

Basic Information on Sexual Assault of Native People¹

Refer to your local victim advocacy program or tribal sexual assault coalition to clarify laws specific to your community.

Generally speaking, sexual assault is “non-consensual sexual contact.” “Non-consensual sexual contact” is usually defined by the laws of each jurisdiction. Many jurisdictions criminalize *any* non-consensual sexual contact that includes one or more of the following types of conduct:

- *Contact, touching or penetration of the any sex organ or the anus by a penis, finger, mouth or foreign object.*
- *Oral contact with a victim’s sex organ(s) or anus.*
- *Contact or touching of a victim’s breast by a finger, hand, mouth or foreign object.*
- *Contact or touching of a victim’s body using sex organs.*

Sexual assault need not include penile vaginal penetration. Also, victims do not need to be unclothed during the assault.

CONSENT is the key factor in determining if a sexual act is criminal. A person must possess the legal capacity to form consent to the sexual contact at the time of the sexual contact. A person who is intoxicated or who have some cognitive disabilities (those who are developmentally disabled, have dementia, etc.) may not have the legal capacity to consent to the sexual contact. Check the laws of your jurisdiction to see at what ages people attain legal capacity to consent to sexual contact (e.g., in most states, a person cannot legally consent to sexual activity if they are under the ages 16, 17 or 18).

Sexual assault can be accomplished by use of force, threat of force, coercion, manipulation, instilling of fear or fraud (e.g. posing as a medical doctor or spiritual healer). To be considered a sexual offense, a victim is not required to physically fight or resist the perpetrator. A person may withdraw consent from the sexual contact at any time. Continued, non-consensual sexual contact typically constitutes sexual assault.

Proving lack of consent is the greatest challenge in sexual assault criminal cases because often there is no evidence other than that which shows that sexual contact did take place. Sometimes, through a forensic medical examination, injuries can be visually documented to show use of force. A medical history can often support a victim’s account of the assault

through written documentation of injuries. If the criminal justice system is not able to prove lack of consent, victims may feel a profound lack of validation that others believe the abuse/assault did happen. It is critical, therefore, that victim advocates offer ongoing support for victims to heal and affirm that they are believed, regardless of criminal justice system outcomes.²

Marriage is not a defense to the crime of sexual assault in many jurisdictions. In many jurisdictions, a person may be criminally prosecuted for the crime of sexual assault for any non-consensual sexual contact with his spouse. However, there may be exceptions (e.g., marriage is often a defense in statutory rape) and differences in how these cases are handled from non-marital cases (e.g., the statute of limitation for reporting might be shorter and sentencing may be reduced). See jurisdictional laws related to marital sexual assault.



Does your tribe have codes in place to address sexual assault? If these codes don't exist or are not strong as you think is needed, it is recommended that you review the *Tribal Legal Code Resource: Sexual Violence and Stalking Laws* developed by the Tribal Law and Policy Institute in conjunction with the Southwest Center for Law and Policy. Available through <http://www.tribal-institute.org/lists/pubs.htm>.

There is no “typical” victim of sexual assault—victims are young and old, married and single, with and without disabilities, etc. While females make up the vast majority of AI/AN victims, there are AI/AN males who are sexually victimized. No one asks or deserves to be sexually assaulted.³

Sexual assault can harm a victim's body, mind, emotions and spirit. The impact on the victim can be devastating regardless of the type of assault. Rather than “just” a physical violation, it may be helpful to think of sexual assault as an assault on a person's humanity, affecting the whole person and, as a result, healing and recovery may be prolonged. Some important considerations:

- **Power and control is the primary motive for sexual assault.** Sexual assault is a weapon that sex offenders use to violate their victims, harm them physically, mentally emotionally and/or spiritually. They seek to take away victims' personal power. This attack on victims' bodies, minds and spirits may take a lifetime to heal. Following a sexual assault, victims are left with many feelings including but not limited to fear, anxiety, isolation, terror, embarrassment, shock, humiliation, anger and sadness. These feelings occur on a personal level, but victims may also feel judged by, disconnected from or even ostracized by their families and communities, thus exacerbating the trauma experienced by a sexual assault.

- There are many myths about sexual assault and what constitutes “normal” reactions. When the response doesn’t fit within those preconceived ideas of what the reaction should be, there may be an assumption that sexual assault really didn’t happen or that victims are lying. In reality, **victim responses to sexual assault vary and each person responds in her own way**. There is no one right way to respond. Sometimes responses are influenced by a need to maintain some normalcy. Perhaps the victim is wearing the face of courage so as not to alarm her children, family or relatives. Many AI/AN women have endured myriad hardships and multiple victimizations and have learned to cope in their own personal way. Because of the shame and fear of not being believed, a majority of victims tend to “test the waters” before disclosing their experience. They may internalize their feelings and wait to express them until they’re emotionally stronger or sense they will be believed and not judged.⁴

Victims of sexual assault have the right to be believed, safe and supported, to heal, to have a sense of justice, to be empowered to make their own choices, to have options and good information, to not be re-victimized, and to have rights protected.⁵

¹ Adapted in part from H. Bongar White, J.G. White, S. Deer and M.L. White Eagle, *Tribal Prosecutor Sexual Assault Model: Guide for Drafting or Revising Tribal Prosecutor’s Protocols Responding to Sexual Assault*, Tribal Law and Policy Institute in conjunction with Southwest Center for Law and Policy, 2008: 11, available through <http://www.tribal-institute.org/lists/assault.htm>.

² Drawn from a draft of *West Virginia Laws on Sexual Abuse and Assault*, a training module, West Virginia Sexual Assault Free Environment (WV S.A.F.E.) project, a partnership of the West Virginia Foundation for Rape Information and Services, the Northern West Virginia Center for Independent Living, and the West Virginia Department of Health and Human Resources (anticipated Internet availability in 2010 through <http://www.fris.org/>).

³ Adapted from H. Bongar White, J.G. White, S. Deer and M.L. White Eagle, *Tribal Prosecutor Sexual Assault Model: Guide for Drafting or Revising Tribal Prosecutor’s Protocols Responding to Sexual Assault*, 3.

⁴ Paragraph drawn from B. Clairmont, *Sexual Assault Response Teams, Resource Guide for the Development of a SART in Tribal Communities*, Tribal Law and Policy Institute in conjunction with the Southwest Center for Law and Policy, 2008: 7-8, available through <http://www.tribal-institute.org/lists/pubs.htm>.

⁵ *Ibid*, 9.