

## Your Rights as a Survivor in the Criminal Legal System

*Embrace knows some people identify as victims, and some identify as survivors. For this fact sheet, “victim” is used because it is the term used the Criminal Legal System and Victims’ Rights Laws. Harm-doers are called “defendants.”*

If you have experienced violence, you don’t have to call the police if you don’t want to. This fact sheet can be helpful if you have decided to call the police and have questions about the process.

Wisconsin Constitution Article I, Section 9m and Wisconsin Statutes Chapter 950 are the laws that give victims rights. This fact sheet breaks down some of what is in Chapter 950 and the Wisconsin Constitution. If you have more questions about victim rights, contact your local Victim/Witness Coordinator (usually located in your county’s District Attorney’s office), or visit [Victim & Witness Rights](#).

### What is accompaniment?

Accompaniment is when an advocate goes with you, either in person or virtually to a medical exam, an interview with police, a court hearing, or other interviews about your medical and legal rights. Advocates are there for emotional support and non-judgmental options counseling that help to protect your legal rights and safety. Advocates are confidential and aren’t part of the criminal legal system.

### When do I have the right to have an advocate with me?

1. **Hospitals:** Victims of sexual assault, child sexual assault, and human trafficking have the right to have an advocate with them during any exam or appointment that happens at the hospital.
  - a. Hospitals have to offer you an advocate. The advocate will only be there if you say it’s okay. You can ask the advocate to leave at any time and the advocate will leave the exam room.
  - b. If you’re under 18, you can have an advocate if you want, even if your parent(s)/guardian(s) don’t want the advocate to be there. Parents and guardians can also ask for an advocate for you, but if you don’t want the advocate there, the advocate will leave the room.

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You have a right to an interpreter at no cost to you! Interpreters are available 24/7 for Embrace advocacy services.*

2. **Police:** Victims of sexual assault, child sexual assault, and human trafficking have the right to have an advocate for police interviews (including Child Advocacy Center interviews).
  - a. Parent(s)/guardian(s) can request an advocate for someone under 18.
  - b. The police don't have to tell you about your right to have an advocate. **You have to ask for an advocate** if you want one. After you ask for one, they can't tell you "no."
  
3. **Court Hearings:** Victims have the right to be at court hearings that are related to the crime that happened to them.
  - a. Court hearings include:
    - i. Court proceedings like bond hearings, motion hearings, status conferences, etc.
    - ii. Department of Corrections proceedings, like probation hearings
    - iii. Post-conviction proceedings, like hearings to appeal or change the original ruling
    - iv. Criminal or civil depositions, like giving victim or witness statements under oath
    - v. All interviews and meetings about those hearings
  - b. You can let the court know how involved you want to be during the court hearings by talking to the Victim/Witness Coordinator who works in the District Attorney's Office. They are required, by law, to give you notice of court hearings.

### **Do I have the right to be heard?**

Yes. Anything said in front of the court reporter can be used in any current or future cases about you or the defendant.

### **Do I have to be a citizen to get help?**

Nope! You have the same rights as any other victim.

### **What if I don't speak English?**

You have the right to an interpreter. You can ask the Victim/Witness Coordinator or an advocate for help getting an interpreter. But if your request is denied, you can submit a *Request for Remedy on Victims Right Violation* (form [CR-296](#)) (you can ask the Clerk of Courts for this form) for an interpreter for the case.

## What if I don't want to "press charges"?

It's not your choice to decide if someone is charged with a crime or what happens in the case.

1. Once the police are called, they investigate and decide if they will refer the case to the District Attorney's office for review.
2. The District Attorney's office reviews the police reports and decides to file charges or not. The District Attorney's office must talk to you about the case, but they don't have to do what you want.
3. The District Attorney has the final say. They decide what charges to file, what pleas to offer/accept, and other decisions related to the criminal case. The victim doesn't control the outcome of the criminal case. This is called prosecutorial discretion.

## Can I be charged with a crime if I am drinking underage or using drugs?

If you need to report a crime that happened while drunk and/or under the influence of illegal drugs, you shouldn't be charged with a crime, but sometimes people are.

Wisconsin has a Sexual Assault Victim Amnesty Law that means you shouldn't get in trouble if you're a victim or witness asking for help because of a crime. It also protects you if you're underage and you run into police at a hospital where you're getting medical care for a crime related to sexual assault, sexual exploitation, or human trafficking.

## What is the "required notice" that I should be getting?

It is information you may receive in the mail, email, or by phone that gives you hearing dates and times and a list of your rights as a victim ([Wisconsin Constitution, Ch. 950, Crime Victims' Rights Board information](#)). This information is from the Victim/Witness Coordinator.

## I don't know what's going on in my case. What can I do?

1. Call the Victim/Witness Coordinator in the county where the case is happening. They have to tell you about what's happening and when hearings are scheduled.
  - a. You also have the right to "confer" with the District Attorney on the case. This means you can talk to them about the case and ask any questions. Sometimes you have to ask for this.
2. You can look for the case on [Wisconsin Circuit Court Access](#) and see information about hearings, what county the case is happening in, some notes from past hearings, and names of any documents filed.
3. [The Wisconsin Department of Justice](#) also has information about the court process.

## If I don't hear back, is that the end?

No.

1. If the Victim/Witness Coordinator or District Attorney's Office ignores you, you can file a complaint with the [Office of Crime Victim Services](#). They can contact the District Attorney's Office to get information about your complaint.
2. You can also file a *Request for Remedy on Victim Rights Violation* (form [CR-296](#)) in the county where the case is happening.
  - a. Please be careful with the information you include on this form because once it's filed, it's a public record and can be seen by the defendant and their attorney.
  - b. Don't include any detailed information about the crime that happened to you because it can be used against you. This is only about your rights that aren't being held up by the District Attorney's office or other people in the legal system like the Clerk of Courts not offering interpretation services, the Judge not letting you speak at a hearing, the case dragging on for years, etc.).

## How does a Victim Impact Statement work?

1. A Victim Impact Statement is your chance to tell the court about how you have been affected by the crime. An advocate can support you with writing this statement.
2. The Victim Impact Statement should be submitted before or during the sentencing hearing.
  - a. The benefit of waiting until the sentencing hearing is that you have time to fully think about the impacts the crime and court case have had on your life.
3. You can submit your Victim Impact Statement to the Victim/Witness Coordinator and they will file it with the court. The defendant and their attorney will be able to see your Victim Impact Statement if you turn it in ahead of time. If you don't want them to see what you wrote, you don't have to turn it into the Victim/Witness Coordinator, you could just read the statement at sentencing.
4. If you feel comfortable, you can read your Victim Impact Statement at the sentencing hearing or ask the Victim/Witness Coordinator, an advocate, or someone else you trust, to read it for you at the hearing.
5. You can give more information or update your Victim Impact Statement at any time before the sentencing hearing by contacting the Victim/Witness Coordinator.

## What if I want to add more information to my original police statement or take information out (also called recanting)?

1. You can go to the police to write a new statement BUT that doesn't mean the original statement you made won't still be used.
2. If you say you want to rewrite your statement because you were not honest, you could be charged with a crime.

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## **What does "timely" mean for notices or updates about the case? Is there a time frame?**

1. There is no specific definition and depends on the situation.
2. Usually, though, notice should be provided as soon as possible so victims can attend court hearings and participate in the case if they want.

## **What if I don't want to be involved in the defendant's criminal case?**

1. That's your choice. You can let the Victim/Witness Coordinator know you don't want to talk or cooperate in the case.
2. BUT if you get a subpoena to testify (an order that you have to go to court to give information) as a witness or victim from the District Attorney's Office, you have to show up.
  - a. If you don't show up, you could be arrested and brought into court.

## **What if I said I don't want notifications on the case but then change my mind?**

That's okay! You can contact the Victim/Witness Coordinator at any time and let them know you'd like notifications.

## **What does it mean to refuse an interview from the defendant? Does this include prosecution or the District Attorney?**

It depends.

1. If the defendant, defendant's attorney, or a private investigator hired by the defendant is asking to interview you, you can say "no."
2. If the District Attorney is asking to interview you for the case, they can subpoena you and you'll legally have to talk to them. Without a subpoena, you are not required to talk to them or the police, if you don't feel comfortable. Just know that this may impact whether or not they move forward with the case.

## **If I am a victim of a crime in Wisconsin but live in another state, do I have to do anything different?**

Nope!

1. Make sure the Victim/Witness Coordinator knows your address so they can send notices and information to the right place.
2. If going to Wisconsin for hearings would be hard for you, you can file a *Request to Appear Remotely* (form [GF-306](#)) for all of the hearings in the case, or just specific hearings. This is only for hearings outside of a trial. You would have to be in person for trial.

## **What if we both got arrested and I am considered the victim in one case and the defendant in another?**

It's complicated. Even if you're arrested, you can still contact an Embrace advocate for support.

1. In the case where you're the victim, you have rights as a crime victim under the Wisconsin constitution and statutes.
2. If you're the defendant in a case, you have the right to an attorney.

## **What is a Bond?**

Bond (sometimes called Bail, or Bail Bond) is when the defendant either has to put money down or sign a piece of paper to temporarily be let out of jail. This is to make sure they come back to court and follow the rules that were set for them to be released.

## **What is a No Contact Order?**

To protect the community and you as the victim, the court will usually include no contact orders as part of the defendant's bond. It means the defendant can't have contact with you and if they do, they'd be violating their bond and could face more charges. You would have to report any violations to the police for the possibility of more charges.

## **What happens if the defendant has their friends or family contact me to ask me questions?**

If there's a no contact order in place, it could be a violation of that order if the friend/family are contacting you for the defendant. You can talk to the police and file a report and let the District Attorney's Office know it's not being followed. The District Attorney's office can decide to add charges if the bond condition isn't being followed.

## **What if I rent a home with the defendant and there is a no contact order with them?**

1. If you're on the lease or rental agreement with the defendant, usually, the laws about domestic abuse let you stay in the home. You can ask the landlord to take the defendant off the lease and evict them. You can also ask to have the locks changed.
2. If you're not on the lease or rental agreement, you might not have a legal right to stay at the home, and you'd have to leave.
  - a. If the home is your permanent residence (if you receive mail there), the landlord would have to file an eviction against you before you have to leave.
3. More renter rights information:
  - a. [Tenant Resource Center: Domestic Violence](#)
  - b. [HUD: Violence Against Women Act](#)

## **What happens if there is a no contact order in place, but I have stuff at the defendant's home?**

1. You can usually call your local police department at the non-emergency number and ask for a "civil standby."
  - a. This means the police will come to the home to be there while you get your stuff. If you ask, they will usually contact the defendant to set a time for this to happen.

## **What happens if there's a no contact and we share custody of our children?**

1. If you have children with the defendant and need to talk to them to exchange the children, you could ask the court to change the bond so you can talk about exchanges and placement.
  - a. You can ask the court for communication about custody and exchanges to be through [Our Family Wizard](#) (a phone app where the court can monitor the conversations).
2. You can ask the court to order that exchanges happen at a specific place, like a safe exchange site or other public place.
3. You can ask the court to make exchanges be through a third-party like a family member, a mutual friend, or another safe person.
4. Contact Embrace or the Victim/Witness Coordinator to help you with the process of making these changes.