The University of Minnesota is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, national origin, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation.
The Aurora Center for Advocacy and Education is committed to the belief that all people have the right to live free of violence and of the fear of violence. We recognize that sexual assault, relationship violence, and stalking are not isolated incidents, but rather the expressions of a pervasive attitude in which violence is acted out in a sexual or controlling manner. We believe that such violence can best be addressed through social action, education, and advocacy. The Aurora Center was formed to:

✓ Ensure quality of services to all segments of the University of Minnesota community and other agencies that victim/survivors may need to contact for assistance.

✓ Ensure the inclusion of the wide diversity of people of the University as staff, volunteers, and constituents of The Aurora Center.

✓ Ensure the effective communication between The Aurora Center and other organizations and people who are concerned about sexual assault, relationship violence, and stalking.

✓ Eliminate violence and other forms of oppression at the University of Minnesota and the community as a whole.

As part of this commitment, The Aurora Center is able to provide legal advocacy services to victim/survivors of sexual assault, relationship violence, and stalking.

Legal advocacy services include: assistance in writing and filing an Order for Protection (OFP), accompaniment to court proceedings to obtain the OFP, support while making optional police reports, and follow-up in determining whether a respondent has been served the restraining order papers. Because the University of Minnesota spans two counties, The Aurora Center provides services in both Ramsey and Hennepin counties.

If The Aurora Center is unable to assist a client in obtaining a restraining order, the office will refer the client to the nearest agency able to write and file a restraining order.

This information is available in alternative formats by calling The Aurora Center for Advocacy and Education at (612) 626-2929. The University of Minnesota is an equal opportunity educator and employer.

University of Minnesota
Office for Student Affairs
Criminal Sexual Conduct

Definitions of Terms

Sexual Penetration  Sexual intercourse, cunnilingus, fellatio, anal intercourse, object penetration, or any other intrusion in the genital or anal openings.

Sexual Contact  Touching of the genital area, groin, inner thigh, buttocks, or breast, or the touching of the clothing covering the immediate area of those parts with aggressive or sexual intent. (This definition is different for cases where the victim/survivor is under 13 years old; see enclosed “Modifications in the Sexual Conduct Code”)

Significant Relationship  A parent, stepparent, guardian, certain relatives, or an adult who lives with the victim but isn’t married to her.

Position of Authority  A parent, a person with parental rights, duties, and responsibilities, or a person who has a responsibility for the health, welfare, or supervision of a child.

Mentally Impaired  A person who lacks judgement to give a reasoned consent because of defects in intelligence or a substantial psychiatric disorder.

Mentally Incapacitated  A person who lacks judgment to give a reasoned consent because of the involuntary consumption of an intoxicating substance.

Physically Helpless  A person who is: asleep or unconscious; unable to withhold consent because of a physical condition; or cannot communicate non-consent and the defendant knows it.

Consent  Words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor.

Defendant  A person charged with a crime.

Fear of Imminent Great Bodily Harm  Victim/Survivor has reason to fear that the perpetrator will physically harm her at some time in the near future.

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University of Minnesota Sexual Assault/Relationship Violence Policy

Academic/Administrative Policy 2.6.3
Effective May 2001

Revision History

The following are responsible for the accuracy of the information contained in this document:

Responsible University Officer
President/Director of Equal Opportunity and Affirmative Action

Responsible Office
Office of Equal Opportunity and Affirmative Action

Policy Statement

Sexual assault and relationship violence are prohibited at the University of Minnesota. Sexual assault and relationship violence, including threats of sexual assault and related relationship violence, are attacks not only on a person's body, but also on the person's dignity, and are not tolerated. To foster a community free from sexual assault and relationship violence, the University provides reporting options, including the police department; victim/survivor assistance; internal mechanisms for discipline and dispute resolution; prevention training; and other related services.

Reason for Policy

As a University and as a community, we strive to assure the safety and respect the dignity of each student, staff, and faculty member. While the Board of Regents' Policy on Sexual Harassment prohibits conduct covered by this administrative policy, this policy establishes procedures for responding to incidents involving sexual assault and relationship violence. The commitment of the entire University community to this policy contributes to our goal of creating a campus free from sexual assault and from other violence that may occur within a personal, intimate relationship.

Because reporting is the only way that action can be taken against an alleged violator of this policy, the University strongly encourages the reporting of sexual assault and relationship violence to appropriate officials. Timely reporting and a medical examination within 72 hours is critical in preserving evidence of sexual assault, and the ability to respond effectively, but a victim/survivor can report an incident at any time.

The University provides an array of on campus services to victims/survivors, including confidential crisis intervention, health care, counseling, and related assistance, including changing academic programs and living situations (if requested and reasonably available). The University provides appropriate judicial/discipline processes that are supportive, fair, expedient, and respectful of the individual needs and rights of all involved, including privacy. The University provides a variety of educational programs and services to all members of the University community.

Continued...

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History
Effective: May 2001
Supercedes: 1993 Memo on Sexual Assault by Marvalene Hughes

To obtain a copy of a historical policy, e-mail the U Policy Librarian at process@tc.umn.edu or call 624-4372.

Definitions

Consent
Consent is informed, freely and actively given, and mutually understood. If physical force, coercion, intimidation, and/or threats are used, there is no consent. If the victim/survivor is mentally or physically incapacitated or impaired so that the victim/survivor can not understand the fact, nature or extent of the sexual situation, and the condition was or would be known to a reasonable person, there is no consent. This includes conditions due to alcohol or drug consumption, or being asleep or unconscious.

Sexual Assault
Sexual assault is actual, attempted or threatened sexual contact with another person without that person’s consent. Sexual assault often is a criminal act that can be prosecuted under Minnesota state law, as well as under the Student Conduct Code and employee discipline procedures.

Relationship Violence
Relationship violence means causing physical harm or abuse, and threats of physical harm or abuse, arising out of a personal, intimate relationship. Relationship violence often is a criminal act that can be prosecuted under Minnesota state law, as well as under the Student Conduct Code and employee discipline procedures.

Responsibilities

University of Minnesota System-Wide

Counseling Services - Provide counseling services and referrals.

Equal Opportunity and Affirmative Action - Oversight of policy and complaint services, consultation regarding allegations, and in the Twin Cities system office, investigation of allegations against employees.

Health Care Services - Provide health care and counseling, and referrals.

Housing/Residential Life Offices - Provide assistance to residents, including changing living situations if requested and reasonably available.

Police Departments - Investigate allegations for possible criminal prosecution.

Student Conduct Office
- Respond to and resolve allegations by students consistent with the Student Conduct Code. This includes advising and sanctioning student offenders when warranted. Some offices, including the Twin Cities campus, will also investigate allegations, unless an appropriate and timely investigation is being conducted by police for use by the student conduct office.
- Provide resource and guidance for training for University presenters and formal hearing board members and chairs.

Victim/Survivor Services
Maintain all contacts and reports as strictly confidential.
- Provide crisis intervention and advocacy.
- Assist victim/survivor in contacting police and/or reporting to other University offices, if the victim/survivor consents (some can assist in obtaining restraining orders).
- Assist victim/survivor in obtaining medical assistance and counseling, changing academic programs or housing, etc.
- Campus-based programs will also provide awareness, prevention and risk-reduction training, and educational programming for students and employees.

Procedures
In support of this policy, the following procedures are included:

Procedure 2.6.3.1 - Responding to Incidents of Sexual Assault/Relationship Violence
Sexual Assault is a Crime in Minnesota

The following is a summary of the applicable elements that determine the degree of criminal sexual conduct in Minnesota. The first four degrees are felony offenses and are classified as “Crimes of Violence” in Minnesota.

First Degree Criminal Sexual Conduct

First degree criminal sexual conduct requires proof of “sexual penetration” and one or more of the following elements:

1. Victim has reasonable fear of great bodily harm.
2. A dangerous weapon is used or threatened.
3. Defendant causes personal injury to victim, and
   a. defendant used force or coercion; or
   b. defendant knows or has reason to know victim is:
      1. mentally impaired,
      2. mentally incapacitated, or
      3. physically helpless.
4. Defendant is aided or abetted by accomplices, and
   a. an accomplice uses force or coercion; or
   b. an accomplice uses or threatens the use or a real or fake dangerous weapon.
5. Victim is under the age of 13 and defendant is more than three years older.
6. Victim is the age of 13, 14, or 15 and defendant is four years older, defendant is in “Position of Authority” over victim, and defendant uses that position so victim will submit.
7. Victim is under the age of 16, and
   a. defendant has Significant Relationship to victim; or
   b. defendant has Significant Relationship to victim, and
      1. uses force or coercion,
      2. uses or threatens use of real or fake weapon,
      3. causes victim reasonable fear of imminent great bodily harm,
      4. causes personal injury to the victim, or
      5. there are multiple sex acts committed over an extended time.

Second Degree Criminal Sexual Conduct

Second degree criminal sexual conduct requires proof of “sexual contact” with elements the same as first degree.

Continued…

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UNIVERSITY OF MINNESOTA
Office for Student Affairs
Third Degree Criminal Sexual Contact

Third degree criminal sexual conduct requires proof of “sexual penetration” and one or more of the following elements:

1. Defendant uses force or coercion.
2. Defendant knows or has reason to know victim is:
   a. mentally impaired,
   b. mentally incapacitated, or
   c. physically helpless.
3. Defendant is aided or abetted by accomplices, and
   a. an accomplice uses force or coercion; or
   b. an accomplice uses or threatens the use of a real or fake dangerous weapon.
4. Defendant is a psychotherapist, and
   a. victim is a patient, and the act occurs during a therapy session; or
   b. victim is a patient or former patient, and the victim is emotionally dependant on defendant; or
   c. victim is a patient or former patient, and the act results from a therapeutic deception.
5. The defendant is a health care professional, and the act occurs by means of false representation that is for a bona fide medical purpose.
6. Victim is under the age of 13 and defendant is more than three years older.
7. Victim is the age of 13, 14, or 15, and the defendant is two years older.
8. Victim is under the age of 16 or 17, and
   a. defendant has Significant Relationship to victim; or
   b. defendant is in “Position of Authority” over victim, and defendant is more than four years older, and uses that position so victim will submit; or
   c. defendant has Significant Relationship to victim, and
      1. uses force or coercion,
      2. uses or threatens use of real or fake weapon,
      3. causes victim reasonable fear or imminent great bodily harm,
      4. causes personal injury to the victim, or
      5. there are multiple sex acts committed over an extended time.

Fourth Degree Criminal Sexual Conduct

Fourth degree criminal sexual conduct requires proof of “sexual contact” with elements the same as third degree. Other elements are:

1. Victim is the age of 13, 14, or 15, and
   a. defendant is four years older; or
   b. defendant is in a “Position of Authority” and uses that position so victim will submit.

Fifth Degree Criminal Sexual Conduct

Fifth degree criminal sexual conduct makes any nonconsensual “sexual contact” a gross misdemeanor. This includes removal or attempt to remove clothes over intimate parts. This excludes touching clothing over the buttocks.

Adapted from the Community Crime Prevention’s “Criminal Sexual Conduct – A Summary of Elements”
## Overview of Criminal Sexual Conduct (1st, 2nd, 3rd, 4th & 5th Degree)

### To Legally Qualify as Criminal Sexual Conduct:

- **X** = Condition **Must** be Present
- **=** One or more of these conditions must be present.

*(One X Condition AND one or more * Condition(s) must be present to qualify as criminal sexual conduct)*

<table>
<thead>
<tr>
<th></th>
<th>Sexual Penetration</th>
<th>Sexual Contact</th>
<th>Fear of Bodily Harm</th>
<th>Weapon</th>
<th>Personal Injury</th>
<th>Force or Coercion</th>
<th>Victim Mentally Impaired or Incapacitated Or Physically Helpless</th>
<th>Accomplice</th>
<th>Therapist, Medical, or Clergy Abuse</th>
<th>Age of Victim and Perpetrator</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First Degree</strong></td>
<td>X</td>
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<td>*</td>
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<td>* See Below</td>
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<tr>
<td><strong>Second Degree</strong></td>
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<td>* See Below</td>
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</tr>
<tr>
<td><strong>Third Degree</strong></td>
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<tr>
<td><strong>Fourth Degree</strong></td>
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<tr>
<td><strong>Fifth Degree</strong></td>
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<td>* See Below</td>
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</tbody>
</table>

Each of these **Age Conditions** function as a * Condition from the chart above. As such, she are not necessarily involved in ALL criminal sexual conduct.

### First and Second Degree:

<table>
<thead>
<tr>
<th>Age of Victim</th>
<th>Age of Perpetrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 13</td>
<td>More than 3 years older</td>
</tr>
<tr>
<td>13, 14, 15</td>
<td>4 years older and uses Position of Authority over victim</td>
</tr>
<tr>
<td>Under age 16</td>
<td>Has a Significant Relationship to victim</td>
</tr>
</tbody>
</table>

### Third Degree:

<table>
<thead>
<tr>
<th>Age of Victim</th>
<th>Age of Perpetrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age 16 or 17</td>
<td>Has a Significant Relationship to victim</td>
</tr>
<tr>
<td>Age 16, 17 or 18</td>
<td>4 years older and has a Position of Authority over victim</td>
</tr>
<tr>
<td>Age 16 or 17</td>
<td>Has a Significant Relationship to victim</td>
</tr>
</tbody>
</table>

### Fourth Degree:

<table>
<thead>
<tr>
<th>Age of Victim</th>
<th>Age of Perpetrator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age 16 or 17</td>
<td>4 years older and uses Position of Authority over victim</td>
</tr>
</tbody>
</table>

### Some Basic Differences between First, Second, Third, Fourth and Fifth Degree Sexual Conduct:

1. **Weapon** can be used or threatened.
2. **Personal Injury** to victim must include defendant's use of force or coercion OR defendant's knowledge that the victim was mentally incapacitated or impaired or physically helpless.
3. **Accomplice(s)** aided or abetted the Defendant AND Accomplice(s) used force or coercion OR used or threatened a real or fake weapon.
4. **Perpetrator is:** Psychotherapist who uses therapeutic deception on a patient or former patient who is emotionally dependent (consent is not a defense) OR person who falsely claims that penetration is for a medical purpose OR Clergy (or says she is) where penetration occurred when victim was seeking spiritual advice or when there were ongoing meetings for spiritual advice.
5. **Fifth Degree definition of “sexual contact” includes removal or attempt to remove clothes over intimate parts and does not include touching clothing over the buttocks.**
The only difference between First and Second Degree is that First requires Sexual Penetration while Second Requires Sexual Contact.

In First and Second Degree, personal injury to the victim must also include either:
- The perpetrator used force or coercion, OR
- The perpetrator knew that the victim was mentally impaired, mentally incapacitated, or physically helpless.

In Third or Fourth Degree, either of these conditions can occur alone (unlike 1st or 2nd where either must occur with personal injury).
- The perpetrator used force or coercion, OR
- The perpetrator knew that the victim was mentally impaired, mentally incapacitated, or physically helpless.

The only difference between Third and Fourth Degree is the different conditions for victims age 13, 14 or 15. (see chart on previous page).

First, Second, Third, and Fourth Degrees are Felony offenses, while Fifth Degree is a Gross Misdemeanor.
Modifications in the Sexual Conduct Code

CHANGES MADE TO CRIMINAL SEX STATUS
SUMMARY OF 1994 OMNIBUS BILL – H.F. 2351

Criminal Sexual Conduct in the First Degree
Expands the first degree criminal sexual conduct crime to include sexual contact with a child under the age of 13 (as defined in section 32) if the other elements of the crime are present. This conduct is currently covered by second degree criminal sexual conduct.

Criminal Sexual Conduct in the Third Degree
Expands the third degree criminal sexual conduct crime to include the use of a position of authority to induce a victim to submit to sexual penetration if the victim is between the ages of 16 and 18 and the actor is more than 48 months older than the victim. Current law requires proof that the use of a position of authority caused the victim to submit.

Criminal Sexual Conduct in the Fourth Degree
Provides that consent to sexual contact is not a defense if the complainant is between the ages of 13 and 16 and the actor is more than 4 years older and uses a position of authority to cause the complainant to submit.

Patterned Sex Offenders - Sentencing Authority
Requires courts to consider imposing a sex offender sentence whenever an offender is convicted of first or second degree criminal sexual conduct.

Definition - Consent
Changes the definition of "consent" for purposes of criminal sexual conduct crimes to mean "words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor." Also provides that a person who is mentally incapacitated or physically helpless cannot consent and that corroboration of a victim's testimony is not required to show lack of consent. (Definition of physically helpless - clarifies this definition as used in criminal sexual conduct crimes to include persons who are unable to withdraw consent because of a physical condition.)

Definition - Sexual Contact With a Person Under 13
Expands the definition of "sexual contact" with a person under the age of 13, as used in section 34, to include the intentional touching of bare genital or anal areas with the actor's bare genital or anal areas with sexual or aggressive intent, without any further showing of force, coercion, inducement, or use of position of authority.

Continued…

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**Definition - Sexual Penetration**
Expands the definition of "sexual penetration" to include penetration by means of any object, when effected by coercion or the use of a position of authority or, if the complainant is under age 13 or mentally impaired, by inducement.

**Sex Offender Registration**
Requires an offender to register if he or she was petitioned for or adjudicated delinquent as a juvenile for a crime for which an adult offender would have to register under current law, and expands the law to cover all felony-level criminal sexual conduct crimes. Provides for notification of the sex offender registration requirement by a corrections agent if the court did not provide notice. Increases the penalty for violating the sex offender registration law from a misdemeanor to a gross misdemeanor. Provides that the violation may be prosecuted either where the person resides or where the person was last assigned to a Minnesota corrections agent. Requires all out-of-state sex offenders accepted for confinement or supervision in Minnesota under any interstate compact or agreement to agree to comply with the registration law as a condition of acceptance.

**Testing of Violent Offenders for HIV Virus**
Permits a victim to request that a convicted sex offender be tested for the presence of the HIV virus when exposure to bodily fluids has occurred. This includes all persons convicted of violent offenses and juveniles adjudicated delinquent for a sex offense. Requires the test to be administered by a health professional who is trained to provide counseling of HIV exposure.

**Time Limits on Reparation Claims**
Expands the time periods within which a crime victim may apply for reparations as follows; crimes must be reported to the police within 30 days of their occurrence instead of five, and claims must be filed within two years of the victim's injury or death instead of one year. 

**H.F. 2519 was passed, creating a civil cause of action for persons coerced into prostitution**
Minnesota is the second state in the U.S. to pass such legislation. Adults and children coerced into prostitution can take civil action against those people who exploited and abused them: pimps, owners of saunas and escort services, johns, etc.

*Edited from the summary report compiled by Mary Albrecht, Director of MCASA, June, 1994, from information in "Laws 1994, Chapter 636, Omnibus Crime Bill Summary, May 12, 1994" by Allison Wolf, Senate Counsel, and Emily Shapiro, House Research.*
Domestic & Dating Violence Crimes

Some of the most common crimes in domestic and dating violence include:
- Assault in the first, second, third, and fifth degrees
- Terroristic threats (MN 609.713)
- Burglary (MN 609.582 Subd. 1, 2,3)
- Kidnapping and/or false imprisonment (MN 609.25)
- Stalking and harassment (MN 609.748)
- Domestic homicide (MN 609.185; 609.19)
- Sexual assault (see previous pages on Criminal Sexual Conduct) (MN 609.341; 609.345 Subd. 1)

Assault

An assault is an act in which:
- The perpetrator intentionally inflicts or attempts to inflict physical harm upon the victim; or
- The perpetrator intends to make the victim fear physical harm or death.

First Degree: assault which causes “great bodily harm,” which means some type of permanent physical damage. First degree assault is a felony.
- Examples include: hearing loss; injuries that will leave permanent scars; vision loss.

Second Degree: assault with a dangerous weapon or assault with a dangerous weapon and “substantial bodily harm.” Second degree assault is a felony.
- Dangerous weapons are defined as a firearm or any other weapon that can cause death or great bodily harm.

Third Degree: assault which causes temporary disability or “substantial bodily harm.” Third degree assault is a felony.
- Examples: broken bones; extensive bruising; victim suffered momentary lapse of consciousness, such as passing out from being choked.

Fifth Degree: assault with intent to cause fear of immediate bodily harm or death or which inflicts or attempts to inflict bodily harm. Fifth degree assault is a misdemeanor, although it can be enhanced to a gross misdemeanor or felony for repeat offenses.
- Example: bruising; scratches; injuries that cause temporary scarring.

Types of Crimes

- Felony: crime for which a sentence for more than one year may be given.
- Gross Misdemeanor: crime that is not a felony or a misdemeanor and for which $3,000 is the maximum fine.
- Misdemeanor: crime for which a sentence of not more than 90 days or a fine of $700, or both, may be given.

To look up any of the Minnesota Statues listed, go to the MM Legislature website at http://www.leg.state.mn.us/leg/statutes.htm.
Crime Victim’s Rights

As a Victim/Survivor of Domestic, Dating or Sexual Violence, You Have the Right:

- To apply for financial assistance for losses resulting from a violence crime. Assistance does not cover property losses.
- To have input in a pre-trial diversion program decision, if you are a victim of specified violent crimes.
- To have a safe waiting area, separate from the defendant, during court proceedings.
- To not give your home or work address in open court unless the judge finds that this is necessary.
- To take time off of work to testify without your employer disciplining you.
- To be notified of the content of any plea agreement recommendation.
- To object to a plea agreement or proposed disposition, orally or in writing, or have the prosecuting attorney do so on your behalf at the sentencing hearing.
- To be notified of changes in the schedule of court proceedings, if you are required to testify in court.
- To request a speedy trial.
- To be notified of the final disposition of the case, so that you will know the outcome of the case.
- To attend the offender’s sentencing hearing. You, or the prosecutor on your behalf, can submit a victim input statement orally or in writing at the hearing.
- To request the court to order the defendant to pay for the actual loss you suffered (restitution). You have a right to ask the offender’s probation officer to request a probation review hearing if the offender fails to pay the restitution as ordered.
- To know when the offender is released from custody or transferred to a minimum security setting. You must request this in writing and send the request to the Commissioner of Corrections or to the head of the facility where the offender is confined.
- To request the court to order the convicted offender to submit to HIV testing, if you are the victim of Criminal Sexual Conduct. Test results are available, on request, to the victim and his/her/hir parent or guardian. This right is available only if certain conditions occurred during the crime.
- To receive notification from the prosecutor if a decision is made not to prosecute or if the charges filed against the defendant are dismissed, if you are the victim of domestic assault or harassment. If charges are dismissed, a record must be made of the specific reason for the dismissal. The prosecutor shall inform the victim as to how to obtain an order for protection, which may be obtained by the victim free of charge.

Adapted from “Your Crime Victim Rights” from the Hennepin County Attorney’s Office.

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Criminal Court Process

Some Basic Definitions:

- **Defendant**: The person charged with a crime; the alleged perpetrator; the suspect.
- **Prosecutor**: The attorney for the State who is trying to convict the Defendant.
  - In the criminal court process, the victim/survivor is not a party in the court case. Instead, the State of Minnesota or the U.S. government is a party in the case, and the victim/survivor is usually the State’s primary witness.
- **Probable Cause**: Legal term meaning that there is enough evidence to cause someone to believe that the crime may have been committed. Probable cause may include the suspect’s confession, victim’s injuries, witnesses, broken furniture, signs of forced entry, emotional state of the victim, etc.

What happens in the Criminal Court Process?

1. A criminal incident occurs, such as sexual assault, criminal sexual conduct, battery, violation of a restraining order, stalking, rape, kidnapping, terroristic threats, assault with a weapon, robbery, burglary, destruction or property, etc.

2. The police arrest the alleged perpetrator, if there is probable cause.
   
   a. The police can arrest a person if:
      
      (1) the offense was committed in front of them;
      
      (2) the offense was committed in the previous four hours; or
      
      (3) there is a warrant out for the arrest of the suspect.

   b. If the victim called the police at the time of the crime and the perpetrator is gone from the scene of the crime, the police have twelve hours from the time of the crime to arrest the perpetrator.

Continued…
(1) When the perpetrator is gone from the scene and is not arrested, this is called “Gone on Arrival,” and the case may still be charged by a city prosecutor and end up in court.

c. If probable cause does not exist, the police officer must still file a written report. This report must include the details of the incident and why she did not find probable cause. If the victim wishes to file a written report and begin the formal complaint process, s/he has the right to do so.

3. Initial Holding
   a. Suspect is booked and held in jail until s/he can see a judge, which is usually the next morning.
   b. On an arrest made over the weekend, the suspect will have a “pre-trial release evaluation,” which is an interview of the suspect. As a result, the suspect may be released without bail and required to appear before a judge the next business day, usually the following Monday. If the suspect is released in this way, the victim must be notified.

4. Complaint
   a. A formal complaint is required for all gross misdemeanor and felony offenses, except sometimes in murder cases where there is an indictment. [For petty misdemeanor or misdemeanor crimes, go to 7(a).]
   b. The police officer who wrote the police report gives the report to the prosecuting attorney. The prosecuting attorney decides if a crime has been committed and should be charged.
      (1) Usually, prosecutors will decide to charge a crime if it is more likely than not that she can win the case at a trial.
   c. The prosecutor prepares a criminal complaint, and a judge signs it.
      (1) A complaint lists what crime is being charged and gives the facts of what happened. The complaint must show probable cause that the crime has been committed.
   d. At this point, a summons may be sent to the defendant or a warrant may be issued for her/his arrest [see 7(b) and 7(c) below].

5. Suspect is formally charged with a crime through:
   a. Citation: suspect is given a ticket (for petty misdemeanor or misdemeanor crimes);
   b. Summons: when a complaint is issued, the suspect is ordered to appear in court; or
   c. Warrant: when a complaint is issued, a warrant is issued at the same time which tells the police to arrest the person.

6. Pre-trial Diversion
   a. A case is taken out of the court process and the defendant is given the chance to complete an alternative or “diversion” program that usually lasts one year.
b. If the defendant completes the diversion program, the criminal case is dismissed. If not, the criminal case is reactivated and the case proceeds through the criminal process.
c. Pre-trial diversion is often used with first time property offenses.

7. Defendant’s first court appearance
   a. Public Defender is appointed to represent the defendant (perpetrator) if eligible.
   b. Defendant has three choices:
      (1) Plead guilty,
      (2) Request a continuance to get a private attorney,
      (3) Plead not guilty.
   c. If the defendant chooses to plead guilty, pre-sentencing and sentencing procedures begin. [see 16 and 17 below]
   d. Conditions of release.
      (1) If the defendant chooses to request a continuance or plead not guilty, the defendant can be released from jail under certain conditions.
   e. The judge usually releases the suspect unless s/he believes:
      (1) the suspect is a danger to public safety;
      (2) the suspect is a threat of physical danger to either themselves or the victim of the crime; or
      (3) the suspect is not likely to appear at future court dates.
   f. Conditions may include: No contact with the victim; no same or similar violations; no use of drugs/alcohol; random drug tests; attend drug/alcohol treatment; turn in any weapons; requirement to live at a certain address; check in with a court officer; etc.
   g. When conditions of release are set, cash bail is also set. If the suspect pays the bail, s/he can secure an unconditional release. Usually, the suspect must only pay 10% of the amount of bail the judge sets in order to be released from jail.
      (1) Sometimes the perpetrator will post bail and be given a court date. The perpetrator would be given a “no contact” order by the judge, meaning that s/he cannot have any contact with the victim.

8. Violation of a Conditional Release
   a. If a defendant violates the conditions of release, s/he can be arrested and brought back before the judge who set the conditional release in the first place.
   b. The defendant can be arrested for such a violation if:
      (1) The defendant commits a new crime;
      (2) A police officer has probable cause to believe that the conditions were violated; or
      (3) The defendant’s probation officer knows of a violation.

9. Pre-trial conference may be held to:
a. Hear motions by the prosecution or the defense;
b. Add new or enhanced charges to the complaint; or
c. Discuss a settlement or negotiation of the case.

10. Omnibus hearing
   a. This hearing deals with any evidence issues or any pre-trial motions made or other motions that the
the defense or the prosecution make.
b. The defendant will plead guilty or not guilty if this did not happen at the first appearance.
   (1) If the defendant pleads guilty, pre-sentencing and sentencing procedures begin [see 16 and 17 below]

11. Plea Bargain
   a. A plea bargain happens when the defendant pleads guilty with the understanding that there will be a lesser
charge or a less severe sentence. The criminal court system is set up to encourage plea bargains much of
the time.

12. Trial
   a. Remaining omnibus issues are handled.
b. The jury is selected and sworn in.
c. Prosecutor and defense make opening statements to the jury.
d. The prosecution offers evidence. This means calling witnesses to testify.
   (1) Often, the victim is called as the prosecution’s first witness.
   (2) The defense cross-examines any witnesses and the prosecutor can then ask follow-up questions.
       Questioning goes back and forth between both sides until both sides have no further questions.
e. The defendant offers evidence. The prosecutor can cross-examine witnesses, and the same process occurs
as above, with both sides going back and forth.
f. The prosecution may offer more evidence in response to the defendant’s evidence, and the defendant may
   offer more evidence in response to the prosecution’s evidence.
   (1) This is called a rebuttal, and an original witness, such as the victim, may be called again to testify.
g. The prosecution then the defense make closing arguments to the jury.
h. The court instructs the jury about the law and tells the jury what she have to do.
i. The jury looks over the evidence and returns with a verdict.

13. Verdict
   a. If the defendant is acquitted, or found not guilty, s/he is released with no conditions.
b. If the defendant is found guilty, pre-sentencing and sentencing follow.

Continued...
14. Pre-sentence investigation
   a. Sometimes, a report used by the court during sentencing is prepared by the probation officer including the defendant’s social and criminal history and a “victim impact statement”
      (1) the “victim impact statement” includes a summary of the damage to the victim, a statement of what the victim would like for the sentencing, and any objections the victim may have to the proposed sentencing.

15. In sentencing, the court can:
   a. Impose and execute a sentence: the defendant is sent to serve time in jail or prison. The defendant receives credit off the sentence for any time already served in jail before the sentencing.
      (1) All defendants automatically get a one-third reduction in their sentences called “good time.” This “good time” can be lost if the defendant commits a new crime while in jail or prison.
   b. Impose and stay execution of a sentence: the defendant is sentenced to a set amount of prison or jail time but does not serve the time now. The defendant is placed on probation for a set period of time.
      (1) Conditions are often placed on probation such as chemical dependency treatment, domestic violence counseling, community service, etc. If any conditions are violated, then s/he could be brought back to court and be required to serve the time.
   c. Stay of imposition of a sentence: the defendant is not sentenced to any prison or jail time. The defendant is only placed on probation for a set period of time, and conditions may be placed on the probation.
      (1) If the defendant commits a new crime or violates the probation conditions, the court could then sentence her to jail or prison time.
   d. Work Release: allows the defendant to continue to work while in jail or prison, but the defendant is required to return to jail or prison after the work release.
Domestic, Dating & Sexual Violence

The Criminal Court System

What Can Be Prosecuted in the Criminal Court System?
- Assault, battery, sexual assault or battery, criminal sexual conduct, violation of a restraining order (Order for Protection or Harassment Restraining Order) including crossing a state line to violate the order, crossing a state line to commit domestic abuse or dating violence, stalking, rape, kidnapping, assault with a weapon, arson, criminal trespassing and/or terrorist threats, robbery, burglary, or destruction of property.

Some Goals in Using the Court System
- Stop the violence or emotional, financial, and physical abuse used to control and coerce victim
- Protect the abused party, family members, and/or the general public
- Hold perpetrator accountable for violence
- Rehabilitate perpetrator
- Provide restitution to the abused party
- Convey to the public that domestic, dating or sexual violence is a crime and not “just a private matter"

Basic Differences Between the Civil and Criminal Court Systems

<table>
<thead>
<tr>
<th>Civil Court</th>
<th>Criminal Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>One individual or party versus another.</td>
<td>State is the agent pressing charges.</td>
</tr>
<tr>
<td>Covers issues/crimes affecting individuals</td>
<td>Covers crimes thought to affect society or the community at large.</td>
</tr>
<tr>
<td>Lower standards of “proof” needed in court (preponderance of evidence/more likely than not that the event occurred).</td>
<td>Higher standard of “proof” needed in court (beyond a reasonable doubt).</td>
</tr>
<tr>
<td>Outcome: fine, restrictions.</td>
<td>Outcome: jail, fine, probation, on perpetrator’s “criminal record.”</td>
</tr>
<tr>
<td>Private court proceedings.</td>
<td>Public court proceedings.</td>
</tr>
<tr>
<td>Examples: Divorce, custody issues, filing and obtaining a restraining order, landlord/tenant disputes.</td>
<td>Examples: DWI, traffic violation, murder, theft, domestic assault, criminal sexual conduct, restraining order violations.</td>
</tr>
</tbody>
</table>

THIS PACKET COVERS THE CRIMINAL COURT SYSTEM. FOR INFORMATION ON CIVIL COURT, SEE The Aurora Center’s “RESTRAINING ORDER” PACKET.

Adapted from the Project P.E.A.C.E. web page [http://www.projectpeace.org](http://www.projectpeace.org)

This information is available in alternative formats by calling The Aurora Center for Advocacy and Education at (612) 626-2929. The University of Minnesota is an equal opportunity educator and employer.
Criminal Court Process

Incident

Police report/investigation

Complaint issued

Charges declined/deferred

Warrant

Detention

Summons

Defendant’s first appearance in court

Bail and conditions are set

Public defender appointed to represent defendant, if eligible

Pre-trial conference

Judges decides if there is probably cause / negotiation process begins

Defendant pleads guilty

Defendant pleads not guilty

Trial

Rasmussen hearing

Jury selection

State’s case is presented / Defense cross-examines

Defense calls their case / State cross-examines

Closing arguments

Jury instructed and given the case

Defendant convicted

Defendant acquitted

Pre-sentence investigation

Defendant is sentenced

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Evidence Used In Criminal Court

What Types of Evidence Can Be Used in Court?

- **Injuries**: Pictures at time of incident or later if there is bruising, medical reports, x-rays (fractures), people who saw the injuries
- **Witnesses**: 911 tape; people who saw or heard the incident (must have their names, address, phone numbers, and she must be cooperative); children present; people who saw or heard things after the incident (phone friend, someone the victim went to after the incident).
- **Property Damage**: Property saved; pictures of damaged property; receipts for repair of property; people who saw the damaged property.
- **Weapons**: Weapon(s); people who saw the weapon; damage caused by the weapon (cut clothing, bullet hole in the wall); pictures of damage; people who saw the damage; damaged property saved.
- **Prior Abuse History (For Dating/Domestic Violence)**: Restraining Order (Order for Protection or Harassment Restraining Order), police reports, medical reports, witnesses to prior abuse, people who knew of abuse, prior convictions.

Can a Victim/Survivor’s Previous Sexual History Be Used in Court?

- In order to use a victim/survivor’s previous sexual conduct in court, certain conditions must apply.
  - First, the court must hold a hearing to determine if the victim’s previous sexual conduct can be used in court as evidence.
  - Second, the value of using the victim’s previous sexual conduct as evidence must be greater than any harm it may cause, including damage it may do to the victim.
  - Third, the defendant (perpetrator) must show that this evidence is relevant for one of the following three purposes:
    - The defendant is maintaining that the victim consented as a defense and the evidence can show a “common scheme or plan” of similar sexual conduct under similar circumstances. Also, the evidence must be relevant to the issue of consent. In this case, the judge must find that the victim made prior allegations of sexual assault which were not true.
    - OR
      - The defendant is maintaining that the victim consented as a defense and the evidence can show the victim’s prior sexual contact with the defendant.
    - OR
      - The evidence shows the source of semen, pregnancy, or disease if the prosecutor’s case includes evidence of any of these three things.
What to Expect in Criminal Court

Courtroom Set-up:
Each courtroom is set up a little differently and each judge runs his/her courtroom a little differently. This is a basic overview of what the courtroom will most likely look like:

What Are All The Things in this Picture?

- **Clerk**: assists the judge, has information on the court hearings, will run errands for the judge, usually the one to swear in the witnesses.
- **Court reporter**: types or writes down everything that is said “on the record,” usually all of the witness testimony and what the lawyers and judges say during the court hearings. The court reporter may ask a witness to spell their names or restate things which the court reporter did not hear.

Continued…

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Witness stand: After a witness is sworn to tell the truth, she usually will sit in the witness stand to testify. Sometimes the judge will just have the witness stand in front of the judge or may have them answer a question while she is standing in the galley.

Bench: This is where the judge sits. During court hearings, the judge will sometimes ask attorneys or others to approach the bench. That means the people are to go to the desk where the judge is sitting.

Table: Attorneys for whatever case is currently having a hearing will usually sit at the table. Some defense attorneys will stand with the defendant in front of the judge. People who are assisting the attorneys will also sit at the tables. This can include law clerks, advocates, and probation officers. In a criminal case, the victim usually does not sit at the table.

Jury box: When there is a trial, the jurors will sit in these seats. In some courtrooms, the jury box is used as extra seating for attorneys, defendants, court personnel during hearings.

Sheriff: There is usually a sheriff deputy present in the courtroom. She are there for security reasons. She will bring people from jail to the courtroom. Sometimes the sheriff deputy will check people in for their court hearings.

Galley: There is usually a railing or divider of some type between the front of the courtroom and the area where the general public can sit. The area where the general public sits is called the galley.

General Courtroom Rules

- Stand when the judge enters the courtroom. Sit down when the judge or clerk tells you to.
- Call the judge or referee “your honor” or “your honor Judge _____.
- Never interrupt the judge. If something needs to be clarified or challenged, wait until the judge or other person finishes talking. Stop speaking instantly if the judge interrupts you.
- Be on time for each hearing. The court hearings are often late in starting but the one time you are late, court will start on time.
- Most courtrooms have signs listing the courtroom rules. For example, no food or drinks, no hats, no gum chewing, no talking.
- Some courtrooms will have metal detectors or will do searches of people coming into hearings. This is usually done when there is a particular safety concern. If there are searches of people, each person coming into the courtroom will be searched as well as any bags or packages which the person carries in.
- It is difficult to have young children in the courtroom. Some judges will tell you to take the children out of the courtroom if she are talking or running about in the courtroom. Most courthouses have no place for children.

Victim Testimony

- In court, there is a limited admissibility of the victim’s previous sexual conduct. This means that your prior sexual history can only be used as evidence if specific conditions are present.
- To use the victim’s prior sexual conduct as evidence, the defendant must
  - Give the State advance notice so a “hearing on admissibility” may be held
  - Show the value of using the victim’s previous sexual conduct as evidence is greater than any harm it may cause, including damage it may do to the victim
  - Establish that the evidence is relevant for one of the following three purposes:
    - The defendant is maintaining that the victim consented as a defense and the evidence can show a “common scheme or plan” of similar sexual conduct under similar circumstances. Also, the evidence must be relevant to the issue of consent. In this case, the judge must find that the victim made prior allegations of sexual assault which were not true.
    - The defendant is maintaining that the victim consented as a defense and the evidence can show the victim’s prior sexual contact with the defendant.
    - The evidence shows the source of semen, pregnancy, or disease if the prosecutor’s case includes evidence of any of these three things.

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