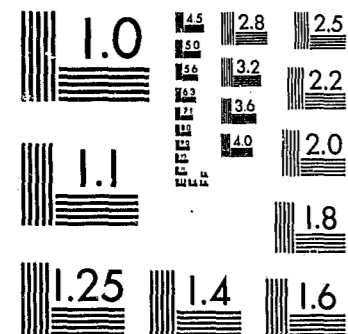


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RAPE CRISIS

The Victim's Rights

How and Where to Get Help in Santa Clara County

81497

Prepared by Richard Alexander as a Special Project of the Santa Clara County Bar Association and the Santa Clara County Criminal Justice Advisory Board

U.S. Department of Justice
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RAPE CRISIS: THE VICTIM'S RIGHTS

HOW AND WHERE TO GET HELP IN SANTA CLARA COUNTY

A Special Project of the
Santa Clara County Bar Association
and the
Santa Clara County Criminal Justice Advisory Board

Prepared by Richard Alexander, Attorney-at-Law
Chair, Special Committee on Rape Education
Santa Clara County Bar Association
Chair, Santa Clara County Criminal
Justice Advisory Board

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INTRODUCTION

Rape is a crime of violence carried out through sexual means. One out of ten women can expect to be assaulted during her lifetime. Any woman can be raped -- regardless of race, age or occupation -- anywhere, anytime. Although men are sexually assaulted too, by other men, the primary targets are women.

The Santa Clara County Bar Association prepared this booklet as a public service to women in Santa Clara County. The booklet's focus is not on rape prevention, but on the victim's personal experience, and on her involvement with agencies such as police, hospitals, district attorneys' offices, courts and mental health facilities.

Why is this important?

Because rape is traumatic and knowledge of the victim's needs, her rights, where to go for help and what she can expect to feel will help her survive the trauma.

The chapters of the book represent the steps in the legal/medical process which follow a rape.

Chapter I describes the law, some of the myths surrounding rape, and precautionary measures.

Chapter II describes the emotional aftermath of rape for both women and men, and discusses mental health services.

Chapter III describes police procedures.

Chapter IV discusses emergency room procedures and medical after care.

Chapter V describes the district attorney's role and municipal court procedures.

Chapter VI describes superior court procedures.

Chapter VII discusses compensation for the rape victim.

Chapter VIII is a referrals section, listing medical facilities, mental health counseling, police departments, temporary emergency housing, legal information, and support networks in Santa Clara County, as well as out of county services.

Chapter IX is a bibliography of booklets and articles dealing with rape.

Every effort has been made to include as wide a range of services as possible. However, no list can be complete. There may be other services available in your community.

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CHAPTER I

RAPE

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CHAPTER I

The Law

Before deciding whether or not to press charges, the rape victim should be familiar with the applicable law.

The California Penal Code section 261 defines the crime of rape as an act of sexual intercourse, accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

1. Where a person is incapable, through lunacy or other unsoundness of mind, whether temporary or permanent, of giving legal consent.
2. Where it is accomplished against a person's will by means of force or fear of immediate and unlawful bodily injury on the person or another.
3. Where a person is prevented from resisting by any intoxicating, narcotic or anaesthetic substance, administered by or with the privity of the accused.
4. Where a person is at the time unconscious of the nature of the act, and this is known to the accused.
5. Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce such belief.

Section 261.5: Commonly known as statutory rape, this is any sexual intercourse with a female "not the wife of the perpetrator" where the female is under 18.

Section 262: "Rape of a person who is the spouse of a perpetrator is an act of sexual intercourse" accomplished against the will of the spouse by means of force or fear of immediate and unlawful bodily injury on the spouse or another.

There is no arrest or prosecution under this section unless the violation is reported to a peace officer or to the county district attorney within 30 days of the violation.

Section 263: "The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime."

Section 264: The punishment for rape as defined in section 261 is three, six or eight years in the state prison. As defined in section 262, rape is punishable by imprisonment in the county jail for not more than one year, or in state prison for three, six or eight years. If the defendant committed rape and also inflicted great bodily injury on the victim, the punishment is 15 years to life imprisonment in the state prison.

Section 1203.065: This major piece of legislation passed in 1979, makes certain sexual offenders ineligible for probation: ". . . probation shall not be granted to, . . . any person convicted of violation of subdivision (2) (3) of section 261, or section 264.1, . . . or committing sodomy or oral copulation in violation of section 286 or 288a by force, violence, duress, menace or threat of great bodily harm

If convicted, the sexual offender would not remain in the community, but would instead be sent to state prison or to an appropriate state level facility.

There are several limitations inherent in the rape laws. First, the State of California must prove "lack of consent," which is difficult if the victim has had previous sexual relations with the suspect. Second, rape historically has been viewed as requiring "sexual intercourse" or "penetration." Because the law defines rape in terms of sexual intercourse, it tends to view rape as a purely sexual crime, rather than the violently aggressive physical crime that it is. Third, according to court decisions, "great bodily injury" means substantial or significant physical injury in addition to that already present in every rape case. Although courts agree that sexually abusive conduct constitutes a serious crime and that victims experience substantial psychological and emotional distress, "great bodily injury" does not include the victim's emotional trauma. (People v. Caudillo (1978) 146 Cal.Rptr. 859, 580 P.2d 274, 21 C. 3d 562.)

People often refer erroneously to other sex crimes such as sodomy, or oral copulation as rape. These are separate crimes and are covered by separate sections of the Penal Code. Even if one is a victim of a sex crime other than rape, the facts and services in the book are relevant.

Myths

There are many myths about the crime of rape, which affect the way the victim views herself and is treated by society. It is, perhaps, the only crime of violence for which the victim feels responsibility and guilt.

One lingering myth, is that rape is a sexual crime, which the victim asked for and secretly enjoyed. This is nonsense! No matter what circumstances led up to the attack and subsequent rape, no one ever "asks" to be raped, or to suffer the accompanying degradation and long term emotional effects. Further, profiles of convicted rapists show that the perpetrator usually experiences no enjoyment of the sex act, but only rapes as an expression of violence to degrade the victim.

Another myth is that the victim should never fight against her attacker. Every rape is different. Fighting can be appropriate or foolish. Submission may be the best course when the rapist is armed with a weapon. However, the victim's best defense is to maintain control of the situation, because the rapist, whether a sick or angry person, usually wants to overpower the victim both physically and psychologically.

The victim may try to catch the rapist off guard, by reacting differently from the rapist's expectations. She should use her imagination. Unless she is fighting for her life, she may go along with the assault until she can see a chance to safely react. The victim should go along attitudinally, not sexually. Whatever she does, if it does not help her, she should make sure it does not harm her.

By thinking creatively at the time of the attack, the victim might extricate herself from the situation and contribute to the rapist's arrest and conviction.

Weapons, such as a nail file, rat-tail combs, or tear gas, are often ineffective for the simple reason that they are usually in a purse or bag and not immediately available. The best defense against assault is the study and continued practice of physical defense. The time and money spent is well worth the effort.

Society's attitudes about rape do seem to be changing. The police, hospitals, attorneys, and courts are generally more sensitive to rape victims than in years past. For instance, today the past sexual history of the victim is not normally admissible in evidence during a rape trial.

Precautionary Measures

A woman should not have to fear for her body and life every time she goes somewhere alone. Realistically, however, women can and should protect themselves from rape by adopting some of the following suggestions.

The greatest precaution is simply the use of common sense.

At Home

- Make sure hallways, garages and grounds are lighted. Have key ready to open door.
- Leave a spare key with a friend rather than leaving it under the doormat or over the door.
- Lock windows and doors that are easily accessible. Pull shades or curtains after dark so as not to advertise that no one else is home.
- List only last name and initials on mailbox, door and phonebook.
- Do not give out personal information or make appointments with strangers over the phone.
- Check who is at the door before answering it. Make sure repair and salespersons, police and survey-takers have identification.

In Town

- Avoid isolated places at night. Try not to travel alone; at least, tell someone of the intended destination.

- Use well-lighted paths at night. Make use of public transportation instead of walking long distances alone in the dark. Wait at well-lighted stops where there are other persons, if possible.
- Take bike lights always when biking at night.
- Yell "Fire" rather than "Rape" or "Help" for faster results.

In the Car

- Park in well-lighted areas.
- Walk back to car with key ready.
- Check back seat before getting in to make sure no one is hiding.
- Keep doors locked at all times.
- If the car breaks down: raise the hood, put on the emergency lights and lock the doors. Wait for someone to stop and offer help. Stay in the car and ask them to call the police or a garage.
- Avoid hitchhiking and hitchhikers. Get a ride from women and older couples if hitchhiking is a must. If there is more than one man in the car, do not get inside. Always look at the license number of the car and jot it down. Ask first where the driver is going and keep baggage in the car. Above all, if the driver and passengers do not look trustworthy, refuse the ride.

CHAPTER II

THE EMOTIONAL REACTION TO RAPE

The Emotional Aftermath of Rape

Professional Counselors Are Available To The Rape Victim

Sexual Assault Victim - Counselor Privilege

Recommendations

The Rape Crisis Syndrome

Primary crisis stage

Secondary crisis stage

Third stage

Emotional Needs Of The Victim During Police, District Attorney And Court Procedures

Emotional Needs Of The Victim's Male "Significant Other"

CHAPTER II

The Emotional Aftermath of Rape

Rape traumatizes both the victim and her husband or partner. Rape fosters physical and emotional reactions in all victims which continue long after the immediate danger has passed. All rape victims share certain feelings about themselves and those around them, but the degree to which an individual experiences the emotional reaction varies. A victim can take steps to lessen the effect and shorten her recovery. Recovery comes from regaining control over her life and from receiving support and understanding from family and friends.

Rape victims not only experience difficulties in sleeping but have nightmares and feelings of rage, of shame and of loss. Many victims experience fears of being alone and of being around men, and have difficulty with present and future sexual relationships. Often, family, close friends and lovers are not able to deal with the rape, which directly affects the victim. Usually rape victims resolve their feelings in six to eight weeks, in either a positive or a negative manner. The victim can make a positive resolution by communicating with people who understand the nature of the problem, who care about her, and who want to assist her in her resolution.

Professional Counselors Are Available To The Rape Victim

Today, the emotional and physical reactions of victims of the violent crime are better understood than a few years ago. The rape victim has unique crisis symptoms which respond best to early crisis intervention techniques.

It is imperative that victims immediately use the available community mental health counseling, advocacy and family/friend support.

The crisis intervention counselor's goal is to help the victim focus on the help she needs, her future decisions, how to protect herself, and how to take positive control over her life.

Sexual Assault Victim - Counselor Privilege

A victim of sexual assault, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing a confidential communication between the victim and a sexual assault victim counselor. Evidence Code Section 1035, et seq. A "confidential communication" means information transmitted between the counselor and the victim necessary in providing counseling, including the victim's prior or subsequent sexual conduct, the victim's opinions regarding sexual conduct and the victim's reputation in sexual matters. Advice given by the counselor on potential court testimony is not protected.

Recommendations

In addition to seeking medical help after rape, the victim should be aware of:

1. The availability of professional counselors.
2. The value of supportive friends and family, who can help her cope positively with the rape experience.
3. The benefits of rest, regular meals, exercise and maintaining as normal a daily routine as possible.
4. The "rape crisis syndrome," (the situational crisis experienced by the victim and the important people in her life -- family, husband, lover). Studies have shown that immediate crisis counseling will help resolve this situation positively in the least possible amount of time.

The Rape Crisis Syndrome

Although some victims do not experience this syndrome, an awareness of its symptoms may help to guide those who do.

The stages of rape crisis syndrome are:

Primary Crisis Stage (the rape experience through the following 24 hours).

The most common physical reactions are:

- coldness, clamminess, numbness (shock);
- shaking, cold sweats, nausea, over-reaction to noises;
- loss of appetite;
- change in facial expression;
- sleeplessness, nightmares;
- loss of normal energy level;
- sudden crying jags, or the inability to cry at all;
- confusion about time, loss of immediate memory recall.

The most common emotional reactions are:

- a sense of loss, violation;
- feelings of loss of control over life, helplessness, shame or humiliation (many rapists want victims to feel this), alternating anger and sadness;
- fears of dying, darkness, of being alone or isolated, of the rapist returning, of falling asleep;
- unusual impatience, inability to handle normal routines, and changes of personality in handling relationships.

Note: The emotional reactions appear to be most acute with victims who did not know their assailant, or the reason for his attack. Many victims who did not see or cannot identify the rapist experience an unfocused fear of all unknown persons and noises -- probably because they could not "identify" their assailant. However, rapists are not always "strangers"; they are often acquaintances, friends, neighbors or relatives.

Secondary Crisis Stage (second day through sixth week)

The most common secondary reactions are:

- continued difficulty in sleeping;
- continued loss of normal energy levels;
- continued loss of appetite;
- feelings of intense anger and rage, or of being "overwhelmed";
- depression (sadness, helplessness, grief);
- difficulties with intimate relationships;
- withdrawal from sexual activity;
- change in feelings about physical appearance;
- continued difficulty in coping with normal routine;
- continued impatience and inappropriate displays of anger;
- excessive and persistent fear of something associated with the rape (knives, cars, death, people following behind, men, etc.).

Note: The inability to reason her way out of these reactions and feelings can be frightening. The professional counselor has techniques to help the victim work her way through this crisis experience.

Third Stage (post-crisis adjustment, sixth week on)

Some reactions may remain, but if the victim has had help, the rape will no longer be the only thing on her mind. The rape no longer dominates her life, and she will begin to feel more like her "old self." If her crisis continues past eight weeks, then she may need more intensive help.

Emotional Needs Of The Victim During Court Procedures

Questioning, identification and testifying can emotionally drain the victim. Many victims find it difficult to see the rapist again, to recount their story many times, and to relive the experience through testimony.

Many police agencies assign a female officer trained in sex crime investigation to interview the victim. The district attorney's office has deputies trained to deal with rape cases and victims.

If a victim needs additional support, advocacy services are available. The service may include counselors who give victims emotional support during interviews at the district attorney's office and during court appearances.

Supportive friends and family can help during this time. The victim should not be afraid to ask for support.

Finally, many women feel depression, anger and fear if the rapist is not found guilty. For some women the decision to report the rape, assist the police, and participate in the trial seems to help in dealing with such feelings.

Emotional Needs Of The Victim's Male "Significant Other"

Although a great deal is known about the trauma of the rape victim, along with ways to help her cope with her crisis, it seems little is known about the effects of rape on the victim's male "significant other" -- husband, boyfriend, brother or father.

By describing the impact upon men, it is hoped the issue of rape will be regarded as a joint concern of both women and men, as well as a community and societal problem.

Studies dealing with the male's ability to deal with rape and its consequences theorize that the affected male, like the assaulted female, undergoes his own "rape trauma." Because his trauma is obviously less severe than the female's, it is often overlooked or suppressed in the rush to aid and comfort the rape victim.

However, it is important to recognize the male rape trauma syndrome and, if necessary, provide appropriate individual or "couple" counseling. The rapidity with which the female rape victim recovers from her attack largely depends upon the level of emotional support she receives from family and friends. If her male partner cannot handle her crisis, then the situation worsens.

Common symptoms of male rape trauma include guilt, rage and resentment. The degree to which a male partner suffers rape trauma, and his capacity to provide the victim with emotional support, turns on his definition of rape. For instance, whether a man regards rape as a crime of sex, a victim-precipitated crime, or a violation of property rights has a direct bearing on his ability to accept its consequences.

In the event his wife or girlfriend has been raped, the man should recognize that he has different, often conflicting feelings which he must acknowledge to her. Even if he feels totally frustrated and helpless, and incapable of dealing with the situation, he can at least admit that fact -- along with declaring his love and support. That attitude will help to ease the immediate crisis.

CHAPTER III

POLICE PROCEDURES

The Report

- How the victim can help
- What the police need to know immediately
- Evidence collection
- Other important help the victim can give
- Advice for the victim who is an illegal alien

The Follow-up Police Investigation

- The interview with the sexual assault investigator
- Photographs of injuries
- Pictures of rapists (mug shots)
- The polygraph exam (lie detector test)
- The arrest of the suspect
- The lineup
- The investigator's report to the district attorney
- Juvenile suspects

The Victim's Rights

- To have a report taken
- To know the status of her case
- To register a complaint
- The decision to press criminal charges

CHAPTER III

The Report

How The Victim Can Help: Preserve The Evidence

If the victim decides to report the crime, she should do so immediately. The sooner the victim reports a crime, the more likely the rapist will be arrested and prosecution will be successful. In addition and perhaps more importantly, an immediate report is often considered corroboration of the complaint's validity.

While waiting for the police to arrive, it is essential that the victim:

- Does not douche;
- Does not wash her hands, face, or any part of her body;
- Does not change her clothes;
- Does not clean or straighten her house or any other area if it was the scene of the assault;
- Does not touch fingerprints the rapist may have left.

By not washing or cleaning, the victim preserves important evidence. Without this evidence, it is difficult to prove in court that a rape occurred. When the victim's testimony is supported by objective evidence, then rape will be conclusively established.

What The Police Need To Know Immediately

When the victim calls the police emergency number, a dispatcher will request the following information:

1. Her name and location;
2. Whether she is in need of emergency medical assistance;
3. When the assault occurred;
4. A brief description of the assailant, his vehicle, and his last known direction of travel;
5. Whether the assailant had a weapon.

The dispatcher immediately sends an officer to the victim's location and broadcasts the assailant's description to the rest of the patrol force, alerting them to be on the lookout.

The victim can ask to speak with a female officer. The police make every effort to assign a woman to the case.

Frequently, though, the first report of a sexual assault is taken by a member of the patrol division on duty in the area. These uniformed officers can respond rapidly to the call because they are constantly on patrol throughout the community.

The officer will question the victim about the assault and obtain further information about the assailant. Unless the victim prefers to give a complete statement at this time, she will not be asked to discuss intimate details of the assault.

Evidence Collection

The police officer will want to know the location of the victim and the rapist, particularly at the time of the assault. An evidence technician skilled in handling and evaluating crime scenes will search the area. S/he will look for fingerprints, hair, blood, seminal fluid, bits of clothing, and any other indication of the assault. This is why it is crucial not to wash after the rape.

The victim can greatly assist the officer by pointing out where the assailant was, what he may have touched, and any other physical evidence she noticed.

Other Important Help The Victim Can Give

The victim may be too upset to recall details immediately following the rape. Once she is calm, she should try to remember as much as she can about the rapist and exactly what happened when he attacked her.

It is important for the victim to try and remember:

- the rapist's height, weight, the color of his skin, hair and eyes, any facial oddities, scars or tattoos;
- the color, style and type of clothing he wore;
- any speech characteristics or accents;
- exactly what the rapist said, including slang expressions or unusual comments;
- the direction taken when he left;
- the make, model, color and license number of his car (if he had one).

At her first opportunity, the victim should write down everything she remembers about the attack. She may have already given information to the police, but as she concentrates, something new may come to mind. Writing down everything will help her if she has to testify in court.

Advice For The Victim Who Is An Illegal Alien

Illegal aliens afraid of contact with police or other authorities may fear reporting sexual assault. Questions about citizenship, legal or parole status, are never asked of victims of violent crimes; but if the authorities learn of the illegal alien's status during the investigation, the information could be used in a deportation proceeding.

The Follow-up Police Investigation

Many police departments in the county and the sheriff's department have personnel especially trained in investigating the crime of sexual assault. An investigator assigned to the case will contact the victim within a few days after she reports the crime to the police. The victim must work closely with the investigators to help them apprehend the rapist. The victim may request a female investigator.

The Interview With The Sexual Assault Investigator

The detective will ask about the force and threats the rapist used against the victim, as well as any weapon the rapist used or said he would use. The detective will also ask her to recall anything she said or did to resist the rapist. These details help to establish that the victim did not agree to the sexual act, and help to prove the legal elements of the crime in court.

If the assailant was the victim's former boyfriend or if she knew him, she may be asked the nature of that relationship and if there had been similar attempts in the past. The victim will not be asked questions about her sexual history except as they relate to the rapist. A significant percentage of women are raped by men with whom the victim has had some form of prior contact, however slight. Thus, the rapist may not be a total stranger. The victim will not be asked if she enjoyed the assault or had an orgasm.

The detective will also ask questions about what happened before and after the rape. The victim must be candid and precise. She should not omit any details, even if she feels they weaken her account because in actuality this may not be the case.

However, if she has doubts about the appropriateness of some questions, she should ask the reasons for them, or refuse to answer them without the advice of her counsel.

The police officer should be able to explain the reason for every question.

Photographs Of Injuries

The victim should report any cuts and bruises she received to the doctor (see Chapter IV on hospital procedures) and the detective. The detective may ask someone to take pictures of the injuries. Usually bruises do not appear for several hours and photographs can be taken later. This evidence may be extremely important after the cuts and bruises have healed and can no longer be seen. The victim does not have to consent to have the pictures taken, but she should know that such physical evidence can be very helpful to her case.

Pictures Of Rapists (Mug Shots)

The detective may ask the victim to identify the rapist from a picture. She will view mug shots of several men to try and identify the man who raped her.

The rapist's appearance may have changed considerably from the time the picture was taken and the victim might be unsure if the picture is of the rapist.

If the victim is asked to identify the rapist from mug shots, she will be asked to pick him out of a group of photos of men with similar characteristics (e.g., racial, age, coloring, etc.). The photos will be saved by the investigating officer for use at trial.

The Polygraph Exam (Lie Detector Test)

Polygraph examinations of victims are rarely used; and if so, only when the victim's credibility is questioned.

The police may ask the victim to take a polygraph examination. She does not have to agree to take it, but it may be advantageous to do so. A polygraph machine measures various bodily functions such as heart and breathing rates, and blood pressure. The polygraph expert will ask some neutral questions which have nothing to do with the rape, and some questions concerning the rape. The amount of change in the heart rate, breathing rate, and blood pressure indicates the truthfulness of the answer. Positive results from a polygraph exam can strengthen credibility.

The Arrest Of The Suspect

If the victim knows the rapist or has identified him from mug shots, the police can arrest him as a rape suspect. The detective may also find a suspect based on other evidence that the victim or others have given, such as a license plate number or description of his car. After the police identify a suspect, they normally obtain an arrest warrant signed by a judge and based on information supplied by the victim and the detectives. The police use this warrant to arrest the suspect.

The Lineup

After the suspect's arrest, the detective may ask the victim to look at the man in a lineup of five or six men. During the lineup, the detective asks the men to turn and be viewed from all sides. This gives the victim a chance to concentrate on each man and to compare him to the other men. If she wants the men to do or say something that might help her recall how the rapist looked or sounded, she should tell the detective. Although the victim will be in the same room as the men, the lighting is arranged so that they will not be able to see her. If the victim is asked to identify the rapist in a lineup, she should be sure to pick him from a group.

The Investigator's Report

The sexual assault investigator will write a report, and if the assailant is identified, the report will be sent to a deputy district attorney. S/he then reviews the report and determines if there is sufficient legal evidence to bring a criminal charge against the suspect.

Juvenile Suspects

If the suspect is a juvenile, the rules for an arrest differ from those for an adult suspect. The victim should ask the detective or prosecutor about any special juvenile procedures and if she will need to attend hearings and give testimony.

The Victim's Rights

The Victim Has A Right To Have A Report Taken

Under Penal Code Section 11107, each sheriff and police chief must give daily reports of felonies and misdemeanors committed in that area to the California Department of Justice. This implies that such reports must be made.

If a peace officer refuses to take a report of a crime, s/he may be disciplined, according to local regulations which require a crime report.

Sometimes, the crime's circumstances tend to disprove the occurrence of a reported crime. But the officer should still make a report, including in it those circumstances which dispute the crime's occurrence. Subsequent investigation should resolve the issue.

A separate matter is if the victim inaccurately describes the crime that occurred. For instance, if the circumstances indicate sodomy and not "rape" as the victim stated, then the officer should make a crime report of "sodomy." The victim's inaccuracy should not detract from the reporting process.

The Victim Has A Right To Know The Status Of Her Case

An amendment to Government Code Section 6254 (f), effective January 1, 1977, requires local law enforcement agencies to inform victims of violent crime of witnesses and statements relative to their case. The victim should call the appropriate agency to find out if the case is under investigation, or has been completed.

If the case has been completed, (i.e., a disposition made), then the victim should be able to find out the disposition, as well as the circumstances and reasons for it.

The Victim Has A Right To Register A Complaint If She Is Dissatisfied

If the victim is dissatisfied with the outcome of the case, either because no report was taken, or the case was not investigated or was dismissed, then she has a variety of remedies.

The victim may complain to the Internal Affairs Division of the local law enforcement agency or to the district attorney. Also, she could notify the county board of supervisors or the city council depending on whether the reporting agency was the sheriff's office or the police department.

The Decision To Press Criminal Charges

The criminal justice system on occasion may not seem to be supportive of the rape victim, because a criminal prosecution is not brought for the benefit of the victim. It is brought by the district attorney on behalf of the State of California to convict and punish a rapist. Some women do not have an unpleasant courtroom experience, but in any case, much time and energy are required. A woman may be made to feel that she is somehow responsible for the rape, and she must relive this trauma in the courtroom.

Many women decide not to press charges for fear of retaliation, while some do not believe that jail is the answer to rape. Some women do not want the rape and their personal lives examined in court. To compound matters, several conditions reduce the possibility the charges will reach the trial stage, such as whether the victim was hitchhiking, or was under the influence of drugs or alcohol.

A woman may want to press criminal charges because by initiating a court case, she forces the courts and the community to acknowledge that rape exists. Society will not condemn the existence and continuation of rape until the awareness of rape grows. Also, women may want to show that they will not react passively about their safety. Perhaps men would not rape as easily if they knew that women would fight back, both literally and legally.

Once the criminal prosecution is concluded, the victim should also consider bringing her own personal civil lawsuit against the rapist and others responsible for her injuries. The purpose of a civil suit is to benefit the victim and compensate her for the aftermath of rape she has suffered. A civil suit must be filed within one year after the attack. (See Chapter VII on Compensation for the Rape Victim.)

CHAPTER IV

EMERGENCY ROOM PROCEDURES AND AFTER-CARE

Why Immediate Medical Care Is Important

Getting In To See The Doctor

"Paperwork"

Helping With The Examination

The general examination

The pelvic examination

Other tests during the examination

Testing for venereal disease

Pregnancy testing

Before Leaving The Emergency Room

CHAPTER IV

Why Immediate Medical Care Is Important

Many victims experience a variety of physical symptoms after the attack. Some of these are caused by physical abuse or violence while others result from the victim's emotional distress.

These symptoms may include soreness, muscle tension, headaches, stomach pains, nausea and sleep disturbances. Common gynecological symptoms are vaginal discharge, itching, burning sensations, and generalized pain. There may be genital abrasions, lacerations or bleeding in the vaginal or rectal area.

Even if there is no discomfort or pain, the victim should receive medical attention. Many rape victims are in shock for varying amounts of time following the rape, and may not be as aware of their bodies and pain as they would be normally. For example, a victim may not be aware of internal injury or bleeding for several hours or days or she may not remember part of her rape experience. Because of the apparent shock, the danger of untreated internal injury and the possibility of venereal disease and pregnancy, every rape victim must seek immediate medical attention.

The rape victim's fundamental concern should be for her personal health and well-being. For this reason she should seek emergency medical attention as soon as possible. A victim may want her immediate examination from a family physician who is familiar with her medical history. The victim may relate better to a physician who knows her, and the physician may treat the victim more sympathetically because s/he knows the victim. Also, the physician may testify more readily at a later proceeding or trial on behalf of a patient s/he knows and understands.

Another concern is medical evidence. Unlike other crimes of violence, medical evidence that a rape has occurred should be collected within 12 to 72 hours after the attack. Even if the victim has decided not make a police report, the doctor will collect and record all possible evidence. If she changes her mind later, then this evidence can be used in arrest and court proceedings.

If the evidence is not collected within the allotted time by doctors who preserve and transfer it to the authorities, then it is of little use in court. The hospitals listed in this booklet train and instruct their staffs in the care of the rape victim and the collection and preservation of evidence.

Getting In To See The Doctor

If the police take the victim to the hospital, they will inform the intake worker, or triage nurse, that the woman is a rape victim and needs immediate medical care. If she is cooperating with the police, then the police department will pay for the medical tests needed for evidence. A police officer will assist the victim before and after the examination, but not during the examination.

If the victim comes in on her own, without the police, she should tell the receptionist that she is a rape victim. She may bring a friend or a rape counselor to the hospital.

If the victim prefers to see her own doctor, or to go to another hospital, she may do so. However, some hospitals may not have a doctor on duty, most will not collect the necessary evidence for prosecution of the case, and the victim will have to pay all costs.

An emergency room provides care to many people and attention is given to life-threatening persons first. Sometimes a person must wait due to the number of critical patients. At other times, the staff may be trying to arrange a few extra moments with the victim.

Rape victims must not let an aide, a nurse, or anyone else clean off her body or assist her in douching before the medical examination. For the same reason, she should not use the bathroom. By refraining, she saves important evidence of the sexual assault. If the victim has already bathed, by force or by choice, she should tell the doctor.

"Paperwork" Before You See The Doctor

The nurse will explain hospital procedures and ask the victim about her medical history. The victim will then read two consent forms before the doctor examines her. One gives the hospital permission to examine and treat the victim. The other indicates whether or not she wants her medical record or any other evidence released to the police. The victim can cross out any sections she wishes before signing the forms. If the police have not been called, the nurse will ask if the victim wishes to make a police report. If so, the police will be notified immediately.

UNDER NO CIRCUMSTANCES is a victim required to make a police report in order to receive emergency medical treatment. However, every physician and hospital in California is required by law to report the name, address, type of assault, nature and extent of injury of each victim of the violent crime treated. Even so, it does not constitute a formal police report that results in the prosecution of the rapist. The police cannot act, unless the victim personally reports the rape to them. The decision not to make a police report is a very serious one that may affect the victim's and other women's safety because rapists generally rape more than one woman. Fortunately, more women are reporting rape and cooperating with the police and the courts to control the problem of rape.

If the victim does not wish to report the crime to the police, she can still help to some degree. Other victims may have already reported similar rapes and described a rapist resembling the man who attacked her. A victim can ask the nurse, or a rape counselor to telephone the police if she wants to give information without actually reporting. The information may enable the police to arrest the rapist and protect other women. However, one problem is that some police departments will not take these reports.

After the victim has signed the appropriate forms, the nurse will help prepare her for the examination. She will be asked to remove her clothes and put on a hospital gown. The nurse will remain with her through the doctor's examination. When police departments require their official representative to be present during the examination, they always provide a female. Many police departments do not have such a requirement.

Helping With The Assault Determination Examination

The following procedures are used during the examination. In all cases, victims should feel free to ask the nurses, doctors or counselors any questions she has about the examination procedures.

The General Examination

The victim will be asked about her general state of health and about significant past medical history (i.e., if she is taking medication, has allergies). The doctor will perform a general physical exam which includes recording blood pressure, weight and temperature, and examining ears, eyes, mouth, heart, lungs, response and limbs. The doctor will ask specific questions about the sexual assault. They will include:

- The length of time between the rape and the examination;
- Sexual acts that were performed during the rape (vaginal intercourse, oral intercourse, anal intercourse, other sexual acts, the degree of penetration, whether the male used a condom, and whether the male climaxed);
- The date of her last menstrual cycle;
- Her method of birth control;
- The last date and time that she had consensual intercourse;
- Any significant actions subsequent to the assault (showering, douching, changing clothes).

The victim must tell the doctor what happened so that the doctor may give her proper treatment and obtain evidence of the assault.

The Pelvic Examination

The pelvic examination is similar to an annual examination and pap smear. The doctor checks external pelvic and internal genital areas for tears, cuts, bruises, or other signs that force was used. He will note these in the medical report.

The doctor will insert a speculum and then take smears and cultures from the vagina to test for semen, sperm cells, and venereal disease. If sperm cells are present, the doctor records whether the cells are alive and moving. The movement of the sperm cells helps the doctor confirm when the sexual acts took place. The doctor will need to know if and when the victim last had consensual sexual intercourse, to determine if the sperm cells were from the rape.

Many doctors will routinely perform a rectal examination during a rape examination. The doctor inserts a gloved, lubricated index finger into the anal opening to feel for tears, or abrasions. If there is evidence of anal rape, then the doctor will take smears and cultures from the anal canal to test for sperm cells, semen, and venereal disease. This test is slightly uncomfortable, and pressure can be relieved during this brief exam by breathing slowly through an open mouth.

Other Tests

Other possible tests include:

1. Fingernail scrapings. If the victim scratched or touched the rapist, any material found underneath the fingernails can be matched to the rapist, his clothing or things found at the scene of the crime. This may help identify the rapist or locate the exact place of the crime.
2. Wood's lamp exam. In a dark room this lamp causes semen left on the victim's body or clothing to glow in the dark (fluorescence). The fluorescence is not evidence, but it suggests areas of the body or clothing that should be examined more carefully.
3. Pubic hair exam. This test includes combing the pubic area for hairs which may have come from the rapist. These hairs, if found, can be matched with hairs later clipped from the rapist to help prove his identity. Several of the victim's pubic hairs will be removed to compare with any loose ones.
4. If indicated, appropriate photographs of the assaulted areas may be requested.

Testing For Venereal Disease

The victim may have contracted venereal disease from the assailant. The doctor cannot diagnose this immediately, but s/he will take blood tests and cultures to aid in the diagnosis. The doctor may offer preventive medication, usually penicillin. (If she is allergic to penicillin, she should inform the doctor so that alternative medications can be used.)

If she takes preventive medication at the hospital, she is unlikely to contract venereal disease from the assault, but she must have follow-up tests. Her private physician or the hospital will arrange for follow-up retesting.

These tests are needed because often a woman does not have any outward signs that she has a venereal disease. Because gonorrhea and syphilis can greatly harm the body and the reproductive system, and can endanger life, victims should be very careful that they are retested at the right times. Also, until follow-up tests show that venereal disease is not present, it is possible to infect someone else through oral, anal, or genital contact.

Because of the severe emotional trauma caused by rape, victims are often advised to reestablish normal sexual relationships as soon as possible. Prophylactics offer protection during intercourse against venereal disease.

A gonorrhea test requires taking a culture from the vagina. It takes four to seven days for the disease to develop to the point of detection. Syphilis is detected by examining a blood sample, and takes about six weeks to develop.

Free tests and treatment are available at public health clinics or at women's clinics. The victim should contact a clinic or physician for a gonorrhea test within four to seven days after the rape and again within six to eight weeks for a syphilis test.

Pregnancy Testing

If the victim was not using some form of birth control at the time of the rape, she may worry about becoming pregnant. Although it is not certain that the victim will become pregnant as a result of the rape, the doctor will talk to her about methods to prevent pregnancy. If she knows or suspects that she is already pregnant, she must tell the doctor.

The emergency physician can offer medications which will terminate the pregnancy. This hormone will cause the victim to have a menstrual period in approximately three days. It is usually given as a shot since the pill form has to be taken over several days and may cause unpleasant side effects. Side effects include nausea, headache, breast tenderness and warm "flashes."

Before the doctor gives pregnancy-preventing drugs to her, the victim must give a urine sample to determine if she was pregnant before the attack. No drugs will be given if the victim is presently pregnant or chooses not to have them.

The victim may decide to wait and see if she misses a menstrual period. If so, a doctor may give medication to bring it on. However, this does not rule out the possibility of pregnancy.

The victim should have a pregnancy test soon after the rape occurs. If the test establishes that the victim is pregnant as a result of the rape, then she has enough time to think about her options. If she decides to carry the pregnancy to term, then she will want early pre-natal medical attention.

If she decides to terminate the pregnancy, a doctor can perform the procedure early.

It is important for her to discuss her choices with her doctor and her counselor. She may also want to talk it over with her family and friends.

Before Leaving The Emergency Room

The victim should read or have read to her the medical report, in order to request any important changes or additions. Often bruises do not appear for several hours or days after an injury, but the doctor should note any soreness or tenderness.

If possible the victim should bring a change of clothing with her, as the police may collect some of her clothing for evidence (especially underpants and articles with semen or blood stains). The hospital may provide a shower after the examination and panties to wear home.

The nurse or the doctor will instruct the victim on care of her injuries, venereal disease follow-up information, and medication if prescribed. Many victims have difficulty sleeping, so they may want to ask for a low-dosage sleeping medication or tranquilizer.

The police may wish to question the victim further, and will ask her to come with them to the station. She has the right to make an appointment to meet them at a later time if she feels unable to continue. In any case, the victim should read the completed police report carefully and make any needed additions or corrections. She should write down the telephone numbers and names of the police contacts, the investigative officer, the detective who will be handling the case, the doctor who examined her, and her counselor.

Victims should arrange for a safe place to stay for the night. If she was raped in her home, she should arrange to stay at a friend's place, with her family or in a hotel. If she wants to return to her home, she should arrange for a friend or a family member to stay with her. She should contact a hotline or mental health center for counseling and advocacy before or immediately after leaving the hospital or police station, and make an appointment for the next day, or earlier, if possible.

Victims should arrange for transportation from the hospital to the place where she is staying with family, friends, or the police. If she called the police into the case, they will take her from the hospital or police station to her destination.

It is important for a victim to plan her next few days (go to work, shop, seek counseling, etc.). She should try to continue as normal a routine as possible.

Once in safe surroundings she can take a bath, wash her hair, eat a good meal and try to get some sleep.

CHAPTER V

MUNICIPAL COURT PROCEDURES

The Deputy District Attorney

The decision to charge the suspect

The Defense Attorney

The arraignment at municipal court

The Preliminary Hearing

A court proceeding to determine whether a trial is warranted

How The Suspect Can Gain Release

Bail

Release on own recognizance

CHAPTER V

The Deputy District Attorney (Prosecutor)

The Decision To Charge The Suspect

Very soon after the suspect's arrest, the district attorney's office must review the case to determine if there is sufficient evidence and a reasonable chance of convicting the suspected rapist. If so, a formal complaint is issued (charges are brought against the suspect) and filed with the court.

In making this decision, the deputy district attorney (DDA) judges the strength of the case by considering the supporting physical evidence collected in the emergency room, the victim's potential as a witness, and the availability of other witnesses. S/he may consider it necessary to interview the victim before filing charges. This is often done to verify the accuracy of the information in the police report, to obtain additional information, and to explain what to expect from the judicial process.

It is within the DDA's discretion to permit victims to have a friend or counselor present at interviews with the DDA. During the interview, the DDA will ask the victim to review the details of the rape to help determine whether to file charges against the suspect. The DDA will ask very specific questions.

The victim should ask any questions that she may have.

She may be concerned about personal information that might be brought out during the trial. She should discuss with the DDA how s/he will control this information during the trial.

During the interview, the victim should ask the DDA to explain words or procedures that she does not understand. Also, she should make sure that she has a name and telephone number to call in case she has additional questions or information for the DDA. Sometimes, the DDA decides not to file charges against the suspect. If this happens, she should ask the DDA about this decision, since the victim has a right to know why the case will not go to court. If the victim is not satisfied with the decision, she may ask for a review of the matter with the DDA's supervisor.

In Santa Clara County, rape and related cases are assigned in advance to one of the preliminary deputies who will work with the case prior to the time of the hearing. The DDA at the preliminary examination may not be the same DDA assigned to the case in superior court for trial.

All rape cases are prosecuted in Superior Court by the District Attorney's Rape Team, which is composed of senior deputies.

The Defense Attorney

The accused has a right to have a lawyer represent him at all stages of the proceedings against him. This person is called the defense attorney, and may be either an attorney hired by the accused or one assigned to the case by the public defender's office. Whether the defense attorney is paid by the defendant or by public funds, it is her/his duty to work solely for the defendant's interests.

The defense receives copies of all statements taken by the police. The defendant's attorney or his investigator may contact the victim and request an interview.

Do not confuse the public defender's office with the district attorney's office. It is also important not to confuse defense investigators with police investigators. The victim should always ask for identification and the purpose in contacting her.

The victim need not talk with any representative of the person charged with the offense. If she does not want to speak with him, she should refuse, but this fact will be raised at trial.

If the victim chooses to discuss the case, she is free to do so. She may want to consult the district attorney or police investigator beforehand. If she gives a statement to a defense investigator, she may choose to do so at either the police station or district attorney's office, with both the investigator and DDA present at that time.

If the victim's statement is put in writing, she is not required to sign the statement. If she decides to sign the statement, she should review it very carefully to assure that it is an accurate account of what occurred. The victim should retain a copy of any statements she signs.

If the defense contacts her, the victim should inform the police investigator of the nature of the contact as soon as possible.

The Arraignment At Municipal Court

Once the case has been charged, an arraignment date is set, and the accused rapist must appear at a municipal court. The victim does not have to appear at the municipal court arraignment.

At the arraignment, the judge reads the formal list of charges to the accused, who then pleads guilty or not guilty. (Once a suspect is formally charged, he is called the defendant.) The judge makes sure the defendant understands his constitutional rights and that he will be represented by an attorney during the court proceedings. The victim does not have to appear at the arraignment; however, the defendant, his attorney, and the DDA must be present.

If the defendant pleads guilty, he will be referred to the Adult Probation Department for evaluation for his sentencing hearing and the judge will set a sentencing date. If he pleads not guilty, the judge sets a date for the preliminary hearing.

The Preliminary Hearing

A Court Proceeding To Determine Whether Trial Is Warranted

After the arraignment, the DDA presents the facts to a judge at a preliminary hearing in municipal court. There is no jury at this stage of the proceeding.

The hearing determines whether the prosecutor (representing the People of the State of California) can show sufficient evidence that a crime was committed and that the person accused is probably the person who did it. The judge will decide whether there is probable cause to warrant a trial.

Cases of this type are given priority for preliminary examination and later trial. The court recognizes the seriousness of the offense, and that the matter should be decided at the earliest possible time. This relates not only to the preliminary examination in the municipal court, but also in superior court for setting trial and for the trial itself. A greater majority of these cases proceed to trial than any other felony case. First, usually there are no witnesses to the offense other than the victim and the defendant, and second, if the defendant is found guilty, the penalty is severe. The victim should be prepared to testify not only at examination in municipal court, but also at trial in superior court.

The victim will be advised by means of a subpoena (a legal notice ordering her to appear in court) of the hearing's date and location. Usually, the DDA will contact the victim before the hearing, to prepare her for the court appearance. The victim need no longer give her address aloud in the courtroom, although she must give her name and occupation when she is sworn in to testify.

In the court proceedings, the victim will be referred to as a "witness for the prosecution" or a "witness for the state," because a sexual assault is legally considered a crime against the state as well as against the individual. Therefore, the DDA prosecutes the case on behalf of the state, not on behalf of the victim directly. The state becomes the accuser, and the victim is a major witness for the prosecution.

The accused and his attorney will be present at the hearing. The Constitution provides that the accused person is entitled to a public trial. However, a preliminary hearing is not a trial and the defense can request the exclusion of all spectators. Only the accused can request a private hearing.

In a private preliminary hearing, the law provides that the judge may allow the prosecuting witness to have someone present for moral support. The person she chooses cannot discuss the testimony with any other witness.

During the hearing, the victim as the prosecuting witness will be called to testify. At that time, the DDA will ask questions to establish that there is probable cause to conclude that the defendant committed the crime and should stand trial. S/he will also have to ask if the prosecuting witness has ever been married to the defendant, and if she recognizes her assailant in the courtroom. If she does, she will be asked to point him out.

The defendant's attorney has the right to cross examine and to ask for details of the assault. A recent law has made it difficult for the defense attorney to ask questions about past sexual experiences, unless the judge decides they are relevant to the case. The DDA will try to prevent these questions from being asked.

The DDA may call other witnesses to testify if s/he feels they are necessary. Usually the defense does not present evidence and the suspect does not testify at the preliminary hearing.

After both sides finish, the judge determines whether there is sufficient evidence to send the case to superior court for trial. If the judge does not believe there is enough evidence, the charges will be dismissed and the accused will be released immediately. However, most cases are sent to superior court.

How The Suspect Can Gain Release

Rapists may threaten to attack their victims again to discourage them from making a police report. Although threats to return are common, a second attack is extremely rare.

Nevertheless, many victims worry about their personal safety and whether the rapist will return. They want to know what happens to the rapist if he is arrested, how long he will be in jail, and whether they can prevent his release.

If a suspect is arrested after the victim makes a police report, he will be held in jail during the prosecution unless:

1. the charges against him are dropped;
2. he posts bail; or
3. the judge releases him on his own recognizance (without bail).

In our legal system, every accused person is presumed innocent until proven guilty. A person is arrested because he is believed to be the person who committed the crime. Thus, the detective and the prosecutor will often call the person who is under arrest "the suspect," "the accused," "the alleged rapist," or "the defendant." Even if the victim knows that the suspect is the man who raped her, he is considered innocent until he confesses his guilt or is proven guilty in a trial.

Bail

Since any person charged with a crime is presumed innocent until proven guilty, a judge must set bail. Bail is an amount of money the defendant must post if he wants to stay out of jail until his case is decided. The defendant must either pay the entire amount of bail or pay a percentage of the set amount to a bail bondsman, who arranges for posting a bond in the amount of the bail. Bail is used to assure that the defendant will attend all of his court appearances.

Release On Own Recognizance (often referred to as "O.R.")

Occasionally, a judge may release a defendant on his own recognizance, which means he need not post bail. The judge bases the decision on information about the suspect's background (residence, family, means of support, criminal history).

The defendant's release from custody is prohibited until the defendant has filed a signed release agreement. Such an agreement includes the defendant's promise to appear in court on all scheduled dates, and to not leave the state without the court's permission.

The judge must believe that the suspect will return for future court appearances in order to release the defendant. In addition the court may consider the severity of a potential sentence as it effects the likelihood the defendant will not return for future court hearings. The victim may influence the judge's decision if the suspect cannot post bail and requests release through this procedure. The victim should ask the investigator or the DDA if she can include a statement in the report to the judge. The statement should express concern for her personal safety and should mention any threats, violent behavior, or injuries inflicted by the suspect, or by anyone associated with him.

Upon releasing the suspect on bail or on his own recognizance, the judge instructs him that he is not to see or talk to the victim at any time or in any way. If the suspect or anyone associated with him contacts the victim, she should report the circumstances immediately to the detective. Any violation of the conditions of his release can be grounds for the judge to increase his bail or return him to jail.

CHAPTER VI

SUPERIOR COURT PROCEDURES

Arraignment

Pretrial Hearing

Plea bargains

Pretrial Motions

Continuances

Hearings on relevant evidence

The Trial

Types Of Verdicts

The Sentencing Stage

The probation department's report

The sentence

Punishment of the convicted rapist

The Appeal

CHAPTER VI

Superior Court Arraignment

This process is basically the same as the municipal court arraignment, except that a superior court judge presides. The victim does not have to appear at this arraignment. However, the defendant, his attorney, and the DDA must be present.

In some limited cases the district attorney may choose to institute criminal proceedings by indicting the defendant. If he selects the indictment course, then the district attorney will not file a complaint in the municipal court. Instead, the DDA will present testimony describing the crime to the county grand jury. If 12 of the 23 grand jurors find that there is probable cause to conclude that this case should go to trial, then the foreperson of the grand jury signs a "true bill of indictment." When the district attorney follows this procedure, the indictment is filed in the superior court and after arraignment, a preliminary hearing (as previously described in the municipal court) will be scheduled.

Pretrial Hearing

At the pretrial hearing, the court hears various procedural motions, such as discovery motions (disclosure of evidence before trial), motions to suppress illegally obtained evidence, motions for consolidation or severance (in cases where there are multiple defendants), or motions relating to the admissibility of identification evidence. There are approximately 70 different legal motions that could arise during the pendency of any case.

The DDA and defense attorney may enter into plea negotiations at this time by discussing the issues presented by the case and negotiating a conclusion, if possible, without trial. The victim may have to appear and testify at a pretrial conference depending which motion or motions are being heard and considered. The DDA will notify her in advance if her testimony is required at this hearing.

Before trial, the defense attorney may seek a psychiatric interview. However, according to a legislative mandate, effective January 1, 1981, all psychiatric interviews with the victim will be forbidden. In the meantime, the victim's refusal to submit to a psychiatric interview will be used against her at trial. The victim should agree to an examination only if the defendant agrees to such an examination as well.

A felony case settlement policy is followed by the district attorney's office. A defendant charged with a felony must plead to a felony charge(s) in the degree which accurately reflects the portion of the defendant's conduct for which there is sufficient evidence required by law for conviction, or proceed to trial. The essential part of the defendant's conduct is the controlling factor in case settlement or plea bargaining.

A DDA usually does not agree to the settlement of a case, by way of plea or submission on the transcript, which seeks to include any sentencing representations or commitments.

This policy is especially followed in cases involving forcible rape, sodomy, or oral copulation.

Plea Bargains

A plea bargain is a compromise between the prosecutor and the defense interests whereby the defendant pleads guilty to a crime in exchange for some leniency and the certainty of knowing the exact crime for which he will be punished. The prosecutor is not required to go to trial, the victim does not have to testify in an open court, and there is no chance of losing the case at trial.

The plea bargain can take many forms. If the defendant was involved in more than one crime, the prosecutor may agree to drop some charges if the defendant agrees to plead guilty to at least one crime. The prosecutor may agree to reduce the charge of rape to a less serious crime. The prosecutor may recommend a lesser punishment to the judge in return for the accused's guilty plea, which would conclude the case except for the defendant's sentencing.

This plea by the defendant must be acceptable to his attorney, the DDA, and ultimately the judge. The defendant will not be allowed to plead guilty, unless his plea is acceptable to all parties. Although the DDA will be representing the interests of the State of California in the case, the victim should discuss with him/her the possible plea and sentencing of the defendant prior to the pretrial date. If the victim is dissatisfied with the bargain, she has a right to a full explanation.

The victim is entitled to:

1. a complete explanation of all court procedures;
2. a complete explanation of any decisions by the DDA affecting the case;
3. be informed of the status of her case;
4. request a personal meeting with the district attorney or the DDA's supervisor;
5. know the defendant's sentence or the final disposition of the case (Penal Code Section 11116.10).

Pretrial Motions

Continuances and Postponements

Since courts have many cases to hear, there may be several postponements ("continuances") before the victim actually testifies. She will receive a new notice each time there is a postponement. Continuances may be requested by either the defense or the prosecution. Victims should be aware that the DDA is in a position to object to a postponement.

The defendant is entitled to a speedy and public trial under the California and the United States Constitutions. In California, the defendant is entitled to a trial within 60 days of the filing of the case in superior court, while the prosecution has no such right. The defendant, however, can waive his right to a speedy trial within those 60 days and, as a rule, most defendants do.

Hearings On Relevant Evidence

It is extremely difficult for the defendant's attorney to ask questions in open court about the victim's past sexual experiences. The law currently requires the defense to file a written document with the court, explaining what it believes the victim's background will show and its relevance to the defense. This generally occurs in cases where the victim was previously involved with the defendant, and if so, a hearing is held outside the presence of the jury.

At this hearing, the victim will be questioned about her background. If the judge determines that her past sexual experiences are relevant to the case, she will have to answer the questions. However, if the judge finds that her past sexual experiences have no bearing upon the case, s/he will inform the defense attorney that s/he may not question the victim about those matters.

The Trial

If there is a trial, it will probably occur several months after the rape. The prosecutor will know the trial date in advance. The victim should inform the detective and prosecutor where she can be reached because they may want to prepare her for the trial. Such preparations include reviewing police statements and examining pictures and diagrams of the crime scene. If the victim has never been to a trial, she may want to become familiar with the surroundings by visiting the courtroom, or by observing another trial in session.

At trial, the defendant can choose whether to have the judge or jury hear his case. If he waives the right to a trial by jury and the prosecution agrees, a judge will hear the case and determine the verdict instead of a jury. If he asks for a jury, the defendant's lawyer and the prosecutor will select the members of the jury.

Both the prosecution and defense present all the available evidence at the trial. The victim's role here will be similar to her role at the preliminary hearing. She will testify to basically the same information and she may be excluded from the courtroom when she is not on the witness stand. Usually, witnesses from either side are not allowed in the courtroom except when testifying. However, the victim may bring friends, relatives, or other supportive people with her.

It is not easy to testify, but it is not as hard as television and movies portray it. The prosecutor will ask simple questions, knowing the answers in advance. The victim's job is to tell the truth clearly and fully. If she does not understand a question, she should ask the attorney to repeat it or reword it.

When the prosecutor finishes asking questions, the defendant's lawyer will begin the cross-examination. These questions will be more detailed and may be harder to answer than those asked by the prosecutor. Victims should pause and think before answering and ask the judge or the defendant's attorney to explain questions she does not understand.

As a witness, she should:

- remain calm and collected;
- listen carefully to all questions;
- not guess;
- not volunteer any information;
- not get angry.

If anyone asks a question that the victim thinks should not have been asked, she may ask the judge's opinion. If the judge tells her to answer, she must do so. The victim may think some questions are arbitrary, but they may be necessary to satisfy the law.

She should always ask attorneys to explain questions that she does not understand.

If the questioning becomes too intensive while the victim is on the stand, she should ask the judge if she could please have a few moments before continuing.

The suspect does not have to testify, in which case the jury is told not to hold that against him. After all the evidence is presented and each lawyer gives a final statement, the judge tells the jury what laws apply to the case. The case is then given to the jury to decide if the defendant is guilty.

Types Of Verdicts

At the trial, the prosecutor must introduce enough evidence about the suspect's guilt to erase any reasonable doubt in the minds of the jurors or judge. A finding of not guilty does not mean that the defendant did not commit the crime or that the victim has not told the truth. It may simply mean that there was not enough evidence for the jury to believe that the defendant was guilty beyond a reasonable doubt.

If all the members of the jury cannot come to the same verdict, they are called a "hung jury." In this case, the court will probably order a new trial for a later date.

If the defendant was found not guilty, he will be released immediately. If the defendant is convicted, the court will set the case for hearing on the defendant's sentencing. Because other witnesses may be called and because a jury may have to reach a verdict, the victim may not be present in the courtroom when the verdict is announced. After the trial, the DDA will advise her of the outcome.

The Sentencing Stage

The Probation Department

If the defendant is found guilty or if he pleads guilty, then the probation department receives the case. It may be weeks or months before he receives the sentence stating his punishment.

During this time, the probation officer will prepare an evaluation report which includes an interview with the defendant; the defendant's personal statement; detailed background information; and statements from the police inspector, witnesses, and references.

The probation officer will want to interview the victim and include her statements in the report. S/he will contact the victim (or her parents if she is under 18) by mail and ask to make an appointment. During the interview, the probation officer will ask her to describe the assault and any violent behavior by the defendant. The victim's statement is a very important part of the pre-sentence report, because the probation officer will make sentencing recommendations based on information gathered for this report.

The Sentence

At the sentencing, the judge may or may not follow the probation department's recommendations. The sentence imposed is the judge's decision within the guidelines of the law. The DDA will contact the victim to inform her of the details of the sentence. The prosecutor will also recommend a sentence. If the victim wishes to make a recommendation, she should inform the prosecutor. The prosecutor may suggest that the victim write a letter for submission to the judge or that she attend the sentencing in order to express her view.

Any letter written by the victim should be submitted to the probation officer in advance of the sentencing date. Probation is not a sentencing choice in this type of case; either state prison or a state hospital facility is the only alternative.

Punishment Of The Guilty

The sentence for rape according to the 1979 amendment to the Penal Code section 264 is three, six, or eight years in state prison. The convicted defendant could possibly be sentenced to three years if mitigating circumstances are present or to eight years if aggravating circumstances are shown. However, he is entitled to one-third off his sentence for good behavior while in prison.

A convicted rapist cannot receive probation under California law if he prevented the victim from resisting by threat of great and immediate bodily harm or if the victim resisted but was overcome by force or violence. The judge sets the conditions which the defendant must fulfill to remain out of prison during the period of his probation.

The Board of Prison Terms makes all decisions concerning parole, and the victim will not be notified when the rapist is released.

If the rapist is considered a "mentally disordered sex offender" as defined by section 290 of the Penal Code, then he will be committed to a state hospital for an indefinite period of time.

Further, any convicted rapist or mentally disordered sex offender who has been sentenced to state prison must register with the city chief of police or county sheriff within 30 days of arriving in any county or city where he plans to reside, even if temporarily. All convicted rapists if placed on probation must, during the pendency of their probation, register as well.

The registration documents include the rapist's signed statement of information required by the Department of Justice, and his fingerprints and photograph.

If the convicted rapist willfully violates his duty to register, then he is guilty of a misdemeanor and must serve a term of not less than 10 days, nor more than one year in the county jail.

The Appeal

If the accused is found guilty, he may appeal the decision of the court. An appeal means that legal questions decided during the trial will be reviewed by another court to see if there were any errors made during the trial. The appeal often takes months, even years. The victim need not be present at the appellate argument. The court can release any accused from jail during an appeal. If the jury finds the accused not guilty, neither the victim nor the prosecutor can appeal the decision.

CHAPTER VII

COMPENSATION FOR THE RAPE VICTIM

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COMPENSATION FOR THE RAPE VICTIM

The victim may sue the rapist, or other persons legally responsible, for her injuries for money damages, even if the district attorney does not prosecute her case or if the rapist is not convicted at a criminal trial.

In a civil suit for her personal injuries, the victim need only prove her case by a "preponderance of the evidence." The heavier burden of proof "beyond a reasonable doubt" only applies to criminal prosecutions. In a civil case, the victim can ask for money damages in either a court or jury trial. Such a trial is directly for her benefit and, unlike a criminal prosecution, is brought expressly on her behalf against the individuals responsible for her injuries.

She may sue the owner of the property where the rape occurred, if his negligence contributed to cause her injuries. The negligent apartment house or motel owner who failed to provide proper security can be held responsible for injuries to the rape victim. Other potential persons who have been held responsible for a rape victim's injuries include: lock manufacturers, owners and managers of unlighted premises (i.e., parking lots and hallways), locksmiths, architects and building contractors. These people have a duty to protect against known dangers, and at a minimum, to warn of any potential hazards presented to women.

The victim may represent herself in a civil suit but should hire an attorney, preferably one experienced in handling personal injury litigation.

A civil suit must be filed within one year after the rape. For this reason it is important to promptly retain an attorney.

Many lawyers offer their services on a "contingency fee" basis and do not charge in advance. If the suit is successful, these attorneys receive a pre-agreed percentage of the recovery. If the case is unsuccessful, the rape victim owes nothing.

Although most civil suits settle before trial, if her case proceeds to a verdict, the victim is entitled to financial compensation for all of her injuries and damages including the following:

1. Doctors, hospital, surgery and other medical expenses incurred by the victim;
2. Psychiatric, psychological or other counseling expenses;
3. Rehabilitative services, including job retraining;
4. The victim's lost wages or if not employed, the reasonable value of her lost time due to the rape; and
5. The pain, humiliation, fears, anxiety, mental anguish and emotional distress suffered as result of the rape.

The dollar amount of any award would be determined by the judge or jury hearing the case and would be based upon the facts presented by her attorney.

In cases where a financially solvent third party is not legally responsible, suing a rapist who currently has no financial resources may not seem worthwhile, but the victim can obtain a legal judgment enforceable for a ten-year period, which may become collectable. Circumstances change, and the financial picture of today's rapist could improve tomorrow.

Another form of victim compensation (not to exceed: \$10,000 for medical, \$10,000 for loss of wages, \$3,000 job retraining) is available through California's Aid to Victims of Violent Crimes Act (section 13959 of the Government Code). In order to receive financial assistance from the State Board of Control, the rape victim must have:

- been a resident of California at the time of the assault;
- cooperated with law enforcement agencies; and
- suffered pecuniary loss.

Expenses which may be reimbursed include medical/hospitalization and counseling fees, loss of wages or support, and job retraining or rehabilitative services. Coverage may also include attorney's fees, traveling expenses, child care, and "other necessary expenses directly related to the injury." Also eligible are members of the victims family, or persons with a close relationship to the victim, who were present during the commission of the rape.

Effective January 1, 1981, the State Board of Control will advance up to \$1,000 in compensation in cases where a victim has suffered a loss of income or support which creates an emergency for her. Disbursements are to be made within twenty business days from receipt of an application by the Board of Control.

If the victim does not receive an application form from the police, she should call the Victim Witness Assistance Program (See page 49), a rape hotline (See page 44), or write to the State Board of Control, 926 "J" Street, Suite 300, Sacramento, CA 95814.

The victim may obtain assistance in completing the application forms and in processing her claim from the National Conference of Christians and Jews Victim Witness Assistance Program, a private, non-profit agency funded by the State of California through Santa Clara County to assist victims of crime.

If the victim did not report the crime to the police, then her personal accident or medical insurance should cover the cost of medical exams. If she did not have personal insurance, she should ask the doctor, her rape counselor, or her attorney about financial assistance in paying medical bills.

CHAPTER VIII

COMMUNITY RESOURCES REFERRAL LIST

CHAPTER VII

COMMUNITY RESOURCES REFERRAL LIST

RAPE HOTLINES

Berkeley Rape Crisis Line	(415) 845-RAPE
Diablo Valley Rape Crisis Line	(415) 938-RAPE
Mid-Peninsula Rape Crisis Center/YWCA/Palo Alto	(415) 493-RAPE
San Francisco WAR	(415) 647-RAPE
San Jose Women's Alliance (W.O.M.A.)	(408) 279-2962
San Mateo WAR	(415) 349-RAPE
Santa Cruz Rape Crisis	(408) 426-RAPE
Sexual Trauma Center	(415) 558-3824
South Alameda WAR	(415) 582-RAPE
YWCA/Valley Rape Crisis Center	(408) 287-3000

MEDICAL

Choice 15215 National Avenue Suite 100 Los Gatos, CA 95030	358-2766	Hours: 8:30 - 5:30 Mon.-Sat. Pregnancy Tests 9-12 No Charge - No age restrictions
East Valley Free Youth Clinic 1989 McKee Road San Jose, CA 95150	251-3717 (Office) 251-2765 (Clinic)	Drop-In basis Ages 12-30 Men welcomed
Our Health Center 270 Grant Avenue Palo Alto, CA 94306	327-8717	Hours: 4 - 10PM Mon. & Thurs. 6 - 10PM Wednesday
San Jose Hospital 675 E. Santa Clara Street San Jose, CA 95112	998-3212	24 hours; 7 days a week

MEDICAL (Continued)

Santa Clara County Health Department 2220 Moorpark Avenue San Jose, CA 95128	279-6141 279-5822	Alcohol Administration & Community Services General Information
Santa Clara Valley Medical Center 751 S. Bascom Avenue San Jose, CA 95128	279-5297 279-5100	Emergency Room Hospital Switchboard
Stanford University Medical Center 300 Pasteur Drive Palo Alto, CA 94305	497-5111	Emergency Room
The Male's Place 976 Lenzen Avenue San Jose, CA 95126	294-3279 279-6153	Health Line Office Information, counseling and referrals, all services confidential
Venereal Disease Clinic 645 S. Bascom Avenue San Jose, CA 95128	279-5913 289-9476	Clinic - Free test and treatment of venereal diseases. Open M-F, 8:30-11:00 AM, 1:00-3:30 PM General Information
Women's Community Clinic 696 E. Santa Clara Street San Jose, CA 95112	287-4322	Services include GYN exams, abortion, psychotherapy program (including sex therapy). Sliding scale fee. M-F 9AM-5PM
Youth Clinic 645 S. Bascom Avenue San Jose, CA 95128	297-8161	Pregnancy check. Involves those under 30. Monday thru Friday 5-9PM

MENTAL HEALTH COUNSELING

Alum Rock Counseling Center, Inc. 5038 Hyland Avenue San Jose, CA 95127	251-8623 251-4422	Business and information 24-hour crisis line
Center For Human Communication 120 Oak Meadow Drive Los Gatos, CA 95030	354-6466	
Centro de Bienestar 361/365 Willow Street San Jose, CA 95110	998-2264	Counseling, support. Staff is bilingual/ multi-cultural.
Centro Pastoral 596 S. 2nd Street San Jose, CA 95112	293-7400	Bilingual counseling and support
Child Abuse Treatment Unit 840 Guadalupe Parkway San Jose, CA 95110	299-2475	Individual, parent, family and group therapy. No fees. For anyone involved in incest and interfamily molesting.
Human Sexuality Counseling Center 925 W. Hedding Street San Jose, CA 95126	246-4422	
Santa Clara County Dept. of Mental Health 2221 Enborg Lane San Jose, CA 95128	279-6242 279-6234	Business and information Emergency - 24-hour service

CENTERS:

841 Blossom Hill Road San Jose	578-6060
14195 Capri Drive San Jose	379-7020
85 E. Paseo de San Antonio San Jose	279-6175
1991 McKee Road San Jose	926-2900
300 S. 2nd Street San Jose	279-6162
287 Leanseley Avenue Gilroy	842-0251
270 Grant Avenue Palo Alto	321-2141 ext 391
660 Fair Oaks Avenue Sunnyvale	733-2760

POLICE DEPARTMENTS

Ask to speak to Sexual Assault Investigator

Campbell Police Dept.	378-1211	
Gilroy Police Dept.	842-6456	
Los Altos Police Dept.	948-8222	
Los Gatos Police Dept.	354-8600	
Milpitas Police Dept.	263-1212	
Morgan Hill Police Dept.	779-2104	
Mountain View Police Dept.	911 (415) 968-1611	Resident's Emergency #
Palo Alto Police Dept.	911 (415) 329-2406	Resident's Emergency #
San Jose Police Dept.	297-3565 277-5300 277-4102	Reporting in-progress crimes Information; phone reports Sexual assault investigating unit
San Jose State University Police	Blue Phones (Centrex) 181 277-3511	Outdoor Emergencies Campus telephones Emergency # Emergency # for outside tele- phones
Santa Clara City Police Dept.	911 984-3194	Resident's Emergency #
Santa Clara County Sheriff Main Office # Cupertino Los Altos Hills Monte Sereno Saratoga	299-2311 294-1334 294-1334 294-1334 294-1334	Reporting in-progress crimes
Sunnyvale Dept. of Public Safety	738-5700	
Police Department	732-3411	

TEMPORARY/EMERGENCY HOUSING

American Red Cross Disaster Service 333 McKendrie Street San Jose, CA 95110	292-6242 Office 321-4121 Night & Weekend Emergency	Provides care for victims of large disasters. Will provide shelter.
Brandon House 1716 E. San Antonio Way San Jose, CA 95116	258-6146	Housing for women and children.
Catholic Worker Community 336 N. Second Street San Jose, CA 95112	294-5642	
Salvation Army Hospitality House and Welfare Center 405 N. Fourth Street San Jose, CA 95112	294-5774	

LEGAL INFORMATION

Asian Law Alliance 692 N. First Street San Jose, CA 95112	287-9710	For low-income or low/moderate- income people.
Casa Legal de San Jose 1616 E. Santa Clara Street San Jose, CA 95116	926-2527	Offers legal services in legal and criminal matters.
Community Legal Services- Legal Aid Society of Santa Clara County 210 S. First Street San Jose, CA 95113	998-5200 Information 998-5450 Family law center	Free legal services regarding civil and domestic matters are provided for people with low incomes.
District Attorney Santa Clara County 70 W. Hedding Street San Jose, CA 95110	275-9651	Any problems concerning a sexual assault court case.
Mexican American Community Services Agency (MACSA) Law Clinic 1501 The Alameda San Jose, CA 95126	228-5220	For low-income or low/moderate- income people.

LEGAL INFORMATION (Continued)

Santa Clara County Bar Association 111 N. Market Street, #712 San Jose, CA 95113	288-8844	Lawyers referral service.
Senior Adults' Legal Assistance 624 University Avenue Palo Alto, CA 94301	321-0850	Legal services for those 60 or older.
12 S. First Street Room 900 San Jose, CA 95113	287-7212	
7737 Monterey Street Gilroy, CA 95020	847-7252	
Welfare Recipients' League 1505 E. Santa Clara Street San Jose, CA 95116	259-9600	Limited to welfare recipients only.

SPECIAL VICTIM SERVICES

Victim Witness Assistance Program 777 N. First Street, Suite 620 San Jose, CA 95112	295-2656	A private agency providing 24-hour response to crime scene, emergency shelter, emotional support, transportation, food, clothing and emergency funds for victims. Assistance in court process and applications for state indemnification.
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OTHER USEFUL NUMBERS

Commission on the Status of Women Santa Clara County 70 W. Hedding East Wing, Fifth Floor San Jose, CA 95110	299-3131	
Coordinating Council on Services to Victims of Sexual Assault 70 W. Hedding San Jose, CA 95110	299-3131	

OTHER USEFUL NUMBERS (Continued)

Information and Referral Services of Santa Clara County 3275 Stevens Creek Blvd. San Jose, CA 95117	243-8565 969-2211	24-hour free information Santa Clara County Palo Alto
Mid-Peninsula Rape Crisis Center/YMCA 4161 Alma Street Palo Alto, CA 94306	494-0972	Business number. Provides information, counseling, and support groups. Bi-lingual advocates available.
Mid-Peninsular Support Network 655 Castro Street, Suite 6 Mountain View, CA 94041	964-2266	Emphasis on battered women and their children. 24hour crisis number.
SJPD Crime Prevention 2244 Story Road San Jose, CA 95122	277-4133	Slide series, home security.
Suicide and Crisis Prevention 2221 Enborg Lane San Jose, CA 95128	279-3312	
W.O.M.A. (Women's Alliance) 349 Willow Street San Jose, CA 95110	298-3505	Basically offers services for battered women. May help with emergency housing and emergency transportation.
YMCA/Valley Rape Crisis Center 375 S. Third Street San Jose, CA 95112	287-3000 295-4011	24-hour, 7 days/wk crisis line, information and counseling. Business

GLOSSARY

APPEAL-

An application to a higher court to correct or modify the judgment of a lower court.

ARRAIGNMENT-

The suspect's first court appearance, to answer the charge against him (he may plead guilty/not guilty/no contest).

CIVIL REMEDY-

The legal right which an injured party has to sue a person injuring another for financial compensation (as opposed to a criminal proceeding, in which the wrongdoer is prosecuted by the state for violating a criminal law).

DEFENDANT-

A person against whom an action is brought, a warrant is issued or an indictment is found.

DISTRICT ATTORNEY-

An elected official who prosecutes criminal actions against persons accused of committing crimes.

GRAND JURY-

A selected group of citizens nominated by the judges of the Superior Court who hear witnesses and evidence presented by the district attorney.

INDICTMENT-

A written accusation that one or more persons have committed a crime, presented upon oath, by a grand jury.

MOTION-

An application to a court, by the parties or their counsel, for a rule or order, either prior to trial or in the progress of a lawsuit.

PAROLE-

Supervised suspension of a convict's sentence, and release from prison, conditional on the convict's compliance with the terms of parole.

PLEA BARGAIN-

A compromise between the prosecutor and the defense, where the defendant pleads guilty to a crime in exchange for some leniency and the certainty of knowing the exact crime for which he will be punished.

GLOSSARY (Continued)

PRELIMINARY HEARING-

A court proceeding where the judge decides if there is good reason to hold the suspect for trial.

PRE-TRIAL HEARING-

A meeting between the judge and counsel for the parties, preliminary to the trial of a lawsuit, to consider any matters that may aid in the disposition of the lawsuit.

PROBATION-

The delay of the imposition of punishment which has been imposed upon a person convicted of a crime.

PUBLIC DEFENDER-

A defense attorney provided by the state at no cost, if the defendant cannot afford a private attorney.

SUBPOENA-

A court order or writ, commanding attendance in a court, under a penalty for the failure to do so.

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