history of child sexual abuse. The ultimate diagnosis of pediatric sexual abuse is made by an analysis of the patient's medical history interview and subsequent investigation of the reported child abuse.

A thorough general physical examination should be carried out first and findings should be indicated on a body diagram. Photographic documentation should be requested if necessary. The genital/anal examination should be done as the last part of the complete examination.

The child should not be restrained in order to conduct the examination or gather evidence. If the child is visibly upset, the attending physician or Pediatric SANE should determine what measures are necessary to reduce anxiety. Some cases may require the use of sedation; however, it is recommended that general anesthesia be administered in the most extreme cases, such as a life-threatening situation or when the removal of a foreign object would cause undue pain and trauma to the child. A thorough explanation of any sedation or anesthetic should be provided to both the family and to the child.

C. Examination Collection

Selective completion of the sex crime kit with a child victim may be most appropriate. This would allow the attending physician or Pediatric SANE to complete those parts of the sex crime kit that are pertinent to the history and clinical findings of the patient. This protocol is most suited to the pediatric patient who is often frightened by the examination and may suffer emotional trauma as a result.

The sex crime kit should be completed in cases of sexual assault occurring in less than 96 hours. The evidence collection procedures should be implemented according to the instructions given for adults, but with modifications. In selected cases the sex crime kit may be completed after 96 hours. DNA testing may identify the perpetrator

in cases in which evidence has been present in the vagina for three (3) weeks or more.

D. Medical Examination—General Information

The patient may present with a behavioral complaint or a physical complaint. Signs and symptoms of sexual abuse can range from subtle (nightmares) to obvious (vaginal discharge).

Behavioral signs of sexual abuse can include aggressive or clinging behavior, insomnia, excessive masturbation, sudden changes in behavior, phobias or fears, inappropriate sexual behavior or attempted suicide.

An immediate assessment of the child's status must be made to determine the presence of any significant vaginal, anal, penile or other major trauma/sites of bleeding. If present, their control and stabilization must be the priority.

The likelihood of finding physical evidence of child sexual abuse depends on the following factors:

- Whether force was used;
- The size and age differences of the perpetrator and the patient;
- Whether a foreign object was placed/forced into the mouth, vulva, or anus;
- Positioning of the child and use of lubricants during the sexual abuse;
- Type of sexual abuse and its frequency and chronicity (McCann, 1991, found that in children with genital injury from sexual abuse, healing occurred rapidly and little scar formation resulted; irregular hymenal edges and narrow rims at the point of injury were the most persistent findings);
- Whether the child resisted.

Findings consistent with child sexual abuse but not diagnostic for the female patient include the following:

- Vaginal discharge; urethral inflammation; lymph gland inflammation; pregnancy; recurrent atypical abdominal pain; blood stains on underwear; genital bleeding; genital pruritis; genital bruising
- Abrasions, chafing or bruising to medial thighs
- Bite marks to the thighs, breasts or other areas
- Scarring, tears or distortion to the hymen
- Injury to or scarring of the fossa navicularis or posterior fourchette
- Scars or tearing of the labia minora

For the male patient findings consistent with sexual abuse include the following:

- Chafing or bruising to the genital region, anus, or back
- Penile discharge, painful urination, penile swelling
- Bite marks to the genital region, anus, or back
- Blood stains on underwear

For the male and female patients the following are consistent findings in cases of child sexual abuse:

- Presence of sexually transmitted disease
- Bruises, scars, or anal tears
- Tears to the labial frenulum or palatal petechiae

The presence of genital and/or other types of physical injuries or abnormalities can serve as corroborative evidence and should be carefully recorded in the medical record. The location of these injuries should be recorded on drawings of the young female and male body. Any specific explanations given by the child for the injury should also be documented in the medical record.

Prior to the full examination, a Wood's Lamp should be passed over the child to determine if seminal fluid is present on the body. If present,

specimens from these areas should be taken for submission to the forensic laboratory. The presence of any bruises, abrasions, lacerations, burns or other lesions should be recorded. An attempt should be made to estimate the age of the injury, noting the color of a hematoma and the degree of healing of an abrasion. Any fractures, loose or absent teeth, grab marks, suction or bite marks should be documented.

E. Examination of the Anal and Perianal Areas

The attending physician or Pediatric SANE must decide on a case-by-case basis the extent to which anal examinations should be performed for both male and female children during the initial examination.

A normal physical examination is most often what is found and can be consistent with child sexual abuse.

F. Female Genitalia Examination

The attending physician or Pediatric SANE must also decide on a case-by-case basis the extent to which vaginal examinations should be performed. For the young female child, a complete gynecological exam is not recommended unless there is evidence or reasonable suspicion of genital trauma. However, a careful visual inspection should still be made.

When the vaginal examination is performed, the speculum should be lubricated with tap water because other lubricants may affect test results and decrease sperm motility. A vaginal speculum is never used in prepubertal children without general anesthesia.

G. Male Genitalia Examination

Both the glans and the scrotal area are targets of trauma in acute sexual abuse cases. Evidence of erythema, bruises, suction marks, excoriations, burns or lacerations of the glans and frenulum should be recorded. The presence of testicular or prostatic tenderness or discharge from the urethra are important signs and may reflect trauma or infection.

H. STDs in Child Patients

The Center for Disease Control and Prevention state that the

identification of a sexually transmissible agent from a child beyond the neonatal period suggests sexual abuse. Confirmatory tests are imperative and cultures mandatory.

Medical personnel are required to report to CPS upon the examination and treatment for STDs of any child under the age of eighteen if sexual abuse or neglect is suspected.

3. Child Interview

A. General Information

A multidisciplinary method for interviewing the child is essential. It requires a medical history interview and a developmentally appropriate forensic interview by someone trained in psychosocial and physical development with expertise in the interviewing process.

The goal of the medical history interview by medical personnel is to determine whether there is a reasonable suspicion of abuse.

The investigative interview involves objectively finding facts through direct questioning techniques.

The West Virginia Legislature enacted a requirement of all statements taken from child victims of a sexual offense who are under fourteen (14) years of age. The new law requires, if conducted as part of a criminal investigation, any law enforcement officer, physician, psychologist, social worker or investigator to either audio or video tape the statement of the child victim or make a contemporaneous written notation and recitation of the statement. The failure to either tape or transcribe the statement of the child victim creates a presumption that the statement is inadmissible in court.

The requirements of this law are inapplicable to social workers conducting an abuse and neglect investigation, statements made by a victim to medical personnel performing a forensic medical examination and to prosecuting attorneys counseling a child in preparation for eliciting the child's testimony in court.

If, however, a child makes spontaneous statements during the interview about the sexual abuse, those statements should be documented verbatim.

- B. Guidelines For Conducting the Medical History Interview
On occasion the examining physician, or Pediatric SANE will be the first person to speak with the child about the sexual abuse. When this is the case, care must be taken to avoid specific leading questions about the abuse that could be detrimental to further investigation by CPS or law enforcement. The following guidelines will assist in this process.

Talking with children about abuse of any kind, physical or sexual, requires special skills. It can be difficult to get the child to talk or to understand what the child says. When children are asked about their sexual activities with adults or other children, many times their inability or reluctance to answer is due to embarrassment, shyness, a fear of being thought of as a “tattle-tale” or disloyal or simply due to a lack of understanding of the question itself.

With children, to a much greater extent than with adults, medical personnel must be aware of the long-term ramifications of their questions. While the immediate goal is to elicit the clearest possible information from the child, medical personnel should be aware of his/her own feelings about child sexual abuse and not communicate any attitudes that might create or increase the child’s trauma. This is especially important in cases of sexual abuse by a family member where, in the child’s mind, the action may have been viewed as one of affection.

Prior to conducting the medical history interview, it is important to determine what reactions the child has been exposed to following the disclosure of the sexual abuse. Try to ascertain if the child’s family has been supportive, panicked, ambivalent, disbelieving, angry or blaming. Also, parents and others who have regular contact with the child should be questioned whenever possible about any behavioral changes they have observed.

The attending medical staff should maintain objectivity and be supportive and sensitive through tone of voice, body expression, and the maintenance of eye contact. Value judgments and expression of shock or surprise should be avoided. Sitting at eye-level with the child can be helpful. The child is not as intimidated and the physician or Pediatric SANE is perceived as genuinely interested.

Attempting to determine exactly what happened to the child and by whom, is the responsibility of the forensic interviewer. An exception to this protocol is if the child makes spontaneous statements about the reported event. If it is necessary to obtain information directly from the child, great care must be taken to avoid asking leading questions. Open-ended questions are best.

An assessment of the child's emotional state is a vital part of the medical history interview. This is an age-dependent interpretation, involving an assessment of how the child relates, his or her body posture, and language used. It is also important to note the child's verbal skill level and to use terms that are understandable to the child. This assessment may often be accomplished by asking typical questions about family, school, television, and everyday events.

C. Interviewing Techniques

In many communities, the role of the specialized or forensic interviewer has been established by multidisciplinary, interagency agreements. This may mean the child could be referred to another agency or a children's advocacy center for the indepth interview. When specialized procedures have been developed, the medical history interview may serve as a major component of the forensic interview coordinated with law enforcement and child protective services.

In specialized settings, children can feel safe and comfortable with intimate discussions. The complete investigative interview should be carried out by a trained interviewer. The interview focuses on objectively finding facts through direct questioning. This information, provided by the child, may be crucial to further investigation. The child can provide very specific details regarding what happened to his or her body through responses to a series of questions that are carefully constructed so the questions do not contain the answers.

Questions that are asked should be open-ended. Short and concise questions are best. If necessary, follow the child's remarks with comments such as, "Tell me more about that." or "Then what happened next?".

The child must be allowed to tell the story with as few interruptions as possible and to use his/her own words in describing what happened. It is vital that the child be believed at all times, especially in cases of disputed accounts by adults. Value judgments and expressions of shock or surprise should be avoided. It must be made very clear to the child, as often as needed throughout the interview, that the child was not at fault for what happened.

Statements made by the child should be recorded accurately. The child should not be led in such a manner that he or she answers questions to please the interviewer. Younger children often have problems with times and dates. In order to establish a time frame in which the abuse occurred, it can help to discuss favorite events or activities. These could include asking about television shows, a vacation or trip to see a relative, going to the zoo, or shopping.

4. Post Examination Information

A. Patient Information

A patient information form should be filled out, providing the same information as given to the adult patient. The patient's parent or guardian should sign the form at the bottom and be given the original copy.

The provision of psychological and/or counseling services for children and their parents or guardians is just as important as it is for adults. If this service is not available through the medical facility, a referral should be made to an appropriate agency.

It is extremely important that the child return for a follow-up visit within one week to re-evaluate any injuries, and to perform follow-up cultures, if necessary.

B. Post Examination Interview

The goal of the post-examination interview with the child of sexual abuse, whether the abuse was committed by a stranger, family member, or other trusted adult is twofold:

- to obtain the accurate information needed for the case investigation; and
- to avoid further trauma to the child.

Ideally, the post examination interview will include the presence of a child protective service worker, law enforcement, a social worker or other personnel. It may also be helpful to have a support person present who has established a rapport with the child during the medical history interview and medical examination interview. To avoid confusion, however, it is important that only one person be the primary interviewer.

Depending on the circumstances of the case, the child may be interviewed at a location away from the hospital, such as a child advocacy center, the child's home or school. Privacy is, of course, crucial to the success of the interview.

Great care should be taken by the law enforcement officer to minimize the visibility of weapons, and equipment such as handcuffs and nightsticks, so that the child is not further intimidated or traumatized.

When the interview is concluded, it is important for the interviewer to thank the child for his or her cooperation, and with older children, to give a telephone number where the interviewer can be reached if any further problems or questions arise.

C. Multi-Disciplinary Investigative Team

West Virginia Code §49-5D-1 provides for the establishment of a multi-disciplinary investigative team to assist the courts in ensuring that children are safe from abuse and neglect and to coordinate investigation of suspected child abuse offenses and competent criminal prosecution of offenders to ensure safety, as determined appropriate by the prosecuting attorney.

West Virginia Code §49-5D-2 provides this system of coordinated service delivery for children who may be victims of abuse or neglect. According to the code the prosecuting attorney shall establish a multidisciplinary investigative team in each county. This team shall be headed and directed by the prosecuting attorney and shall include as permanent members the prosecuting attorney or his or her designee, a local child protective service worker from the Department of Health and Human Resources and a local law enforcement officer employed by a law enforcement agency in the county.

The investigative team shall be responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect, and shall make a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution.

D. Presence of Parent or Guardian

Although some children are more relaxed and informative without a parent or guardian present, others, especially very young children, may not be willing to cooperate in an interview without such support. Also, parents or relatives may be the only adults to whom the child will talk. When this happens, questions can be directed to the child through these family members, but only after initial efforts of the interviewer to talk with the child are unsuccessful.

If a parent or guardian is present, the purpose of the interview should be explained and cooperation elicited to reassure the child that it is “safe” to talk with the interviewer. The parent or guardian should also be told that any facial expressions of shock, disbelief or disapproval, or any verbal or physical signals to the child could impede the investigation.

As with the medical history interview, if it is suspected that the parent/guardian is the perpetrator, then under no circumstances should the interview of the child be held in his/her presence.

THE SURVIVOR

Survivor Information

Sexual assault is a violent and coercive invasion of privacy and can be a humiliating and terrifying experience. Sometimes people fear for their lives. In other cases, the sexual assault may not seem life threatening or dangerously violent, but still radically affects the survivor in all aspects of life.

It is common for the survivor to have a range of feelings afterwards, including anger, anxiety, depression, and a distrust of anyone who resembles the offender. The survivor might feel numb or be in shock. The survivor may have flashbacks, fear for her/his safety and experience changes in eating and sleeping. She/he may experience amnesia and be unable to remember some, or all, of what has happened. The survivor may be unable to concentrate or may become irritable. It might be difficult to be productive. The survivor might find that she/he no longer trusts people as before.

All of these reactions are quite normal. For many survivors, the symptoms of trauma will occur less frequently over time. Eventually, she/he will be able to get back to a more normal routine. Be aware that there may be an occasional setback. It takes time to heal. Talking with a trusted friend can help. Although it may be difficult to reach out for help at this time, the most important thing the survivor can do is get support.

The information in this section can help the survivor understand that what she/he is feeling is common to people who have experienced a traumatic event of any kind. Understanding the process one may go through may provide some sense of comfort to make this difficult experience less confusing and frustrating.

Many people who have been a victim of sexual assault have put the pieces of their lives back together. It takes time to heal.

Special Needs of Survivors

While all survivors of sexual assault need support, some may have additional concerns, questions and needs.

What If the Survivor Is a Child?

For the purpose of this section, the term “sexual abuse” will refer to all sex crimes perpetrated against children including but not limited to sexual intercourse, sexual intrusion and sexual contact. “Child” means any person less than 18 years of age.

“Abused child” means a child whose parent, other family member, guardian, custodian or other person inflicts or attempts to inflict or allows to be inflicted as a result of inadequate supervision, physical injury or substantial, emotional injury upon the child which endangers the present physical or mental health of such child or inflicts, attempts to inflict or knowingly allows to be inflicted sexual abuse upon the child. (Refer to WV Code §49-1-3)

Sexual abuse of children falls into the following categories:

- Sexual abuse of a child by a family member or other person known to the child whom the child trusts to some degree.
- Sexual abuse of a child through the use of pornographic materials and exploitation. Many of those involved are “runaway” children who are dependent upon the exploiters for physical survival, and in some cases, even affection.
- Sexual abuse of a child through the use of the Internet, e-mail or other telecommunication technology.
- Sexual abuse of a child by a stranger, many times involving kidnapping and/or the use of a weapon. These assaults are more likely to result in severe physical injuries to the child and account for a growing number of sex-related deaths of children.

The abuser in intra-familial child sexual abuse is related to the child victim through blood, marriage, adoption or common living arrangement. Parents may be prosecuted for procuring another person to inflict sexual abuse upon a child.

The abuser in extra-familial child sexual abuse is not considered a part of the child’s family; however, this person usually has an opportunity for frequent contact with the child and/or represents an authority figure that the child may believe to be trustworthy.

Many children are sexually abused in some way over a period of years. Long-term abuse in intra-familial situations may begin when the child is three or four years of age or younger, and continue well into adolescence or even after the child leaves home.

In some instances, child sexual abuse may be restricted to fondling or genital touching; other instances may begin that way and escalate to penetration or full intercourse after an extended period of time. Some children become adolescents before realizing, through normal discussions with friends about family life and events, that the sexual contact they have experienced is wrong and does not occur in most households. By this time, however, the child may have assumed a great deal of guilt about the sexual activities and may be even more reluctant to reveal the situation to an adult or other family member.

When an attempt is made to talk to someone about the abuse, many children are unable to communicate what is happening. Even when the child is quite verbal, the listener may dismiss the story or accuse the child of lying. If no action is taken to protect the child from further abuse, the child may not initiate the subject again.

Some children believe that something bad will happen if they break the secret of abuse. Often the offender uses threats to keep the child silent. The offender may tell the child that no one will believe the story if she/he tells or the offender may physically threaten the child or his family.

No matter how a child tells you of the abuse, it is important that the child has placed trust in you. Don't try to decide for yourself whether or not the allegation is true. Don't try to investigate the matter. Child Protective Services and your local law enforcement are trained to do that.

The law requires that you report suspected child abuse. WV Code §49-6A-2 states that when any mandated reporter has reasonable causes to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than 48 hours after suspecting this abuse, report the circumstances to cause a report to be made to the WV Department of Health and Human Resources.

In any case where the mandated reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report or cause a report to be made to a law enforcement agency having jurisdiction to investigate the complaint.

Persons legally responsible for reporting or causing a report to be made when they have reasonable cause to suspect a child is abused or neglected include any medical, dental, mental health professional, school teacher or other school personnel, social service worker, child care or foster careworker, peace officer or law enforcement official (Refer to WV Code §49-6A-3).

Any person required to report shall immediately notify the person in charge of such institution, school, facility or agency or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

Reports of suspected child sexual abuse shall be made immediately by calling Child Protective Services, WV Department of Health and Human Resources at 1-800-352-6513 twenty-four hours a day, seven days a week. A written report should follow within 48 hours if so requested by the receiving agency. All reports under this article shall be confidential and unless there are pending proceedings with regard thereto shall be destroyed six years following their preparation.

What Are Common Emotional Responses of Sexually Abused Children?

Children who have been sexually abused may have some of the following feelings:

Fear

- of the abuser
- of getting into trouble or getting a loved one into trouble
- no one will believe them

Guilt

- for not being able to stop the abuse
- for believing they “consented” to the abuse
- for “telling”—if they told
- for keeping the secret—if they did not tell

Shame

- about the abuse
- about their body’s reactions

Confusion

- because of their changing emotions
- because they may still love the abuser

Anger

- at the abuser
- at other adults who failed to protect them
- at themselves

Sadness

- at being betrayed by someone they trusted

Isolation

- because they have trouble talking about the abuse
- because they feel alone

Sexual Abuse of Children

Any sexual contact or interaction between a child and adult is abusive by definition. This includes any time an adult uses, allows, permits or encourages the use of a child for any kind of sexual stimulation.

How Can You Support a Child if Sexual Abuse Has Occurred?

- Stay calm. Don't panic or overreact.
- Believe the child.
- Assure the child that she/he is not to blame for what has happened.
- Do let the child know it was very brave to tell you.
- Let the child know you are glad she/he told you.
- Protect the child immediately from the suspected perpetrator.
- Report the child sexual abuse at once to the Department of Health and Human Resources, Child Protective Services (1-800-352-6513), the police or your local rape crisis center.
- Get a medical exam even if the child appears to be unhurt.
- Help the child work with a counselor who can help with the case.

What If You Are the Parent of a Child Who Has Been Sexually Abused? Finding out that your child has been sexually abused can be overwhelming and confusing for many parents. It is most important now to emotionally support and reassure your child by telling her/him that you believe what happened and that you are glad she/he told you. Say that you are sorry about what happened and you will do everything that you can to protect her/him.

You may need help dealing with your own feelings. A trained counselor will not only help your child but you and your family as you sort out your own feelings.

Remember:

Children only report sexual experiences they have encountered.

Children are not responsible for assaults against them.

Most children are afraid to tell their parents what has happened.

If your child was victimized, be there to provide support.

If you are calm, accepting and caring, your child will be better able to deal with the situation.

What If the Survivor Is a Teenager?

Approximately 25 percent of all young people in the United States are sexually assaulted by the time they are eighteen (18) years of age.

Teens
Ages 16 to 19
are 4 times
more likely
to be victims of rape than
the general population

This is a very traumatic experience, especially during an already confusing time in their life. It may be difficult for them to tell anyone what happened. They may fear that if they tell, their parents may try to limit their activities in an attempt to protect them. They may have been sexually assaulted when they were at a place they should not have been and they may be afraid of getting in trouble. They may be afraid of what their friends will say if they find out.

If they were sexually assaulted by someone they know, or someone trusted by their family, they may be afraid that their family or friends will not believe what they say. They may even feel pressure from friends or family members who don't want them to get that person in trouble.

When sexual activity is forced on someone, by anyone, it is a crime. It is important to get medical care as soon as possible. There may be medical concerns that aren't immediately noticed. It's important for the teen survivor to talk to someone that they can trust. It can help to talk about what happened.

If you are Sexually Assaulted...

- DON'T**
- DON'T... Shower or bathe.
 - DON'T... Brush or comb your hair.
 - DON'T... Douche or go to the bathroom.
 - DON'T... Change clothes.
 - DON'T... Eat or drink anything.
 - DON'T... Brush or rinse your teeth.
 - DON'T... Touch anything at the crime scene.

- DO**
- Do get to a safe place.
 - Do call 911 or the police for help.
 - Do tell someone.
 - Do get medical care as soon as possible.

Young people say that the most difficult sexual assault to talk about is incest. Incest is sexual contact between family members. It can happen in any family. The offender can be a man or a woman, parent, stepparent, uncle, aunt, sibling or other family member. Both girls and boys can be victims of incest.

Remember, no one asks to be sexually assaulted. The person who did this is responsible.

There are people who will believe you.

There are people who want to help.

For free, confidential help and support call 1-800-656-HOPE

What If the Survivor is a Person with a Disability?

Sexual assault against persons with mental retardation, cognitive disabilities, or mental illness are very common. People who commit these assaults perceive persons with disabilities as easy targets. People who commit these crimes can be family members, caretakers or family friends who repeat their abuse because their victims are not able to report the crimes against them.

Strangers may also target persons with mental retardation, cognitive disabilities, or mental illness who live alone. They are less able to physically defend themselves, less able to hear a perpetrator enter the home and less likely to have anyone in the home to interrupt the assault. Individuals who are mentally challenged have an added vulnerability to an assault because they are so trusting of others.

Persons with disabilities will experience many of the same feelings as other survivors. It is not uncommon for the sexual assault to increase their feelings of helplessness. Seeking emotional support and other assistance from local agencies that advocate for persons with disabilities is recommended. It is not uncommon for family and friends of the survivor to become overprotective and limit the survivor's ability to live independently.

When medical personnel treat a survivor with mental retardation, cognitive disabilities, mental illness or a physical disability, medical personnel are mandated to report the sexual assault to a law enforcement agency. Referrals to specialized support services are available and necessary for

those who may need protection, physical assistance and transportation for follow-up treatment and counseling.

What If the Survivor Is a Person Who Is Deaf?

A survivor who is deaf or a survivor who has difficulty hearing faces specific issues. The most significant is communication accessibility. Some survivors may experience a tendency for people to ignore them. This is not uncommon when people do not know how to respond to persons who do not hear well or persons who are deaf.

Law enforcement, hospitals, and prosecuting attorneys are all required by law to provide sign-language interpreters and other auxiliary aids to ensure effective communication with the survivor. It can be very helpful to have an advocate work with the survivor to be sure that the needed services are delivered.

What If the Survivor Is Elderly?

Elderly survivors of sexual assault, as well as most other victims, may experience extreme humiliation, shock, disbelief and denial about what has happened. Often the full emotional impact of the assault may not be felt until after the initial contact with medical, police, legal and advocacy groups. Fear, anger or depression can be especially severe in survivors who are elderly who many times are isolated, have no confidant or family and live on meager incomes. These are normal feelings and talking with someone can help.

Elderly survivors are physically more fragile and injuries from an assault are more likely to be life threatening. In addition to possible pelvic injury and sexually transmitted disease, elderly survivors may be more at risk for other tissue or skeletal damage. The sexual assault may exacerbate any existing illness or vulnerabilities. Thus, the recovery process for elderly survivors tends to be longer than for younger survivors.

If the sexual assault took place in a health care facility, a law enforcement agency (city, county or state) must be notified. The law enforcement agency is responsible for reporting the incident to the Department of Health and Human Resources, Adult Protective Services (1-800-352-6531).

What If the Survivor Is a Person Who Is Gay or Lesbian?

People who are gay, lesbian, bisexual or transgendered are not free from sexual assault. Whatever the circumstances of the sexual assault, they may have additional fears and concerns specifically related to their sexual orientation. These concerns may be not only about the sexual assault, but about how they will be treated by the health professionals, law enforcement, legal professionals, their friends and family and/or their partner. There may be fear that one's sexual orientation will be seen as the central issue to health care providers, instead of the assault. Some may fear losing custody of their children, if family or a former partner learns of her/his sexual orientation.

For free,
confidential
help & support
call
1-800-656-HOPE

In addition to sexual assault that occurs within the context of a relationship, people who are gay, lesbian, bisexual or transgendered also experience high levels of violent acts perpetrated by people who are heterosexual but who are not tolerant or accepting of non-heterosexual people. In many cases when lesbians are sexually assaulted, it happens simply because they are female. For women who have rarely or never experienced heterosexual intercourse, forcible penetration may be particularly frightening or painful.

When sexual assaults are perpetrated against people who are gay, lesbian, bisexual or transgendered as a way of "punishing" them because of their sexual orientation, these assaults tend to be more violent and often cause more injuries than other sexual assaults. These acts are also hate crimes.

It is important to remember that a sexual assault is never the victim's fault. Everyone has the right to be provided with nonjudgmental services. Call 1-800-656-HOPE for free, confidential support and help.

What If the Survivor Is Male?

Although sexual assault is most often a crime against women, men can also be victims of sexual assault. Men and boys are sexually assaulted and molested every day in the United States. It is believed that 1 in 6 boys will be sexually assaulted before the age of 18. 83% of abused boys are

under the age of 12; 26% are under the age of 6. 25–35% of child sexual abuse victims are males. Many men do not report their assault. Stigma, stereotypes, and society's reluctance to accept a man's sexual victimization keep men from reporting their assaults.

Young boys are most likely to be abused by someone they know and trust. Sexual abusers can be fathers, mothers, stepparents, uncles, neighbors, spiritual leaders, and camp counselors. 85% of the time, boys know their abusers.

Adult men can be assaulted by friends, significant others, strangers, and gangs. 60% of men sexually assaulted by other men knew their attackers. Male sexual assaults are frequently violent and involve weapons. Often, men reporting muggings or robberies have also been sexually assaulted. Emergency room doctors and police, however, do not typically look for behavioral signs of sexual assault in men.

Some offenders are sexually attracted to children. Some were victims of abuse as children themselves, and some abuse children so they can feel the power and control they do not feel in relationships with adults. Whatever the reason for abuse, it is never the victim's fault.

Sexual feelings or attractions do not motivate a rapist to commit a sexual assault. Instead, an offender is motivated by a need to dominate, control or humiliate another person in the most personal way. When we consider our society's definition and standards of what it means to "be a man", it becomes obvious that male sexual assault is committed to make the offender feel powerful, not sexually satisfied.

If you are a male and have been victimized:

- Go to a safe place.
- Call someone you trust for emotional support.
- Seek medical attention. Because of the high risk of genital and non-genital injury, it is important that you seek medical attention. Valuable evidence of the assault could remain on your body and clothes.
- Do not eat, drink, smoke, comb your hair, shower, urinate, or defecate before going to the emergency room.

MALE
VICTIMS

Our culture expects men to never be vulnerable and to be able to protect themselves against any kind of attack. A man who is sexually assaulted may feel ashamed of himself for “not being a man” because he couldn’t stop the attack. Because he was vulnerable he may also be afraid that others will question his sexual orientation. Feelings of guilt, shame, isolation and anger are likely to be intensified due to the societal stigma about being a male victim.

Emotional Reactions to Sexual Assault

Males who have been victimized may experience some of the following reactions:

Denial	Fear	Helplessness
Dislike of sex	Rationalization	Flashbacks
Self-blame	Mood swings	Depression
Anxiety	Difficulty with intimacy	Loneliness
Numbness	Social withdrawal	Nightmares

Sexually abused boys often exhibit high-risk behavior, including the use of prostitutes, unprotected sex, a high number of sexual partners, behavior and legal problems, drug and alcohol abuse and suicide.

Sexual identity becomes an important issue for males after a sexual assault. Homophobia (fear or hatred of gays and lesbians) keeps many male survivors from coming forward for assistance after an assault. One of the most persistent myths about sexual assault (that it is a sexual act) is doubly damaging to male survivors because it becomes intertwined with homophobia.

A heterosexual survivor may believe the sexual assault means he is gay because of the way his body reacted during the assault. It is important to remember that just because a person’s body reacted sexually, does not mean that he enjoyed the abuse. A homosexual or bi-sexual man may feel that he is to blame for the assault because of his sexual orientation.

A male survivor of sexual assault may need help dealing with this traumatic experience. Call 1-800-656-HOPE for the local rape crisis center in your area for free, confidential help and support.

(Source: Adapted from Male Sexual Violence Brochure, Pennsylvania Coalition Against Rape.)

What If You Are Sexually Assaulted By Your Spouse?

Sexual assault occurs in all types of relationships, including marriage. Marriage does not mean that one person becomes the property of another person.

If anyone, including your spouse, attempts to force you to have sex, either through threats of harm or physical violence to you, your children, or another person, he or she is in violation of the law.

Marital sexual assault is often part of a larger picture of physical and emotional abuse. The abusive spouse may use some of the following behaviors in an attempt to exercise control by:

- putting you down or calling you names;
- not allowing you to have any money, even if you have a job;
- turning your children against you or threatening to take them away;
- threatening to hurt you, your children or herself/himself;
- using looks, actions, or gestures to intimidate you.

Many survivors who have been sexually assaulted by their spouses have concerns about:

- the system's ability to protect them from future assaults;
- living arrangements for their families;
- economic dependency for their family's financial support;
- the well-being and safety of their children.

The rape crisis center in your area is available to help you. Call 1-800-656-HOPE for free, confidential support, information and resources.

What Are Signs That You May Have Been Drugged and Sexually Assaulted?

You may have been drugged and sexually assaulted if any of the following behaviors have occurred:

- You feel more intoxicated than your usual response to the amount of alcohol you consumed.
- You wake up very hung over, feeling “fuzzy,” and experiencing a memory lapse.
- You remember taking a drink but cannot recall what happened for a period of time after you consumed the drink.
- You think someone had sex with you but you can’t remember the entire incident.
- You felt confused or had other unexplained symptoms after drinking a beverage.

What Should You Do If You Think You Have Been Drugged and Sexually Assaulted?

There has been an increase in sexual assaults involving the use of drugs and alcohol. Drugs and/or alcohol can result in a loss of consciousness and a loss of the ability to consent to sexual activity. If you think that you have been drugged and sexually assaulted, you should:

- Go to a safe place. Get help immediately.
- Call a trusted friend to assist you in getting the help you need.
- Call 911, the National Sexual Assault Hotline at 1-800-656-HOPE or the local rape crisis center.
- Preserve as much physical evidence as possible. Do not urinate, shower, bathe, douche or throw away the clothing you were wearing during the incident. If possible, save any other materials that might provide evidence, such as the glass that held your drink.
- Get medical care. Go to a hospital.
- Blood and urine samples should be collected as soon as possible to detect the presence of any sedating substance. Every hour matters. Chances of getting proof are best when the samples are collected within 96 hours.
- Receive treatment for external and/or internal injuries, tests for pregnancy and sexually transmitted diseases and find out what support services are available to help you.

- Ask for an advocate from the rape crisis center to be with you to provide support and information. A physician or Sexual Assault Nurse Examiner (SANE) can check for injuries that may not be visible and perform a forensic medical exam to collect forensic evidence.
- Whether or not you report the sexual assault to law enforcement, you should still protect your health. It is best to receive medical attention within the first 96 hours after being sexually assaulted.
- Consult your health care provider for information about HIV/AIDS and other sexually transmitted diseases.

Remember:

- Talking to someone you trust can help.
- Sharing your concerns about what happened may be helpful to you.
- There are people who care and understand. There are people who can help you.
- It is not your fault; you did not deserve to be sexually assaulted.

What Should You Do After A Sexual Assault?

It is important to seek medical attention as soon as possible following a sexual assault. It is important to be examined for injuries (some of which may not be evident), given antibiotics to prevent sexually transmitted diseases (STDs) and medication to protect against pregnancy.

Whether or not you decide to report the sexual assault to law enforcement, a forensic medical exam can be conducted to collect evidence from your body. This is done at a hospital. Many hospitals now have Sexual Assault Nurse Examiner (SANE) programs. These nurses are specially trained to perform physical and forensic exams on adults and children who have been sexually assaulted.

The physician or SANE will perform the examination in a private room. A victim advocate from the rape crisis center can be with you at the hospital, if you agree. Medications for STDs and pregnancy prevention should be offered to you.

The SANE or other medical personnel will ask you to tell what happened so they will have an idea of the type of evidence to look for and collect. The more specific and complete your responses, the more likely sufficient evidence will be collected.

If you did not change clothing after the assault, the clothing could be collected by the physician or SANE as evidence. A change of clothing might be necessary if the clothing being worn is kept as evidence. Evidence might include hairs, fingerprints, stains, or fibers. This evidence can be used to connect the offender with the crime.

Next the physician or SANE will examine you for external injuries. If there are physical injuries, pictures may be taken for evidence. An agreement to release the evidence to law enforcement will need to be signed by you, if you decide to participate in a criminal investigation.

Depending on the type of assault, a pelvic examination may be necessary to check for injury. With your consent, forensic evidence may be collected using a WV State Police sex crime kit. If consent to release the evidence is given, the hospital will call the police to transport the evidence to the West Virginia State Police Forensic Laboratory.

If you are not sure you want to report the sexual assault to law enforcement, you can still have a forensic medical examination. The evidence collected will be held for 18 months before being destroyed, unless you decide to initiate an investigation.

If there is reason to suspect that the offender used any drugs or other substances to commit the sexual assault, blood and urine will be collected for testing. Several drugs, such as Rohypnol and GHB, along with alcohol, have been used to facilitate sexual assault by leaving the victim helpless and unable to remember what happened during the assault.

Some victims worry about contracting the human immunodeficiency virus (HIV) which causes AIDS. Because of many variables, it is difficult to say how high the risk of HIV infection is in cases of sexual assault. Hospital and local health department staff can explain testing options more fully and can refer the survivor to other information resources and test sites.

What Are The Emotional Effects of Sexual Assault?

Survivors of sexual assault may experience many feelings. These emotions are normal responses to a traumatic event. There is no “right way” to feel.

No two people react in exactly the same way. Emotions may be very frequent and strong for one person, less intense for another. Some survivors may go through a period of strong emotions for a short time after the sexual assault. Others will seem to have put the sexual assault behind them, only to have the feelings return at a later time.

Some survivors may wonder if they are going crazy because of the strong feelings they have. Survivors may swing from one emotion to another, thinking that they have lost control. It is important to remember that this is a common response to a very stressful event.

Survivors may also have nightmares, insomnia, changes in eating habits, nausea, stomach pains and flashbacks. It may seem that they are reliving the sexual assault all over again. Remember that recovery takes time. It can be helpful for them to talk to someone who will understand and support them through this difficult time.

Survivors may ask “Why me?” or “What did I do to cause this to happen?”. It is important to remember that the responsibility for the sexual assault lies with the offender. Sexual assault has nothing to do with the way someone looked, walked or dressed. Sexual assault is a crime of aggression, humiliation and power.

Immediately after a sexual assault, survivors may feel:

- numb
- disorganized and confused
- unable to talk about it
- they want to forget it ever happened
- emotionally upset and tearful
- very calm
- distrustful of others

Later, survivors may feel:

- helpless
- depressed
- angry—suspicious of others
- afraid
- irritable
- guilty
- apathetic
- alone, isolated
- vulnerable
- nervous
- impatient

What Happens If the Sexual Assault Is Reported to Law Enforcement?

Reporting a sexual assault to the police is a very personal decision. If a victim chooses to report, having a friend or victim advocate with them can help make the process easier. If the sexual assault is reported, police will send an officer to the victim. The victim may be at the hospital, the scene of the crime, at her/his home, or at the home of a friend.

After the forensic medical examination is completed, the officer or investigator may conduct a personal, in-depth interview with the victim. The investigator will need to ask many questions. These questions are very important for the investigation of the case. All the facts must be known in order to make a complete report. The investigator will want as much information as the victim can provide about the person who committed the sexual assault. It might be necessary for the victim to provide a step-by-step description of what happened. The questions may be very personal and difficult to answer.

At first, it may be difficult to remember some details, but perhaps later what happened will be clearer. If this happens, and it often does, it's important to tell the investigator. It is not unusual for a victim to be confused about details and the order of events—a traumatic event makes it difficult to remember things as clearly as one normally does. If things are remembered later, the victim should be sure to report them promptly to the investigator. The investigator working on the case may need to talk to the victim several times during the investigation.

West Virginia Code §62-6-8 prohibits any law enforcement officer, prosecutor or other government official from asking or requiring an adult, youth or child victim of an alleged sexual offense to submit to a polygraph examination or other truth-testing examination as a condition for proceeding with the investigation of the alleged offense. No law enforcement officer, prosecutor or any other government official may refuse to proceed with an investigation, warrant, indictment, information or prosecution of the alleged offense because the alleged victim refused to submit to such an examination. (Effective 7-2007)

If a victim does not know the person who committed the sexual assault, she/he may be asked to look at pictures of suspects who fit the description given to the law enforcement officer. The investigator may ask the victim to help make a composite drawing of the perpetrator.

During the investigation, the victim's account of the sexual assault may need to be repeated several times. The victim may be called at different times to clarify information as the investigator develops new leads.

It is important to notify the investigator assigned to the case of any changes in phone numbers, place of residence or work, or trips out of town. When the investigator's report is complete, it will be given to the prosecutor in the county in which the offense occurred.

What Happens If The Sexual Assault Is Not Reported to Law Enforcement?

If the patient chooses to have a forensic medical examination but does NOT want to initiate or participate in any investigation relating to the sexual assault, the attending physician, SANE or nurse MUST have the patient sign and complete the consent form for "Non-Reports to Law Enforcement" found in the WV Sex Crime Kit paperwork. The kit tracking number is to be placed on all three (3) copies of the form. The pink copy of the form MUST be given to the patient to track and identify the sex crime kit should the decision be made at a later time to report the sexual assault to law enforcement. The white copy becomes part of the medical record and the yellow copy is placed in the envelope on the bottom of the sex crime kit.

When a sex crime kit has been collected but not released to law enforcement, hospital personnel will be responsible for preparing the forensic evidence, while maintaining chain of custody, to be mailed by private carrier to Marshall University Forensic Science Center (MUFSC). The evidence will be stored for eighteen (18) months at MUFSC if an investigation has not been initiated by the victim. At the end of that time the evidence will be destroyed or used for training or research purposes once all identifying information has been removed.

The physician, SANE, or other hospital personnel MUST email MUFSC at marra2@marshall.edu or call 304 690-4363 extensions 210 or 247, Monday through Friday, 8:00a.m.–5:00p.m. to report that a sexual assault kit is ready to be picked up at the specified hospital. MUFSC will make arrangements for the kit to be picked up by private carrier. Should additional boxes be

needed to package evidence, such as bags of clothing, hospital personnel should be prepared to let the contact at MUFSC know what size boxes are needed. Until the kit is picked up by the private carrier, the kit must be kept in a secure area with limited access. The evidentiary integrity of the kit must be maintained. The hospital will not incur any costs for shipping the kit to MUFSC.

Per 2007 legislation and per statutory changes effective July 1, 2007 the law states that a victim of sexual assault is NOT required to participate in the criminal justice system OR cooperate with law enforcement in order to have a forensic medical exam. (West Virginia Code §61-8B-16)

What Is the Process In the Criminal Justice System When a Criminal Offense Has Occurred?

A criminal offense may be classified as a felony or misdemeanor. A felony is a serious crime which carries a penalty of imprisonment in a state prison for one year or more. A misdemeanor is a less serious crime which carries a penalty of confinement in a county or regional jail for 12 months or less.

Arrest

Many criminal cases begin when a law enforcement officer arrests a person suspected of committing a criminal offense. Arrests may occur with or without an arrest warrant.

If the victim knows who committed the sexual assault, can identify the perpetrator from police photographs, or if the perpetrator can be identified by other evidence, the police will obtain an arrest warrant from a magistrate. Once the warrant is issued, the police can arrest the suspected perpetrator and take him to jail.

Sometimes the victim is asked to identify the suspected perpetrator from a line-up of several persons at the police station. The victim can ask that the people in the line-up do or say something to help recall how the perpetrator looked or sounded during the assault. The victim cannot be seen by the people in the line-up.

Initial Appearance/Bond

When an individual is arrested, the law requires that he/she be brought before a magistrate as soon as possible. The magistrate explains the charges to the defendant, advises the defendant of his/her rights and sets bond.

The magistrate may set bond in all cases except capital crimes (crimes punishable by life in prison), in which case only a Circuit Court Judge may set bond.

Since the United States legal system operates on the principle that an accused person is innocent until proven guilty, most defendants can be released from jail on bond or on the promise that he/she will return for the next court hearing.

A magistrate may require a defendant to post cash or surety (real estate) bond prior to being released from jail. A surety bond must be posted by someone other than the defendant.

A magistrate may allow a defendant to be released from jail after determining a bond amount and trusting his/her word that he/she will return for the next court hearing. There is no actual cash or surety transaction.

If a defendant is unable to post bond, he/she will remain in jail either until bond is posted or until the case is concluded. If a defendant posts bond, she/he will be released with the understanding that the defendant is not to have contact with the victim of the crime while out of jail. If the defendant violates any of the restrictions of the bond, he/she may be subject to bond revocation and could be returned to jail. If the defendant fails to appear at a court hearing, bond can be forfeited.

If the victim is contacted by the defendant, the defendant's friends or family, or is threatened in any way, she/he should immediately contact the detective assigned to the case or the Prosecuting Attorney.

Magistrate Court Arraignment

At the arraignment, a defendant is asked to plead "guilty," "not guilty," or "no contest" to the charge(s) that have been made. After a plea has been entered, the case may continue in one of two ways.

If a defendant pleads “guilty” or “no contest” to the charge(s), the magistrate may impose a fine and/or a sentence and the case is closed.

If a defendant pleads “not guilty”, the case will generally continue to the next stage in the criminal justice process. In addition, if the defendant cannot afford to hire an attorney, one will be appointed to represent him/her.

Most misdemeanor cases are disposed of in Magistrate Court. However, though felony cases may begin in Magistrate Court, they must be disposed of in Circuit Court. An individual charged with a felony cannot enter a plea in Magistrate Court.

Pre-Trial or Preliminary Hearing

The type of hearing that takes place after the initial appearance and arraignment is determined by whether the crime committed was a misdemeanor or a felony. Both types of hearings take place in Magistrate Court before a magistrate.

Pre-trial hearings are held in misdemeanor cases when the defendant has requested a jury trial. The purpose of the hearing is to allow the two sides (prosecution/defense) to reach some type of agreement instead of going to trial. Victims and witnesses are not required to attend pre-trial hearings since the hearings do not involve testimony.

However, it is often helpful for victims to be available as many misdemeanor cases are settled at this stage of the criminal justice proceedings. The hearing takes place in an open court before a magistrate. There is no jury. The court is usually open to the public, so there may be a few spectators. If no agreement is reached, the case will continue to a trial.

During this time, the attorneys will be involved in learning the facts about the case. The defense attorney learns what evidence the state has and is allowed to see the physical evidence and copies of the hospital and laboratory reports. The defense attorney may also request interviews with any witnesses, including the victim. Only the victim may decide whether she wants to be interviewed at this time. It is strongly recommended that the victim contacts

the prosecuting attorney, the detective assigned to the case, or the local rape crisis center before any contact with the defense attorney is made.

The victim should meet with the prosecutor before court proceedings to discuss the case. Honesty is important in this interview. It is better to tell the prosecutor all of the information about the assault rather than to have something brought up by the defense attorney in court as a surprise. The victim should be ready to fully cooperate with the prosecutor. It is in the best interest of the case.

The victim advocate at the local rape crisis center can provide information that will help the victim prepare for court. In many cases the advocate will be asked to go to court or to the prosecutor's office with the victim to provide emotional support and advocacy. If a victim advocate is not available, the prosecutor should prepare the victim for trial.

Preliminary hearings are held only in felony cases. These are often called "probable cause" hearings, since the purpose is to make sure that enough evidence exists to establish the belief that a felony occurred and that the accused committed that crime. Preliminary hearings are held in Magistrate Court.

If the magistrate finds probable cause, the case is "bound over" (continues on) to the Grand Jury to be presented at a future date. If however, no probable cause is found, the case is dismissed. This does not mean the case cannot be heard by a Grand Jury, but it does mean the defendant will be released from jail or bond with no restrictions.

Preliminary hearings do involve testimony, usually that of the investigating officer rather than victims or witnesses. Only in the most serious cases are victims/witnesses subpoenaed to testify at a preliminary hearing. It is very common for a defendant to waive his/her right to a preliminary hearing. When this occurs there is no testimony and the case is simply bound over to be heard by the Grand Jury. If probable cause is found, the case will proceed to the Grand Jury and the defendant will remain free on bond or will remain in jail. If probable cause is not found, the case is dismissed and the defendant is released from bond or jail.

Magistrate Court Trials

If a pre-trial hearing does not result in some form of agreement between the prosecution and the defense, the case will proceed to a trial.

If a jury trial is requested, six people will be selected to the jury panel. In West Virginia, juries must reach unanimous decisions, meaning all members must agree as to the guilt or innocence of a defendant.

If a jury trial was not requested, the case will proceed to a bench trial. This type of trial is before a magistrate. There is no jury and the Magistrate determines the guilt or innocence of the defendant.

In most misdemeanor cases, the magistrate will proceed to sentencing immediately following the trial or guilty plea. Sentencing can include up to a year in jail, a fine and court costs.

Grand Jury

Defendants have the right to have their cases heard by the Grand Jury. The Grand Jury meets three times a year—February, June, and October.

The grand jury is a group of sixteen men and women selected for jury duty that decides whether there is enough evidence to make a formal charge against the defendant. If the victim testifies, it is done privately to the Grand Jury. Neither the defendant nor the defense attorney is present for the Grand Jury proceedings. The prosecuting attorney questions the victim and/or police officer about the crime. If the Grand Jury decides that there is sufficient evidence for the case to go to trial, an indictment will be issued against the defendant and the case proceeds to arraignment (at least twelve of the sixteen jury members must return the indictment). If an indictment is returned, the case will continue through Circuit Court.

If sufficient evidence is not found, the case against the defendant is dismissed. Since there is no statute of limitations (time limit) on felony cases in West Virginia (except in cases of perjury,) the case can be brought before the Grand Jury at a later date. If the case is dismissed, the victim cannot make a criminal suit but may still pursue a civil suit.

The Grand Jury hearing usually takes place within a few months of the preliminary hearing.

Arrest/Circuit Court

If the Grand Jury returns an indictment, the defendant is required to appear before the Circuit Court Judge. At the arraignment the defendant is given a copy of the indictment to show that she/he is aware of the charges against him/her. If the defendant has not yet been arrested, bond will be set and she/he will be fingerprinted and photographed by the Sheriff's Department. If the defendant is unable to post bond, she/he will remain in the custody of the Sheriff and placed in jail until the next court proceeding.

If the defendant does not have an attorney, one will be appointed for him/her. Generally a trial date will be set for the month before the next meeting of the Grand Jury. The defendant's first appearance in Circuit Court is similar to a Magistrate Court arraignment on a misdemeanor charge. The defendant is not asked to enter a plea of "guilty" or "not guilty" as in Magistrate Court. In addition, there is no testimony at this stage of the proceedings and victims and witnesses are rarely present.

Plea Agreement

Once the pre-trial phase is complete, both attorneys will be familiar with the evidence in the case. They may try to negotiate a settlement through a plea agreement or plea bargain. This happens when the defendant admits to committing an offense and accepts an agreed upon punishment without a trial ever taking place.

A plea agreement or a plea bargain is a compromise made that allows the prosecuting attorney to drop some charges, reduce the charge to a less serious one, or recommend a lesser sentence than the defendant would receive if found guilty in a trial. Although not ideal, plea agreements can sometimes benefit the victim. In a plea agreement, there is no chance that the defendant will be found not guilty and the victim does not have to endure the stress of a trial. The prosecuting attorney will discuss the option of a plea agreement with the victim and can explain its benefits and disadvantages. Once the trial has begun, the judge may still allow a plea agreement to be made. If no plea agreement is made or agreed upon, the case proceeds to trial.

The decision whether to make a plea agreement or not is the responsibility of the prosecutor. Victims often have mixed feelings about a plea agreement. They can feel relief that they do not have to testify or feel disappointment about the lesser charge.

Circuit Court Trial

It can take months before the trial is scheduled after the arraignment. When the trial is scheduled, the victim may be subpoenaed to tell his/her story and answer questions about what happened. The investigator and the prosecutor should know where to reach the victim at all times. They should prepare the victim for the trial.

If a defendant does not waive his/her right to a trial as part of a guilty plea, the case will continue to a trial by jury. In a Circuit Court juries for felony cases are made up of 12 persons. Juries for Circuit Court proceedings are generally chosen on the day prior to the beginning of trials for that term of court.

If a trial by jury is chosen, the jury is selected by the prosecuting attorney and the defense attorney. After the jury is selected, both attorneys will make opening statements to the jury expressing each of their theories about the case and what each believes the evidence will show.

Once the opening statements are complete, the prosecution will present its case. It is up to the prosecution to prove that the defendant is guilty beyond a reasonable doubt. Because the defendant does not have to prove innocence, there is no guarantee that the defendant will testify or that the defense attorney will present any evidence at all.

The victim is usually the first witness for the prosecution. The prosecuting attorney asks the victim questions about the case knowing in advance what the answers will be. Once the prosecuting attorney has finished questioning the victim, the defense attorney will cross-examine. This means that the defense attorney will question the victim. This part of questioning is often more detailed, difficult, and stressful. The best strategy for any witness being cross-examined is to remain calm and simply answer the questions asked without volunteering information. If a question is

unclear, ask that it be repeated or rephrased. A victim may feel that she/he is on trial as the defense tries to make its case.

After all the evidence is presented, the jury or judge will decide if the defendant is guilty or not guilty. To find the defendant guilty, the jury or judge must be sure, beyond a reasonable doubt, that the evidence proves that the defendant is guilty. All members of the jury must agree on the decision.

At the conclusion of all the evidence, both attorneys will make their final arguments and the judge will instruct the jury on the law to be applied to the facts of the case. The jury then deliberates in private. If all members of the jury cannot reach the same decision, it is called a “hung jury”. If this happens, another trial may or may not take place at a later time. This decision is made by the prosecuting attorney.

If the jury finds the defendant not guilty, the decision is final and cannot be appealed. The case is finished and the defendant released. Note that a not guilty decision does not necessarily mean that the jury thought the victim was lying or believed the defendant. It simply means that there was not enough evidence for the jury to believe, beyond a reasonable doubt, that the defendant was guilty.

If the jury finds the defendant guilty, the judge will set a date for sentencing. At the sentencing hearing the judge decides on an appropriate punishment for the defendant. Note that if given a guilty verdict, the defendant has the option to appeal the case. If an appeal is made, the judge may delay punishment until further proceedings are complete.

Testifying Tips:

When testifying in court you should:

- Dress appropriately. Wear neat, clean, conservative and comfortable clothes.
- Always tell the truth. Accurately tell what you recall and what you know. If you do not know the answer, say “I don’t know.” Do not guess.
- Listen carefully to each question before you answer to be sure that you understand it. Take your time and think about your answer. If you do not understand a question, ask to have it rephrased or repeated.
- Speak clearly and address your answers to the judge or the jury hearing the case.
- Answer only the questions asked and then stop. Do not volunteer information.
- Answer questions that require a “yes” or “no” answer with a “yes” or “no”, unless the answer cannot be fully understood without an explanation.
- Answer only one question at a time. Do not answer “yes” or “no” to a long series of questions.
- Be polite, firm and clear in your answers even if the questions are hostile.
- Stop talking if an objection is made by one of the attorneys or if the judge interrupts. The judge will tell you if you can finish your answer. If you have forgotten the question, ask to have it repeated.
- Answer truthfully if you are asked whether you have talked about the case with anyone. You probably have spoken to the police, the prosecutor, family and friends. The court is interested in what you know and how you know it.
- Be quiet in and around the courtroom. Talking about the case around jurors or witnesses may cause a mistrial.
- Tell the judge or the jury exactly what you know.

Sentencing

In some cases the Circuit Court Judge will proceed to sentencing immediately after a trial or guilty plea. In other felony cases the court may require a pre-sentence investigation before sentencing. The investigation involves a review of the defendant's background and includes either a written or oral victim impact statement. The victim impact statement allows the victim to talk about the effects the crime has had on her/him and family members.

Certain crimes require that a minimum sentence be imposed. If there is no plea agreement which includes an agreement as to the sentence, the Judge may consider the extent of personal injury, property damage, the defendant's criminal history and other factors when determining the appropriate sentence.

The court process can be long and confusing. The time between the guilty verdict/plea agreement and the sentencing hearing may be lengthy. Remember, the victim advocate at the local rape crisis center can offer emotional support and help to the victim at any and all stages of this process.

Appeals

Convictions in both Magistrate and Circuit Court may be appealed. An appeal is a request by the defense attorney for a higher court to review the actions of the lower court.

Convictions by a jury in Magistrate Court may be appealed to the Circuit Court for reconsideration. Circuit Court appeals follow the same procedure as in Magistrate Court. However, they are addressed by the West Virginia Supreme Court of Appeals.

Civil Suit

In addition to criminal prosecution, a victim can hire a private attorney and sue the defendant for personal injury in Civil Court. If the civil lawsuit is won, the defendant is ordered to pay money for damages caused, including medical expenses, loss of income, and pain and suffering. Punitive damages may also be available. Punitive damages are not to compensate the victim for actual injury, but to punish the defendant. If the defendant was found guilty in criminal court, the victim is likely to win in Civil Court as well.

In a civil suit, the defendant will be publicly charged and held accountable for his actions. He will not be able to escape anonymously. The victim is much more in control over this kind of proceeding. There is no detailed questioning about past sexual conduct, medical documentation of intercourse, etc. There are also psychological benefits to this kind of suit. It gives the victim an outlet for her anger and lets her regain a sense of power. An important factor to consider when deciding whether to file a civil suit is whether the assailant will be able to pay the money damages. If he owns nothing of value or has no income, a civil suit could result in a judgment that is impossible to collect.

Another alternative in filing a civil suit is to bring the suit against a person or business for failing to provide reasonable security when and where the sexual assault occurred. This kind of suit usually requires a special relationship between the victim and the person or business that failed to prevent the assault (employee-workplace, student-campus, tenant-landlord, guest-hotel, etc.).

For further information, a victim should consult with a lawyer to learn the specific process and requirements to file a civil suit.

Restitution

Convictions in both Magistrate Court and Circuit Court will often result in the defendant being ordered by the Judge to pay money to the victim for physical, psychological and economic injury or loss. In order to receive court ordered restitution, it is necessary for the victim to verify the losses/costs reported with documentation. Orders of restitution vary, depending upon the court.

Witness Fees

Victims and witnesses who are subpoenaed to attend court proceedings may apply for witness fees. Witnesses can be paid a per day rate and can be reimbursed for certain travel expenses. If you appeared in Circuit Court, you must go to the Circuit Clerk's Office to complete a voucher requesting payment. If you appeared in Magistrate Court, you must request a voucher from the magistrate's assistant.

Parole Hearings

Parole Board hearings are held at the facility where the offender is incarcerated, or by video teleconferencing at the Regional Jail Authority. To attend these hearings, please contact the Institutional Parole Officer at the correctional facility where the perpetrator is housed, at least three (3) days prior to the scheduled hearing.

If you wish to attend a video teleconferencing parole hearing at a Regional Jail, please contact the WV Division of Corrections, Victim Services Manager to make those arrangements.

As a crime victim, you may:

- Attend the hearing and give a statement;
- Submit a written statement;
- Bring someone with you for support;
- Give your statement to the Parole Board before the hearing and out of the presence of the inmate;
- Be present at the hearing and speak with the inmate present;
- Have a victim advocate attend the hearing with you.

As a crime victim, you should expect to:

- Be met by a Victim Service Representative prior to the hearing, who will accompany you to the hearing for support
- Be escorted by security staff;
- Be in the perpetrator's presence, but have no direct contact with him/her.

If you do not wish to attend the hearing, but still want your voice heard:

- Submit a written statement explaining the impact the crime has had on you and your family to the Victim Services Manager or the WV Parole Board through mail, fax, or e-mail.
- You may also request an appointment with Parole Board Chairperson and designated Parole Board Members.

Truth In Sentencing

West Virginia has "good time" sentencing contingent upon the inmate's institutional behavior. This means that an inmate receives one (1) day credit for each day that is served. Thus, five (5) years really means an

inmate may only serve 2 1/2 years. Inmates' behavior in prison can affect "good time". For clarification on individual cases, please contact the WV Division of Corrections Victim Services Manager.

Parole

Parole is the release of an inmate before her/his term has expired on condition of continued good behavior. The duration of such conditional release will not exceed the discharge date. The perpetrator will be under the supervision of a Parole Officer. You may obtain the Parole Officer's name by contacting the Victim Services Manager.

Children under 12 are not allowed to attend Parole Hearings, unless they are a direct victim and will be speaking to the Parole Board without the inmate being present.

When you arrive at a Correctional Facility for a hearing, you can expect the following:

1. Visitors stop at the front gate before entering.
2. Visitors will be asked to park in the visitor parking area.
3. Adult visitors must sign in at the processing desk and provide two (2) forms of identification –one of which must be a photo ID. (No credit cards will be accepted.)
4. Visitors younger than 18 must have a birth certificate, and be with their parent(s)/guardian.
5. Visitors are subject to officer and/or canine search during processing.
6. If you are unable to clear the metal detector due to medical reasons (pacemaker, metal pins, etc.), you will need to present a letter from a physician indicating this.
7. You are required to wear suitable, modest clothing.
8. You may be asked to wear a wristband if you are the same gender as the population being housed in that facility.
9. Each facility may have different procedures for admission.

A victim is now able to check the status of offenders in custody within the West Virginia prison system by calling the Victim Information and Notification Everyday toll-free number 1-866-WV-4-VINE. VINE is a free, 24-hour telephone service that provides offender information. A victim can also register for automatic notification whenever an offender's incarceration status has changed.

To participate a victim must provide the following information to VINE: offender's name, DOC number and the victim's four-digit PIN Code. It is important to remember that a victim can not depend solely on the VINE service for her/his protection. If a victim feels that she/he may be at risk, take necessary precautions as if the offender has already been released. The VINE service is provided by the West Virginia Division of Corrections.

(Additional information on the VINE service is available in the Resources Section of this handbook, pages 158–159.)

What Is the West Virginia Crime Victims Compensation Fund?

If you are the victim of a crime in West Virginia and if you were physically injured during the crime, the West Virginia Crime Victims Compensation Fund may provide financial assistance to you for related expenses that cannot be reimbursed from insurance or other sources. Compensation is available for medical, funeral/burial expenses, earning losses, mileage to a medical treatment facility and to court for the prosecution of the perpetrator, mental health counseling, crime scene cleanup, and relocation expenses.

Any innocent victim who suffers personal injury as a result of a crime is eligible to file a claim. An individual who is the dependent of a deceased victim of a crime; or a West Virginia resident who is victimized in a state that does not have a victim compensation program is eligible, as well.

(Additional information on how to apply is available in the Resources Section of this handbook, pages 159–165.)

WEST VIRGINIA PROTOCOL

Victim Advocate Response

The victim advocate provides free, confidential and non-judgmental emotional support, information, social service referrals and guidance following a sexual assault. The victim is usually more cooperative and better able to respond to procedures when feeling supported, believed and safe.

The victim advocate's involvement should begin at the time the victim reports the sexual assault and extends beyond the point when other agencies have terminated their involvement. Many local rape crisis centers serve and assist the victim from "start to finish".

It is important for the Emergency Department staff to be familiar with the local rape crisis center and the services that they offer to victims and their families.

Victim Advocate

Initial Report

- Determine if the victim is in immediate danger.
- Determine the need/willingness for emergency medical care.
- Help identify and address the immediate concerns of the victim.
- Be aware of issues that may exist for victims with special needs (i.e. culture, religion, language, mode of communication, disabilities, gender and age and how these issues may influence a victim's behavior in the aftermath of an assault, including the exam process).
- Determine whether any special accommodations (e.g. the provision of an interpreter in the case of a person who is deaf or hard of hearing) are needed in order to ensure that the person has full and equal access to services. If needed, arrange for necessary accommodations.
- Answer the victim's questions about law enforcement and the criminal justice system.
- Offer crisis intervention services.
- Ask if the victim wants to report the crime to police. If the victim chooses not to report the sexual assault to law enforcement, support her/his decision and provide crisis intervention and referral resources.
- Caution the victim against evidence destruction.
- Arrange transportation to and from hospital if requested.

- Answer the victim's questions about the forensic medical exam, evidence collection and the payment of incurred expenses from the assault.
- Establish interagency coordination procedures.
- Offer long-term support.

Medical Examination

- With the victim's consent, provide emotional support and crisis intervention during the medical examination.
- With the victim's consent, discuss recovery issues of sexual assault with family and provide crisis intervention to secondary victims.
- Arrange for clothing, if needed, to assure that the victim does not leave the examination wearing a hospital gown.
- Provide cosmetics and other toiletries, as needed, for use after the medical forensic examination is completed.
- Ask if the victim needs any special accommodations (i.e. interpreters, special positioning).
- Provide support to the victim whether or not the victim chooses to make a report to law enforcement.

Initial Interview

- Establish a clear understanding about the confidentiality of case-related information gained during the interview.
- Define the role of the victim advocate during the interview (i.e., provide emotional support, pay attention to the victim's needs, help inform the victim about procedures).

Crime Victims' Compensation

- Inform the victim about the Crime Victims' Compensation Fund and offer to help in completing the application when the victim is ready.
- Follow-up on the application to ensure that it is processed in a timely manner.
- Inform the victim about the payment for the medical forensic exam and about payment for medical treatment.

Investigation

- Facilitate communication between law enforcement and the victim.
- Provide support for the victim during the investigation.
- Discuss precautionary measures for easing fears about safety and security.

Arrest

- When known, notify the victim when an arrest is made.
- When known, notify the victim of a change in the custody status of the suspected offender.
- Provide support, with victim's consent, during police line-ups and other proceedings.

Pre-Trial

- Establish procedures for notifying the victim of the status of the case.
- Coordinate communication among agencies providing services to the victim.
- Provide guidance for facilitating victim/prosecutor communication concerning plea negotiations and the victim's needs.
- Accompany the victim, with victim's consent/request, to pre-trial proceedings.

Trial

- Establish procedures for accompanying the victim to court.
- Support development of different waiting areas in the courthouse to completely separate the victim from access by defendant and defense witnesses.
- Provide resources for offering on-going emotional support to the victim.

Sentencing

- Assist the victim with the preparation of a victim impact statement.
- Support the victim's right to speak at sentencing hearing.
- Accompany the victim, with victim's consent, to court proceedings.

Post-Sentencing

- Inform the victim of right to seek redress through civil litigation, if warranted.

- Keep the victim informed about status of appeals, if the information is available.
- Keep the victim informed about parole hearings and changes in incarceration status, when possible.
- Help the victim prepare or update the victim impact statement for parole hearings.
- Provide guidance to the victim for enforcing restitution requirements, protection orders, and for reporting harassment.
- Encourage the victim to register to find custody status information on inmates in the WV Division of Corrections or to register to receive automatic phone notification when an offender's status changes by calling 1-866 WV4-VINE.

On-Going Victim Services

- Establish guidelines for continuing services as long as the victim requires emotional support or counseling.
- Provide referral and resources for other available community services.

WEST VIRGINIA PROTOCOL

Law Enforcement Response

Sexual assault can be terrifying and life-threatening. Victims may experience a wide variety of responses such as anger, fear, shame or confusion. Some may be unable to clearly recall all details of the assault during the initial interview. Injuries are not always immediately apparent. Once the sexual assault is over and the victim has survived, the struggle to recover and to take back control begins. It is of the utmost importance that acceptance and support be given to the victim, regardless of her/his emotional response.

IMPORTANT: Please Note

Per 2007 legislation and per statutory changes effective July 1, 2007 the law states that a victim of sexual assault is NOT required to participate in the criminal justice system OR cooperate with law enforcement in order to have a forensic medical exam. (West Virginia Code §61-8B-16)]

Role of the Dispatcher

Initial Response

Emergency communications personnel play a critical role in focusing the initial police response by compiling the necessary information concerning the victim and the offender and providing initial aid and comfort to the victim.

The first responder's actions and attitudes may be critical to the way in which the victim copes with the trauma and to the length of time it may take to recover. In order to gain the victim's trust and cooperation and to enable the victim to provide accurate, complete information about the crime, the first responder must make every effort to suspend judgment and to treat the victim with respect and unconditional support.

- Determine if the victim is in a safe place.
- Tell the victim you will get help to her/him.
- Assess the victim's ability to communicate needs effectively.
- Obtain and document the following information:

- Victim's name
 - Location of the call
 - Location, date and time of the assault
 - Name and/or description of perpetrator(s)
- Dispatch ambulance for injuries requiring medical attention.
 - Caution the victim not to wash, brush teeth, urinate, douche, change clothes, gargle, clean up or touch anything from which evidence might be collected.
 - If the victim is not willing to give a name, encourage the victim to seek medical attention. Offer to connect her/him to the local rape crisis center.
 - Keep the victim on the line until police or emergency medical personnel arrive on the scene.
 - Transfer the victim's call to the rape crisis center hotline.
(National Sexual Assault Hotline Number: 1-800-656-HOPE)

Role of the First Responding Officer(s)

Initial Investigation

The first contact for many adult victims of sexual assault will be with a law enforcement officer. The primary responsibilities of this officer are to ensure the immediate safety and security of the victim, to obtain basic information about the assault in order to apprehend the perpetrator and to transport the victim to a designated facility for examination and treatment.

In many rural counties in West Virginia, the responding officer will also be the investigating officer who will be responsible for the sexual assault case investigation and follow-up.

IMPORTANT: Please Note

Per 2007 legislation and per statutory changes effective July 1, 2007, the law prohibits any law enforcement officer, prosecutor or other government official from asking or requiring an adult, youth or child victim of an alleged sexual offense to submit to a polygraph examination or other truth-testing examination as a condition for proceeding with the investigation of the alleged offense. No law enforcement officer, prosecutor or any other government official may refuse to proceed with an investigation, warrant, indictment, information or prosecution

of the alleged offense because the alleged victim refused to submit to such an examination. (West Virginia Code §62-6-8.)

The following will help the responding officer provide assistance to the victim. The officer should:

- Identify him/herself by name and badge.
- Ensure the immediate safety and security of the victim.
- Assess the victim's well being and express concern and assurance.
- Confirm the victim's ability to communicate effectively.
- Speak softly and gently. Forceful aggressive actions can intensify anxiety for the victim.
- Minimize the amount of touch and moving when transporting the victim. Remember that the victim may have an aversion to touch.
- Attempt to gain the victim's trust and confidence by showing understanding, patience and respect for personal dignity.
- Administer necessary first aid and request emergency medical assistance if required.
- Confirm or establish the following information:
 - Victim's name
 - Location, date, and time of assault
 - Name and/or description of offender
 - Direction and means of offender's flight
 - If a weapon was used
 - Brief description of the assault
- Relay any pertinent information to the dispatcher/emergency communications personnel.
- Preserve evidence on the victim. Do not allow the victim to drink, brush teeth, douche, remove clothing or bathe.
- Secure the crime scene.
- Know that the victim may display a variety of reactions—crying, laughing, shaking, anger, silence, etc. The victim may rock back and forth, appear catatonic, or may demonstrate no reaction at all.

- Use language appropriate to the age and emotional condition of the victim.
- Speak clearly and concisely in simple sentences.
- Focus on one problem or concern at a time.
- Encourage the victim to make small decisions as a way of helping to regain control.
- Encourage the victim to consent to a forensic medical examination, emphasizing its importance to investigative and apprehension efforts.
- Provide an officer of the same gender if desired and available.
- Advise the victim of the availability of a victim advocate and encourage the victim's acceptance of counseling and advocacy services.
- Transport the victim to a designated medical facility for examination and treatment and relay any pertinent information concerning the assault to hospital personnel.
- Inform the victim that the Forensic Medical Examination Fund will pay for the cost of the forensic part of the exam.
- Remain at the hospital until family members, the victim advocate or a criminal investigator arrive.
- Provide interpreter services if needed, including language translation for a non-English speaking victim and signing for a hearing disabled victim.
- Inform the victim of the stated policy about the use of video and/or audio taping of the interview and how the tape will be used in later proceedings.

Follow-Up Interview

An investigative officer will be assigned to the case as soon as possible after the initial complaint is received. This officer should remain responsible for the case until it is closed or removed from his/her assignment.

After the forensic medical examination is completed, the follow-up interview should be conducted if possible. The follow-up interview should happen only

after the victim's immediate medical and emotional needs have been met. Conduct the interview in a private, secure place.

The officer should introduce him/herself by name and title and ask how the victim would like to be addressed. It is important that the officer be aware of his/her body language and reactions. The officer should speak calmly and quietly, being careful not to patronize the victim. Using short sentences and pauses, avoiding clinical terminology and using the victim's own terminology to ask clarifying questions is helpful for many victims. Offer breaks during the interview. Allow the victim to temporarily skip questions that are too upsetting to answer, returning to them later in the interview. Avoid mentioning prosecution until after the interview is completed.

The goals of the interview should be to:

- Determine how the crime occurred.
- Maintain the victim's cooperation and emotional well-being. (Be prepared for all types of emotional reactions, including calmness. Don't interpret composure as evidence that an assault did not occur.)
- Explain why and how the interview will be conducted.
- Determine information needs for the police and the prosecutor from victim interviews to minimize necessity of repetitious interviews.
- Ask the victim to write out a statement of exactly what happened and bring the statement to the next interview.

When the Perpetrator is Unknown

A primary issue of the investigation is identification. The following information is critical:

- Physical description (facial features, identifying marks, appearance, clothing, odors, etc.)
- When and where the sexual assault occurred
- How the victim was approached
- Any use of force or weapon
- Any threats made by the offender
- Any objects used during the sexual assault

- Amount and type of restraint used
- Type and sequence of acts
- Verbal exchanges between the offender and the victim
- Any possible witnesses before, during or after the sexual assault

When the Perpetrator is Known

Key investigative issues in these cases are consent and use of force. (Force may be defined as forcible compulsion or physical helplessness.)

- Identify the nature, duration and intensity of the relationship.
- Document visible physical injuries and observations about emotional state.
- Document details concerning the sexual assault.

Evidence Collection

- Encourage the victim to have a forensic medical examination immediately. A physician, SANE or other appropriate medical personnel should collect this evidence.
- Explain that medical personnel will check for injuries and discuss STDs and pregnancy prophylaxis.
- Evidence collected during the exam may be useful for DNA identification of the perpetrator.
- Notify the hospital if the victim chooses to receive medical attention.
- Explain to the victim that her/his clothing may be taken as evidence and suggest bringing along extra clothing.
- Ensure that the evidence at the scene is collected. Pay particular attention to evidence that tends to show force, any items used to clean up after the assault, and paraphernalia that may indicate drug facilitated sexual assault.
- Transport the victim to the hospital.

Responsibilities of the Law Enforcement Agency

The investigating officer or law enforcement agency is responsible for the following duties when a sexual assault is reported.

The investigating officer should inform the victim upon arrival at the hospital that the Forensic Medical Examination Fund will pay \$350.00 for the cost of the forensic medical examination. The investigating officer need not secure a victim's agreement to pursue prosecution of a case as a condition of obtaining the examination. Payment from the fund may NOT be refused for the reason that the victim refuses to involve law enforcement.

The investigating officer should be able to explain to the victim that any non-forensic procedures performed by the licensed medical facility, including prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases (STDs), will NOT be paid from the fund.

The investigating officer should remain at the hospital (but is NOT to witness the examination) until family members, the victim advocate or a criminal investigator arrives.

If a report has been made to law enforcement, the investigating officer will pick up the sex crime kit once the forensic medical examination is completed. Ensuring that the chain of custody is maintained, law enforcement will be responsible for transporting the forensic evidence to the WV State Police Forensic Laboratory in South Charleston for analysis.

On-Going Investigation

- Address the victim's concerns for safety and the possibility that the assailant will return.
- Accommodate the victim's needs during investigative processes that require victim participation (e.g. interviews, hearings, line-ups).
- Notify the victim when the offender is taken into custody.
- Advise the victim of the custody status of the offender and any changes in that status.
- Allow the victim advocate to be present during line-ups to provide emotional support for the victim.
- Keep the victim informed about the status of the case.

WEST VIRGINIA PROTOCOL

Medical Response

All victims of sexual assault should seek both medical treatment and evidence collection from a licensed medical facility. Hospitals providing sexual assault treatment should have a 24-hour emergency room facility with staff trained in sexual assault examinations. The ideal situation would include the on-call availability of a Sexual Assault Nurse Examiner (SANE) and the services of a victim advocate from the local rape crisis center.

Sexual Assault Nurse Examiner (SANE)

A Sexual Assault Nurse Examiner (SANE) is a Registered Nurse who has been specially trained to provide comprehensive care to patients of sexual assault and who has demonstrated competency in conducting a forensic examination. The SANE provides

SANE
programs
have made a
profound
in the difference
quality of care
provided to
sexual assault victims.

compassionate, consistent care throughout the examination process, conducts a timely medical and forensic examination and provides appropriate referral for follow-up care and counseling services in an effort to avoid further trauma to the victim. A listing of West Virginia SANE programs is available by viewing the West Virginia Foundation for Rape Information and Services website at www.fris.org.

If a victim of sexual assault arrives at a medical facility that is not equipped to provide a sexual assault examination, arrangements should be made to transfer the victim to the medical facility that can perform the forensic medical exam. However, if there are acute medical or psychological injuries that must be treated immediately, this should be done at the initial receiving facility. A copy of all records, including any X-rays taken, should be transported with the victim to the nearest medical facility.

A sexual assault victim (hereinafter referred to as patient) should be considered a priority patient—regardless of whether additional physical injuries are evident. A physical examination should be performed in all cases of sexual

assault, regardless of the length of time that may have elapsed between the time of the assault and the examination.

If the assault occurred within 96 hours of the examination, a WV State Police sex crime kit should be used. If it is determined that the assault took place more than 96 hours before the examination, the use of a sex crime kit is not necessary. However, evidence should still be gathered. Document findings made during the medical examination by taking photographs, bitemark impressions (if appropriate), and by recording the patient's statements about the assault.

DNA evidence in the form of saliva, blood, skin tissue, hair and semen can be left on the patient's body or at the crime scene. Saliva, which contains valuable DNA, can be found on an area where the patient reports being licked or bitten.

Medical Facility Intake

- Provide a private waiting area for the patient separate from the emergency department waiting area.
- Provide expedited consultation and attention to the patient from the SANE or specially trained staff.
- Call an advocate from the local rape crisis center to meet with the patient. Explain the role of the advocate to the victim and support the victim's acceptance of the help and services that can be provided by the local rape crisis center.
- Determine whether any special accommodations are needed (e.g., the provision of an interpreter in the case of a person who is deaf or hard of hearing in order to ensure that the person has full and equal access to service. If needed, arrange for necessary accommodations.
- Establish procedures to obtain the patient's consent for each medical and evidentiary procedure.
- Support the patient through the forensic examination part of the process.
- Explain to the patient the importance of performing the forensic medical exam for evidence collection. The Forensic Medical Examination Fund will pay \$350.00 of the costs of the forensic medical examination to the medical facility.

- Any non-forensic procedures will NOT be paid from the fund.
- Inform the patient that the law does not require that a report be made to law enforcement in order to have a forensic medical examination.
- Inform the patient that obtaining written consent for release of evidence means that once the evidence is released to law enforcement it becomes part of the criminal investigation and property of the state.

Evidentiary Examination

- Conduct the examination in accordance with the established sexual assault evidence collection protocol.
- Minimize discomfort experienced by the patient.
- Directly coordinate the collection of evidence to maintain the chain of custody.

Medical Examination

- Direct primary attention to the immediate medical needs of the patient.
- Inform the patient about possible pregnancy, sexually transmitted diseases, testing for HIV infection, AIDS, and prophylactic steps to avoid pregnancy and infection.
- Set guidelines for making referrals for follow-up medical and mental health services.

Post Examination

- Provide basic supplies to allow the patient to wash and supply a change of clothing for the patient if needed.
- Provide information for making referrals to follow-up medical and mental health services.
- Help secure transportation for the patient if needed.

Responsibilities of the Licensed Medical Facility

In order to be eligible for and to receive reimbursement for conducting forensic medical examinations, a licensed medical facility must comply with the following procedures:

- The licensed medical facility must use either the WV State Police sex crime kit or kits containing, at a minimum, the items contained in the WV State Police sex crime kit.

- The licensed medical facility can order sex crime kits free of charge from the WV State Police Forensic Laboratory by calling Chris Hayslip at 304 746-2184 or by e-mail at cahayslip@wvsp.state.wv.us.
- The forensic medical examination must have been conducted within a reasonable time of the reported offense.
- The licensed medical facility must certify that the forensic medical examination was performed and submit an original invoice and a completed certification form (a sample form can be found in the Resources Section, page 158) to the West Virginia Prosecuting Attorneys Institute (WVPAI) for payment from the Forensic Medical Exam Fund.
- The original invoice and completed certification form must be submitted by the licensed medical facility to the WVPAI for reimbursement for the forensic medical exam.

The \$350.00 reimbursement to the licensed medical facility covers all reasonable, customary and usual costs of the forensic medical examination. Any non-forensic procedures performed by the licensed medical facility, including prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases (STDs), will NOT be paid from the fund.

IMPORTANT: PLEASE NOTE

Per the 2007 legislation and per statutory changes effective July 1, 2007, the law states that a victim of sexual assault is NOT required to participate in the criminal justice system OR cooperate with law enforcement in order to have a forensic medical examination. (West Virginia Code §61-8B-16)

When a victim presents to the hospital and chooses to involve law enforcement, an investigating officer or local police agency should be contacted immediately following hospital protocol.

Ideally, the forensic medical examination should be conducted by a sexual assault nurse examiner (SANE). Payment will not be refused based on qualifications of the medical personnel performing the examination when the forensic medical examination is conducted by a licensed health care professional acting within the scope of practice at a licensed medical facility.

A licensed medical facility may not bill the victim of a reported sexual assault for costs associated with a forensic medical examination.

WEST VIRGINIA PROTOCOL

Prosecution Response

A sexual assault victim has been subjected to one of the most traumatic experiences possible. As a prosecutor carries out his constitutional duty of representing the state in a sexual assault case, an important consideration is the victim's need to be informed about the reasons motivating decisions that may appear to be adverse to the interests of the victim.

General Prosecution Protocol

- Notify the victim of all hearings and changes in schedules.
- Consider the needs of the victim when scheduling case-related activities (i.e., religious holidays, health requirements, family commitments and occupational requirements).
- Facilitate the victim's participation in all activities at which the victim has a right to be present.
- Establish communication methods to avoid unnecessary trips to the courthouse (i.e., electronic pagers, an on-call system for victims, or a voice mail system so victims may call in and receive current case status information).
- Object to continuances unless they benefit the victim.
- Establish and maintain direct liaison with victim/witnesses and rape crisis centers advocates.
- Recognize the impact that sexual assault has on child and adult victim and their families.

Initial Appearance, Arraignment and Bail Hearing

- Discuss conditions of release with the victim prior to bail hearing and allow the victim to express concerns about the suspected assailant.
- Request that any suspected offender's release on bail or release on their own recognizance (ROR) include a protection order for the victim.
- Inform the victim how to stay current on the detention status of the suspected offender.

Plea Negotiations

- Inform the victim of reasons to consider a negotiated plea.
- Describe optional courses of action other than a negotiated plea.
- Determine what courses of action the victim wants to take.
- Consider the needs of the victim in determining whether to accept a plea (i.e., restitution, protection, and emotional security).

Trial

- Provide separate areas for the victim and defense witnesses.
- Attempt to provide court accompaniment for the victim.
- Keep the victim informed about court schedules: dates, times and places.

Sentencing

- Comply with WV Code 61-11A- et. sequiem (Victim Act of 1984)
- Ensure an opportunity for the victim impact statement to be part of sentencing considerations.
- Include the victim's needs as part of the sentencing recommendations (i.e., restitution, protection, emotional security).

Post Sentencing

- Notify the victim about changes in offender status, if known.
- Notify the victim of scheduled parole hearings, if known.
- Provide priority prosecution for violations of release conditions.

Responsibilities of the WV Prosecuting Attorneys Institute

The WV Prosecuting Attorneys Institute was charged with the responsibility of administering the Forensic Medical Examination Fund and providing reimbursement to licensed medical facilities performing forensic medical examinations according to WV Code §61-8B-1 and WV Code §61-8B-15.

The Forensic Medical Examination Fund is restricted to the payment of all reasonable and customary costs of a forensic medical examination, which must be conducted within a reasonable time of the reported sexual assault.

No payment shall be made from this fund for non-forensic procedures or treatment. The legislation provides that following the forensic medical examination, the

medical facility shall certify that the forensic medical examination was performed and submit an original invoice and completed certification form to the WV Prosecuting Attorneys Institute requesting reimbursement from the fund for the forensic medical examination.

IMPORTANT: PLEASE NOTE

[Per 2007 legislation and per statutory changes effective July 1, 2007 the law states that a victim of sexual assault is NOT required to participate in the criminal justice system OR cooperate with law enforcement in order to have a forensic medical exam. (West Virginia Code §61-8B-16)]

The major objective of the Forensic Medical Examination Fund is to provide payment for forensic medical examinations in sexual assault cases. However, additional benefits include providing a more effective prosecution of persons reported to have committed a sexual assault, while protecting the rights and dignities of victims of sexual assault.

Payment For Costs of the Forensic Medical Examination

- a.) The West Virginia Prosecuting Attorneys Institute shall pay to a licensed medical facility from the Forensic Medical Examination Fund the cost of the forensic medical examination for a victim of sexual assault on the following conditions and in the following manner:
1. The payment shall cover all reasonable, customary and usual costs of the forensic medical examination;
 2. The costs of additional non-forensic procedures performed by the licensed medical facility, including, but not limited to, prophylactic treatment, treatment of injuries, testing for pregnancy and testing for sexually transmitted diseases, may not be paid from the fund;
 3. The forensic medical examination must have been conducted within a reasonable time of the reported sexual assault;
 4. The licensed medical facility must apply for payment of the costs of a forensic medical examination from the fund within a reasonable time of the examination;
 5. The licensed medical facility shall certify that the forensic medical examination was performed and submit a statement of charges to the West Virginia Prosecuting Attorneys Institute along with a completed certification form for payment from the fund.

- No licensed medical facility may collect the costs of a forensic medical examination from a victim of sexual assault or from the victim's insurance company.
 - A victim of sexual assault is not required to participate in the criminal justice system OR to cooperate with law enforcement in order to be provided a forensic medical examination.
- b.) No licensed medical facility may collect the costs of a forensic medical examination from the victim of a sexual assault if the reasonable, customary and usual costs of the forensic medical examination qualifies for payment from the Forensic Medical Examination Fund as set forth in WV Code §61-8B-16.

According to changes to the "Effect of Amendment of 1999" (a) (3), the West Virginia State Police Forensic Laboratory has informed us that ninety-six (96) hours is the "reasonable time" and outside limit for conducting the forensic medical examination and (a) (4), a reasonable time for submitting a statement of charges for costs of the forensic medical examination is "ninety (90) days".

RESOURCES IN WEST VIRGINIA

Rape Crisis Centers

CONTACT Rape Crisis Counseling Team
Huntington
304-399-1111 / 304-523-3447

Family Refuge Center
Lewisburg
304-645-6334

Family Counseling Connection—REACH Program
Charleston
304-340-3676

Rape and Domestic Violence Information Center
(RDVIC)
Morgantown
304-292-5100

Shenandoah Women's Center
Martinsburg
304-263-8292 / 304-725-7080 / 304-258-1078

Task Force on Domestic Violence, "Hope, Inc."
Fairmont
304-367-1100

Upper Ohio Valley Sexual Assault Help Center
Wheeling
304-234-1783 / 304-234-8519 / 1-800-884-7242

Women's Aid In Crisis
Elkins
1-800-339-1185 / 304-636-8433

Women's Resource Center
Beckley
304-255-2559 / TTY 1-888-825-7835

or

The National Sexual Assault Hotline
1-800-656-HOPE



West Virginia Foundation for
Rape Information and Services, Inc.

304-366-9500
FAX 304-366-9501
www.fris.org

West Virginia Resource Numbers

United States Attorney's Office (Southern District)	(304) 345-2200
United States Attorney's Office (Northern District)	(304) 234-0100
Victim Information & Notification Everyday	1-866-984-8463
WV Attorney General's Office	(304) 558-2021
WV Coalition Against Domestic Violence	(304) 965-3552
WV Crime Victims Compensation Fund	(304) 347-4850
WV Division of Corrections	(304) 558-2036
WV Foundation for Rape Information & Services, Inc.	(304) 366-9500
WV Human Rights Commission	(304) 558-2616
WV Hate Crimes Hotlines	(888) 676-5546
WV Prosecuting Attorneys Institute	(304) 558-3348
WV Regional Jail and Correctional Authority	(304) 558-2110
WV State Police	(304) 746-2100
Wv State Police Sex Offender Registry	(304) 746-2133
WV Women's Commission	(304) 558-0070

National Resource Numbers

Childhelp USA Hotline	(800) 4A-CHILD (800) 422-4453
The Family Violence Prevention Fund	(415) 252-8900
National Center on Elder Abuse	(202) 898-2586
National Clearinghouse for Alcohol & Drug Information	(800) 729-6686
National Clearinghouse on Child Abuse & Neglect	(800) 394-3366
National Coalition Against Domestic Violence	(303) 839-1852
National Domestic Violence Hotline	(800) 799-SAFE
National Sexual Violence Resource Center	(877) 739-3895
Rape, Abuse & Incest National Network (RAINN)	(800) 656-HOPE

National Victim Related Websites

American Bar Association	www.abanet.org/child/
American Professional Society on the Abuse of Children	www.apsac.org
Bureau of Justice Statistics	www.ojp.usdoj.gov/bjs/
Childhelp USA— Treatment and Prevention of Child Abuse	www.childhelpusa.org
Club Drugs	www.stopdrugs.org
CyberAngels	www.cyberangels.org
CyberTipline	www.cybertipline.com
Family Violence Prevention Fund	www.fvpf.org
GHB Information	www.usdoj.gov/dea/concern/ghb.html
National Center for Missing & Exploited Children	www.cybertipline.com www.missingkids.org/
National Center for Woman Victims of Crime	www.ncvc.org
National Center for Women & Policing	www.womenandpolicing.org
National Center on Elder Abuse	www.ojp.usdoj.gov/ovc/help/ea.html
National Children's Alliance	www.nca-online.org
National Coalition Against Domestic Violence	www.ncadv.org
National Criminal Justice Reference Service (NCJRS)	www.ncjrs.org
National Network to End Domestic Violence	www.nnedv.org
National Sexual Violence Resource Center	www.nsvrc.org
Office for Victims of Crime (OVC)	www.ojp.usdoj.gov/ovc
ONDCP—Office of National Drug Control Policy	www.whitehousedrugpolicy.gov
Project GHB	www.Projectghb.org
Rape, Abuse and Incest National Network (RAINN)	www.rainn.org
SafetyEd International	www.safetyed.org
Security on Campus, Inc.	www.campusafety.org/
Sexual Assault Training & Investigations (SATI)	www.mysati.com
U.S. Department of Education OPE Campus Security Statistics	www.ope.ed.gov/security/
U.S. Department of Justice Office on Violence Against Women	www.ovw.usdoj.gov
Working to Halt Online Abuse (WHOA)	www.haltabuse.org/

Sexual Assault Nurse Examiner (SANE) and Sexual Assault Response Team (SART) Resources

<i>American College of Emergency Physicians</i>	www.acep.org
<i>CDC Guidelines for Treatment Sexually Transmitted Diseases (2006)</i>	www.cdc.gov/std/treatment/#tg2006
<i>Emergency Nurses Association</i>	www.ena.org
<i>Implementing SANE Programs in Rural Communities (West Virginia Regional Mobile SANE Project)</i>	www.fris.org/sections/08Programs
<i>International Association of Forensic Nurses</i>	www.iafn.org
<i>National Protocol for Sexual Assault Medical Forensic Examinations</i>	www.ncjrs.gov/pdffiles1/ovw/206554.pdf
<i>SANE/SART Information</i>	www.sane-sart.com
<i>Sexual Assault Forensic Examination Technical Assistance Project (SAFE-TA)</i>	www.safeta.org

INFORMATION

Sexual Assault Nurse Examiner (SANE)
Sexual Assault Response Team (SART)

What Is a SANE?

A Sexual Assault Nurse Examiner (SANE) is a registered nurse who has advanced education and clinical preparation in the medical forensic examination of sexual assault victims. The SANE is trained:

- to provide comprehensive care to victims of sexual violence;
- to identify physical trauma;
- to document injuries;
- to collect evidence and maintain the chain of custody;
- to provide referrals for medical and psychological care and support;
- to be an expert witness.

What Are the Advantages of a SANE Program?

- A SANE program provides services for victims of sexual assault 24 hours a day, 7 days a week. This shortens waiting time and increases personalized attention and care for the victim.
- A SANE completes a thorough, yet sensitive, forensic medical exam in a safe and private environment. A 40 hour classroom training plus accumulated clinical hours in the complete assessment, evaluation and treatment of the adult sexual assault victim prepares the SANE to provide this special care. A 32 hour classroom training, plus accumulated clinical hours in the complete assessment, evaluation and treatment of the child sexual assault victim, is required for the Pediatric SANE to provide this special care.
- A SANE provides referral services for follow-up care after the exam. This helps the victim deal with healthcare concerns after the immediate crisis.
- A SANE's thorough evidence collection and comprehensive documentation increases the credibility of the prosecutor's case in seeking to convict the offender.

What Is a SART?

A Sexual Assault Response Team (SART) is a group of community professionals who work to coordinate an immediate, high quality, multidisciplinary, victim-centered response to sexual assault cases. The SART creates a mechanism to monitor the effectiveness of the response and to promptly address problems in service delivery. Two important goals of the SART are to limit further trauma to victims and to improve the quality of evidence collection and investigation.

Who Is on a SART?

SART members typically include representatives from the community, particularly the criminal justice system (law enforcement and the prosecutor), victim advocates from rape crisis center and medical personnel (SANEs).

Other members of the SART may include representatives from public health departments, victim-witness programs, state forensic labs, crime victim compensation offices, child/adult protective services, organizations serving victims from under-served populations and social and human services, mental health center, sex offender treatment programs, college/university representatives, churches, women's organizations, etc.

What Are the Roles of the Members of the Sexual Assault Response Team (SART)

Advocate —The advocate should be paged at the same time as the SANE or physician. The role of the advocate is to provide emotional support and information to the victim/survivor. This initial contact with the victim/survivor at the hospital increases the likelihood that the victim/survivor will contact the rape crisis center for other services, such as support during police and prosecutor interviews, court accompaniment and individual or group support/counseling

The West Virginia Foundation for Rape Information and Services (WV FRIS) has made a commitment to offer information and technical assistance to individuals and institutions interested in developing SART/SANE programs. For additional information contact FRIS by calling 304-366-9500 or online at www.fris.org.

services, mental health centers, sex offender treatment programs, college/university representatives, churches, women's organizations, etc.

Sexual Assault Nurse Examiner (SANE)—The SANE provides medical care and completion of the evidentiary exam. A SANE is a registered nurse who has been specially trained to provide comprehensive care to the sexual assault patient, who demonstrates competency in conducting a forensic medical examination, and has the ability to be an expert witness. If a hospital does not have a SANE program, emergency department physicians conduct the exam with nursing assistance. All physicians who will be collecting forensic evidence should receive training in the use of the sex crime kit and protocol for responding to victims of sexual assault.

Law Enforcement—Law enforcement responds to the crime scene, takes the initial report and in some cases, may transport the victim/survivor to the hospital. Law enforcement is not present during the examination. After the exam is completed, law enforcement takes possession of the sex crime kit. The evidence is transported to the WV State Police Forensic Laboratory in Charleston. Law enforcement may provide the victim with a safe ride home.

Other members of the SART may not be involved directly in responding to a victim at the hospital, but their participation at SART meetings may enhance the community response to the issue of sexual assault.

Why Is a SART Important to the Community?

- A SART can assess and improve the effectiveness of current coordinated interventions.
- A SART can identify agencies that should be involved in the multidisciplinary team providing a victim centered response.
- A SART can provide a timely victim-sensitive and coordinated response to a sexual assault victim. This can increase the likelihood that victims will seek follow-up assistance and long-term support to promote healing, whether or not a formal police report is filed.

Forensic Medical Examination Certification Form

The licensed medical facility must certify that the forensic medical exam was performed and submit an original invoice with the completed certification form to receive the \$350.00 reimbursement.

Forensic Medical Examination Certification Form		
Name of Victim (Where applicable— See note at bottom of page)	Date of Examination	Fee
		\$
Pediatric Exam _____ Adult Exam _____	Hospital Invoice #	

Please attach statement of itemized charges

West Virginia Code §61-8B-16(a) (5) requires that licensed medical facilities, when submitting a statement of charges to the Forensic Medical Evaluation Fund for payment, certify that the sexual assault examination was performed.

Certification (*please print*):

I, _____, on behalf of _____, (*licensed medical facility*) do hereby certify that the charges listed above were for the purpose of performing a forensic medical examination of an alleged sexual assault in accord with West Virginia Code section §61-8B-16(a) (5).

Signed: _____ Date: _____

REMIT PAYMENT TO (*Licensed Medical facility's name and billing address*):

Please attach an original hospital invoice to this form and forward to:

Attn: Forensic Medical Examination Fund
c/o
WV Prosecuting Attorneys Institute
The Cambridge Center, Suite 202
90 MacCorkle Ave, SW
South Charleston, WV 25303

Note: West Virginia Code §61-8B-16(c) provides: "Nothing in this section shall be construed to require an alleged victim of sexual assault to participate in the criminal justice system or to cooperate with law enforcement in order to be provided a forensic medical examination pursuant to the provisions of this section."

This means in cases where the victim chooses not to participate in the criminal process it would be contra to the West Virginia Code to require the victim's name on this certification form. In such cases financial tracking may be accomplished by invoice number alone.

Victim Information and Notification Everyday: VINE
VINE provides notification of critical information about incarcerated offenders. Victims can call 1-866-WV4-VINE to find custody status information on inmates in the WV Division of Corrections or to register to receive automatic phone notification when an offender's status changes. Victims can now register to receive notification by e-mail at www.vinelink.com.

Victims may submit a written request to be notified if an offender:

- Has escaped;
- Has died;
- Is paroled or the sentence discharged;
- Is released;
- Is placed on work release;
- Is released due to reconsideration;
- Is released under clemency;
- Is released for medical respite;
- Is released/paroled on detainer to another state.

WV Division of Corrections has someone available 24/7 to answer questions.

VINE does not provide a notification call when an offender is moved from one facility to another due to the safety and security of the officers.

Victims who have submitted a request form (in writing) for notification of an offender's status, will also be notified of the parole hearing.

Important: If there is a change in your address, you must notify the Victim Services Manager.

Written requests for notification must be sent to:

WV Division of Corrections
ATTN: Victim Services Manager
112 California Avenue
Building 4, Room 300
Charleston, WV 25305

Phone: 304 558-2036 Ext. 29
Fax: 304 558-5934
E-mail: sjaynes@mail.wvnet.edu

WV Parole Board
112 California Avenue
Building 4, Room 307
Charleston, WV 25305

Remember:

- If you or your family and friends are being harassed by an offender, offender's family or friends, notify the Victim Services Manager immediately.
- Always notify the WV Parole Board and the WV Division of Corrections Victim Services Manager when your address changes.
- Request notification of Parole Board Hearings.

West Virginia Crime Victims Compensation Fund

The West Virginia Legislature enacted legislation (WV Code §14-2A) Statute in 1981 creating the crime victims program within the West Virginia Court of Claims declaring that “a primary purpose of government is to provide for the safety of citizens and the inviolability of their property”. This act provides for compensation to innocent victims of crime who have suffered personal injury and who have incurred out-of-pocket losses as a result of criminally injurious conduct.

Crimes Resulting in Personal Injury

- Malicious Assault
- Assault and Battery
- Child Abuse/Molestation
- Domestic Violence
- Murder
- Other Violent Crimes
- Robbery
- Sexual Assault

- Driving under the Influence
- Reckless Driving
- Vehicle Homicide (Negligent Homicide)
- Kidnapping
- Hunting Accident
- Arson

Basic Eligibility Requirements for Applying to the Victims Compensation Fund

To be eligible for compensation, there must be a crime involving personal injury or death, with the following additional requirements:

a) Residency Requirements

- The crime must have occurred in West Virginia, or
- Be a West Virginia resident injured in another State without a compensation program, or
- Be a West Virginia resident injured outside the United States as a result of terrorism.

b) Basic Requirements

- The crime must be reported to law enforcement officials within 72 hours (unless just cause exists).
- The claimant must fully cooperate with law enforcement officials.
- The claim for compensation must be filed within two years of the date of the crime.
- The victim must suffer a personal injury.
- There must be an economic loss. (Economic Loss—Expenses incurred as a result of the crime such as funeral, burial and dependent loss expenses [when the crime results in death], work loss and replacement costs of prosthetic devices [i.e. glasses, dentures]).

Persons Eligible to File an Application

- An innocent victim suffering a personal injury as a result of a crime, can file an application to the Crime Victims Compensation Fund.
- Someone paying for the medical and/or funeral/burial expenses of a victim, or

- A legal guardian of a minor, or
- An executor or executrix of the estate of a deceased victim, or
- A spouse or dependent suffering non-economic loss due to the death of a victim.

Reimbursable Expenses

The Fund can reimburse the following expenses if they are incurred as a direct result of a crime as long as there are no other sources of reimbursement available:

- Medical/Dental
- Mental health counseling
- Lost wages/Income
- Funeral/Burial
- Lost support of eligible dependents
- Replacement service loss
- Mileage to medical treatment facility

Persons Not Eligible to Receive Compensation

- Persons who commit the crime
- Persons who do not cooperate with law enforcement officials or the claim investigator
- Persons who are injured while incarcerated

Types of Losses Not Covered

- Personal property (except medically necessary items such as eyeglasses, prosthetic devices, dentures, etc.)
- Work loss of others (only the victim's work loss is considered)

Limits on Awards

The total of all reimbursement to or on behalf of a victim cannot exceed the maximum allowable benefits as set out below:

If the Victim Suffers Injury

- Up to \$25,000
- Medical/Dental
- Mental health counseling
- Wage/Income loss (Victim only)
- Mileage to and from medical treatment facility
- Replacements services

If the Victim Suffers Death

- Up to \$50,000
- Medical
- Dependent Economic Loss
- Funeral/Burial expenses up to \$7,000

Reimbursement From Other Sources

By law, the Crime Victims Compensation Fund is the “payer of last resort”. As such, if any other sources of reimbursement are available for the victim's/claimant's crime-related losses, such sources must be used before the victim/claimant becomes eligible for reimbursement from the Fund.

Victims/claimants have the responsibility to inform the Fund of any reimbursement sources for their losses and are responsible for repayment of any amounts for which it was later determined they were not eligible. Other reimbursement sources that may be available include, but are not limited to:

- Medical/health, dental, or vision insurance
- Employee sick leave benefits
- Employee annual leave benefits
- Public program benefits (Medicaid, Medicare, etc.)
- Workers' compensation
- Unemployment benefits

- Life insurance over \$25,000 and auto insurance
- Court-ordered restitution
- Civil lawsuit recoveries

Filing an Application

A Crime Victims Compensation Fund application must be completed and submitted. Applications are available upon request from the fund or by calling 1-877-562-6878 (within W.Va. only) or (304) 347-4850. Applications may be obtain from local county prosecuting attorney offices or online. (A copy of the application form can be found on pages 166–168.)

Claimants may also seek assistance from an attorney. Reasonable fees will be paid by the fund at no cost to the claimant, regardless of the outcome of the claim. Attorneys are paid from the fund, not from awards.

Time Limitations for Filing an Application

The application for an adult victim (18 years or older at the time of crime) must be filed with the fund within two years of the crime.

The application for a minor victim (under 18 year of age at the time of the crime) must be filed with the fund before the minor's 20th birthday.

How the Application Is Reviewed

After receiving the application and related documentation, the claim is assigned to a claim investigator for review to determine eligibility. This involves verifying all of the information presented in the application. Witnesses to the crime, law enforcement officials, physicians, counselors, hospitals, and employers may be contacted for verification of the information presented.

Upon completion of the application review process, the claim investigator will file with the Court a Finding of Fact and Recommendation. A copy of the recommendation is sent to the claimant who may file a response within 30 days.

One of the three Court of Claims judges will review the Finding of Fact and Recommendation, all other documents in the file, and the claimant's response, if any. The judge will render a decision and a copy of the Order is sent to the claimant.

Right to Appeal a Decision

If the claimant disagrees with the judge's decision, the claimant is given 21 days to request a hearing. Another judge will preside over the appeal hearing, which is the final process.

How Awards Are Made

- The law requires that awards be made directly to the medical or funeral/burial provider.
- Awards are made to the claimant for reimbursement of approved expenses.
- Awards are made to the claimant for approved wage/income losses.

Victims Compensation Fund Funding

All funding comes from court costs. No tax dollars are used. Every person who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a non-moving traffic violation, is assessed additional court costs, which are transmitted to the state treasurer for deposit into the Crime Victims Compensation Fund.

- \$8.00 in Municipal Courts (excluding nonmoving violations)
- \$10.00 in Magistrate and Circuit Courts
- 20% of DUI fines
- \$50.00 in felony cases

Persons Eligible for Compensation From the Fund

If you answer YES to all of the following, you may be eligible for an award.

- Was a victim of crime in West Virginia.
- Suffered a personal injury.
- Reported the crime to law enforcement officials within 72 hours.
- Cooperated with police.
- Was an innocent victim.
- Can file a claim application within 2 years.

West Virginia Crime Victims Compensation Fund Is Administered
by the West Virginia Court of Claims.

For information contact: By mail: Crime Victims Compensation Fund
1900 Kanawha Blvd., E., Rm. W-334
Charleston, WV 25305-0610

In person: State Capitol Building,
West Wing, 3rd Floor, Room W-334

Telephone: 1-877-562-6878 (within W.Va. only)
(304) 347-4850 Fax: (304) 347-4915

Forms can be obtained on-line at:
<http://www.legis.state.wv.us/joint/victims/main.cfm>
or by e-mailing ctclaims@mail.wvnet.edu



Crime Victims Compensation Fund
 1900 Kanawha Blvd., E., Room W-334
 Charleston, WV 25305-0610

Voice: 304.347.4850 & 877.562.6878
 Fax: 304.347.4915
 Email: ctclaims@mail.wvnet.edu

OFFICE USE ONLY

Page 1

CV-

CLAIM NUMBER

Date Received

Record Number

APPLICATION *PLEASE PRINT CLEARLY*

VICTIM Information

VICTIM'S FIRST NAME _____ MI _____ VICTIM'S LAST NAME _____

MAILING ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

(AREA CODE) HOME PHONE NUMBER _____ (AREA CODE) WORK NUMBER _____

SOCIAL SECURITY NUMBER _____ DATE OF BIRTH (mm/dd/yyyy) _____

MALE FEMALE SINGLE MARRIED PARANED DIVORCED

CLAIMANT Information (only if not the victim)

CLAIMANT'S FIRST NAME _____ MI _____ CLAIMANT'S LAST NAME _____

MAILING ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

(AREA CODE) HOME PHONE NUMBER _____ (AREA CODE) WORK NUMBER _____

SOCIAL SECURITY NUMBER _____ DATE OF BIRTH (mm/dd/yyyy) _____

RELATIONSHIP TO VICTIM _____

CRIME Information

DATE OF INJURY _____ TIME OF INJURY _____ LOCATION WHERE INJURY OCCURRED _____ COUNTY WHERE INJURY OCCURRED _____

POLICE AGENCY CRIME WAS REPORTED TO _____ ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____

DATE REPORTED (mm/dd/yyyy) _____ TIME REPORTED _____ IF NOT REPORTED WITHIN 72 HOURS, EXPLAIN WHY NOT. _____ WHO REPORTED THE INCIDENT TO POLICE? _____

SUSPECT'S NAME ADULT JUVENILE _____ 2ND SUSPECT'S NAME ADULT JUVENILE _____ 3RD SUSPECT'S NAME ADULT JUVENILE _____

DID VICTIM KNOW THE SUSPECT(S)? YES NO IF YES, IN WHAT WAY? _____ WAS VICTIM LIVING IN SAME YES NO HOUSEHOLD WITH SUSPECT(S)? YES NO

Please check the box to the right that best describes the type of crime that occurred:

- | | | |
|--|---|--|
| <input type="checkbox"/> ADULT SEXUAL ASSAULT | <input type="checkbox"/> CHLD ABUSE OR SEXUAL ASSAULT | <input type="checkbox"/> ALL OTHER ASSAULTS |
| <input type="checkbox"/> HOMICIDE | <input type="checkbox"/> DWI/DUI | <input type="checkbox"/> OTHER VEHICLE CRIMES (NO DWI/DUI) |
| <input type="checkbox"/> STALKING | <input type="checkbox"/> ROBBERY | <input type="checkbox"/> KIDNAPPING |
| <input type="checkbox"/> ARSON | <input type="checkbox"/> TERRORISM | |
| <input type="checkbox"/> OTHER (SPECIFY) _____ | | |

HAS THE SUSPECT(S) BEEN YES NO CHARGED? _____ PLEASE EXPLAIN _____

_____ COURT NAME _____ CHARGE(S) _____

NARRATIVE - In your own words, briefly describe what happened.

Check if you want a copy of this completed application mailed to you.

VICTIM'S INJURY Information

BRIEFLY DESCRIBE VICTIM'S INJURIES _____

WHERE WAS VICTIM TAKEN FOR EMERGENCY TREATMENT? ADDRESS CITY STATE ZIP CODE

 WAS VICTIM HOSPITALIZED? YES FROM _____ TO _____
 NO (mm/dd/yyyy) (mm/dd/yyyy)

HOSPITAL NAME (IF DIFFERENT FROM ABOVE) ADDRESS CITY STATE ZIP CODE

F
**MEDICAL EXPENSES - SUBMIT A COPY OF ALL OF THE VICTIM'S ACTUAL MEDICAL BILLS.
 INSURANCE STATEMENTS ARE NOT ACCEPTABLE.**
VICTIM'S DEATH Information

DATE OF DEATH (mm/dd/yyyy) FUNERAL HOME ADDRESS CITY STATE ZIP CODE

EXECUTOR OR ADMINISTRATOR OF VICTIM'S ESTATE ADDRESS CITY STATE ZIP CODE

COPIES OF THE FOLLOWING DOCUMENTS SHOULD BE SUBMITTED WITH THE APPLICATION:

- DEATH CERTIFICATE - BIRTH CERTIFICATE OF VICTIM'S MINOR CHILDREN - SOCIAL SECURITY BENEFITS BEING PAID - FUNERAL & BURIAL EXPENSES - PROOF OF GUARDIANSHIP

INSURANCE AND REIMBURSEMENT Sources

LIST ANY SOURCES OF INSURANCE OR OTHER REIMBURSEMENT

By law, you must first use all existing sources of financial assistance or reimbursement before receiving payments from the Crime Victims Compensation Fund.

 MEDICAID MEDICARE HEALTH WORKERS' COMP SOCIAL SECURITY
If AUTO or LIFE specify below

INSURANCE COMPANY NAME ADDRESS CITY STATE ZIP CODE

VICTIM'S EARNING LossesWAS VICTIM EMPLOYED ON DATE OF INJURY? YES NODID VICTIM LOSE EARNINGS NOT REIMBURSED? YES NO LIST AMOUNT OF EARNINGS LOSS IN DOLLARS \$ _____DID VICTIM LOSE WORK DUE TO INJURY? YES NO LIST DAYS VICTIM WAS UNABLE TO WORK DUE TO INJURY _____

EMPLOYER'S FULL NAME EMPLOYER'S FULL MAILING ADDRESS EMPLOYER'S CITY STATE ZIP CODE

(AREA CODE) EMPLOYER'S TELEPHONE NUMBER WORK-RELATED REMARKS

MILEAGE Expense Requested YES NO (Specify _____)**DEPENDENT'S Information***A DEPENDENT IS ONE WHO HAS RECEIVED OVER ONE HALF OF HIS/HER SUPPORT FROM THE VICTIM.*

DEPENDENT'S NAME DEPENDENT'S FULL ADDRESS RELATIONSHIP TO VICTIM DATE OF BIRTH (mm/dd/yyyy)

 1. _____
 2. _____
 3. _____
ATTORNEY Information (if applicable)

You are not required to have an attorney to file your application. However, if you do, the attorney fees are paid by the Crime Victims Fund in addition to any award.

 ATTORNEY ASSISTING ONLY WITH THIS APPLICATION
 (ALL COMMUNICATIONS WILL BE WITH CLAIMANT/VICTIM)

 ATTORNEY IS ATTORNEY OF RECORD
 (ALL COMMUNICATIONS WILL BE WITH ATTORNEY)

ATTORNEY'S NAME ADDRESS CITY STATE ZIP CODE

ATTORNEY'S SIGNATURE (AREA CODE) ATTORNEY'S TELEPHONE NUMBER

CLAIMANT'S RELEASE

I, the claimant, hereby state UNDER THE PENALTIES OF PERJURY AND FALSIFICATION that this application of three pages has been prepared or read by me and that the information given herein, including attached bills, records, or certificates, is true and complete.

Important:

This affidavit is part of your application and must be completed and signed in the presence of a notary.

Further, I hereby authorize any person (including any physician, health care or health services provider, organization, law enforcement or governmental agency, including the Social Security Administration), to release to the West Virginia Court of Claims upon its request, a copy of any report, document, record, criminal record or other information (including copies of my West Virginia state income tax returns and related records for the years requested), in any way relating to my claim for an award of compensation on behalf of

_____, a victim of criminally injurious conduct.

PRINT VICTIM'S NAME

I also authorize release of medical records or other information regarding my treatment, hospitalization, and/or outpatient care including behavioral health, drug/alcohol, Acquired Immunodeficiency Syndrome (AIDS), tests for infection with Human Immunodeficiency Virus (HIV), blood alcohol serum tests, sexual assault/sexual abuse examinations, and those test results.

This authorization or a photostatic copy, which will be considered as valid as the original, shall be valid, without further consent by me, until final disposition of this claim.

THIS FORM MUST BE SIGNED BEFORE A NOTARY

CLAIMANT'S SIGNATURE (SIGN ONLY BEFORE A NOTARY)

CLAIMANT'S PRINTED NAME

DATE



NOTARY SEAL

As a duly appointed Notary Public, I hereby certify that the above listed person (claimant) has personally appeared before me and I have witnessed the signature that is affixed hereon.

NOTARY PUBLIC SIGNATURE

MY COMMISSION EXPIRES:

