

Chapter 7

Advocating in the Legal Setting

“Injustice anywhere is a threat to justice everywhere.” ~ Martin Luther King, Jr.

OBJECTIVES FOR THIS CHAPTER

- Have an understanding of the legal process
 - Learn the role of the advocate during legal and criminal justice proceedings
 - Learn the options a victim has regarding reporting a sexual assault and testifying
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A victim has many choices regarding reporting and participating in the legal process. The legal system can be a very intimidating process for a victim. As an advocate, it is important that you know all the options available to victims and your role in supporting them. This section describes the victim’s options and the impact of involvement in the criminal justice system.

THE RIGHT TO AN ADVOCATE

While participating in the criminal justice and legal settings, a victim is faced with many choices and expectations from law enforcement, attorneys, friends and family. Victims can have an advocate present to support them, provide information, and when necessary, to speak up for them. The State of Iowa has provided statutory guidelines to ensure that every victim has access to an advocate if she or he wants one.

Code of Iowa 915.2 Presence of Victim Counselor Definitions

- **Proceedings related to the offense** means any activities or proceedings commenced by a law enforcement agency, Department of Corrections or a court pertaining to the commission of a public offense against the victim. Also includes examination of the victim in an emergency medical facility due to injuries from the crime that do not require surgery.
 - **Victim counselor** means a counselor who works for a crime victim center and who is certified as having completed a minimum of 20 hours of victim advocacy
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training and who is supervised by a direct services supervisor. A victim counselor who is present as a result of a request by a victim shall not be denied access to any proceedings related to the offense.

As victims face the many emotions and aspects of the trauma they have experienced, they are also faced with decisions regarding reporting, including all the accompanying issues regarding their future. As an advocate, it is your responsibility to provide victims with clear, concise information regarding the choices they have available to them and to let them know that these choices can be changed, as their view of what they want changes.

ADVOCATING IN THE LEGAL SETTING

If you have not already done so, please read the section “What is Advocacy?” in Chapter 6, Advocating in the Medical Setting.

In general, the advocate’s role is to let victims know about some of their options, let them know a little about the legal process in general, facilitate talking with the right person in the legal system, and most importantly, support and validate victims’ feelings and choices.

The victim has four main options in the criminal justice process:

- **get more information** on legal options from a detective or county attorney
- **report the assault** to a detective (report only, no desire to pursue legal remedies)
- **report and make a formal complaint** with the intent of cooperating with police and the county attorney in pursuing criminal prosecution of the offender
- **not report**

Option 1: Get More Information

Legally, the police have the option of investigating any crime they are aware of. In Johnson County, the police have the general policy of not prosecuting an adult sexual assault without the permission of the victim. You can reassure people assaulted within this county that they can choose whether or not to file a complaint and testify.

Difference Between Uniformed Officer and Detective

A uniformed officer may be the first one to respond when a crime is reported. With sexual assaults, often the uniformed officer will get a brief initial report and transport

the victim to the hospital if necessary. They may call a detective to do a more in-depth interview with the survivor.

A detective is the one who investigates the case and will be the victim's ongoing contact regarding the case until it goes to the County Attorney.

Before making a report, the victim can call or meet in person with a detective or County Attorney to get more information about the process. In our area, the detectives and county attorneys are generally very willing to talk with victims, help answer questions, and let them know more about their legal options.

Your Role: Give the victim information about the reporting process. Briefly explain the legal process. If the incident just happened, and the victim wants to talk to the police, the sooner the better for the purposes of beginning an investigation and building a good case.

If the victim does not talk to them at the time of the medical exam, the victim or advocate can arrange a time soon afterwards to make a report. Many detectives are now allowing the victim to wait for the interview until they have eaten and slept. If it is the weekend, the IP advocate may accompany the victim; if it is during the week, a staff member can go. As with any call that may include staff involvement the next day, let us know right away if the victim has made an appointment with the detective or will be calling us to do so. If the victim reports that something happened some time ago, we will help make an appointment with a detective during the day.

Option 2: Report Only

The victim might want the police to know about the assault but not want to have charges brought against the assailant. There are two ways to do this: tell the detective or have RVAP staff make a third-party report. A report can be made by phone or in-person; usually the detective will encourage the victim to come to the station and fill out a written report. The victim can tell the detective as much or as little as they want but it is best to be as forthcoming as possible.

The victim can talk with the detective, make a statement, and/or report what happened. If the victim does not choose to make a formal complaint, this information will just go on file and the police will not do anything else.

Your Role: Let the victim know about these options and offer support in this process, especially if a report is made after the hospital exam.

Third-party Report

This is the "bottom level" of reporting, because the police do not act on information from a third-party report. The victim gives the information to RVAP, and then RVAP

staff passes it on to the police. It may be kept by the police as “intelligence” information, and could possibly help in an investigation of another assault by the same perpetrator. The victim can include as much or as little as they want in the report.

Your Role: Let the victim know about this option. If someone wants to make a third-party report, staff can be called during business hours.

Option 3: Report and Make a Formal Complaint (Intent to move towards prosecution)

The victim will be asked to make a written statement and also to tell the detective about what happened. The detective will ask clarifying questions. The detective will ask for people who could be a witness. (This does not mean they had to have seen the assault; it could be someone the victim told about the assault, people who know or live with the perpetrator, or anyone nearby at the time.)

The procedure is initially the same as “reporting only,” except that there may be a request for more details. The victim will be asked to provide as much detail as possible to help assure the best possible outcome in the criminal case. It is generally better for the police and County Attorney to have as much information as possible, even if it includes details that may seem “incriminating” to the victim (i.e., the victim had been drinking or said okay to some level of sex). It is easier for the detective and County Attorney to deal with these issues up front in the criminal case than it is for them to hear it for the first time from the defense attorney at trial. The detective or officer might want to drive out to the scene of the crime with the victim. The IP advocate can, and should, go with them in the police car if the victim wants the advocate to go.

The detective will probably talk with the perpetrator and any other witnesses. The police may arrest the perpetrator if there seems to be enough evidence.

Your Role: Validating the victim’s choices; making sure there are necessary breaks or to stop if needed; assuring that questions get answered, and helping to find out when the victim can expect to hear back from the detective (if the detective does not say).

Let the victim know the detective will be asking difficult questions or questions that may sound blaming and they can ask for clarification. It is never the intention of law enforcement to blame the victim. If the victim looks confused, ask if they need to hear the question again or if the question is understood.

A staff member will continue to act as advocate throughout the prosecution of the case. Early in the process the victim can meet with the prosecuting attorney (the County

Attorney or an Assistant County Attorney), who will consult with the victim about all the major decisions in the case, especially plea negotiations. The victim will also be supported by the Victim Witness Coordinator in the County Attorney's Office. The victim will probably have to testify at least two times as the case proceeds: once in a deposition some time before the trial, and one (or more) times at the trial. Neither the victim nor any other witnesses can be present in the courtroom during the trial, but we can be there for support, and watch parts of the trial. A trial usually takes three to five days, depending on the number of witnesses. If the defendant (the perpetrator) is convicted, the victim can make a written or oral victim impact statement at the sentencing hearing to let the judge know the impact the rape and the trial has had.

Option 4: Not Report

Many times, victims choose not to report. No matter what the victim chooses to do, the role of the advocate is to listen to the victim, assist in weighing the pros and cons, and ultimately support whatever decision the victim makes.

Note: It is important at all times as an advocate to remember that persons with cultural differences will view and participate in the criminal justice and legal systems differently.

THE LEGAL PROCESS

During involvement in the legal process a victim who has reported and made a formal complaint will participate in the following steps:

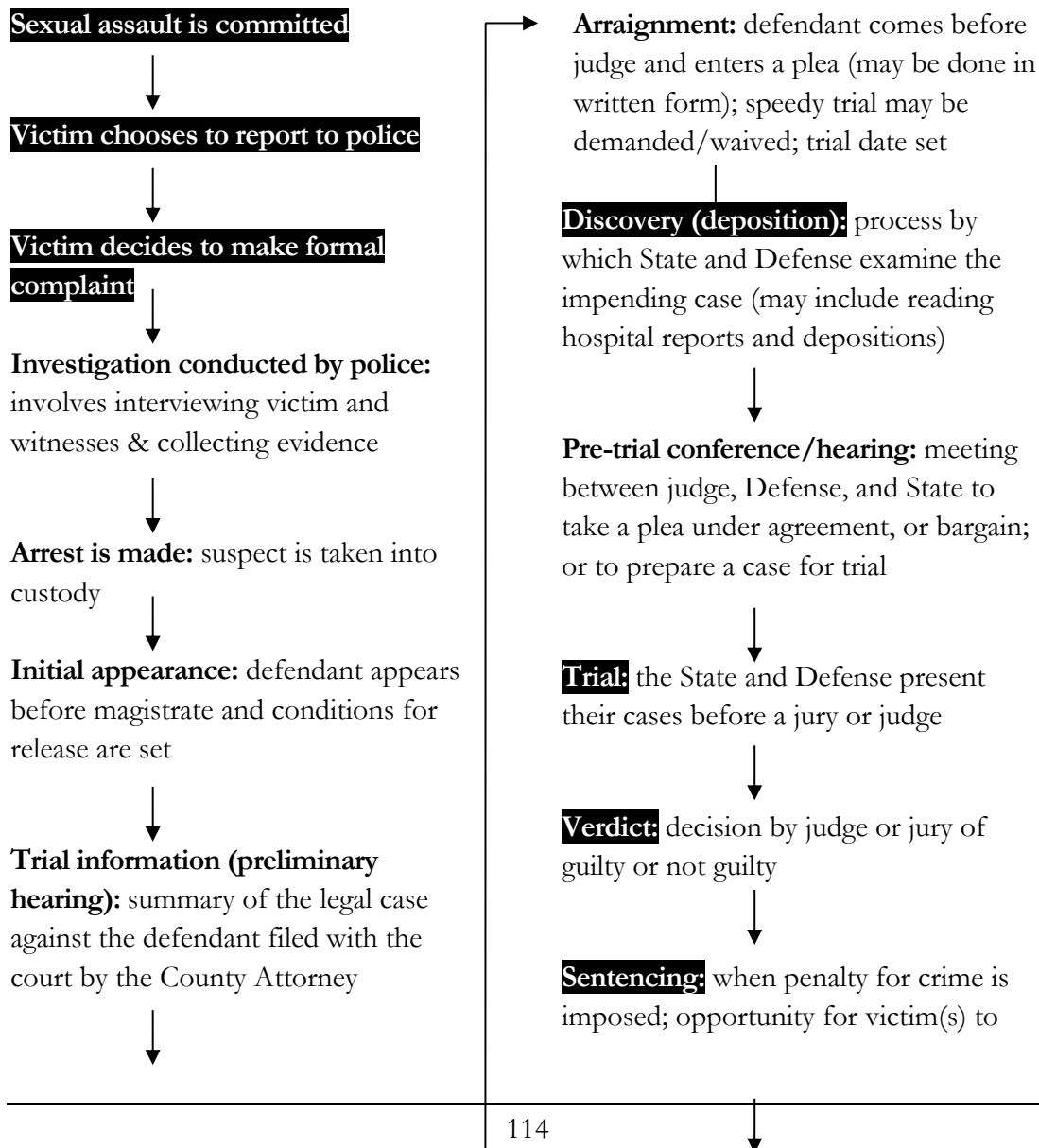
- Reporting the crime to a law enforcement officer
- Giving an oral description of the crime (statement)
- Having a forensic medical exam to look for evidence
- Participating in a deposition (questions asked by defense attorney)
- Acting as a witness at trial
- Being present at the reading of the verdict (decision of judge/jury as to guilt)
- Being present at the sentencing hearing to give a victim impact statement or observe

The following flow chart describes the aspects of the court process using the wording of the criminal justice system. There are many portions of the process in which the victim may participate and others where their presence is not required. It can be confusing and many do not know the terminology.

As a victim begins to decide how to proceed, it is important that they have an idea of what it means to make a formal complaint. As an advocate, make certain to make the distinction between the legal process and the healing process. Victims should be discouraged from seeing the prosecution and conviction of a perpetrator as an end to the feelings and trauma surrounding the assault. Informing a victim of the positives and negatives of pursuing legal action will enable a truly informed decision. These should never be presented in a manner to sway the decision one way or another.

LEGAL PROCESS FLOWCHART

Note: The black boxed portions denote when the victim is present.



give impact statement or have it read
into evidence

have grounds on which to appeal
(ineffective counsel; new evidence).

Appeal (does not always occur):

Defense may appeal the verdict but must

DECIDING TO PARTICIPATE IN LEGAL SYSTEM: FACTORS TO CONSIDER

Possible Pros

- May bring the perpetrator to justice/punishment
- Victim may feel in control of situation/decision making
- Victim may gain a sense of hope, self-esteem and power
- Opportunity for victim to tell about the experience and explain the impact of sexual assault on their life
- Victim may feel enhanced amount of support from members of the system
- Victim may gain a sense of empowerment

Possible Cons

- May not bring the perpetrator to justice/punishment
- After charges, police, then prosecutors, are making decisions
- Victim may not feel respected by system participants (hopefully avoided)
- Statements to law enforcement, attorneys, depositions and trial can cause re-traumatization to the victim
- May be accused of lying, causing or exaggerating the assault
- May be re-traumatized through discovery and trial process
- Will have to be seen by perpetrator and see perpetrator
- May believe that a conviction will have the effect of “ending” the experience
- Victim experiences strong feelings of anger, shame and hurt
- Loss of some confidentiality

CRIMES OF SEXUAL VIOLENCE IN IOWA

The following chart is a thumbnail of how certain charges are determined and what penalties leveled when a perpetrator is convicted. This chart is followed by sections of the Iowa Code that deal with sexual abuse.

Note: At no time are advocates to interpret or make legal opinions based on this information. It is to be made available as a resource but not to give them legal opinions. To do so is a felony.

Crime	Definition	Penalty
Sexual Abuse in the First Degree (Iowa Code 709.2)	Serious injury is caused during the commission of sexual abuse. Has to be during the act (i.e., cannot be charged if victim is shot or stabbed before or after sex act). Infrequently used.	Mandatory life in prison. No parole. Clemency can be requested from the governor after a long time, but it is rarely granted.
Sexual Abuse in the Second Degree (Iowa Code 709.3)	Uses or threatens to use a dangerous weapon during commission of sexual abuse. Also any sex act with a child under 12. Also sexual abuse when aided or abetted by another (gang rape).	Mandatory prison sentence of up to 25 years. (4 -10 years usually served.)
Sexual Abuse in the Third Degree (Iowa Code 709.4)	Any sex act by force or against the will of another person. Sex act includes genitals, mouth, hands or other object touching genitals of another person. Includes sex act child of 12 or 13, or sex between 14 or 15 yrs old and someone 5 or more yrs older; “statutory rape.” Includes marital rape.	Mandatory prison term of up to ten years (The average amount of time spent in prison on this charge is 2.5 - 3.5 yrs — exact amount depends on whether or not offender accepts treatment, among other factors.)
Assault with Intent to Commit Sexual Abuse (Iowa Code 709.11)	Commits an act of assault—places another in fear of physical injury—and demonstrates the intent to commit sexual abuse.	Up to 2 yrs in prison (avg. 3 - 9 mo.) Prison not mandatory. Can be county jail time and/or probation and treatment. Sometimes used as a substitute charge in plea negotiations because prison is not mandatory.

Assault with Intent to Commit Sexual Abuse Causing Injury (Iowa Code 709.11)	Same as above, but causing bodily injury. If serious injury is caused penalty jumps up a level.	Mandatory 5 yrs in prison for bodily injury (1 - 2 yrs). Mandatory 10 yrs for serious injury (2 - 3 yrs).
Sexual Abuse by a Counselor or Therapist (Iowa Code 709.15)	Any sexual conduct (includes kissing and other sexual touching) with a patient or client or an emotionally dependent patient or client.	Prison not mandatory. Includes several levels —penalty differs with circumstances and degree of crime.
Lascivious Acts with a Child and Indecent Contact with a Child (Iowa Code 709.8)	These cover sexual contact with children under 12 that is not a sex act (e.g.: touching or rubbing clothing over genitals or breasts).	Prison not mandatory. Lascivious Acts (LA) is more serious than Indecent Contact (IC). LA can carry a sentence of up to 5 yrs (1 - 2 yrs). IC can carry a sentence of up to 2 yrs (most >1 yr).

STATUTE OF LIMITATIONS

Sexual Abuse Charges (Iowa Code Section 802.2)

For first, second, or third degree sexual abuse with a person who is a minor, charges may be brought within ten years after the victim has turned 18.

For first, second, or third degree sexual abuse of an adult, charges may be brought within ten years after the commission of the offense.

For sexual exploitation by counselor or therapist, charges may be brought within ten years of the date that victim was last treated by the counselor or therapist.

MANDATORY REPORTING OF SEXUAL ABUSE (IOWA CODE SECTION 232)

If the person responsible for the care of a minor commits the sexual assault, a report to DHS is mandatory.

If the child is under the age of 12, regardless of who perpetrates the crime, a report is mandatory.

Reports of sexual abuse to minors 12 or older, by someone other than a caretaker, are not mandatory, but may be made at the discretion of the provider.

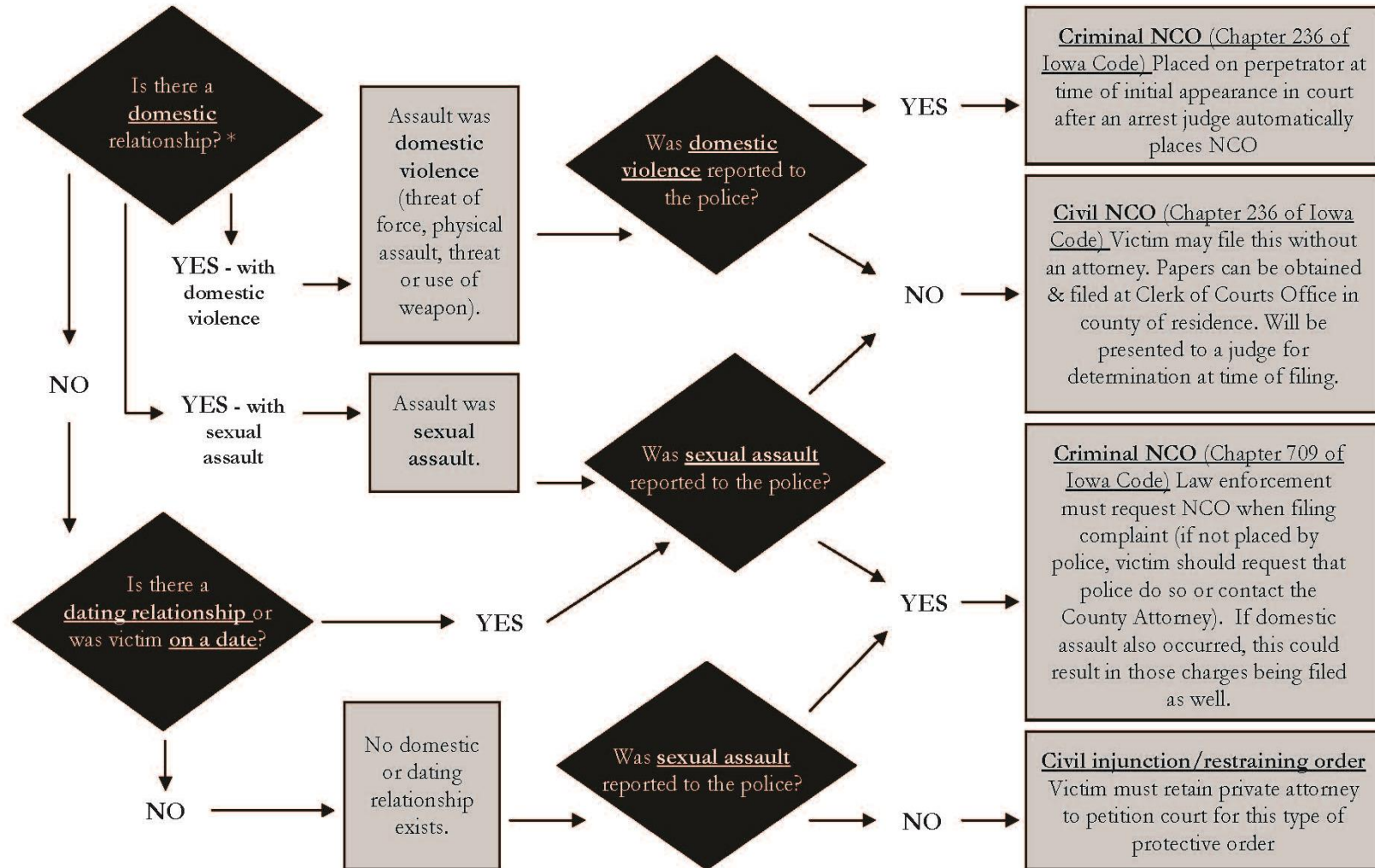
For more details, see the “Mandatory Reporting Guidelines Chart” in Chapter 11, Childhood Sexual Abuse and the Adult Survivor.

NO CONTACT ORDERS (NCO)

Victims of sexual assault or domestic violence are often concerned about their safety. A No Contact Order (NCO) may be an option for safety planning. The information below will assist you in explaining NCO options, but remember we do not give legal advice. RVAP staff can provide more information and offer assistance.

First, determine if there is a legal relationship between the victim and the offender as defined by Iowa law. Then, follow the NCO chart (on the next page) to determine the victim's available options.

Domestic Violence & Sexual Assault No Contact Orders (NCO)



* **Domestic relationship:** if any of these circumstances exist: presently married; divorced; separated; living together in an intimate relationship at time of abuse; living together and related by blood or legal decree and are adults; share a minor child; have lived together in the past year in an intimate relationship, or have lived together in the last year and were related by blood or legal decree

CONSIDERATIONS WITH A NO CONTACT ORDER

- Keep a copy of the protection order with you to show police.
- If you do not get a copy of the protection order in the mail, contact the Clerk of Courts office.
- Screen your phone calls.
- Save any messages or voice mails from the offender or anyone contacting you on behalf of the offender. These can be used in court as evidence.
- Report the violation(s) as soon as possible and to the police department that has jurisdiction where the crime happened.
- Let all those in your life (employers, co-workers, friends, family, faith community, daycare providers, etc.) know that you have a no contact order and provide a copy if possible.

WHAT YOU NEED TO KNOW

- Reporting options
- The role of the advocate in reporting options
- Victims have a legal right to an advocate present during all legal proceedings
- Victims have the choice of whether or not to initiate the legal process

FOR FURTHER READING

Chappell, D., R. Geis, and G. Geis. *Forcible Rape: The Crime, the Victim, and the Offender*. New York: Columbia University, 1977. Print.

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THE RIGHT TO AN ADVOCATE109
ADVOCATING IN THE LEGAL SETTING110
THE LEGAL PROCESS.....113
LEGAL PROCESS FLOWCHART114
DECIDING TO PARTICIPATE IN LEGAL SYSTEM: FACTORS TO CONSIDER115
CRIMES OF SEXUAL VIOLENCE IN IOWA.....116
STATUTE OF LIMITATIONS.....117
MANDATORY REPORTING OF SEXUAL ABUSE (IOWA CODE SECTION 232)117
NO CONTACT ORDERS (NCO)118
SAFETY WITH A NO CONTACT ORDER120
WHAT YOU NEED TO KNOW120
FOR FURTHER READING.....120