

# Sexual Assault and Young People

Juliet Watson  
Practice and Learning  
Centre for Adolescent Health

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# Fact and figures

- 1985 - The year rape in marriage was made illegal in Victoria
- 92.5% - The percentage of victim/survivors who are female
- 93% - The percentage of perpetrators who are male
- 20% - The percentage of perpetrators charged with rape where the matter has been reported to police

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- 78% - The percentage of female victim/survivors who know the perpetrator
- 47% - The percentage of male victim/survivors who know the perpetrator
- Alcohol - The most common drug used in drug facilitated sexual assault



# What is Sexual Assault?

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# Legal Definitions of Sexual Offences in Victoria

## Indecent Assault (Section 39)

A person commits indecent assault if he or she assaults another person in indecent circumstances while being aware that the person is not consenting or might not consent.

# Assault with intent to commit rape

A person must not assault or threaten to assault another person with an intent to commit rape. Assault means the direct or indirect application of force by a person to the body of, or to clothing or equipment worn by, another person.

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# Rape

A person commits rape if:

- He or she intentionally penetrates another person without that person's consent either:

- while being aware that the person is not consenting or might not be consenting.

- while not giving any thought to whether that person might or might not be consenting

- After sexual penetration he or she does not withdraw from a person on becoming aware that the person is not consenting or might not be consenting.
- A person is made to sexually penetrate (or not stop penetrating) another person.

Sexual penetration means the introduction to any extent of the penis into the vagina, anus or mouth of another person or an object or another part of the body into the vagina or anus of another person.

# Consent

Consent means free agreement of one's own free will. Free agreement does not occur if:

- Physical force is used or there is fear that someone else would be forced.
- There is fear for what might happen.
- There is unlawful detainment, e.g. locked in a house or car.

# Consent

The law states that a person cannot consent in the following circumstances:

- Unconscious or asleep
- Under the influence of alcohol or drugs
- Unable to understand the sexual nature of the act
- Mistake the sexual nature of the act or think the person is someone else
- Belief that the act is for medical or cleanliness purposes.

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# Sexual offences against children

These include:

- Sexual penetration of a child aged between 10 and 16
- Indecent act with a child under 16
- Sexual penetration or an indecent act with a child aged 16 or 17 by an adult who cares for, supervises or has authority over the child, e.g, teacher, employer, foster parent, sports coach, etc.
- Procurement

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# Possible exceptions

- Reasonable grounds for believing the child was over 16
- The accused person was no more than 2 years older than the child
- The accused believed they were married to the child

# Cognitive Impairment

The law refers to sexual penetration or indecent assault by a person who provides medical or therapeutic services to a person with a cognitive impairment or works or volunteers in a residential facility.

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# Sexual Assault Services Definition

- Occurs along a continuum of violent behaviour which includes any uninvited sexual behaviour which makes the recipient feel uncomfortable, harassed or afraid.
- A violent act of power which, in the main, is carried out by men against women and children.
- A violation of human rights – a crime against the individual and society.
- A criminal offence punishable by law.

Sexual Assault is one of the most under-reported crimes in the legal system – 1 in 10 report rape to the police.

WHY?

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# Why is sexual assault under-reported?

- Lack of faith in the legal system – 1 in 6 reports of rape and 1 in 7 reports of sexual penetration of a child result in prosecution
- Victim/survivor was too young, offence occurred too long ago
- Fear of the offender
- Fear of being stigmatised
- Wanting to forget/move on

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# Myths and Misconceptions

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# Dominant beliefs and assumptions

## Belief

Allegations about sexual assault are easily made and difficult to prove (still appears in current texts for law students)

Women & children who make allegations are often vindictive (Prior to recent law reforms, judges would frequently warn jury's of this as a fact)

Consent cannot be assumed, lack of consent must be proven

## Assumptions

→ Women lie about rape

→ The weight of the word of women and children is somehow less than that of men

→ The overall sexual autonomy of women is not enshrined in the law to the greatest degree

# Dominant beliefs and assumptions

## Principles/Assumptions Of the criminal Justice System

The accused has the right  
to face the accuser in court →

The accused may instruct a  
lawyer to put forward any  
defence in order to protect  
the accused liberty →

## Correlating Impact for the V/S (according to the law)

The right of the V/S to give  
evidence by alternative means  
must be weighed against the  
right of the accused to face the  
accuser (despite the fact that the  
State, not the V/S, is the  
accuser).

Any excuse may be used to  
disqualify the V/S's experience,  
her testimony, her integrity.

# What are the impacts of sexual assault?

- Financial
- Physical
- Emotional/Psychological
- Social

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# Principles of Effective Support

- Believe that the assault happened
- Be willing to listen and hear
- Recognise the impact
- Don't blame the victim/survivor
- Validate her feelings
- Recognise her strength and survival
- Give her back control

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- Resource and educate yourself
- Examine your own attitudes
- Treat the victim/survivor with respect, dignity, sensitivity and understanding
- Clarify your role as a worker: your responsibility and restraints
- Provide accurate information
- Provide options and explain possible consequences
- Secure informed consent prior to taking any action

- Accept, respect and advocate for the victim/survivor's choices
- Respect the victim/survivor's right to privacy and confidentiality

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# How do I speak with a victim/survivor?

- Universalise
- Individualise
- Believe – validate feelings and statements
- Active listening
- Encourage the victim/survivor to speak for herself
- Reframe the experience

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- Provide an alternative context
- Reduce emotional distance and power distance
- Place sexual assault in a wider context

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# Advocacy – Your Role

- To speak on behalf of the victim/survivor – be her voice
- Secure informed consent
- Accept and respect choice
- Negotiate with other professionals/stakeholders

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# Legal Rights and Options

Victim/survivors have the right to:

- Take no legal action
- Report the crime to police at any time
- Report to police and make a 'no further action' statement
- Have the matter investigated and the law applied
- Make changes to the statement at any time
- Take other legal action, e.g, intervention order, civil case

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- Have an investigating police officer of the same gender
- Pre-court information meetings
- Information regarding the criminal justice system
- Court support

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# Engaging with marginalised young people

- Positive statements about strength of character
- Flexibility about appointments while maintaining confidentiality
- Praise for sharing ideas and asking questions
- Acknowledge strengths
- Express empathy – stay tuned into how they describe school, home, friends, interests
- Listening to young people is the key to increasing their involvement and self-management

## Ask the young person...

- What has worked
- What hasn't worked
- What is important now
- How they see themselves in relation to what has happened

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