

Sexual Assault



What is assault?

Assault is when someone uses force to hurt you. Slapping, kicking and pushing can be assault. Sometimes touching can be an assault. Threatening or trying to hurt someone can also be assault.

Sexual assault involves sexual contact that you didn't agree to. Some common types are:

- touching your private parts or kissing you (“simple sexual assault”); or
- forcing you to have sex, even oral sex (“serious sexual assault”).

If the person hurts you, uses a weapon or threatens to use a weapon before or during a sexual assault, that could be “sexual assault causing bodily harm”.

If you are hurt very badly or almost killed, that is “aggravated sexual assault”.

All types of sexual assault are against the law. Courts deal with the types differently, and there are penalties for the different types.

Where can I get help after a sexual assault?

Go to the health centre or hospital right away, even if you don't think you have been hurt. A doctor may find evidence of the assault that the police can use when laying charges.

You might also want to talk to a counsellor to help you deal with the emotional effects. The trauma of sexual assault is not something that just goes away. Many people who have been sexually assaulted need counselling for years, and may have feelings like:

- fear;
- depression;
- flashbacks and very clear, scary memories of the assault;
- lack of confidence;
- trouble relating to others; and
- disruption of their sex life.



Can my husband or wife be charged with sexual assault?

Yes. If your spouse assaults you, you can testify against him or her.

If you know that your spouse has sexually assaulted someone else, you may testify and the Crown prosecutor can call you to testify.

What if I agreed to have sex with the person?

When a person agrees to have sex or to do something sexual, courts call it “consent”.

There is no consent if:

- you did not agree to do it;
- you weren't able to agree – for example, if you were asleep or drunk;
- the other person convinced you to do it and was in a position of trust, power or authority – for example, the other person was your babysitter, teacher or relative;
- you told the other person you didn't want to do it – for example, you said no, or pushed the other person away;
- you agreed to do it only because the person hurt you or threatened to hurt you;
- you were very young (usually, people younger than 14 can't consent);
or
- you agreed to do it, but later told the person that you wanted to stop.



What if the person says that I agreed to have sex?

If the other person says that you agreed, the judge or jury must decide who is right. If the other person honestly believed that you consented, and the mistake was reasonable, he or she will not be found guilty of a sexual crime. The other person must have taken reasonable steps to find out if you consented. Some common excuses that will not be accepted in court are:

- the person was so drunk that he/she thought you had consented; or
- the person was out of control or careless and thought you had consented.

Does there have to be a witness to the assault?

No. The judge or jury will need to be sure beyond a reasonable doubt that the person assaulted you. You can tell your story in court, and there is usually other evidence, like medical tests, that can show that you were assaulted.



What if I don't want to call the police right away?

It's best if you call the police as soon as possible. They will be able to collect evidence right away and talk to witnesses while the story is fresh in their minds. It is better in court if you can say you reported the assault right after it happened.

However, there is no set time, and you can report an assault years after it happened. If you don't want to call the police, go to the health centre or hospital and tell them what happened. You should go to the health centre or hospital as soon as possible after the assault. Even if you don't see any bruises, you can have injuries inside your body. The doctor or nurse may also want to talk to you about sexually transmitted infections and pregnancy. It is up to you to decide whether to tell the police about what happened to you. Sometimes it helps to talk to a victim services worker first.

What will happen when I report the assault?

The police will ask you questions about what the person did to you. They will want a doctor to check you for injuries and take pictures of any cuts or bruises. The police may go to the scene of the crime to collect evidence and talk to people who might have information about what happened.

If you know who assaulted you, the police will talk to him or her. The person may be put under arrest and will be charged with a crime if there is enough evidence.



Will the person be in jail until the trial?

It depends. Usually, the person is released until the trial. If you are afraid that the person will visit or hurt you, tell the police or Crown prosecutor. They can ask the judge to put conditions on the person's release, like an order that he or she can't go near you or talk to you.

Will everyone know that the person assaulted me?

Unless the judge asks the public to leave the courtroom, courts are open to the public and anyone can come to court to hear evidence. The Crown prosecutor can ask the judge for a publication ban. That means that your name can't be reported in the paper or on the news. Some publication bans cover details about the crime.

Will I have to testify in court?

If the person pleads guilty (admits that he or she assaulted you) you will not have to testify. If the person pleads not guilty (denies he or she assaulted you) you will probably have to give evidence in court. You are a very important witness and might even be the only person who can tell the judge exactly what happened.

You might have to give evidence at a preliminary hearing and at trial. At a preliminary hearing, a judge decides if there is enough evidence to hold a trial. People who are charged with crimes like serious sexual assault, assault causing bodily harm or aggravated assault have a right to a preliminary hearing.

If the judge decides there is enough evidence to go to trial, he or she will set a date for trial. It's usually a few months between the crime and the preliminary hearing, and a few more months between the preliminary hearing and the trial.



What if I want to withdraw the charges or don't want to testify?

If the police have laid charges against the person, you cannot withdraw them. This is up to the Crown prosecutor's office. If you get a subpoena, you must go to court to give evidence. A subpoena is a court order telling you to come to court on a certain date and time.

If you are afraid or you do not want to testify, talk to the Crown prosecutor as soon as possible. If you do not obey a subpoena, the judge can issue a warrant for your arrest. That means the RCMP may arrest you and take you to court to explain to the judge why you didn't obey the court order.

Will I have to talk about other people I've had sex with?

Usually not. If the person wants to talk about your sexual history as evidence in court, he or she will have to ask the judge and tell the Crown prosecutor. Then the judge will hold two hearings: one to decide if the evidence can be admitted and another to decide if the evidence will be admitted.

You can't be forced to testify at these hearings, and the jury and the public (including reporters) are not allowed to hear what's said. The judge will only allow your sexual history to be used as evidence if:

- it covers specific instances;
- it is relevant; or
- it is important evidence in proving the facts of the case.



The judge will think about several things, including:

- the other person's right to make a full answer and defense;
- the potential harm to your personal dignity and right of privacy; and
- the effect that the evidence might have on the jury.

No one is allowed to publish or broadcast information about the application or the judge's decision without the judge's permission. The judge must give written reasons for his or her decision.

What type of sentence will the person get?

If the person is found guilty, he or she will be sentenced. Usually the judge will set a date for sentencing and may ask a probation officer to do a pre-sentence report. The probation officer will find out about the person's background, family, education, employment record, and previous criminal record. You can tell the Crown attorney how the crime has affected you and your family. This information can be included in a victim impact statement or the Crown attorney can tell the judge at the sentencing hearing.

The judge has many sentencing options, including:

- fines: the person can be ordered to pay money to the court;
- probation: the person can be released back into the community as long as he or she promises to do things like follow the law, stay away from you, etc.; or
- a jail term: the person can be sentenced to jail in your community, another NWT community, or even somewhere else in Canada.



The judge may choose one or more of these penalties. For example, the judge may fine the offender and place him or her on probation. In deciding what sentence to give the judge looks at:

- how serious the offence was;
- what happened during the offence;
- any injuries to you;
- the amount of force the person used;
- the person's attitude towards the crime;
- the person's previous criminal record; and
- the kinds of sentences that are usually given for similar offences.

If I was sexually assaulted as a child, is there anything that I can do now?

Yes, sometimes. Talk to the police and your lawyer. Sometimes the police will lay criminal charges many years after a crime happens. You might also want to talk to a counsellor.



Call your local victim services worker for help with a victim impact statement, for information about your case or for emotional support in this difficult time:

Fort Good Hope: (867) 598-2247 or (867) 598-2352

Fort Smith: (867) 872-5911

Hay River: (867) 874-7212

Inuvik: (867) 777-5493 or (867) 777-1555

Yellowknife: (867) 920-2978 or (867) 669-1490

Please ask for service in your language.

