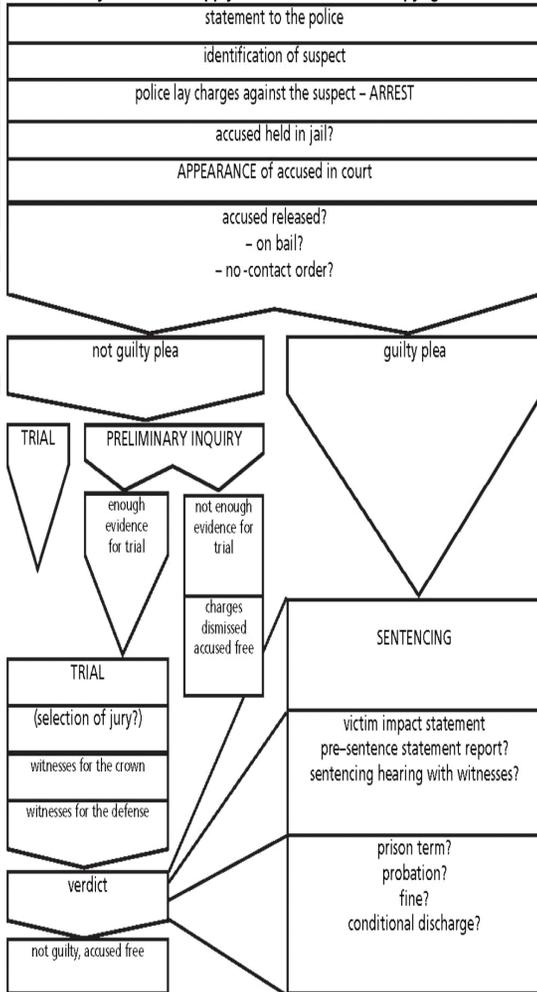


The Justice process after sexual assault has been reported to the police

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# Sexual Assault and the Legal System: A Basic Overview



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# The Legal Process: A Basic Overview

The legal system can be quite confusing and overwhelming. It is difficult to cover all legal aspects of sexual assault in a one page pamphlet; however, we have included the key points. **This pamphlet is not meant to replace any kind of legal advice you may feel you need.** If you decide to report the sexual assault to the police, below is a list of some of the processes involved.

**Police Statement:** a record of the assaulted person's complaint. It can be taken at the hospital, at the police station, or at your home. It can be used later in court and you may be questioned about it at that time. You may wish to have a support person with you, however, they will not be permitted to be in the room when you give your statement. This is to avoid them being called as a witness at the trial. The police will ask you detail questions: time, place, the order in which things happened, who was the person that sexually assaulted you, what did they look like. You may ask for a female officer but one may not be available to take your statement. Any information gathered will be given to both the Crown and the accused.

**The Suspect:** The person alleged to have committed the sexual assault. The police will usually try to find the suspect and question them when they are found.

**Charging the Suspect:** There must be enough evidence to justify charging the suspect. Once charges are laid, the suspect is brought before the court. If charges are not laid, it does not mean that no one believes you. It means that the police do not feel they have enough evidence to charge the suspect.

Once charges have been laid, *only the Crown Attorney can drop them*, or change them. A suspect may be arrested and not charged, or arrested and charged later.

**Held, Released and Appearance:** Depending on the crime alleged to have been committed by the accused, the police may hold them in jail until they have appeared before a judge or a justice of the peace, release them with conditions to stay away from the victim, or release the accused and tell them to appear in court at a specific date. If the accused appears before a judge or justice of the peace, they may be released with conditions to stay away from the victim/survivor, or they may be held over for a bail hearing. Be sure to ask about a publication ban on your name; there is generally one in cases of sexual assault.

**Bail Hearing:** At the bail hearing, the Crown Attorney will argue that the accused should be held over until trial and the Crown will have input on the terms of the bail that is going to be granted. Most accused will be released on conditions.

**Preliminary Hearing:** The accused may or may not choose to have a preliminary hearing if they are being charged with an indictable offence (more serious offence). This is when it is decided whether or not there is enough evidence to send the accused person to trial. If there is enough evidence, the accused will be sent to trial; if there is not enough the charges will be dropped. The victim will be expected to testify.

**Defense Attorney:** the lawyer for the accused.

**Crown Attorney:** represents the state, or society at large. **The Crown is not your lawyer.** The Crown's job is to protect the interests of society. The victim of the assault is a witness for the Crown.

**Trial:** This is the time in the process when the Crown presents their case to the judge and/or jury. The defense has the right to "full answer and defense", and is permitted to present their case as well.

**Testifying in Court:** As a witness for the Crown, you will need to testify in court. You will be asked to tell the court what happened to you. This is called direct testimony. The defense lawyer is allowed to question you after the Crown has finished—this is called cross examination. The purpose of cross examination is to try to help the defense with their case. After you have testified, the Crown will call other witnesses or submit other evidence gathered by police. After the Crown presents their case, the defense has an opportunity to do the same. The accused has the option of testifying or not testifying.

**Verdict:** This is when the accused is either found guilty or not guilty. Even if the accused is found not guilty, do not doubt yourself. Because of the burden of proof, the finding of not guilty does not mean you were disbelieved.

**Sentencing:** If the accused is found guilty, or pleads guilty, sentencing usually takes place after the verdict. This allows time for you to complete a victim impact statement, which describes how this crime has impacted on your life. Time is also allowed for probation services to complete a pre-sentence report about the convicted person. The Crown and defense will make recommendations about what the sentence should be and the Judge will make a decision. This may include a prison term, probation, a fine, conditional sentence order or conditional discharge.