

LEGAL INFORMATION ABOUT SEXUAL ASSAULT

The Boston Area Rape Crisis Center (BARCC) provides the information in this document to help Boston Area residents understand legal processes. This document is for educational purposes only and is only intended to give you information; none of the information in this document is legal advice and it does not address how the law would treat your situation or what steps you should take. If you want help figuring out the options for your particular situation, you can call [BARCC](#) and ask for confidential free services from the Legal Advocacy program.

The information in this document was prepared by Melina L. Muñoz and Jacqueline Anchondo, Esq. with edits by Aaron Horth, and is current as of December 2013. Please note that there may have been relevant changes to the law/legal system since December 2013. For the most current information, please call [BARCC](#) and ask for confidential free services from the Legal Advocacy program.

BARCC helps survivors from all backgrounds and is knowledgeable about all types of sexual violence.

BARCC would like to extend special thanks to Melina L. Muñoz for donating her time to researching and drafting significant portions of this document; Melina's work was central to making this document a reality.

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CIVIL LAWSUITS

Basics of a Civil Lawsuit

A civil lawsuit is started by the survivor, so it's the Survivor vs. Defendant (in [criminal cases](#), the state brings the lawsuit). There are many [different types of civil lawsuits](#) a survivor can bring. For example, you may be able to sue the owner of the place where the assault took place, or the perpetrator for causing you harm.

In a civil case, the survivor, as the person bringing the lawsuit, has the responsibility of proving the case—this is known as the [burden of proof](#). If the judge rules in your favor, the [outcome](#) is typically money from the defendant.

With rare exceptions, there is a strict 3 year statute of limitations for civil lawsuits. Statutes of limitations give you the timeframe during which you can start your lawsuit. Some statutes of limitations start immediately after the incident you're bringing the lawsuit about, others start when you knew or should have known about the injury. To talk more about statutes of limitations, please [call BARCC](#) and ask for Legal Advocacy services.

It is important to remember that a lawsuit is public record, so the public can access information about the lawsuit.

Although you are not required to have an attorney to bring a civil lawsuit, an attorney may be able to help you understand the law and explain your options. An attorney can also help you understand how a civil lawsuit can affect a criminal case, and vice versa. If you would like information about attorneys you can contact, please [call BARCC](#) and ask for Legal Advocacy services.

Types of Lawsuits

There are different types of civil lawsuits that you can bring against different people, and the outcome is typically money.

- You have the option to sue the perpetrator for causing you harm.
- You can also sue a perpetrator who infects you with certain sexually transmitted diseases.
- You may be able to sue the perpetrator's parents/legal guardians if they knew or should have known that the assault could have or would have happened.
- You may be able to sue the perpetrator's employer for sexual harassment by any supervisory employee regardless of whether they knew of the harassment.

- You may be able to sue the perpetrator’s employer for sexual harassment by employees without supervisory authority or certain non-employees such as customers, patients, clients, or independent contractors.
- You may be able to bring suit against your employer if you were wrongfully denied medical leave that you had a legal right to take.
- You may be able to sue the owner of the place where the assault took place.
- You may be able to sue a school if the school had knowledge of severe or pervasive sexual harassment that deprived you of access to educational opportunities or benefits. Different from a civil lawsuit, you may also want to learn more about school-based accommodations for survivors.

For more information about what you need to prove, click see below. For additional or other questions, please [call BARCC](#) and ask for Legal Advocacy services.

What do I need to prove?

As the one bringing the civil lawsuit, you have the responsibility of proving your case—this is known as the “burden of proof.” The burden of proof is different for every type of lawsuit. Please [call BARCC](#) and ask to speak with the Legal Advocate if you have any questions about this.

To win your case, you have to prove it by a “preponderance of the evidence.” This means that you will have to prove that you more likely than not suffered the harm you are suing about, or, said another way, there is greater than a 50% chance that the harm occurred.

Remember, with rare exceptions, civil lawsuits have a strict 3 year [statute of limitations](#).

CRIMINAL

Basics of Criminal Prosecution

In a criminal case, the state, through a District Attorney’s (DA’s) office, prosecutes the perpetrator as the defendant after charging them with a crime. If you are a victim under the age of 18, click [here](#) to learn more about how the process will be different for you.

As a survivor, you have the right to report a sexual assault to the police, which may lead to criminal prosecution of the defendant. Not all reported cases of sexual assault will lead to prosecution for various reasons. This does not mean that you are not believed. For more information about criminal prosecution, please [call BARRC](#) and ask for Legal Advocacy services.

Reporting to the Police

Whether or not to report to police is completely up to you. You know your situation best and should make the choice that will be right for you, whatever that choice is.

Police (and other service providers, including hospitals, schools, BARCC volunteers and some staff) may need to [file a report](#) to a state protective agency if you are under age 18, disabled, or over age 60. Please [call BARCC](#) and ask for Legal Advocacy services if you would like more information about how this might affect you.

Statutes of Limitations

Statutes of limitations are time limits that might affect your ability to move forward with the criminal process. Even if the statute of limitations has run, meaning the criminal process can't move forward against the perpetrator, you can still report the incident to police to document the incident and notify law enforcement. To learn more about statutes of limitations, please [call BARCC](#) and ask for Legal Advocacy services.

How to Report

If you have been the victim of a crime or believe that a crime has been committed and want to report to authorities, you can contact the police in the city or town where the crime occurred. A Legal Advocate at [BARCC](#) can help prepare you to feel ready to report the crime. For information about your rights when talking to the police, click [here](#).

You may also want to speak with the [Legal Advocacy program](#) if there is any chance that you have an outstanding warrant for your arrest or you are engaged in any unlawful activity so that you can be advised on how best to proceed.

What happens once a report is made?

After a report is made to the police, the case is in the hands of the state, so the DA's office, together with the police, will decide how to proceed. This also means that if the case moves forward, you will be a witness to the state's case.

You may have to speak with different officers to report what happened. An initial report with very little information may be taken by one officer. That initial report may then get passed to a sexual assault investigator or detective who will contact you to set up an interview time.

Sometimes it is possible to call a police department in advance to request an appointment with a sexual assault detective so you do not have to speak with other officers, although not every police department will set up appointments.

When you do meet with the sexual assault investigator, you will likely be asked many questions about what happened, how you know the perpetrator, and whether you had any previous consensual sexual encounters with the perpetrator. This can be an emotionally difficult interview, and so you can always ask for a break or to have the interview continued some other time.

A BARCC advocate may also be able to meet you at the police station before the interview and be there to support you after the interview (although the advocate will not be able to be in the same room as you and the detective during the interview).

For help with appointments with sexual assault detectives, to discuss the police interview and your rights in more detail, or to learn about BARCC advocate accompaniment, please [call BARCC](#) and ask for Legal Advocacy services.

Next Steps After Making the Report

Police will then investigate. This process frequently takes several weeks to months. The police may talk to other people who may have relevant information, including the perpetrator. If you ask, some detectives, although not all, will notify you before talking to someone in particular.

It is important to know that the perpetrator may hire a defense attorney or private investigator if they become aware that you are moving forward with the criminal process. These people may try to contact you, or your friends or family, to ask questions about you and about the case. You and your friends/family are not obligated to talk to them or anyone else working for the perpetrator. Anything that you or your friends/family say to the perpetrator's attorney or investigator can be used against your interests during the criminal process. If you are unsure whether someone contacting you might be working for the defendant, you can [call BARCC](#) and ask for Legal Advocacy services.

After police have completed enough of the investigation for the DA's (prosecutor's) office to decide whether or not to move forward with the case, the DA's office will generally contact you to set up a meeting. At the initial meeting with the Assistant DA (ADA) assigned to your case, you may learn whether:

- 1) the DA's office has decided to move forward with the case;
- 2) the DA's office has decided to close the case without moving forward; or
- 3) the DA's office wants more information before deciding whether or not to move forward.

If you would like accompaniment for a meeting with the DA's office, please [call BARCC](#) and ask for Legal Advocacy services. We will do our best to provide accompaniment. Please note that we will not be able to be in the same room with you while you are

being asked questions about the case, but we can talk to you and law enforcement about next steps.

What to Expect Leading Up to Trial

There are many steps involved in going to trial on a criminal case. A Victim Witness Advocate at the DA's office will be assigned to your case. Their role is to keep you informed throughout the process. There may be some court proceedings that you may be asked to attend, and others where your presence will not be required. Before hearings at which your attendance is expected, the DA's office will likely prepare you in advance so you know what to expect.

It can take months or even years before a case goes to trial. You will likely be called to testify at trial—this means that both the ADA and the defense (perpetrator's) lawyer will be asking you questions, which can include questions that can be triggering and difficult to answer.

Trials, in addition to all proceedings in criminal court, are open to the public. In Massachusetts, the victim's name is not supposed to be released to the public or used in the media. However, technically anyone could attend the trial and learn of your identity. You can ask the DA's office to request that your name and identifying information be impounded in all court documents, meaning that information will be blocked out in the documents available to the public. This request may not always be granted, but if you are particularly worried about your safety, it may be worth it to make the request.

At the end of the trial, the jury will give a verdict of either Guilty or Not Guilty, or in rare instances, there may be a hung jury. A Guilty finding requires that all jurors be convinced beyond a reasonable doubt that the crime happened, meaning the jurors must be convinced of the defendant's guilt to a moral certainty, rather than just thinking it's more likely than not that the defendant is guilty. If there is a hung jury, it means the jurors couldn't agree, and the judge will declare a mistrial. If this happens, there might be another trial.

As the trial date approaches, you can work with the BARCC [Legal Advocacy Program](#) to figure out an individualized plan to support you throughout the process.

If the perpetrator is under the age of 18

If the perpetrator is under the age of 18, the court process may be different. The trial might take place in juvenile court, where proceedings (called “delinquency proceedings”) are closed to the public. Juvenile delinquency proceedings are also different from adult proceedings in that the main goal is to rehabilitate the perpetrator, instead of just punishing them. This means that, if the juvenile perpetrator is found responsible for the offense, the outcome might include treatment or some other way of trying to help the perpetrator learn how to not be abusive.

Contact a legal advocate at [BARCC](#) to learn more about your rights and options.

I changed my mind!

It’s okay! If you change your mind at any time during the criminal process, just let the detective and/or the DA’s office know. Often, this means the case will be dropped, but technically, they can still move forward against your will and require that you participate (but this is not common).

Call [BARCC](#) and ask for Legal Advocacy services to talk more about what happens if you change your mind.

Your Rights when Talking to Law Enforcement

It’s important to be honest with law enforcement. If you don’t know the answer to a question you are being asked, it’s okay to say you don’t know.

Your conversations with law enforcement—this includes police, the Victim Witness Advocate, and the DA’s office—are not confidential and law enforcement will have to share information they collect from you with the defendant if the case goes forward.

Some things, if disclosed to law enforcement, can be used against you in the criminal process. This can include information about any mental health conditions or diagnoses that you have, any therapy you receive or have received, any services you received from BARCC or other Rape Crisis Centers, and information about anything you may have done that may have been unlawful.

If you ever decide for whatever reason that you do not want to talk to law enforcement, you do not have to. You can take a break during an interview, choose not to answer

questions you do not want to answer, let police know you'll get back to them later with an answer, ask to finish a different day, or stop the interview altogether at any time.

Police may ask you to hand over evidence, such as your cell phone, which can be helpful to their investigation of the case. Unless there is a search warrant requiring you to give something to police, it is your decision whether or not to do this. Please note that if you do choose to hand over your cell phone, the police may have access to everything there, including apps, email, and other accounts. If you are not comfortable with this, there may be other options available, such as requesting that the police take photos of the information they want from your phone (instead of taking your actual phone). Remember that whatever police have access to may eventually be handed over to the defendant as part of the criminal process.

When talking to law enforcement, you have many rights. The [Legal Advocate](#) can talk more with you about these rights.

Juvenile Victims

When the victim is under the age of 18, the investigation process is slightly different. After an initial report is taken by police, the police will connect with the [Child Advocacy Center](#) (CAC) of the DA's office. The CAC will schedule a time for the juvenile victim to come in for an in-depth interview by a specialist trained in age-appropriate interviewing techniques.

Police (and other providers, including hospitals, schools, BARCC volunteers and some staff) may need to file a [51A Mandated Report](#) upon learning of someone under the age of 18 who has been harmed. This report is sent to the Department of Children and Families (DCF).

Contact a legal advocate at [BARCC](#) to learn more about your rights and options.

SCHOOL

Reporting the Incident to your School

If you are a student, you have the option to report the assault to your school. This is separate from reporting to police, and you can do this whether or not you want to report to police. The school should have an established protocol for receiving these reports and responding to them.

If the assault happened on campus, whether by a fellow student, employee, visitor, or someone else, you can report to the school where it happened. If the assault happened off campus but the perpetrator is a student at your school, you can report the assault to your school. If the perpetrator attends a different school, regardless of where the assault happened, you can report the assault to their school.

If you choose to report the incident to the school, or even to talk to someone informally whom you trust at school about what happened, the person you talk to might be obligated to report what you told them to other people at your school, even if you ask them not to tell anyone. For questions about confidentiality and privacy in the school process, contact [BARCC](#) and ask for Legal Advocacy services.

In general, if you report to a school, there are two different tracks of action:

1. In the “adjudication process,” the school’s conduct board will conduct an investigation which will include talking to you, the perpetrator, and any other people who might have information about what happened. This process should only happen if you want it to. During this investigative phase, the school should take measures to keep you safer if you want them to, including issuing a “stay away” order against the perpetrator and moving you or the perpetrator to a different dorm if you share a dorm. The school should then issue findings on whether they think there is enough evidence to determine that the assault happened. If they decide there is, the school should discipline the perpetrator.
2. Regardless of whether you choose to undergo the adjudication process, a designated staff person called the “Title IX Coordinator” must be notified and must investigate, and the school must respond to your report by working to make the school environment safer for you and your fellow students.

If you have or will report to police, a report to your school may affect the criminal process. Certain information such as any written statements you make to the school about the assault may be obtained and used in the criminal trial.

You can seek legal representation to help through the school process to make sure that your rights, interests, and privacy are protected. The [Victim Rights Law Center \(VRLC\)](#) helps survivors for free and may be able to help you with this.

If you have any questions, please [call BARCC](#) and ask for Legal Advocacy services.

Requesting accommodations from your school

If the assault is negatively affecting your studies or life at school, you may be able to request accommodations from your school, for example an extension on your work,

time off, changes in your schedule, or transferring to another school. If you want to learn more about your options, please [call BARCC](#) and ask for Legal Advocacy services.

WORK

Requesting Accommodations from your Workplace

If you work, and you find that the assault is affecting your ability to work, you may have the option of requesting accommodations, such as time off. If you want to learn more about your options, please [call BARCC](#) and ask for Legal Advocacy services.

If the Assault Involved your Workplace

If you were assaulted and/or sexually harassed at work or by a coworker, you may have the option to report it to your workplace. Your workplace may already have a policy for addressing this. If you are concerned about who might find out once you tell someone at work, or to learn more about your rights and options for reporting an incident to your workplace, you can [call BARCC](#) and ask for Legal Advocacy services.

IMMIGRATION

Rights and options

If you are not a U.S. Citizen, you may have immigration options based on the sexual assault. For example, you may be eligible for a special visa for crime victims, even if you crossed the border without permission or are otherwise undocumented. To find out whether you may be eligible for an immigration benefit, [call BARCC](#) and ask for Legal Advocacy services. If you want help with your immigration case, the [Victim Rights Law Center \(VRLC\)](#) helps survivors with immigration cases for free and may be able to help you with yours.

SAFETY

Protection Orders

For some people, a civil protection order might help them feel or be safer. A protection order is an order from the court that makes it illegal for the perpetrator to approach you or your home/workplace, or have any type of contact with you, even through third parties. If you have an active protection order and the perpetrator breaks the terms (violates) it, you can call the police right away to report the violation. Police may then arrest the perpetrator and start a criminal investigation and case against him for the violation of the order.

You may want an attorney to represent you in the process to get a protection order. An attorney might make it more likely that you will win and can help protect your rights and interests. Free, high quality attorneys are available at the [Victim Rights Law Center](#). [BARCC](#) can also help connect you with an attorney.

There are two types of civil protection orders: 258E Harassment Prevention Order and the 209A Restraining Order.

258E Harassment Prevention Order

For a harassment prevention order, “harassment” is defined as:

1. Three or more acts malicious (cruel) behavior against a specific person with the intent to cause fear, intimidation, abuse or damage to property and that those acts actually do cause fear, intimidation, abuse or damage to property OR
2. An act that:
 - a. By force, threat or coercion causes another person to have sexual relations against his/her will; or
 - b. Comes under the definition of certain crimes, including rape, stalking, and criminal harassment.

For more information and help figuring out whether a civil protection order is right for you, contact [BARCC](#) and ask for Legal Advocacy services.

209A Restraining Order

For a restraining order, “abuse” is defined as the occurrence of one or more of the following acts between "family or household members:"

1. Actual or attempted physical abuse;
2. Placing another in fear of serious physical harm;

3. Causing another to engage involuntarily in sexual relations by force, threat of force or duress.

"Family or household members" include:

1. A spouse or former spouse;
2. Someone you live with or used to live with;
3. A relative by blood or marriage;
4. The parent of your child;
5. A person you have or had a substantial dating relationship with.

Getting a Protection Order

To get a protection order, you (and your attorney, if you have one) must go to court, fill out some papers about who you are and write a statement—known as an affidavit—about why you are applying for the order, and ask the judge to issue the order.

If the judge agrees that you need the order to stay safe, the judge will issue a temporary order that usually lasts 10 days. During this time, the police will “serve” (give) the perpetrator a copy of the temporary order, and the perpetrator must abide by it.

When the temporary order expires, you (and your attorney) will have to go back to court to ask for an extension. At this time, the perpetrator is also allowed to go to court and bring an attorney for them. At court, both sides will have a chance to explain their side of things to the judge.

If the order is extended, the extension is usually for about a year. When it expires, you will have to return to court to seek an extension. The perpetrator will also have the right to be present.

Eventually you may have the option to make the order permanent.

Emergency Protection Orders

If you are in immediate danger and want to get a protection order, but the courts are closed, you can request an emergency order by contacting the police of the town or city where you live.

You will have to provide a statement to police about why you need the order, and they will contact an on-call judge to decide whether or not to issue the order on an emergency basis.

If the emergency order is issued, it will be a temporary order that lasts until the court opens. When the court opens, you will have to go and request a protection order through the usual route, explained above.

General Technology Safety Information

There are various steps you can take to protect your privacy while using technology, which may make you be or feel more safe. For example, you can:

- Change passwords and pin numbers.
- Minimize use of cordless phones or baby monitors to prevent others from overhearing you.
- Check your cell phone settings—if using a phone provided by the perpetrator, consider shutting it off when not in use or shutting off the location feature.
- Create a new email account if you suspect the perpetrator has access to your current account (use an anonymous name on the new account, such as whitehorse@gmail.com).
- Use a safer computer if the perpetrator has access to yours—maybe use one at a public library or community center.

For more general safety tips, visit the [National Network to End Domestic Violence's website](#), or call [BARCC](#) and ask for Legal Advocacy services.

Facebook

For information about privacy and safety on Facebook, please see [Privacy & Safety on Facebook: A Guide for Survivors of Abuse](#) created by The National Network to End Domestic Violence.