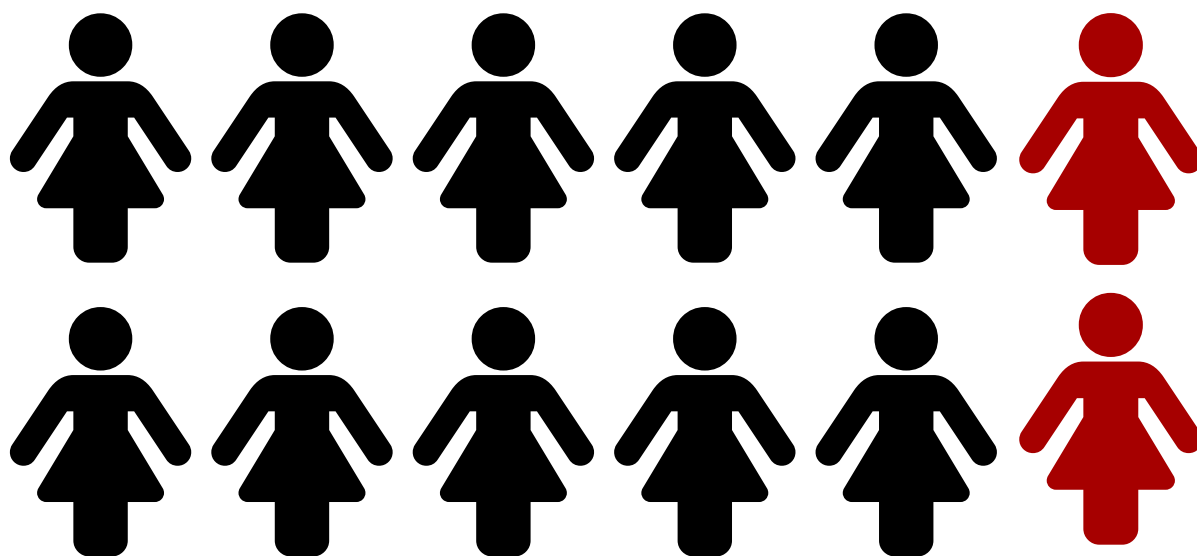


# **know** your rights



**A SIMPLIFIED GUIDE TO YOUR RIGHTS  
AGAINST SEXUAL VIOLENCE**



**WOMEN'S LEGAL CENTRE**

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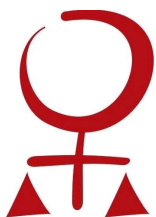
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## **The Women's Legal Centre**

About the Women's Legal Centre: The Women's Legal Centre is a non-profit, independently funded law centre, started by a group of women lawyers. It is an independent law centre that seeks to achieve equality for women in South Africa.

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# PART ONE

## HOW TO USE THIS BOOKLET

### What is this booklet for?

This booklet is part of a series of booklets designed by the Women's Legal Centre to help women and girls to understand the laws which can help them to protect their rights.

This booklet focuses on the laws relating to sexual violence. It explains the different types of sexual violence and the legal rights that women have if they have experienced sexual violence. It also explains the legal processes that are to be followed if a woman has experienced sexual violence so that she can exercise her rights. Please note that this booklet provides an overview of women's rights in relation to sexual violence. It contains a summary of most, but not all, rights regarding sexual violence.

While men, women and children can be victims of sexual violence, this booklet is aimed at educating adult women about their rights. As a result, this booklet does not set out many of the rights relevant to children. According to the law, a child is any person under the age of 18 years.

### What can I learn from this booklet?

You can use this booklet to:



Learn about your legal rights against sexual violence.



Understand the legal processes that you need to follow to protect your rights if you have experienced sexual violence.



Help others learn about their rights if they have experienced sexual violence.

### Why is it important to know my rights?

If you know your rights, then you can:



Know when the way others treat you is against the law.



Know how the law can help you if your rights are violated.



Know where to enforce your rights and get legal help.



Create community awareness and educate your family, friends and community members about their rights.

### Use these pictures as your guides through this book:



Definition: You will see this picture near legal terms and words that may be difficult to understand.



Comment: You will see this picture next to information that is important or may seem hard to understand.

# PART TWO



## INTRODUCTION

### What is sexual violence?






Sexual violence is a general term used to describe any sexual act that is committed against someone, without that person's consent, through the use of violence or the threat of violence.

You consent to a sexual act when you willingly and without force engage in a sexual act with another person.

You can indicate that you do not consent to a sexual act by:

-  Verbally indicating that you do not want to engage in the sexual act, for example, by saying "no".
-  Showing through your body language or in any other way that you do not want to engage in the sexual act, for example, by pushing the person away.

You have not consented to a sexual act if:

-  You agreed to a sexual act with somebody because you were afraid of what they would do if you did not agree to the sexual act. For example, the person threatens to hurt or harm your children or kill you if you do not engage in the sexual act.
-  You agreed to a sexual act but you did not know that you were agreeing to a sexual act. For example, you agree to a doctor touching your breasts and vagina not knowing that it is not necessary for him to touch your breasts and vagina in order to determine whether you have a heart problem.
-  Somebody commits a sexual act with you while you were under the influence of drugs or alcohol.
-  Somebody commits a sexual act with you while you are unconscious or sleeping.
-  Somebody commits a sexual act with you and you are mentally disabled.



What is mental disability? A mental disability is a mental condition that affects a person's mental development and prevents the person from understanding the consequences of certain actions that may be committed against them.



No one, not even your husband or your partner or a family member, has the right to harm you by committing an act of sexual violence against you.

## What laws protect my rights if I have experienced sexual violence?

The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, commonly referred to as the Sexual Offences Act, contains the main laws that protect the legal rights of survivors of sexual violence.

The Sexual Offences Act provides details of various sexual acts that qualify as sexual offences. A sexual offence is a sexual act that is against the law.

## What qualifies as a sexual offence?

The Sexual Offences Act sets out which sexual acts can be sexual offences. The most common sexual offences that women experience are rape and sexual assault. Both of these sexual offences are explained below.

Sexual Offence	Description according to Sexual Offences Act	Example
Rape	Rape includes the forced penetration of the genital organs, of one person into the genital organs, anus or mouth of another person. It also includes the forced penetration of any other part of the body of one person, or any object, into the genital organs or anus of another person.	Someone forcefully penetrates your vagina or anus with his penis (or with any other object) without your consent.
Sexual Assault	Sexual assault includes any act which causes contact between the mouth, genital organs or anus of one person (or the breasts of a woman) and any part of the body of another person. A sexual assault can take place even if someone has not engaged in any of these acts but threatens to do so.	Someone touches your breasts or kisses you without your consent.

## What should I do if I experience a sexual offence?



Do not take a shower or a bath. You may have hair, semen or blood on your body from the person who committed the act of sexual violence against you. This can help to prove the identity of your attacker. If you have a shower or a bath, you may end up washing away this physical evidence.



Do not wash the clothes that you were wearing when you experienced the sexual violence. Your clothes may also have the hair, semen or blood of the attacker on them. Wrap the clothes in clean newspaper or in a paper bag and take them with you when you seek medical attention. Do not put the clothes in a plastic bag as this can destroy physical evidence.



Get medical attention. The sooner a doctor examines you the more chance there is of finding physical evidence from the person who committed the act of sexual violence against you.



Tell someone that you trust about what happened to you or write down what you experienced. This will help you to remember what happened when you report the sexual offence.

# PART THREE

## REPORTING OF A SEXUAL OFFENCE

### When should I report a sexual offence?

You can report a sexual offence whenever you are ready to do so but it is best to report the sexual offence as soon as possible. If you do not report the sexual offence soon after it happens then it is possible that physical evidence that will help to prove what happened to you may be lost and it may be difficult to find any witnesses who saw what happened to you or may be able to help to identify the attacker.

If you have been exposed to bodily fluids (like semen or blood) of the person who committed the act of sexual violence against you, then the sooner you report the sexual offence, the sooner you can get access to antiretroviral treatment that can help to prevent you from contracting HIV.

### Where can I report a sexual offence?

You can report a sexual offence to the police. You can also report the sexual offence to a health care professional like a nurse or doctor. If you report the sexual offence to a health care professional, you will be informed of your right to report the sexual offence to the police.

You have the right to decide whether you want to report the sexual offence to the police. Remember, an investigation regarding the identity of the person who committed the act of sexual violence against you can only be done if you report the sexual offence to the police. If you do not report the sexual offence to the police, the matter will not go to court.

You can report a sexual offence to the police at any police station even if you do not live in the same area as the police station and even if the sexual offence was committed in a different area from where the police station you are reporting it to is located.

### What can I expect from the police when I report a sexual offence?

When you arrive at the police station, you must tell the police officer at the front desk that you want to report a sexual offence. The police officer should treat you with respect and empathy and assist you in a professional manner. The police officer must do the following:



Assist you confidentially and in private, away from other members of the public.



Check whether you need immediate medical assistance and if so, arrange such assistance.



Check whether you would like to have anyone with you to offer you support while you are reporting the sexual offence.



Check whether you are capable of laying a charge. In other words, you must be in the physical, psychological or emotional state to lay a charge regarding the sexual offence.

When you report the sexual violence, the police officer will ask you to complete a written statement with the following information:



Your personal details.



The time and date when the incident of sexual violence took place.



The place where the incident of sexual violence occurred.



A description of the sexual violence that you experienced.



Any details regarding the identity of the person who committed the act of sexual violence against you. Try to provide as much detail as possible regarding what the person looked like and what clothes he was wearing in order to help the police to identify the person.



Details of any witnesses who may have seen what happened to you or may help to identify the person who committed the act of sexual violence against you.



The personal details of the first person that you told about the sexual violence that you experienced.

If you do not feel that you are ready to make a full statement when you report the sexual offence, you can do so at a later stage.



You must ensure that all the information in the statement is true and correct because if the case goes to court, this statement will be used as evidence of the sexual violence that you experienced.

Once you have reported the sexual offence, the police officer must do the following:



Open a docket and inform you of the case number for your case. A docket is a police file which contains all of the evidence that the police have in a criminal case.



Provide you with the contact details for the investigating officer. The investigating officer is the police officer who will be in charge of the investigation into the sexual offence.



Explain to you the police investigation process.



Make sure that you write down the case number and the name of the investigating officer. You will need this information if you want to check on the progress of the police investigation after you have reported the sexual offence.





Inform you about your right to get access to antiretroviral treatment that can help to prevent you from contracting HIV if you have been exposed to the virus.



Provide you with a list of local organisations that can provide counseling and support.



Refer you for a medical examination as soon as possible.

## **What should I do if I am not happy with the service I receive from the police?**

If you are not happy with the service that you received from the police, you can complain to the Station Commander of the police station where you received the bad service.

You can also complain to the Independent Police Investigative Directorate which has the power to investigate misconduct claims against the police. Contact details for the Independent Police Investigative Directorate appear at the end of this booklet.

If you go to a police station and the police do not allow you to report the sexual offence, tell them that you have the right to report and ask to speak to the Station Commander. If you still don't get assisted after doing this then go to another police station to report the sexual offence. You can make a complaint about the police station later on.

# PART FOUR

## THE MEDICAL EXAMINATION

### **Do I need to go for a medical examination if I have already received medical attention?**

Yes, you must go for a medical examination even if you received medical attention after the act of sexual violence. The investigating officer will arrange for you to go for the medical examination as soon as possible after you have reported the sexual offence.

The medical examination is very important as the doctor will determine the extent of your physical injuries and assess your mental and emotional health. The doctor will also examine your body to see if there are any traces of physical evidence of your attacker on your body (for example, blood, semen or hair). This physical evidence can help the police to identify the person who committed the act of sexual violence against you. The results of the medical examination will also be used as evidence of the sexual violence that you experienced if the matter goes to court.

### **What can I expect when I go for the medical examination?**

The doctor will examine your body to find any physical wounds and bruises. The doctor will also examine any parts of your body where there was penetration (for example, your vagina or your anus) and take samples from these areas. These samples will help the doctor to find any traces of physical evidence of your attacker which may assist the police to identify him.

All the information regarding the injuries that you sustained during the incident of sexual violence will be recorded in a medical form by the doctor. This form will be part of the evidence in court proceedings if the matter goes to court.



You will not be charged any fee for the medical examination and you are free to ask the doctor for any medical advice about the effect of the act of sexual violence on any aspect of your health.

# PART FIVE

## EXPOSURE TO HIV

You can be exposed to the HIV virus through an act of sexual violence by, for example, coming into contact with the blood or semen of the person who committed the act of sexual violence against you.

If you have been exposed to the HIV virus as a result of a sexual offence, you have the right to receive a type of antiretroviral medical treatment called PEP. You also have the right to apply to a court to order that your attacker be tested for HIV.



What is PEP? PEP stands for “Post Exposure Prophylaxis”. PEP is an antiretroviral medical treatment that can help to prevent you from contracting HIV after you have been exposed to the virus.

You will only be entitled to receive PEP and to apply for the HIV testing of your attacker if:

- you report a sexual offence to the police; or
- you report a sexual offence to a hospital or clinic which offers PEP;
- within 72 hours after the sexual offence took place and an HIV test shows that you are HIV negative.

This means that in order to receive PEP and to be able to apply for the HIV testing of the person who committed the act of sexual violence against you, you must report the sexual offence within 72 hours, that is, within 3 days of the sexual offence and test results must show that you are HIV negative.



If you have reported the sexual offence to the police, the police will advise you of the hospitals or clinics closest to you which offer PEP. You can also contact the Department of Health in order to find out which of the hospitals or clinics closest to you offers PEP. A contact number for the Department of Health appears at the end of this booklet.

If you have been exposed to HIV, it can take up to a few weeks for your body to show through HIV tests that you have contracted HIV. It is therefore important for you to practice safe sex until a doctor advises you that you are no longer at risk of contracting HIV.

### What are my rights in respect of receiving the PEP antiretroviral treatment?

In order for the PEP antiretroviral treatment to be effective to prevent you from contracting HIV, it must be taken within 72 hours of exposure to the HIV virus. If you report the incident of sexual violence within 72 hours, you have the right to receive PEP free of charge at one of the hospitals or clinics which offers PEP. You will not receive the PEP antiretroviral treatment if you do not report the sexual offence within the 3 day period.

In order to receive PEP, you will have to agree to have an HIV test and only if the test result is negative, will you be entitled to receive PEP. The results of HIV tests are kept confidential so only you and the doctor who is assisting you will know your HIV status.

If you do not want to take the HIV test immediately, you will receive a 3-day PEP starter pack. In order to receive the full course of the PEP antiretroviral treatment, you will have to take the HIV test and only if the test result is negative, will you be able to receive the full course of the PEP treatment.

If you take the HIV test and your test result shows that you are HIV positive, you will be assisted with receiving long term treatment for HIV and AIDS. You will not receive the PEP antiretroviral treatment as the treatment only helps to prevent HIV if you have been recently exposed to the virus.



You will be entitled to free medical advice regarding the use of PEP and the sexually transmitted infections that you may risk contracting as a result of the sexual violence that you experienced.



If your test results show that you are HIV negative, you should take another HIV test within a few weeks of your first test in order to be sure that you have not contracted the virus because it can take up to a few weeks for your body to indicate through HIV tests that you have contracted HIV.

## What are my rights to apply for HIV testing of the offender?

You are only entitled to apply for HIV testing of the offender if you have reported the sexual offence within 3 days and if an HIV test taken after the sexual offence shows that you are HIV negative.

If you are entitled to apply for HIV testing of the offender, you must make the application within 90 days after the sexual offence was committed. You will have to fill out an application form given to you by the investigating officer. You can ask the investigating officer to assist you with completing the application. The application form requires the following information:



A statement that the sexual offence was committed against you by the offender.



Confirmation that you reported the sexual offence.



A statement that it has been less than 90 days since the sexual offence took place.

Once you have completed the application form, you must hand it to the investigating officer who will then submit the application to the court.

The court will consider your application and if your application is successful, the court will order that the offender be tested for HIV and that the test results should be disclosed to you.

Knowing the offender's HIV test results can empower you to make informed decisions regarding your health and lifestyle. The test results may also be used as evidence during court proceedings if the matter goes to court.



The offender's HIV test results are private and confidential information so you should not publically disclose the results.

# PART SIX

## INVESTIGATION

The investigating officer will investigate your case and must keep you informed of any developments in the investigation. If the investigating officer finds a person who is suspected of committing the sexual offence against you, the person will be arrested and the police may require you to participate in an identity parade. At the identity parade, a number of men will be lined up and you will have to point out your attacker if he is in the identity parade.

Once the police have identified the person that they think committed the sexual offence against you, the police docket will be sent to the National Prosecuting Authority (NPA). The NPA will decide whether or not the person accused of committing the sexual offence against you will be prosecuted for the crime of committing a sexual offence.



To “prosecute” a case means to take the case to court and try to have the accused convicted of the sexual offence.

The NPA may decide not to prosecute the accused if the prosecutor is of the view that based on the evidence, it does not appear that an act of sexual offence was committed and that more evidence cannot be obtained.

The prosecutor will not prosecute the case if it has prescribed, that is, if the time period for instituting court proceedings has expired. A charge of rape never prescribes and court proceedings can be instituted against someone accused of rape at any time. A charge of sexual assault can be laid up till 20 years after the date when the sexual assault took place.

# PART SEVEN

## COURT PROCEDURES

### Decision to prosecute

If the NPA decides to prosecute the case, the case will be taken to court for a trial and the court will decide whether or not the accused should be convicted of a sexual offence. The prosecutor will have consultations with you before the trial and explain the court proceedings to you and your role during the court proceedings. As criminal proceedings are between the State and the accused, your role in the court proceedings is as a witness for the State. In your role as a witness, you will be required to testify in court about the sexual violence that was committed against you.

### Bail application

The accused has the right to apply for bail before the trial. If the accused is granted bail, he will have to pay the amount of money specified by the Judge and he will be released from police custody until the court makes a decision regarding whether he is guilty of a sexual offence.

The prosecutor can argue against the granting of bail and show that it will not be in the interests of justice to grant bail. Alternatively, the prosecutor can argue that bail can be granted, but only under certain conditions. For example, the prosecutor could argue that bail should only be granted if the accused agrees not to interfere with witnesses.

If the accused is granted bail on certain conditions and you become aware that he has done something that goes against those conditions, you should report this information to the investigating officer as soon as possible. If the accused is found guilty of failing to comply with bail conditions, he can be fined or imprisoned.

### Plea

At the beginning of the court proceedings, the Judge will ask the accused how he pleads. This is the way in which the accused is asked to indicate whether he thinks that he is guilty of the sexual offence or whether he thinks that he is not guilty.

If the accused pleads guilty, and the Judge is of the view that he has made this plea voluntarily and with a full understanding of the sexual offence, then the court proceedings will move to the sentencing stage and the Judge will decide on a punishment.

If the accused pleads not guilty, then there will be a full hearing in court where all the evidence will be presented. This is referred to as the trial.

## Trial

At the trial, the prosecutor will start by showing the court all the evidence that the accused was the person who committed the sexual offence against you. You will be called as a witness and you will have to explain to the court what happened to you and the effect that the sexual violence has had on you. As a witness, you will be asked questions by the prosecutor and then by the accused or his legal representative. This experience can be scary but you must not let your fear stop you from telling the court what happened to you. After the prosecutor presents the State's case, the accused or his legal representative will lead evidence and call witnesses in favour of the accused.

The Judge will then decide whether the accused is guilty of committing the sexual offence "beyond reasonable doubt". This means that it is not reasonably possible that the accused's version that he is innocent is true.

## Sentencing

If the court decides that the accused is guilty of committing a sexual offence, the court will punish him. Punishment can include imprisonment and the payment of a fine. This punishment is referred to as a sentence. The sentence will depend on the nature and seriousness of the sexual offence, the personal circumstances of the offender and the interests of society. The prosecutor will advise the court of circumstances which may influence the court to give the offender a harsher sentence, for example, the fact that the offender has been found guilty of committing a sexual offence previously or because the extent of the injuries that he inflicted on you. You have the right to bring to the prosecutor's attention any circumstances that you feel may be used to give the offender a harsher sentence.

There are laws which provide for minimum sentences for certain sexual offences. You can ask the prosecutor for details about minimum sentences. Where there is a minimum sentence for a sexual offence, there has to be a good reason for the Judge to give the offender a sentence that is not as harsh as the minimum sentence.



# PART EIGHT

## CIVIL PROCEDURE

You can also sue an offender for damages in terms of civil law. In a civil matter, you will be suing the offender unlike in a criminal matter where the State sues the offender. You can sue an offender for hospital and medical expenses, loss of income or earnings, and for the pain and suffering that you experienced as a result of the sexual offence.



What are “damages”? “Damages” is a legal term for compensation of monetary loss and for pain and suffering.

You should obtain legal advice before deciding to proceed with a damages claim.

# USEFUL CONTACT NUMBERS

Women's Legal Centre Cape Town Office	021 424 5660
Women's Legal Centre Johannesburg Office	011 339 1099
Independent Police Investigative Directorate	012 399 0000
South African Police Services Flying Squad	10111
Department of Health	012 395 8000
Stop Gender Violence Helpline	0800 150 150
Thuthuzela Care Centre	0800 150 150
Rape Crisis	021 447 9762
Child Line	0800 055 555
Lifeline	082 231 0805
South African Depression and Anxiety Group	011 234 4837
Family and Marriages Association of South Africa	011 975 7106/7

