What happens when you report an assault to the police?

When a victim/survivor reports the crime, the police gather evidence to prove that the crime occurred. For some victim/survivors the decision to report an assault is made some time after the crime has occurred. This does not mean that it is impossible to attain a conviction, as convictions have been obtained some years after an offence was committed.

Police Code of Practice

The Victorian Police department has guidelines to follow once they have received a report of a sexual assault. The Code of Practice for the Investigation of Sexual Assault describes the way members of Victoria Police should respond to reports of sexual assault. The fundamental principle underlying this service is that the victim is the first priority. Guidelines were developed in 1992 and further enhanced through the incorporation of recommendations made by the Rape Law Reform Evaluation Project.

The main aims of the Code of Practice are to:

- Provide a co-ordinated approach to the handling of sexual assault cases by the police, Centers Against Sexual Assault (CASA) and other victim assistance programs.
- Increase the confidence of sexual assault victims and the public in police management of sexual assault cases so as to increase the reporting of offences.
- Increase the apprehension of offenders.
- Maximise successful prosecutions.
- Minimise trauma experienced by sexual assault victims during the investigative process.

The Code gives priority to the medical needs of all victim/survivors, as well as to their emotional and physical wellbeing.

Functions of Victoria Police in sexual assault case

- To protect and support victims
- To establish whether a crime has been committed, and gathering evidence, including interviewing the victim and ensuring prompt medical attention where necessary
- To identify, apprehend and prosecute the offender(s).

The code requires that if a victim/survivor reports a recent sexual assault to the police they will be:

- asked for basic information about the assault;
- taken to the nearest CASA within 2 hours of the arrival of the first police member (for a medical examination and support);
- asked to make a statement to the Sexual Offences and Child Abuse Investigation Teams (SOCIT) member of the same sex, unless otherwise requested;
- given a copy of the statement made to the police;
- kept informed about the progress of the police investigation (whether the offender has been caught, whether the charges have been laid);
- advised within 7 days of the initial report and after that time contacted every week (or more frequently as appropriate) until the offender is located or the investigation is discontinued;
- told if a decision is made not to continue an investigation, or not to lay charges (the decision will be communicated verbally or, if requested, in writing); and
- have the right to request to the DPP to review a decision not to charge the offender.

The statement is the verbal record of the events, made by the victim/survivor. It is used in the legal proceedings if the complaint goes to court, or if an application for a victim of crime is made. The Code makes it clear that the statement should be in the victims own words without interruptions.

Interpreter

Although the code does not specifically state that a victim/survivor from a non English speaking background is entitled to an interpreter, it is her right to have an interpreter who is, where available, of the gender of their choice.
Disability
For victim/survivors with an intellectual or psychiatric disability, the Code states explicitly that an independent third party (ITP), available through the Office of the Public Advocate, must be contacted to be present throughout the entire reporting procedure. A CASA counselor/advocate can act as an ITP during the process of a forensic medical examination.

For most victims of sexual assault, the decision to report to the police is a difficult one. It is not uncommon for the victim/survivor to have many fears about this process, including fear of retaliation by the offender, fear of the legal process and fear that they will not be believed. In this context, it is important that an opportunity be provided for victim/survivors to explore these fears, and to obtain information which will assist them in reaching a decision.

Reporting a past assault
There is a low rate of reporting sexual assault generally. Yet, due to changes in community attitudes to victim/survivor of sexual assault, it is becoming much more common for sexual assault to be reported some months, or even years after the assault took place.

There are many good reasons for this. Some may do so because they have a right to apply for victims of crimes compensation. Others simply want the crimes against them recorded by someone in authority.

If a victim/survivor wants to make a full report to the police and wants the offender to be charged, the police will take a statement, however the police may decide that there is insufficient evidence to proceed with charging the offender. In the event that the victim/survivor is not satisfied with any police decision, the Police Code of Practise (Victoria), requires police to give a decision in writing.

Reversing a decision to report
If the victim/survivor decides not to proceed with police involvement, a statement of no further police action, or 'No Complaint', may be made by the victim/survivor. However, because the police have a duty to the public to enforce the criminal law they are able to override this decision if they think it is in the public interest to pursue an offender.

One example of the criteria which informs police decisions about proceeding with an investigation is found in the Police operating Manual in Victoria. This describes these decisions as being based on:

- the seriousness of the offence;
- whether the offence is one of a series (i.e. the offender is a 'serial rapist');
- whether the complaint is easy to solve;
- whether the matter is of priority given police resources.

If the police accept the victim/survivor's reason for not wanting to proceed, they will take a statement which gives the reasons why the decision not to proceed has been made and notes that no one has forced this decision.

Making a statement
The statement is a:

"...word picture of a series of events for police, prosecutors, court officials, and jurors; it can be referred to by witnesses to refresh their memory of events and provides a guide for witnesses to base their testimony on." (Victorian police 1994;1).

If the victim/survivor wishes, someone may accompany them during the medical examination and whilst the police take a statement. This person may be a friend, family member or someone from a sexual assault service.

When taking a statement the police will want to talk about the incident, especially obtaining detailed descriptions of conversations, and acts. This is a very lengthy difficult and traumatic process for the victim/survivor. It is also important that the victim/survivor has an opportunity to describe their feelings during the assault, as part of their statement. This has become more crucial now that the laws in most States describe consent provisions which specify consent as not being present where the victim/survivor is afraid for themselves or someone else.

The victim/survivor will not have to pay for a solicitor, because it is the police or Public Prosecutor who conducts the prosecution. The victim/survivor will be a witness for the State. They are called the Crown Witness, and as such they are not a party to the proceedings. There is both an advantage and a disadvantage to this; the advantage is that sexual offences are seen as crimes against the state, which means that the community recognises the offence as one for which it is responsible, and may punish the offender accordingly. The disadvantage is that the victim/survivor often has no say in the discontinuation or continuation of proceedings, and no right of appeal if any decisions are made to which they do not agree.
During the process of making a statement to the police the victim should also be aware that:

- they have the right to leave the police station at any time;
- they should never sign anything that they think is untrue, or that is not written down the way they intended it to be. For example they should not sign a statement which says s/he wasn’t assaulted or sign a statement of ‘No further police action’ or ‘No Complaint’, without adequate information;
- the statement should be a complete record of events in their own words;
- they should be given a copy immediately by the police;
- if their recollection of events was unclear when the statement was made, or they wish to add or change something in the statement, they should contact their support person, the police, the Public Prosecutor or a lawyer.

Safety

For many victim/survivor, decisions about whether to report an assault will be informed by their sense of safety in pursuing their legal rights. It is not uncommon for threats to be made in the context of the assault, and these threats should be given the full attention of the law where protections or sanctions are available. The safety of victim/survivor, regardless of whether a decision to pursue legal remedies has been made or not, is of paramount importance. Exploring questions of safety at the earliest opportunity is critical to the provision of effective support.

False reports

There is a popular mythology amongst some members of the community and the legal profession that there is a high incidence of false reports of sexual assault. (Graycar and Morgan, 1990:339). In fact, research demonstrates that sexual assault is the most under-reported crime, and that most victims are reluctant to report at all. The Women’s Safety Survey found that only 15% of victims reported the most recent incident of sexual violence within the past 12 months, although 32% disclosed the assault to a family member and 59% disclosed to a friend or neighbour. (ABS 1996)

Some victim/survivors who have tried to stop charges proceeding have ended up telling the police the initial charges were untrue. As a result, they have been charged with making false statements to the police. A victim/survivor in such cases could also face perjury charges. Both of these charges are treated extremely seriously by the courts and as such a charge can result in the payment of costs incurred by the police investigating the original complaint. Some victim/survivors, when telling their story may mix up events. In these events, it is not unknown for the police to begin to speak in terms of a charge of false reporting.

Deciding not to take criminal action/Not to report to the police

For some victim/survivors, the decision not to formally report to the police is a legitimate one based on prior knowledge or experience of the legal system, a fear for their safety, or advice by others not to report. Some of the reasons associated with not reporting may be allayed through the provision of accurate information about the process, and support and advocacy through it. Ultimately, the decision as to whether to report or not lies in the hands of the victim/survivor.

There are other options available which may perform a role similar to that of reporting, but without losing control over the process. These options include;

- notifying the police in order to make them aware of the assault, and provide information about an offender or an offence;
- notifying the police of the offence so that information may be recorded in order that the victim/survivor can make a full statement in the future;
- making a full statement to the police and concluding this statement with a statement of ‘No Further Police Action’ (while bearing in mind that police acceptance of this statement is reliant upon the considerations outlined above).