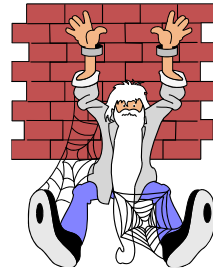


# The Advantages and Disadvantages of Reporting to the Police

## PERCEIVED ADVANTAGES:

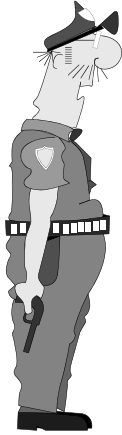
1. **APPREHENSION OF PERPETRATOR:** Reporting the assault is the first step toward arresting and convicting the rapist. Since most rapists are repeat offenders, apprehension of the rapist protects you and other potential victims.
2. **REGAIN SENSE OF CONTROL:** Reporting can help you gain control over the situation and regain your sense of power. You are exercising your rights!
3. **COMPENSATION:** When you report the crime, you may be eligible for crime victim's compensation for the time you may have lost from work and for the medical and any other expenses the rape has caused you.
4. **SERIOUSNESS OF CRIME:** When you report your rape it becomes a statistic and can help let people know how serious and prevalent the crime is. It also alerts them to danger spots in the area.
5. **LOW COST:** Rape, like all violent crimes, is considered a crime against "the people of the state", not just you personally. Therefore, you do not have to hire a lawyer or pay to prosecute the rapist. The District Attorney will act as your attorney.
6. **PRIVACY:** The Rape Shield Law protects the victim so that her present or past lifestyle(s) or sexual experiences is less likely to be brought out in a trial.
7. **ADVOCACY:** You can get help throughout the reporting and court process from a crisis center rape-victim advocate.



## PERCEIVED DISADVANTAGES:

1. **RETRAUMATIZING:** It may be hard for you to repeat your story. If the case does go to trial, you may have to relive much of the rape during the trial. But reporting it doesn't necessarily mean going to trial.
2. **NOT IN CONTROL:** The prosecutor has the choice whether or not to proceed with your case. You have the right to know why. Should prosecution end before the case gets to trial, it is often due to a lack of evidence.
3. **POOR RESULTS:** Reporting may be frustrating because only a small proportion of the rapists are caught, identified, and arrested, and only a few of those proceed to trial. The police and prosecutor will do the best job they can, however.

4. **INSENSITIVITY:** Although there is getting to be a wider understanding of rape these days, you may be treated rudely, disbelieved, or badgered by a callous defense attorney. The prosecutor will do his or her best to protect you against this treatment.



5. **MORE TROUBLE:** Teenagers are often afraid to go to the police because they think they will be punished, especially if they were breaking a rule when the rape happened (i.e. drinking).

1. **PUBLICITY:** Some victims feel they don't want anyone else to know about the rape. The name of the victim is not usually released to the media.

Note: In spite of all the positive reasons for reporting a rape or attempted rape, most survivors do not report. The current estimate is that nine out of ten rapes go unreported.

## Unsure of reporting and Jane Doe Laws

1. Survivor is unsure if she/he wants to prosecute at the time of the assault.
2. Survivor comes to SANE facility for Jane Doe evidence collection.

This allows the survivor time to consider prosecution if she/he is unsure at the time of the assault. The SANE nurse is able to collect and store vital evidence and the survivor does not have to decide immediately or feel pressured to report. It also provides the survivor with options and helps them to regain a sense of control over their situation by choosing what she/he wants to do. Survivor is also eligible to make an appointment with a counselor following the evidence collection to process her decision to report or not to report.

3. A Jane Doe SAFE kit is prepared with an identifying number to keep the survivor's name confidential if she/he is unsure of reporting.

The survivor signs a special release for a Jane Doe evidence collection kit and she/he is given contact information if she/he does decide to prosecute at a later date.

4. We keep the evidence kit for 90 days (at a minimum) to allow the survivor time to decide if she/he would like to report the rape to law enforcement.

The evidence kit stays at the SANE facility until or if the survivor decides she wants to prosecute. If there has been no contact from the survivor after 90 days the kit may be destroyed.

## Steps to Pressing Criminal Charges

### 1. Police Respond

If the survivor is seriously injured, the police will take her to the nearest hospital. If she is not seriously injured, they will take her/him to the SANE Facility or Cooper Green or University Hospital.

### 2. Interview by Detective

The detective assigned to her/his case will contact the survivor within a few days. The survivor is questioned in greater detail about the incident by the person who will be investigating the case. If she/he does not wish to press charges, there will be no further questioning.



## STEPS TO PROSECUTION

### 3. Warrant Screening

If the Assistant District Attorney feels there is sufficient evidence that a rape has occurred and that there is an adequate description of the assailant, a warrant for his/her arrest may be issued. If for some reason the ADA feels an element is missing or that the case is not prosecutable, the warrant will be denied.

In most cases the survivor will sign the warrant as well as appear before the magistrate to swear that what she/he has said is true.

### 4. Arrest

Arrest may take place at the scene of the incident if officers witness the crime or if other witnesses restrain the assailant until their arrival. If not, arrest may be made only after a warrant is issued.

The detective may make the arrest by serving the warrant. However, in most cases the Jefferson County Sheriff's Department will make the attempt to arrest the assailant. You should be aware it often takes months to make the arrest.

At the time a formal charge is made, the suspect is booked. He/She may then be released on bail or on his/her own recognizance.

## 5. Arraignment

The defendant appears before a judge to enter his/her plea of guilty or not guilty. The Assistant District Attorney, defense attorney (private or appointed) and a judge are present. The victim is not present. Bail may be reexamined at this time.

If the defendant pleads guilty, there will be no trial and the survivor will not have to testify. The defendant will be given a date for sentencing.

## 6. Preliminary Hearing

The survivor will be notified by subpoena of the date and time for which the hearing is set. She/He will meet with the Assistant District Attorney who will be trying the State's case at this level. This meeting usually occurs on the day of the hearing and often within minutes of the time set for the hearing. It is important that she have the support of the Rape Response counselor at this time.

Preliminary Hearings for Jefferson County, with the exception of Bessemer, are held at the Jefferson County Criminal Justice Center. If a case is being tried in the Bessemer district it will be held at the Bessemer courthouse. Cases tried in Walker, Shelby and St. Clair Counties will be held in those counties' courthouse.

The hearing is held for the purpose of determining if there is enough evidence to establish that the defendant may have committed the crime. This is called establishing probable cause.

The survivor *may* have to testify and give a detailed account of the incident. The defense attorney will then have opportunity to question the survivor. Because the hearing is only to determine probable cause, and not guilt or innocence, the scope of the questioning is limited to the survivor's testimony. Any other factors in the case are not explored.

The defendant is present but is not required to testify. The survivor is usually asked to point out the attacker when she/he testifies.

If the judge decides that a prima fascia (valid at first impression) case has been made, the case will be bound over to the Grand Jury and may proceed through the system. If he determines that there is not enough evidence for a prima facia case, charges will be dismissed. Through a decision by the defense attorney, the preliminary hearing may be waived, but this is rare. The case would go directly to trial without the survivor having to testify. Bail may be reduced as a part of this agreement.

## 7. Grand Jury

The Grand Jury is comprised of eighteen citizens.

Testimony before the Grand Jury is theoretically secret. The District Attorney presents his/her case at this time. Neither the defense attorney nor the defendant appears. The survivor testifies at this point and other prosecution witnesses may be called.

The survivor must testify before the Grand Jury alone. Neither her/his attorney nor her/his counselor will be allowed to accompany her into the room. However, they may wait with her/him outside before the survivor testifies.

The Grand Jury will return either a True Bill or a No Bill. If a True Bill is returned, the case is set on the trial docket. If a No Bill is returned, the case goes no further. A No Billed case can only be reexamined if more evidence becomes available after the first Grand Jury.

The survivor will not know the results of the Grand Jury trial for at least one week. After one week the District Attorney's Victim Witness Office should know the outcome. Unless the survivor calls that office, a subpoena to appear in court for trial may be her/his only indication they returned a True Bill.

## 8. Pre-Trial Motions

The defense attorney may request a suppression hearing at the beginning of the trial. This is to determine if the constitutional rights of the defendant have been violated. The judge has the right to deny or accept the motion for such a hearing. It is often based on questionable identification procedures (the men/women in the line-up were not similar in appearance or the survivor was shown only a few mug shots from which she/he chose the defendant). Other types of motions may be made, i.e. the defendant was held in custody too long or was not advised of his/her rights.

If the judge determines that the defendant's rights have been violated, the case may be sent back to an earlier stage in the proceedings or thrown out altogether.

The judge will determine the admissibility at trial of whatever evidence or investigative procedure has been challenged by the defense attorney.

## 9. The Trial

The purpose of the trial is to establish whether the defendant is guilty beyond a reasonable doubt and to a moral certainty. The survivor will relate the events of the incident and other prosecution witnesses will be called. The defendant may or may not testify.

Defense counsel will cross-examine the survivor. He/She may refer to the incident report (made at the time of the assault and written in the officer's own words) and any prior recorded testimony (a transcript of the Preliminary Hearing, for example) in order to establish any inconsistency in the survivor's testimony.

The defendant may waive his/her constitutional right to a jury trial. This is called a jury waiver trial and the case will be heard only by a judge.

Depending on the circumstances, the defendant is advised by his/her attorney to choose the type of trial that will provide him/her with the best chance of acquittal.

## 10. Verdict

In jury trials, the jury delivers a verdict; a judge alone decides jury waiver trials.

The defendant may at any stage plead guilty. If he/she does this, the survivor may not have to testify and a sentencing date will be set. The Assistant District Attorney and the defense attorney may also agree on some lesser-included offense to which the defendant may plead guilty. This is called plea-bargaining.

If the defendant is found guilty, he/she has the right to direct appeal. This involves having the case reviewed by a higher court.

The State does not have the right to appeal.

## 11. Sentencing

This may occur at the end of the trial, but is often deferred to allow for a pre-sentencing investigation by a probation officer. This report will contain background information on the defendant and can include sentencing recommendation for the judge.

The Code of Alabama fixes punishment at not less than 10 years.

## Victim Rights

Many time clients ask what are *their* rights during this process. There are some rights for victims established by the Crime Victims' Rights Act (Act 95-583). Crime victims have the right:

- To be present throughout all criminal proceedings;
- To a waiting area separate from the defendant, his relatives and defense witnesses, where practical;
- To protection from threats or intimidation by the defendant, his family or friends;
- To have address, phone number, place of employment or other related information kept in confidence and not part of the public record;
- To refuse an interview or other communication from the defendant, his attorney or any other person acting on the defendant's behalf;
- To be present, heard and present evidence at any pre-sentencing, sentencing or restitution proceeding, as authorized by law;
- To know the status of any post-conviction hearings;
- To be notified of the prisoner's escape or subsequent re-arrest;
- To be notified of any "end of sentence" release within 15 days prior to the end of that sentence;
- To submit a written statement (or oral transcription) to the Department of Corrections to be entered in to the prisoner's permanent record;
- To information regarding the release of any property taken as evidence;
- To be notified and heard at a parole or pardon hearing conducted by the Board of Pardons and Paroles;
- To receive, upon written request, a copy of the release opinion from the Alabama Department of Mental Health and Mental Retardation, if applicable;
- To respond to a subpoena to testify in a criminal proceeding or participate in the reasonable preparation of criminal proceeding without the loss of employment or the intimidation, threats or fear of the loss of employment.

## Victims' Responsibilities

- The victim (or his/her legal representative) must notify the District Attorney's Office in writing that you wish to invoke your rights.
- The victim must provide and MAINTAIN a correct, current mailing address and telephone number to the District Attorney's Office. If the victim fails to keep this information current, his or her request for notice shall be considered withdrawn and void.

## Crime Victims Compensation

### You May Qualify for Compensation If:

- The crime was reported to law enforcement within 72 hours (unless good cause can be shown for not doing so). Good cause must be submitted in writing.
- The claim is filed within one (1) year of the date of the incident (unless good cause can be shown for not doing so). Good cause must be submitted in writing.
- The victim suffered serious personal injury or death as a result of a criminal act.
- The victim cooperated with law enforcement officials, the courts, and ACVCC.
- The victim was not engaged in illegal activity or was not in an illegal place of business at the time of the incident.
- The victim did not provoke, incite, or willingly take part in the incident.
- The victim was not convicted of a felony after applying for compensation.

### Benefits Available

- Medical expenses – including doctor and hospital care, dental expenses, prescriptions, medical supplies, inpatient psychiatric care, etc. This does not include expenses covered by insurance.
- Rehabilitation expenses – including vocational or physical therapy, if not covered by another agency.
- Counseling expenses – including counselor, psychologist, or psychiatric fees for counseling. Limited to 50 sessions and payments limited to \$80.00 per hour for license counselors and social workers; \$100.00 per hour for psychologists; and \$125.00 per hour for psychiatrists.
- Work loss – including the victim or claimant's net (take-home) weekly pay for a reasonable length of absence from work. This does not include vacation pay, sick pay, or disability pay. There is a maximum of \$400.00 per week of work loss.
- Funeral expenses – including funeral home expenses, cremation, burial expenses including monument. The total allowable for funeral costs is \$5,000.00. We cannot consider expenses for flowers, clothing or limousines.
- Property expenses – including only property taken as evidence by law enforcement, which was soiled or damaged as the result of the crime. This does not include automobiles, automobile repair, insurance deductibles, appliances, or money. There is a \$1,000.00 maximum on property expenses.
- Moving expenses – including security deposits, utility deposits, and the cost to move. It does not include rent payments. There is a \$1000.00 maximum on moving expenses. This is only considered in extreme circumstances when the victim is in imminent physical danger and when the offense occurred at home.
- Future economic loss – future or additional moving expenses or loss to victim or victim's dependents. Must be justified with explanation of how losses were calculated.
- Replacement services loss – expenses claimant would not have suffered had a victim lived. There is a maximum of \$900.00.

### **Emergency Awards**

These are reserved for cases of dire economic need. Usually these awards are granted for loss of income or moving expenses. If you are requesting an emergency award for loss of income, please attach a statement from your employer stating the time lost from work and your net (take-home) weekly pay. If you are requesting an emergency award for moving expenses, you must attach estimates or receipts for the requested items. There is a maximum of \$1,000.00 for emergency funds.

### **Supplemental Awards**

If you have additional expenses which you have incurred after the award is made, which are directly related to the crime, those bills can be submitted and will be considered every three months, up to a maximum time period of two (2) years from the date the initial claim is paid.

### **For More Information Contact**

Alabama Crime Victims Compensation Commission  
PO Box 1548  
Montgomery, AL 36102-1548  
(334) 242-4007  
1-800-541-9388 (Victims Only)  
Fax (334) 353-1401

## Test Your Knowledge

1. What are the perceived advantages and disadvantages of reporting to the police?
2. At what points in the prosecution will the victim likely be called to testify?
3. Who is eligible for Crime Victim Compensation? What benefits are available?