



Dealing with Assault

The **Consent Counts** program was created to ensure that kinky people understand their rights and options when it comes to consent violations, and to decriminalize consensual BDSM in the U.S. courts. NCSF has a list of kink aware victim services that you can contact for help on our website: www.ncsfreedom.org You can also find out more details about how to deal with assault and get the help you need from counselors, social services and law enforcement in NCSF's booklet "In the Aftermath." If you believe you have been unjustly accused of assault, you can consult "When the Levee Breaks."

1. How do I decide if I should report what happened to the police?

Everyone's view of justice does not look the same. Some victims want to hold their assailant accountable and the criminal justice system was created to do that. The justice system was also created to prevent an assailant from doing such things to other victims. Some victims don't feel the consent violation is serious enough to be reported as a crime. Some victims don't want to cause harm to their assailant which would come with filing a police report against them. Some victims are afraid of being outed. Some victims need counseling first to deal with the assault. Some victims who don't report an assault later regret not doing so just as some who do file regret doing so. It's an intensely personal decision that an alleged victim has to make with legal and/or therapeutic assistance.

2. Who can help me decide if I should report what happened to the police?

Consult with sexual assault centers and domestic violence centers that can help to guide you through the process of making a decision. There is a list of kink aware victim services under the Consent Counts Project on the NCSF website who are ready to help kinky victims. There are also many anonymous rape crisis centers and call lines, and these victim advocates will not reveal your information and you can speak freely with them. However victim advocates in police departments and State Attorney's offices may reveal the details of your accusation to law enforcement and prosecutors.

3. Are kinky people discriminated against when they report an assault to the police?

BDSM is often misunderstood, so you may find that law enforcement officers, prosecutors and social service workers don't understand BDSM or consent in a BDSM context. They may blame the victim for agreeing to do BDSM. When kinky people also have other marginalized identities, you can face a poor or a hostile response. For example a kinky person of color or kinky gay male bottom may face more barriers to support.

4. How can I explain this was assault instead of consensual BDSM?

Download the NCSF wallet card: *BDSM vs. Assault for Law Enforcement and Victims & Social Services*. It's a handy tool to quickly be able to explain the concept of BDSM vs. Assault in terms of consent rather than specific practices. Be honest about what happened with the police because they will not respond well if they find out you are lying about any point. Tell them what you agreed to do, what activities violated your consent, and if you have any written email or texts of your negotiations, bring that as well.

5. Are there any options other than reporting it to the police?

If your consent is violated at a BDSM event or party, report it to the group leaders immediately. Hold your local groups and events accountable for helping to stop consent violations by encouraging the group to establish a consent policy and deal with violations when they happen in communal spaces. Consult with NCSF's Guide for Groups on what your group can do to establish a consent policy. You can also get a restraining order to keep someone away from you, which becomes part of that person's record and keeps them from getting near you. You can also file a civil lawsuit.

6. What do I do if I'm hurt but I don't know if I want to report it to the police?

Get medical treatment for any health issues related to the assault. With BDSM-related injuries, you don't have to go into details about the cause. If rape was involved, keep in mind that most hospitals may have mandatory police reporting of your injuries if they do a "rape kit." There are time-limits for collecting evidence and getting treatments to prevent pregnancy and/or Sexually Transmitted Infections if you have been exposed—so the sooner you do this step, the better.

7. Can I be arrested for doing BDSM if I was the bottom?

This is highly unlikely in the U.S. The precedent set by the courts is that consensual BDSM may be considered assault, whether there was consent or not. Law enforcement officers are more likely to be prejudiced against the BDSM top rather than the bottom, no matter who committed the assault. However, NCSF is not aware of any case where someone made a complaint of rape or criminal assault and the police or prosecutor charged the victim with assault for doing BDSM.

8. If I report the assault to the police, does that mean I'll have to go through a trial?

About 85% of reported cases never go to trial, however if someone is reported for assault multiple times, your complaint may be taken more seriously by prosecutors. Of the cases prosecuted, approximately 90% end in plea deals. If the case is settled out of court, the victim doesn't go through a trial however the perpetrator suffers consequences for their crime.

9. Is it too late to report what happened if it was two weeks ago?

You can report a crime two weeks or even more after the incident but it isn't as likely that it will be prosecuted because the delayed complaint may be seen as less credible and because it's more difficult to collect usable evidence. However there is a statute of limitations against prosecuting crimes years after they happened, depending on the type and degree of crime. The statute of limitations doesn't put a deadline on reporting a crime and it may be useful to report a crime even after the statute expires to open an investigation into a person or to support an ongoing investigation of a repeat offender.

10. Will I be outed to my family or job if I report a crime?

Once you make a criminal report, anything that you tell police or prosecutors could come out in public. Whether this is likely to happen depends on the nature of the case and the people involved. However, most prosecutors and law enforcement officers are careful to conceal the personal details of the victim when dealing with sexual assault cases, and most kinky victims in cases that are covered by the media do have their identity protected.

11. Will I be shunned by BDSM groups for reporting and thereby "outing" someone who assaulted me?

The crime of assault is much more serious than BDSM confidentiality rules.

12. I'm the Top. Who will believe that I was the one assaulted?

Unfortunately tops as well as bottoms can be victims of assault. Assault is also non-gender-specific. In either case, you will have a much more difficult time explaining that you were assaulted because of the stereotypes about victims and assailants.

13. I'm transgender or my assailant was transgender. Does that mean I shouldn't report it?

People who are transgender or gender queer should get the assistance of a local GLBTQ victim services program. If there isn't one in your area, call the closest one and ask for a recommendation. The identity/orientation of the assailant and the victim may be a factor in how they are treated by law enforcement and the judicial system, however as a victim, your first concern should be for yourself.

14. What other issues should I consider when deciding whether to report a BDSM-related assault?

People who are kinky may have a more difficult time reporting an assault to the police if they are also undocumented immigrants, if English is not their language of comfort, if they have a disability, a past experience with incarceration or a criminal record of any kind. Know the process takes a lot of time and that your private identity may not be protected. For example, victims of rape usually have their identities protected while victims of assault may not.

15. How can I help kinky victims?

No one should have to be alone when dealing with a sexual assault. If you know someone who has been assaulted, then listen to their story, sympathize with the pain they are in, and help them get the professional help (especially counseling) that they may need to deal with the situation. If the consent violation happened in a group setting, support the person making the allegation and encourage your leaders to investigate what happened. When kinky victims choose to report an assault, they need an advocate by their side who has been trained in how to deal with social services and law enforcement.

16. What else can I do?

Make consent an issue with your local groups and events. Host or participate in discussions and workshops on domestic violence and sexual assault, and download the NCSF Consent Counts discussion guide to hold a roundtable on consent. Make it a priority that communal spaces are safe by encouraging your BDSM group or events to create and enforce a consent policy (consult NCSF's Guide for Groups for more information). You can also help network within your local community to make sure that victims of assault know their rights and options so they can get help and the justice they deserve.