

Prevention Pathways

Online Courses

FACT SHEET

A Woman's Legal Rights

Women who are victims of rape, domestic violence, or other sexual assaults can seek help from the law. Every State in the U.S. has laws designed to protect female and male victims of violence. Committing violence against a woman is also a Federal crime. The Violence Against Women Act (VAWA) of 1994 made domestic violence a civil rights violation. Although the majority of victims are women, VAWA also covers men who are victims of family violence. In 1999, VAWA was expanded. The law now protects people who are elderly, immigrants, or in dating relationships.¹ Colleges and universities that use Federal Aid programs must provide protections for sexual assault victims as well.

“Stay-Away” or Protective Orders

A woman who lives anywhere in the country can ask a court to order her abuser to stay away from her home, work, and other places where she may be in danger. Legal names for these papers are called “protection orders,” “stay-away orders,” “no-contact orders,” or “restraining orders.” As a group, these papers often are referred to as protective orders. A court order is good anywhere in the United States (and its territories). Protective orders are issued by district, civil, criminal or family court judges. A woman can get a court order without having to hire a lawyer.

Although laws vary from State to State, most protection orders cover:²

- A current or ex-spouse
- A co-habitant (someone who has lived in the house/apartment as a sexual partner for at least 90 days during a 1-year period)
- A child

- A person related to the abuser by blood, marriage, or adoption
- A parent or stepparent living with the abuser
- A “vulnerable adult” (someone unable to care for themselves)
- An individual who has had a child with the abuser
- A person with whom there has been a date and/or a dating relationship

Women who are victims of any of the following crimes should be able to get a court order against their abuser. The crimes include:³

- Criminal acts (robbery, abuse, burglary, kidnapping)
- Sexual assault and marital rape
- Holding someone against their will at home
- Interfering with child custody
- Harassing behaviors (on the phone, in writing, in person) or stalking
- Emotional abuse
- Damaging property (destroying car or home)

In most States, an abused woman can get a temporary stay-away order in 1 day without the help of a lawyer (called *ex parte* – meaning one-party orders). To get this temporary order in most places, all a woman needs to prove to a judge is that she or a member of her household is in danger of being abused.⁴

Criminal and Civil Cases

Acting violently against women can be a “criminal” or a “civil” act—or both. If a judge decides that a person should be charged with a criminal offense, the judge will call for a trial to decide whether the person is guilty or not. Punishment may include prison.

Any crime victim can sue (file a lawsuit against) the person who committed the crime, whether or not the offender is found guilty in a criminal trial. She can also sue if there has not been a trial. In civil cases, the judge does not try to decide whether the offender is guilty; the offender is not put in prison. The civil court has to decide whether the offender caused the injuries. If so, he will probably have to pay the victim money.⁵ Most women choose an attorney to help them sue the abuser in civil court.

Legal Protection for Rape

A woman who is a victim of sexual assault has a right to decide whether she wants to “press charges” (file criminal charges with the police) against her abuser. It may seem that a woman would want to use the legal protection she has a right to, but there are many reasons why women are afraid to do so. Some women don’t want to have their private lives made public and don’t want friends and family to know about the rape. Some women fear that their rapist will try to get even with them. However, studies show that repeat rapes are rare.

The more society makes it clear that sexual assault will not be tolerated, the more women will use the law to protect themselves and their families. Men who abuse women need to know

that violence against women is illegal and can even lead to jail. The crime of rape is being taken more seriously as more women have gone to court against rapists, and the rate of rapists going to jail has increased.

Definitions

Sexual assault:⁶ Occurs when a person knowingly

- Causes another person to take part in a sexual act by threatening or scaring them, or
- Participates in a sexual act with another person who is not able to understand or stop the abuse (for example, someone too young, handicapped, or passed out from alcohol or other drugs, or other conditions)

Domestic violence:⁷

- Actual or threatened physical or sexual violence, or mental or emotional abuse by a spouse (or ex-spouse), boyfriend or girlfriend (or ex-boyfriend or ex-girlfriend), partner, or date.

For more information, go to www.samhsa.gov/preventionpathways and click on “courses” to find Module 11 of the online course, “It Won’t Happen to Me: *Substance Abuse and Violence Against Women*.” prevention@samhsa.gov.

References

¹ Fazzone, PA; Holton, JK, and Reed, BG. (1997). Substance abuse treatment and domestic violence. Treatment improvement protocol series 25. (DHHS Publication No. SMA 97-3163). Rockville, MD: Center for Substance Abuse Treatment.

² Hart BJ (1992), State codes on domestic violence: analysis, commentary, and recommendations. *Juvenile and Family Court Journal*, 43(4):79.

³ Fazzone, PA; Holton, JK, and Reed, BG. (1997).

⁴ Orloff, L., (1992). Protection orders. In J. Carter (Ed.) *Domestic violence cases in the civil court: A national model for judicial education*. San Francisco, CA: The Family Violence Prevention Fund.

⁵ National Center for Victims of Crime. (2000). Information for victims. Washington, DC: The National Crime Victim Bar Association. Available at http://www.victimbar.org/victim_information.html

⁶ 18 U.S.Code, § 2242, Sexual Abuse. (2001).

⁷ The Centers for Disease Control and Prevention. (2001). Intimate Partner Violence [Fact Sheet]. Available at www.cdc.gov/ncipc/factsheets/ipvfacts.htm