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Understanding the System

Advocates: Key is to spot signs of assault; Police are investigating the apparent rape of a severely disabled woman

*written by Barry Adams and Brenda Ingersoll,
Wisconsin State Journal, Madison, Wisconsin, August 7, 2003, p. B1*

In this newspaper story it was reported that a woman with a severe disability who resides in a state facility with 52 other people was taken to the hospital because of medical problems. Doctors discovered that she was 6 weeks pregnant. The woman does not have the mental capacity to consent to sexual relations. In 1997 a Vulnerable Adult Legal Intervention Project was started in Dane County. The program “assigns someone who acts as an advocate, liaison, and interpreter between the victim and the criminal justice system”(p. B1). According to Jennifer Ondrejka, Executive Director of the Wisconsin Council on Developmental Disabilities, one of the things that advocates do is “help the professional ask the questions in better ways so the person is able to successfully respond and explain” (p. B1).

Understanding the system refers to knowing the laws, rights, agencies, programs, and services that protect and support victims and promote justice. Think about the woman in the newspaper story and

Ask Yourself...

What systems do I think will be involved in helping the woman in the story?

What systems in my community would I be working with if I were sexually assaulted?

The victim in the story will (or at least should) be involved with several systems responsible for protecting, supporting, and seeking justice for crime victims with disabilities. The creation of a program specifically designed to support and advocate for vulnerable adults who are crime victims is a good indication of how complex the system can be.

OVERVIEW OF THE ISSUE

The system can be very confusing and overwhelming to anyone, but especially to victims who are also dealing with the consequences of violence and abuse. You will learn about four parts of the system: **victim services, vulnerable adult advocacy**

and protection system, the criminal justice system, and the civil justice system. Remember, the word *victim* refers to a person who has been abused or who has been a crime victim. The word *victim* does not mean that people with disabilities are victims. People with disabilities are disempowered when they are not provided with the information they need to protect themselves and to promote their own best interests. Sir Francis Bacon, 16th century philosopher and statesman, said “knowledge is power.” Understanding the system will help you advocate on your own behalf and support the self-advocacy of people with disabilities that you know.

VICTIM SERVICES

Before you read about victim services,



Ask Yourself...

What are the rights of crime victims in my state?

Can I be compensated for crime-related expenses?

How do I get a victim advocate to help me as my case works its way through the criminal justice system?

What is an order for protection and how would I get one?

By the end of this chapter, you will know the answers to these questions and so much more about victim services.

Victim services are the array of federal, state, and local services available to help victims obtain justice and to heal from their victimization. These programs are located within state, county, or other government agencies and private nonprofit organizations. In the United States the Victims of Crime Act (VOCA) of 1984 (PL 98-473) authorizes funding for a broad array of services and resources to help victims and to ensure that their rights are not violated (U.S. Office for Victims of Crime [U.S. OVC], 2004). The VOCA fund is administered by the Office for Victims of Crime. Money comes from criminal fines, forfeited bonds, special assessments, and penalties collected by the U.S. Attorney’s Office, U.S. Federal Courts, and the Federal Bureau of Prisons (U.S. OVC, 2002). You should be familiar with the rights of crime victims and the two general types of services: assistance and compensation.

Victims’ Rights

Every state has a **victim’s bill of rights** that specifies the legal rights of crime victims. The specific rights vary depending upon the state. Refer to Table 6.1 for a basic list of victims’ rights. Contact the Attorney General’s Office or the victim assistance agency in your state to learn about the specific rights of victims in your area.

The U.S. Constitution states the constitutional rights of offenders. There are no specific constitutional protections for victims. The National Victims’ Constitutional Amendment Passage (NVCAP) and other victim advocates are working to amend the U.S. Constitution to create universal rights and protections for victims of violent crime. In addition, many states have amended or are attempting to make changes to state constitutions to provide better rights for victims of crime. Victims’ rights

Table 6.1. Victim's rights

In general, victims have the right to

- Be notified of proceedings and the status of the defendant
 - Be present at certain criminal justice proceedings
 - Make a statement at sentencing or other times
 - Receive restitution (compensation for loss or injury) from a convicted offender
 - Be consulted before a case is dismissed or a plea agreement entered
 - Have a speedy trial
 - Keep their contact information confidential
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Source: NCVC (1999b).

groups want crime victim rights 1) to be protected in the same way that defendants' rights are protected, 2) to be a permanent part of the criminal justice system, and 3) to make sure that the courts have the power to enforce crime victims' rights if they are violated (National Center for Victims of Crime [NCVC], 1999a). Thirty-three states have changed their state's constitution to provide for the rights of victims (NVCA, n.d.).

Victim Assistance Programs

There are two main types of victim assistance programs: system-based victim assistance programs and community-based victim assistance programs (National Organization for Victim Assistance [NOVA], 2005). Victim assistance includes the following services: crisis intervention, emergency shelter, emergency transportation, counseling, and criminal justice advocacy (U.S. OVC, 2002, 2005). Each state has a victim assistance agency that provides oversight of the statewide victim assistance services system and provides information and referral to victims. In addition, there are many national organizations that provide information on victims' rights, services, and criminal justice resources (refer to the resource list at the end of the chapter). Several of the organizations have 24-hour toll-free hotlines in order to immediately address the needs of victims.

System-Based Victim Assistance Programs System-based victim assistance programs provide criminal justice advocacy services (see Table 6.2). These programs run out of local police or local prosecutor's offices. A victim advocate is assigned to help the victim understand the procedures and practices of the criminal justice system and to support the victim as the case is prosecuted. Victims may not automatically be given a victim advocate. Victims may need to ask that an advocate be assigned to their case.

Table 6.2. System-based victim assistance services

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- Assistance in filing for state crime victim compensation funds
 - Notification of hearings, plea negotiations, and court dates
 - Someone to accompany victims to court proceedings
 - Explanations of the legal process
 - Interaction on the victim's behalf with attorneys, court personnel, employers, and schools
-

Source: NCVC (2008b).

Table 6.3. Community-based victim assistance services

Crisis intervention
Emergency shelter
Emergency transportation
Obtaining a protective order (e.g., order for protection, harassment)
Counseling
Criminal justice advocacy

Community-Based Victim Assistance Programs Community-based victim assistance programs provide many types of services (see Table 6.3). At first, advocates deal with the emotional support needs of victims, make sure that appropriate referrals for services are made, and ensure that the victim's legal rights are upheld (NOVA, 2005). Advocates also help with the long-term needs of victims. Domestic violence programs and sexual assault programs are the two most common community-based victim assistance programs.

Domestic violence programs are located in communities throughout the United States and provide many services, including "counseling and support groups; information about legal options, the criminal justice system, and social services; shelter; attorney referral; vocational counseling; safety planning; and case advocacy" (NCVC, 2008a, p. 3). Services are provided at no cost to victims. Domestic violence programs primarily serve female victims and their children. You will need to ask if services are available to men who are victims of domestic violence. Victims are assisted regardless of their decision to stay in or leave the relationship (NCVC, 2008a).

Sexual assault programs provide support and services to victims of sexual assault regardless of whether or not the victim chooses to report the assault to the police (NCVC, 2008b). Many communities have written protocols on how to respond to sexual assault victims. **Sexual Assault Response Team (SART)** programs have been created in many communities to respond at crime scenes, hospitals, and police stations to serve the immediate needs of victims. A typical SART team consists of a police officer, an advocate, and a **Sexual Assault Nurse Examiner (SANE)** or doctor. The purpose of the SART program is to reduce the negative effects and trauma associated with sexual assault. This is done by reducing the number of interviews and by giving the victim immediate access to resources (NCVC, 2008b).

Victims of sexual assault are encouraged to undergo the collection of forensic (crime-solving) evidence through the administration of a **rape kit** in order to help in the successful prosecution of their case (Rape, Abuse, and Incest National Network [RAINN], 2008). Typically the rape kit exam is administered by a SANE or a **Sexual Assault Forensic Examiner (SAFE)**. Victims who are unsure if they want to report the sexual assault should still have forensic (crime-solving) evidence collected in case they change their minds later. Advocates explain the importance of and actual procedures used in the rape kit exam. In addition, advocates are present, when requested by the victim, to provide emotional support to victims during

the rape kit exam. A urine sample should be collected from victims who suspect that they may have been drugged (RAINN, 2008).

A rape kit is a standard kit with little boxes, microscope slides, and plastic bags for collecting and storing evidence. This process preserves evidence so that it may later be processed and used in court. The process involves collecting evidence left on [the victim's] body and clothing, including hair and fibers. (RAINN, 2006, p. 1)

Order for Protection Domestic violence, sexual assault, and other victim assistance programs can help victims in getting an Order for Protection (OFP), also known as a *restraining order*. An OFP is a “court-issued order that directs individuals to refrain from specified conduct” (NCVC, 2005, p. 1). OFP are usually related to domestic violence. However, in many states an OFP can also be obtained to protect vulnerable individuals (people who are elderly and people with disabilities), stalking victims, crime victims, and witnesses from harassment by offenders (NCVC, 2005). An OFP is typically issued against someone who is in a domestic relationship or related to the victim, such as a spouse, partner, boyfriend/girlfriend, parent of the victim's child, or blood relative. Specific examples of the protection offered by an OFP are listed in Table 6.4. A **harassment restraining order**, another type of protective order, may be granted by the court for nondomestic relationships. Many forms of aid or assistance are available under an OFP and harassment restraining order. In addition to those listed in Table 6.4, the court may provide other relief determined to be appropriate under the circumstances. The cost of petitioning and serving a protective order varies depending on the type of order, reason for petitioning, and jurisdiction. Many states and communities have funds available to help victims pay for protective orders. In addition, courts may require offenders to pay the cost for getting protective orders.

The process of obtaining an OFP is pretty much the same in each state (see Figure 6.1). A victim advocate can assist you in this process. The first step is for a victim to petition the court for an OFP against a specific individual. A temporary order can be granted by the judge based solely on the evidence presented in the petition. The offender is notified by the police and a hearing is scheduled within a few days or weeks to hear evidence from the victim and the offender. If the judge sides with the victim, a permanent OFP is granted stating the conditions of the OFP, including the length of time of the protective order. An OFP is typically in place for 1–3 years. The conditions of the order can be changed or the length of time can be extended by the court. If the offender violates any of the provisions of the OFP, the police should be immediately notified and the offender should be arrested.

Table 6.4. Types of relief available under an Order for Protection (OFP)

Restricting contact
Prohibiting abuse, intimidation, or harassment
Determining child custody and visitation
Mandating offender counseling
Prohibiting firearm possession

Source: NCVC (2005, p. 1).

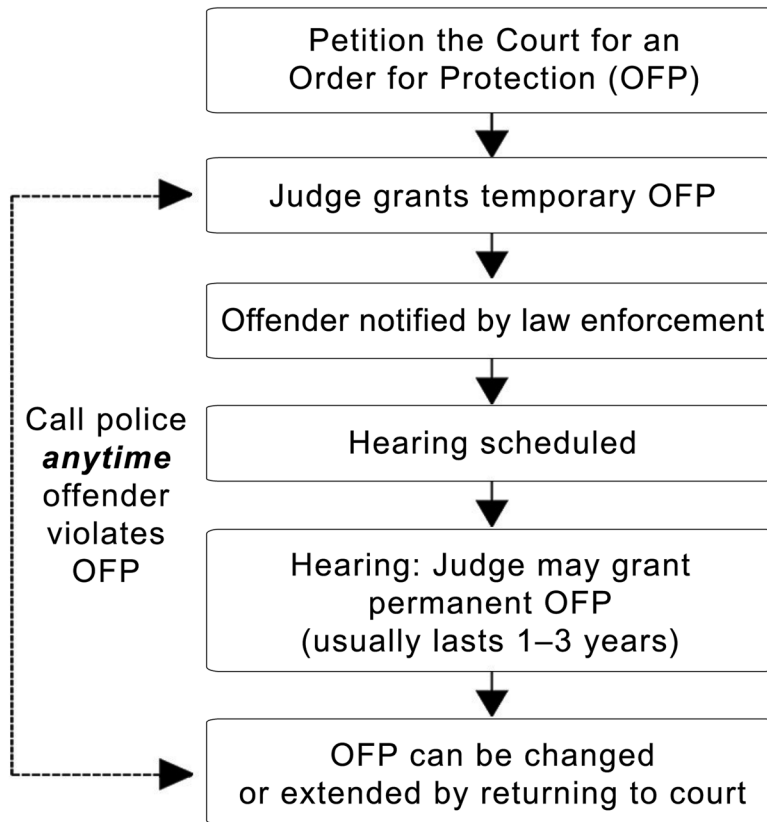


Figure 6.1. The general process for obtaining an Order for Protection (OFP). (Source: National Center for Victims of Crime. [2005]. *Orders of Protection*. Retrieved April 20, 2008, from <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentID=39538>)

A protective order is only effective if everyone does their part in enforcing the order. According to the National Center for Victims of Crime (NCVC, 2005), “the effectiveness of a protective order increases when the victim reports every violation—no matter how minor—to law enforcement” (p. 2). Research shows that a protective order that is not enforced may actually increase a victim’s risk for violence and additional abuse (NCVC, 2005).

Crime Victim Compensation Programs

State-sponsored **crime victim compensation** programs provide direct payment to or on behalf of victims of criminal offenses occurring in the state (including victims of federal crimes) for crime-related expenses (U.S. OVC, 2002; U.S. OVC, 2005). Violent crimes such as “homicide, rape, drunk-driving, domestic violence, and child sexual abuse and neglect” are covered (U.S. OVC, 2002, p. 1). Victims may be compensated for many types of crime-related expenses (see Table 6.5). However, property damage, theft and loss are usually not covered expenses “unless damage is to eyeglasses, hearing aids, or other medically necessary devices” under victim compensation programs (National Association of Crime Victim Compensation Boards [NACVCB], n.d., para. 4). When asked about covering the cost of replacing

Table 6.5. Compensated crime-related expenses

Medical costs and hospital care
Funeral and burial costs
Mental health counseling
Lost wages due to crime-related injury
Loss of support for dependents of a deceased victim
Replacement or repair of eyeglasses
Dental services and devices to repair injury to teeth
Prosthetic devices
Crime scene clean-up

Source: NACVCB, n.d.; U.S. OVC (2005).

a wheelchair, TTY, or other assistive device that was damaged or stolen as a result of a violent crime, the Executive Director of NACVCB responded

Crime victim compensation programs will cover the cost to purchase wheelchairs or other assistance devices if the victim is in need of those devices due to the injury from the crime. For example, if a victim was injured in a drunk driving crash and is now requiring the use of a wheelchair, the victim compensation program will cover that cost. However, if a wheelchair is stolen during a robbery/theft, victim compensation programs generally will not pay the replacement cost because the programs do not cover property crimes. However, some states have indicated that if the wheelchair was damaged or destroyed, absent an attack on the person, they would consider a wheelchair essentially as a part of the person, so it could be covered. If a wheelchair is damaged during an attack on the victim, most compensation programs would cover damage or replacement of the wheelchair, or other prosthetic device. It's always best to check with the compensation program in the state where the crime occurred. (Dan Eddy, personnel communication, October 1, 2008)

You should contact the agency in your state that provides victim compensation to find out the specific crime-related expenses covered. You can access compensation by contacting the victim compensation program in your state. Most compensation programs require victims to reports crimes to the police within 3 days of the offense and to file a claim within a defined period of time, typically 2 years (U.S. OVC, 2005). In most states these time limits can be extended if good reason can be given. If victims have collateral sources ("other private or public programs, agencies, companies or other sources that will cover the same costs"), these sources must be used first before state programs compensate for the remainder of the loss (NACVCB, n.d., para. 7).

Final Thoughts About Victim Services

This chapter has covered a lot of information about victim services. Let's review a few key points.

- If you are a victim of a crime you have a right to an advocate. Ask for one.
- Every state has a victim's bill of rights and a crime victim compensation program.
- Every community has services for victims of sexual assault and domestic violence. Find out the availability of service for people with disabilities.

You should take some time to learn about the victim services in your area before you or someone you support needs them. Refer to the Resources at the end of the chapter to learn more.

VULNERABLE ADULT ADVOCACY AND PROTECTION SYSTEM

You have already read a little about adult protection services (APS) in earlier chapters. You may be less familiar with the other systems that deal with protecting vulnerable adults. Before you learn about the three main systems,



Ask Yourself...

What agency is responsible for responding to reports of abuse of vulnerable adults who live in private homes in my area?

What agency is responsible for responding to reports of abuse of vulnerable adults who live in long-term care facilities in my area?

Who would I call if I was concerned about the quality of care that I or someone with a disability was receiving?

Although the systems for protecting vulnerable adults vary from state to state, in general there are three types of vulnerable adult protection and advocacy services: 1) **adult protection services** (APS), 2) **long-term care ombudsman program** (LTCOP), and 3) **protection and advocacy** for individuals with disabilities. There may be other types of advocacy and protection services available in your area. The three types discussed in this chapter are available in every state.

Adult Protection Services

All 50 states have passed laws creating APS to serve victims of elder abuse, with most states also defining adults with disabilities as vulnerable adults under these laws (American Bar Association Commission on Law and Aging [ABA], 2005). The purpose of APS is to “insure the safety and well-being of elders and adults with disabilities who are in danger of being mistreated or neglected, are unable to take care of themselves or protect themselves from harm, and have no one to assist them” (National Center on Elder Abuse [NCEA], 2005, para. 1). State laws vary widely in the

- Age or circumstances that a victim is eligible to receive protective services
- Definitions and types of abuse covered
- Classification of abuse as criminal or civil
- Reporting requirements
- Investigation responsibility and procedures
- Remedies for abuse (ABA, 2005)

APS workers partner with local police in cases involving violation of criminal laws. APS provides an array of services beginning with receiving reports of abuse to monitoring the services received by vulnerable adults (see Table 6.6).

Table 6.6. Common services provided by adult protection services

Receive reports of vulnerable adult abuse
Investigate reports
Assess victim's risk
Assess victim's capacity to understand his or her risk and to give informed consent
Develop service plans
Arrange for emergency shelter, medical care, legal assistance, and supportive services
Monitor services

Source: NCEA (2005).

In some states, APS laws only pertain to domestic abuse (abuse in a private home) or to individuals who reside in the community. Some states have separate laws and systems for protecting vulnerable adults who live in long-term care facilities from **institutional abuse**. Other states include protection of adults in institutional settings under APS laws and services. To make this even more complicated, there are some states that have no separate institutional abuse law and cover protection of institutionalized vulnerable adults under the APS law. However, they have a separate state agency responsible for receiving reports and investigating reports of institutional abuse (ABA, 2005). You should contact the Attorney General's office in your state to learn about the laws and systems for protecting vulnerable adults in your area.

The **burden of proof** required to substantiate (prove) an allegation (claim or report) of abuse is far less than in the criminal justice system (see Figure 6.2). The standard used varies depending upon the state and investigating agency. APS may use the **preponderance of evidence** standard, which means that it is more likely than not that the abuse or neglect occurred. Offenders are not determined to be guilty or not guilty. Rather, after an assessment or investigation the outcome is classified using such terms as substantiated, unsubstantiated, founded, unfounded, or undetermined. The classification systems vary under state laws.

Long Term Care Ombudsman Program

LTCOP was created under the Comprehensive Older Americans Act Amendments of 1978 (PL 95-478). Every state has laws creating the LTCOP as a requirement for receiving federal money under the current Older Americans Act Amendments of 2006 (PL 109-365). An **ombudsman** is an advocate (National Long Term Care Ombudsman Resource Center [NLTCORC], 2001). The purpose of the LTCOP is to advocate on behalf of residents of long-term care facilities—such as nursing homes, board and care homes, and assisted living facilities—who experience abuse, violation of their rights, or other problems. The LTCOP also works on improving the overall quality of care provided in long-term care settings. When abuse is discovered the ombudsman reports the abuse to the appropriate authorities in the state, such as APS, the police, or the agency responsible for licensing and certifying long-term care facilities. In some states, the LTCOP also performs the APS role and has the legal authority to investigate and respond to institutional abuse (ABA, 2005).

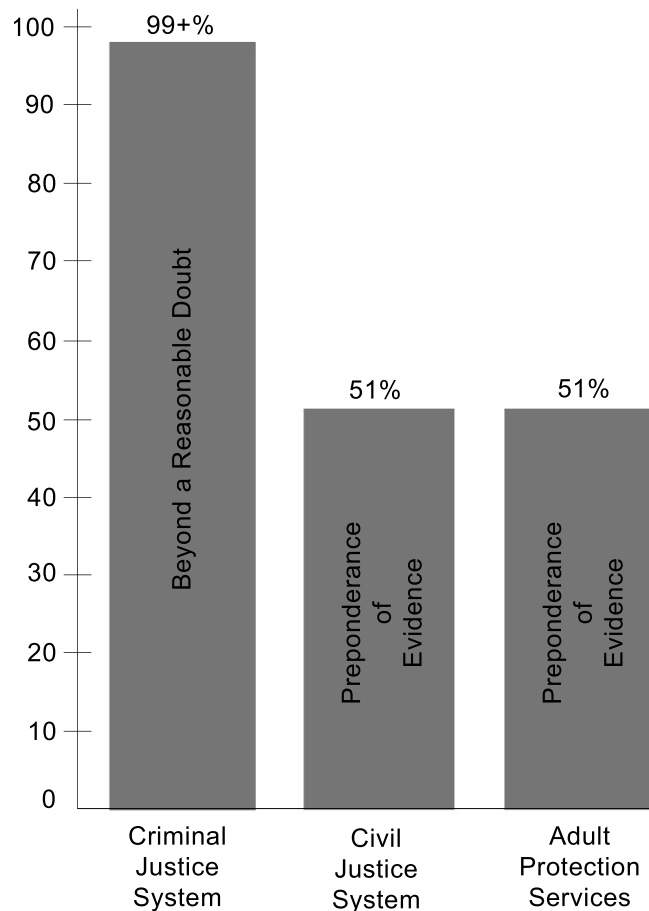


Figure 6.2. The burdens of proof in the criminal justice, civil justice, and adult protection systems.

Protection and Advocacy for Individuals with Disabilities

A **protection and advocacy (P & A)** agency is located in every state “to provide legal representation and other advocacy services, under all federal and state laws, to all people with disabilities” (National Disability Rights Network [NDRN], 2006, para. 1). The system of protection and advocacy is a national network of 57 disability rights agencies mandated under various federal laws. P & A agencies monitor, investigate, and attempt to get fixed poor conditions in facilities that care for people with disabilities. In addition, these agencies advocate for inclusive education, financial benefits for people with disabilities, affordable and accessible healthcare, accessible housing, and equal employment opportunities (NDRN, 2006). A closely related program is the **Client Assistance Program (CAP)**. CAP provides information and assistance to people seeking or receiving vocational rehabilitation services under the federal Rehabilitation Act (NDRN, 2006, para. 1). Many CAP agencies are located within P & A offices.

Final Thoughts About the Vulnerable Adult Advocacy and Protection System

You have just read a very basic overview of the protection and advocacy services that may be available to help you or the people with disabilities you know. Each state has a system for protecting vulnerable adults who live in private homes (domestic settings) or who live in some type of long-term care setting (e.g., group homes or nursing homes). You should take some time to learn about the systems in your area. Refer to the Resources at the end of the chapter to learn more.

CRIMINAL JUSTICE SYSTEM

The criminal justice system consists of four parts: law enforcement (commonly referred to as the police), prosecution, judiciary (the courts), and corrections. For many people, knowledge of how the criminal justice system works is based on what they see on television. And as you know, what is shown on television does not always reflect reality. In this section, you will learn the process that a criminal case goes through from reporting the crime to the police to sentencing an offender (see Figure 6.3). You will learn the definition of many legal terms that it will be

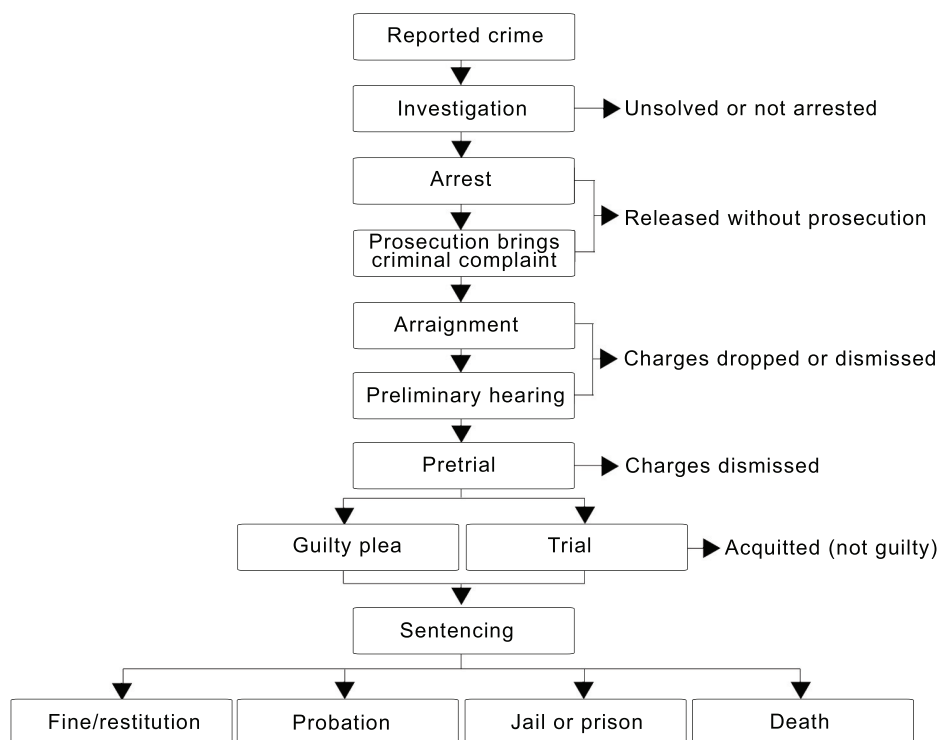


Figure 6.3. The general process through which a criminal case moves in the criminal justice system. (Source: Bureau of Justice Statistics. [2004, January 14]. *The justice system: What is the sequence of events in the criminal justice system*. Washington, DC: Bureau of Statistics, Office of Justice Programs, U.S. Department of Justice. Retrieved July 10, 2008, from <http://ojp.usdoj.gov/bjs/justsys.htm>)

helpful for you to know. As you read the chapter, remember that when the word **defendant** is used, it refers to the offender—the person who allegedly committed the crime. With the information provided you will be better able to advocate for yourself and others involved with the criminal justice system.

The criminal justice process begins after a crime is committed and is reported to the police (National Crime Victim Bar Association [NCVBA], 2007). **Crime** is defined as “a type of behavior that society has declared illegal and has decided to punish” (Hames & Ekern, 2006, p. 121). Some are crimes against property and some are crimes against people. Some behavior may be a crime (as in child sexual abuse) and some may not be a crime (such as verbal abuse) (NOVA, 2005). You should consult with police in your area to determine what is and is not considered criminal behavior in your state. Criminal offenses are considered crimes or offenses against the state (Hames & Ekern, 2006). The plaintiff in criminal cases is always some governmental representative. For example, the plaintiff would be “The People of the State of Minnesota” rather than the victim. The victim’s role is mainly as a witness for the state. The prosecutor makes decisions based upon what is in the best interest of the state, not the victim.

An investigation begins as soon as the police are aware that a possible crime has been committed. The police make an arrest once “enough evidence has been collected to establish probable cause” (Hames & Ekern, 2006, p. 409). **Probable cause** means “an officer has a reasonable basis for the belief that a person should be searched or arrested” (Hames & Ekern, 2006, p. 394). After an arrest is made the prosecuting attorney decides if and what charges will be filed against the defendant—the offender. The first document filed with the court is the **criminal complaint**, “a written statement explaining the significant facts of the case” (Hames & Ekern, 2006, p. 410). Usually within 24 hours of filing the criminal complaint, the defendant will have his or her initial appearance in court before a judge. At this initial appearance the defendant will be informed of the charges filed against him or her and notified of rights. The judge will decide if the defendant is eligible for release, and bail will be set if it is granted. Finally, a date will be set for the preliminary hearing.

At the **preliminary hearing**, usually held within 10 days from the initial appearance, the judge hears evidence to determine whether probable cause exists. In some jurisdictions, a grand jury indictment is required to determine whether or not probable cause exists. A **grand jury** is “a jury that is called upon to receive and review accusations and complaints in criminal matters” (Hames & Ekern, 2006, p. 621). If probable cause is not established, the defendant goes free. If probable cause is established, formal charges are filed either in the form of an **information**, defined as “an accusation made by a prosecutor,” or an **indictment**, defined as “a written accusation given by a grand jury” (Hames & Ekern, 2006, p. 418).

The next court appearance for the defendant is the **arraignment**. “At the arraignment, the charge is read and the defendant enters a plea” (Hames & Ekern, 2006, p. 418). A **plea** is the defendant’s “response to the charges” (Hames & Ekern, 2006, p. 407). Criminal defendants have three plea options: 1) not guilty, 2) guilty, or 3) nolo contendere. If a defendant pleads guilty, the prosecutor and the defendant’s attorney will discuss a **plea bargain**. Most criminal cases result in plea agreements.

If a defendant pleads not guilty, the case will proceed to trial. A **nolo contendere plea** means that the defendant neither admits guilt nor denies the charges (Hames & Ekern, 2006, p. 420). The court will treat this as a guilty plea. The advantage of a nolo contendere plea is that in most states the plea cannot be used against the defendant in a civil lawsuit, whereas a guilty plea can be used against the defendant.

The next steps in the process include formal **discovery** of the evidence, **pretrial motions** (e.g., motion to dismiss, motion for change of venue [location for the trial], motion to suppress evidence), and finally the actual trial (Hames & Ekern, 2006). In order to prove that the defendant is guilty of the charges, evidence is presented by the prosecuting attorney. The defendant's attorney will also present evidence to support the claim that his or her client is not guilty. Each state has an evidence code that spells out the rules of evidence.

There are several different types of **evidence**: testimony, actual, documentary, and demonstrative. Table 6.7 explains each of the four types. As a victim of a crime, you would be a lay witness who gives testimony about the crime. A lay witness is someone "who gives testimony about a subject of which [she or he] has personal knowledge" (Hames & Ekern, 2006, p. 427). In addition, evidence can be direct or circumstantial. Direct evidence is evidence that "actually proves a point" (Hames & Ekern, 2006, p. 432). The testimony of an eyewitness and a confession by a defendant are examples of direct evidence. Circumstantial evidence refers to "indirect evidence that provides the jury with information from which inferences may be drawn" (Hames & Ekern, 2006, p. 432). An inference "is a logical conclusion of a fact that is not supported by direct evidence" (Hames & Ekern, 2006, p. 432). Circumstantial evidence is more common than direct evidence.

The burden of proof in a criminal case is much higher than in a civil case or in a case investigated by APS (see Figure 6.2). You will learn about civil cases later in this chapter. In a criminal trial, the prosecutor will have to present enough evidence for the jury, or the judge in some cases, to find the defendant guilty **beyond a reasonable doubt** (Hames & Ekern, 2006). The **verdict** in a criminal case can either be guilty or not guilty (a not guilty verdict is sometimes referred to as an acquittal). If the jurors cannot all agree on a verdict, which is called a **hung jury**, then the judge declares a mistrial and the case can be retried in front of a new jury. The decision to retry or not is made by the prosecuting attorney's office. As a victim, you have very little say in the decision to retry. The defendant may appeal a guilty verdict. The case is closed if the jury gives a not guilty verdict.

Table 6.7. Types of evidence

Type	Explanation
Testimony	Evidence that is delivered under oath, either orally or by affidavit [sworn statement], by a competent witness.
Actual	Tangible [real, touchable] items that could be admitted into evidence, such as a weapon used in a crime.
Documentary	Writings such as reports, business records, and correspondence.
Demonstrative	A type of actual evidence or exhibits created for use in court, [including] diagrams, charts, and photographs.

Source: Hames and Ekern (2006, pp. 427, 429).

When a defendant is found guilty, the court will give some sort of punishment, such as a monetary fine, imprisonment, and/or **probation** (release to the community with conditions) (Hames & Ekern, 2006). The money collected from fines goes to the state, not to victims. In some cases the criminal court may order the offender to pay restitution to the victim. **Restitution** is the “reimbursement of certain expenses incurred by a victim, or persons who have become responsible for the maintenance and support of a victim as a result of a crime” (NCVBA, 2007, p. 2). According to the NCVBA, even when the court orders restitution, lack of enforcement in collecting the money and limitations on the type of damages that can be awarded result in restitution not meeting the needs of victims.

Final Thoughts About the Criminal Justice System

You have just read a pretty straightforward description of the process from reporting a crime to sentencing an offender. Hopefully you have enough information to feel knowledgeable about the system without being confused or feeling overwhelmed. Knowing this information should help you to feel empowered to advocate for yourself or for someone you support who has been a victim of a crime. Let’s review a few key points that you should remember:

- First and foremost, ask for a victim advocate to help you (or the person you know) understand the process and provide support as the case works its way through the criminal justice system. Keep in contact with your advocate throughout the process.
- Decisions are made by the prosecutor’s office based on what is in the best interest of the state, not necessarily in the best interest of the victim.
- Be aware that the process can take a very long time.
- Ask to see your victim or **witness statement** before giving testimony evidence to help you recall the details of the crime.

You are aware of some of the barriers for people with disabilities in the criminal justice system. Advocacy and self-advocacy will be needed to ensure that people with disabilities receive equal justice under the law. Let’s move on to looking at the last system—the Civil Justice System.

CIVIL JUSTICE SYSTEM

Crime victims have the right to file a **civil lawsuit** seeking financial compensation (payment) from the offender or from a third party whose conduct created conditions that allowed a crime to occur (NCVBA, 2007). Before you read more about the civil justice system,



Ask Yourself...

Do I know anyone who has filed a civil lawsuit to receive financial compensation for a crime committed against them? If so, what was the outcome?

Do I know that in some cases people with disabilities who have been abused have the right to file civil lawsuits?

The Civil Justice System, through the filing of a civil lawsuit, provides the opportunity for victims of certain offenses to sue offenders and those third parties who are indirectly responsible for the crime for financial compensation (payment). An example of a third-party defendant is a disability service provider that did not properly check the backgrounds of employees or transferred employees to other locations following allegations of abuse that were not reported and investigated. A **tort** is the term used in civil cases to refer to the “wrongful act” (NCVBA, 2007, p. 9). The situations in which a civil lawsuit may be filed include: assault, battery, wrongful death, false imprisonment, intentional or reckless infliction of emotional distress, fraud, or negligence (NCVBA, 2007).

It is important to understand that differences exist between the civil and criminal justice systems. According to the NCVBA (2007),

The civil justice system does not attempt to determine the innocence or guilt of an offender. Offenders are not put in prison. Rather, civil courts attempt to determine whether an offender or a third party is liable for the injuries sustained as a result of the crime. A civil court’s finding of liability usually means the defendant must pay the victim, or the victim’s family, monetary damages. (p. 4)

One of the other important differences is the burden of proof—*preponderance of evidence*—is far less than in the criminal justice system (see Figure 6.2). In addition, civil cases do not require a unanimous verdict by the jury (Hames & Ekern, 2006). The required number of jurors needed to obtain a liable verdict varies under states’ laws. Because the burden of proof is far less in a civil case, it is possible for an offender to be found not guilty in the criminal justice system, but **liable** in a civil case (NCVBA, 2007). There are also time frames or *statutes of limitations* in which a civil lawsuit can be filed. The time frames vary depending upon the state and the particular case.

The civil process begins by getting an attorney to represent the victim (see Figure 6.4 for a flow chart of the civil lawsuit process). You can contact the National Crime Victim Bar Association for a referral to an attorney in your area. The attorney will ask detailed questions about the crime, offender, and damages sustained by the victim (NCVBA, 2007). Usually attorneys represent victims on a **contingency fee basis**, meaning the attorney is only paid if the victim is awarded a monetary settlement (NCVBA, 2007). Victims may be responsible for paying court costs such as filing fees and deposition fees. Some attorneys require the victim to pay a **retainer fee**, money kept in a special account to cover costs related to the case (NCVBA, 2007). Unused money is returned to the victim at the conclusion of the civil suit.

The victim’s attorney begins the civil case by filing a **complaint**, or a document with the court, on behalf of the **plaintiff**, or victim, which “sets out the facts of the case and the legal claims being made” (NCVBA, 2007, p. 11). If needed to protect the victim, the privacy of victims can be protected by filing suits under pseudonyms (false names), obtaining confidentiality agreements with the defendant, filing cases under seal or closed to the public, and recording videos of depositions (NCVBA, 2007).

The defendant’s attorney then issues their response, called the **answer**. The legal process of **discovery** involves the plaintiff and the defendant’s attorneys investigating the facts of the case, interviewing witnesses, obtaining significant

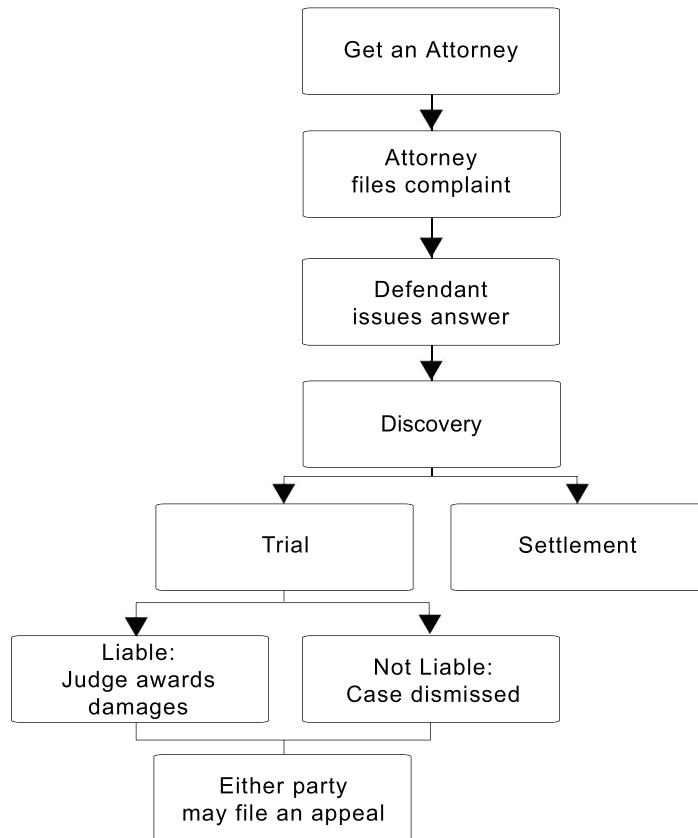


Figure 6.4. The general process through which a civil lawsuit moves in the civil justice system. (Source: National Crime Victim Bar Association. [2007]. *Civil justice for victims of crime*. Washington, DC: Author. Retrieved April 20, 2008, from <http://www.victimbar.org/vb/AGP.Net/Components/documentViewer/Download.aspx?DocumentID=43749>)

documents, and obtaining depositions under oath from victims, witnesses, and defendants (NCVBA, 2007). A **deposition** is “the testimony of a witness, given under oath, outside the courtroom and taken before a court reporter” (Hames & Ekern, 2006, p. 620). If a settlement cannot be agreed to by both parties the case will proceed to a judge or jury trial.

At trial the plaintiff must prove his or her case by a *preponderance of the evidence*, meaning that it is more likely than not that the wrongdoing occurred. If the plaintiff wins, the judge or jury will award damages. There are two types of damages that can be awarded by judges or juries, compensatory and punitive:

- **Compensatory damages** “pay for the losses suffered by the injured party”
- **Punitive damages** “punish and deter criminals or third parties” (NCVBA, 2007, p. 13)

If the defendant is found not liable, the case is dismissed. Either party may file an appeal. Occasionally offenders may also sue or countersue victims for defamation or slander (saying something that is not true that damages a person’s reputation) (NCVBA, 2007).

Final Thoughts About the Civil Justice System

Filing and winning a civil lawsuit can be a very empowering experience for people with disabilities who have been abused. Victims get to tell their story in a public forum. A *liable* verdict means that the offender is held responsible for causing pain and suffering and is made to pay for his or her actions. One of the limitations of the civil justice system is actually getting the money awarded by the court from the offender. It is easier to collect from third-party defendants such as long-term care facilities than it is to collect from individual offenders. Despite this limitation, the civil justice system is an important system for people with disabilities who are abused to obtain justice under the law.

Before you complete the next Learning Activity, take a look at the overview of the system in Table 6.8. Make sure that you are clear about when to use each

Table 6.8. Overview of the system

System	Use when
Victim services system	<p>You need to know your rights as a crime victim. <i>Call your state's Attorney General's office.</i></p> <p>You need someone to help you as your case gets prosecuted in the criminal justice system. <i>Get a victim advocate through your local police or prosecutor's office.</i></p> <p>You need help dealing with domestic violence. <i>Call your local domestic violence shelter.</i></p> <p>You need help getting an order for protection (OFP). <i>Call your local domestic violence shelter, sexual assault services provider, or legal aid office.</i></p> <p>You need help dealing with a sexual assault. <i>Call your local sexual assault services provider.</i></p> <p>You need to be compensated for crime-related expenses. <i>Call your state's crime victims compensation program.</i></p>
Vulnerable adult advocacy and protection services system	<p>You are a vulnerable adult who is being abused and need protection and services. <i>Call your local adult protection services (APS).</i></p> <p>You live in a long-term care facility and are being abused or having your rights violated. <i>Call your state's long-term care ombudsman.</i></p> <p>You live in a long-term care facility that is providing poor services. <i>Call your state's protection & advocacy (P & A) agency.</i></p> <p>You are being denied your rights in education, financial benefits, healthcare, housing, or employment. <i>Call your state's P & A agency.</i></p>
Criminal justice system	<p>You believe you have been a victim of domestic violence, sexual assault, financial exploitation, or other crime. <i>Call the police.</i></p> <p>You want a judge to grant you an OFP. <i>Work with your local domestic violence shelter, sexual assault services provider, or legal aid to get your petition before the court.</i></p> <p>You need to report a violation of an OFP. <i>Call the police.</i></p> <p>You want an offender criminally prosecuted for the abuse or other crimes perpetrated against you. <i>The prosecuting attorney decides if criminal charges are going to be filed and if the case is going to be prosecuted.</i></p>
Civil justice system	<p>You want to sue an offender for financial compensation for the abuse or other crime. <i>Call an attorney in your area who handles civil lawsuits.</i></p> <p>You want to sue a third party (e.g., a long-term care facility or disability service provider) that you believe is indirectly responsible for the abuse or other crime being perpetrated against you for financial compensation. <i>Call an attorney in your area who handles civil lawsuits.</i></p>

system and whom you should contact. Let's apply what you have learned about all of the systems to Joyce, Henry, and June's stories.

LEARNING ACTIVITY

Using The Systems

Joyce's Story

Once again review *Joyce's Story* (refer to 85 for more details). Think about the systems that could help Joyce.

Joyce is a woman with multiple sclerosis who met her husband while they were in college. The domestic violence began after they were married. The verbal abuse escalated into physical assault and psychological abuse. He threatened to get sole custody of their children if she tried to leave him or report the abuse.

Review the checklist of systems in Figure 6.5. Place an X next to all of the systems that you think Joyce could use to get out of the abusive relationship and to protect herself and her children. Think about which system Joyce should call first for help. After reading *Henry's and June's stories*, revisit the checklist. After reading *Henry's and June's Stories*, revisit the checklist.

Thoughts About Joyce's Story

Remember the personal barriers that you thought applied to Joyce's story? You know that fear of retaliation and fear of losing custody of her children, along with some of the other personal and systemic barriers, might make it less likely that Joyce would call the police for help. You also know that not all domestic violence shelters readily accommodate the needs of women with disabilities. However,

	Joyce	Henry	June
Crime victim advocate	—	—	—
Domestic violence shelter	—	—	—
Sexual assault service provider	—	—	—
Crime victim's reparation agency	—	—	—
Adult protection services	—	—	—
Long-term care ombudsman	—	—	—
Protection and advocacy agency	—	—	—
Criminal justice system	—	—	—
Civil justice system	—	—	—

Combating Violence and Abuse of People with Disabilities: A Call to Action by Nancy M. Fitzsimons. Copyright © 2009 Paul H. Brookes Publishing Co., Inc. All rights reserved.

Figure 6.5. Checklist for choices of systems.

despite this possible barrier, Joyce would benefit from contacting her local domestic violence shelter. Joyce and her children could receive shelter. She would get support in reporting the abuse to the police. She would also get help in getting an OFP. The shelter could help Joyce deal with her immediate need to be safe, provide counseling to help her deal with the trauma of being abused, and help her plan for her short-term and long-term future. Refer to the answer sheet on pages 185 and 186 for more thoughts about the systems that could help Joyce.

Henry's Story

Read Henry's Story. You first read about Henry's story in Chapter 3. Think about the systems that could help Henry.

Henry is a 52-year-old man who is legally blind. He lives in his own home. Henry recently had hip replacement surgery. He has a home care provider named Cheryl who visits him four times a week to assist with personal care and house-keeping tasks. One day when Cheryl was emptying the kitchen wastebasket she found an empty liquor bottle, beer cans, and cigar butts. Later, when Cheryl was helping Henry with his bath she noticed bruises on his upper arms. When Cheryl asked Henry about the bruises, he made up an excuse about bruising easy. Cheryl also discovered that there was little food in the house. She learned that Henry was short of money because he had given money to his son who recently lost his job. When Henry's son arrived at the home he got angry that Cheryl was there. He called Henry a "blind idiot" and yelled at his father for letting strangers in the house. Henry appeared frightened and told Cheryl that she could leave early. Henry's son stormed downstairs, stating he was going to get a beer and watch television. Henry assured Cheryl that he was fine and that his son was just under a lot of stress.

Refer to the checklist of systems in Figure 6.5. Place an "X" next to all of the systems that you think Henry could use to protect himself from his abusive son. If you were Cheryl, which system would you call to report possible abuse?

Final Thoughts About Henry's Story

You've already read about how in U.S. society men are expected to be able to defend themselves. Men who do not live up to society's expectations may feel ashamed or blame themselves for the abuse. Henry was clearly afraid of his son, but he was not willing to tell his care provider what was really going on. He may have been embarrassed or he possibly felt some responsibility for his son. Cheryl has every reason to suspect that Henry is being abused by his son. Henry is probably considered a vulnerable adult under state law. As a mandated reporter Cheryl is required to report her suspicion to APS. APS is responsible for ensuring Henry's safety and providing services. The police are responsible for investigating to determine whether a crime has been committed and whether there is probable cause to arrest Henry's son. Refer to the answer sheet on page 186 for more thoughts about the system that could help Henry.

June's Story

You are now quite familiar with June's story. Review a few details of June's story. Think about the systems that could help June and the other people who live at the residential facility.

June is a 37-year-old woman who has a moderate intellectual disability. She was repeatedly sexually assaulted while living in an institution for people with intellectual disabilities. June's sister and parents reported their suspicion that she was being sexually assaulted to the administrators at the institution. The first and all additional reports of sexual assault made to administrators at the institution were ignored. Thirteen years after the first report, officials from the institution finally acknowledged that June had been sexually assaulted by the suspected staff member. The offender confessed to sexually assaulting June and 15 other female residents at the institution.

Refer to the checklist of systems in Figure 6.5. Place an X next to all of the systems that you think should be involved to help June and to protect the other residents of the institution from violence and abuse.

Thoughts About June's Story

Clearly the system failed June. June needs services to help her deal with and heal from the trauma of being repeatedly sexually assaulted. You know that not all sexual assault service providers and mental health service providers know how to adapt their services to meet the needs of people with intellectual disabilities. However, despite this possible barrier, June needs professional help to heal from the abuse. The police, prosecuting attorney, and judge all play important roles in making sure that the abuser is held criminally responsible for sexually assaulting June and 15 other women at the institution. The vulnerable adult advocacy and protection system needs to get involved to hold the institution responsible for failing to protect June and other residents at the institution and to work to fix the system. June's parents can and should file a civil lawsuit on behalf of their daughter against the institution for repeatedly failing to protect June. Refer to the answer sheet on page 187 for more of the author's thoughts about the systems that could help June.

FINAL THOUGHTS

Not understanding the systems that protect and serve victims of abuse is a major barrier to preventing violence and abuse. You should now have a much better understanding of the systems. Your next step is to learn about the specific laws, rights, agencies, programs, and services in your area. Refer to the Resources listed at the end of this chapter. Take some time to research the systems in your area that you or someone you know with a disability can call to help stop and prevent future abuse. Fill out the *My Safety Network Resources Worksheet* in Appendix A (see pp. 179–181). Make several copies of your *My Safety Network Resources Worksheet*. Put them in places that are safe and easily available for you or someone else to access.

It is time to move on to learning about some specific strategies and skills for preventing violence and abuse. In the next chapter you will learn about ways that you can empower and protect yourself. This information should be shared with people with disabilities you know so that they can be proactive in preventing violence and abuse.

RESOURCES

Suggested Readings

The Office for Victims of Crime (OVC) has many publications and videos dealing with victim issues, including

- *Enforcement of Protective Orders*, September 2006
- *State Crime Victim Compensation and Assistance Grant Programs*, April 2004
- *What You Can Do If You Are a Victim of a Crime*, April 2002

Go to the OVC web site to review these and other publications, <http://www.ojp.usdoj.gov/ovc/publications>

The National Center for Victims of Crime (NCVC) has a *Get Help* series that provides a wide array of information on crime victim issues, including

- *Constitutional Rights for Crime Victims*, 1999
- *Overview of the Criminal Justice System*, 1997
- *Rights of Crime Victims*, 1999

Go to the NCVC web site to download these and other publications, <http://www.ncvc.org>

Additional Resources

Civil Justice for Crime Victims (NCVBA, 2007), http://www.ncvc.org/vb/main.aspx?dbID=DB_VictimsInfo126

How to Get Help After a Victimization (NOVA, 2005), <http://www.trynova.org/victiminfo/victimizationhelp>

The Justice System: What is the sequence of events in the Criminal Justice System (U.S. Bureau of Justice Statistics Office of Justice Programs, [n.d.]), <http://www.ojp.gov/bjs/justsys.htm>

When to Call Your State P & A/CAP (National Disability Rights Network, [n.d.]), <http://www.ndrn.org/aboutus/pwd.htm>

National Victim, Advocacy, and Legal Organizations

Abused Deaf Women's Advocacy Services (ADWAS), 1-206-726-0093 (TTY only*), 1-206-236-3134 (24-hour TTY crisis line), <http://www.adwas.org>

National Adult Protection Services Association, 1-217-523-4431, <http://www.apsnetwork.org>
(Provides a web link for each state to report abuse.)

National Association of Attorneys General, 1-202-326-6000, <http://www.naag.org>

National Association of Crime Victim Compensation Boards, 1-703-780-3200, <http://www.nacvcb.org>

National Center for Victims of Crime (NCVC), 1-800-FYI-CALL (1-800-394-2255), 1-800-211-7996 (TTY), <http://www.ncvc.org>

National Center on Elder Abuse, 1-302-831-3525, <http://www.ncea.aoa.gov>

National Clearinghouse on Abuse in Later Life, 1-608-255-0539, <http://www.ncall.us>

National Coalition Against Domestic Violence, 1-303-839-1852, 1-303-839-1681 (TTY), www.ncadv.org

National Disability Rights Network (Protection and Advocacy for Individuals with Disabilities), 1-202-408-9514, 1-202-408-9521 (TTY), <http://www.ndrn.org> (Provides a web link to contact each state's P&A.)

National Domestic Violence Hotline, 1-800-851-SAFE (7233), 1-800-787-3224 (TTY)

National Fraud Information Center, 1-800-876-7060 (Hotline), <http://www.fraud.org>

National Long Term Care Ombudsman Resource Center, 1-202-332-2275, <http://www.ltombudsman.org>

National Organization for Victim Assistance (NOVA), 1-800-TRY-NOVA (1-800-879-6682), 703-535-6682 (general information), <http://www.trynova.org>

National Resource Center on Domestic Violence, 1-800-537-2238, <http://www.nrcdv.org>

National Sexual Assault Hotline, 1-800-656-HOPE (4673); online hotline at rainn.org

National Sexual Violence Resource Center, 1-877-739-3895, 1-717-909-0715 (TTY), <http://www.nsvrc.org>

National Victims' Constitutional Amendment Passage (NVCAP), 1-800-529-8226, <http://www.nvcap.org>

Office for Victims of Crime (OVC), 1-800-851-3420, 1-877-712-9279 (TTY), <http://www.ojp.usdoj.gov/ovc> (Provides a web link to contact each state's Victim Assistance and Compensation Programs.)

Rape, Abuse and Incest National Network (RAINN), 202-544-3064 (general information), <http://www.rainn.org>

The National Crime Victim Bar Association, 1-800-FYI-CALL (attorney referral), <http://www.ncvc.org>