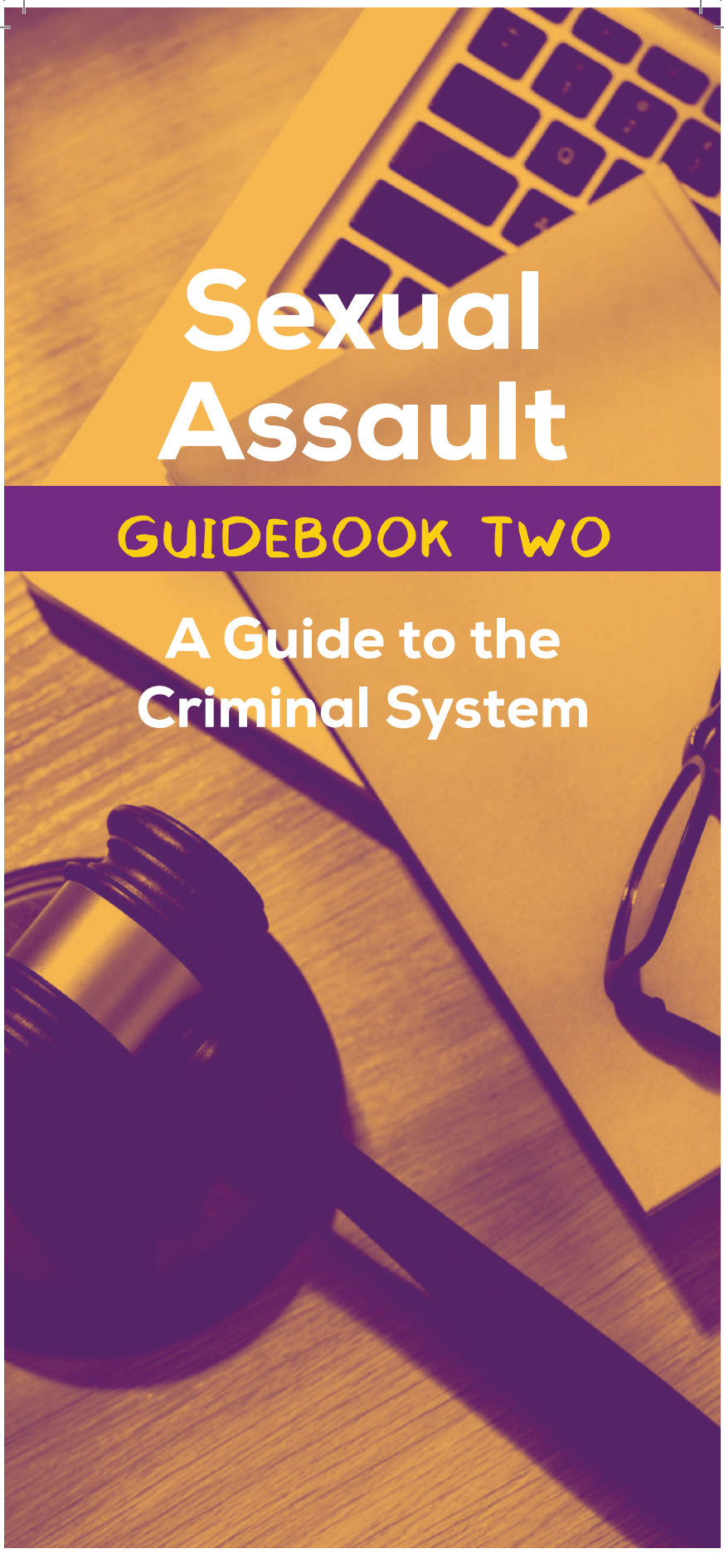


Sexual Assault

GUIDEBOOK TWO

A Guide to the Criminal System

METRAC
ACTION ON VIOLENCE

METRAC
ACTION ON VIOLENCE

Sexual Assault
Guidebook Two
A Guide to the Criminal System

If you have been sexually assaulted, there is no right or wrong way to react. Sexual assault can happen to anyone and every person who experiences a sexual assault has different needs and different reactions. You should make the best decision for yourself. Whether or not to report the sexual assault to the police or to any other institution is always your choice.

The guidebook will help you understand the law and explain your legal options, so that you can make a decision that feels right for you.

TABLE OF CONTENTS

What is Sexual Assault?

Sexual assault under Canadian criminal law is **any non-consensual sexual act or touching done by one person to another**.

Non-consensual means that it was done without your permission or agreement.

Consent must be voluntary or freely given. This means that there is no consent where someone agrees to have sex because they or someone else are threatened with or fear violence. It is not legal consent to assume that the other person agrees to sex. Instead, the law says that there must be positive steps, like a discussion, to ensure that the other person consents. There also must be consent to each sex act.

Finally, consent can be taken away at any time. This means you have a right to change your mind about whether you want to continue having sex.

Sexual conduct that may be sexual assault ranges from kissing to clothed sexual touching to sexual intercourse. You do not have to have physical injuries to be sexually assaulted. Sexual assault also includes attempts and threats of unwanted sexual conduct.

Anyone, regardless of their race, age, sexual orientation, class, religion, profession, economic status, and/or ability, can be sexually assaulted. Anyone can commit sexual assault – it does not matter whether you were in a relationship.

Sexual assault is a **criminal offence**. There is no time limit to report sexual assault to the police.

Some examples of sexual assault are:

- Kissing you or forcing you to kiss them
- Touching your genitals, breasts, buttocks, thighs or elsewhere on your body
- Forcing or coercing you to masturbate them or yourself
- Forced vaginal sexual intercourse (rape)
- Any sex act with someone who is incapacitated (e.g. so intoxicated they have passed out)
- Anal rape
- Taking advantage of a position of trust or authority to get sex
- Threatening to harm you or someone else if you do not agree to any of these things
- Removing or attempting to remove your clothing

Each person who experiences a sexual assault has different needs and different reactions to the various legal options that are available to them. It is always your choice whether you want to report a sexual assault to the police. You should decide what you are going to do based on what you can handle and find a good network of support.

This guide explains the basic steps in the criminal process for survivors of sexual assault. You can use this to better understand your options and what you may face in the criminal system.

What Happens When I Report a Sexual Assault?

If you decide to go through the criminal system, you will need to talk to the police. Sexual assault is a criminal offence and criminal charges are laid by the police, not by the survivor. The survivor is considered a witness to the crime.

You have the right to consult or hire a lawyer to get advice about your decision to talk to police and represent your interests throughout the criminal process.

Talking to the Police

- When you call the police, ask for an officer from the Sexual Assault Unit. These officers have been specially trained to deal with cases of sexual violence.
- If your police force does not have a specialized force, it may still have one or more officers who have been trained on sexual violence. You should try to speak to one of these officers.
- You can also ask for a female identifying officer if this makes you feel more comfortable.

You may want to bring a relative or friend you trust when you talk to the police. Most police officers allow a support person in the room while they take your statement of what happened, as long as that person does not disrupt the process.

However, keep in mind that police officers take notes of interviews. If the case proceeds, the accused will get disclosure of the officers' notes, including the name of your support person. It is possible that the support person could be asked to come to court if the matter goes to trial.

Remember **there is no time limit for reporting sexual assault**, but, depending on the type of sexual assault, it may be easier for the police to gather evidence if it is reported sooner.

It can be hard to talk about a sexual assault experience with the police. Community organizations can be very helpful in giving you the space to share your story. Their staff understand sexual assault and will help you understand your options and prepare you to talk to the police. To find a crisis organization in your community, you can call the Assaulted Women's Helpline.

What should I tell the police?

When making the complaint, the police will ask you to describe what happened. The officers will guide you through this by asking questions. Try to provide as many details as possible, even if you think it makes you look bad. For example, if you were drinking or using drugs, tell the officers—it is better for the police to know this right from the start so they trust that you are being honest with them. **Being impaired by drugs or alcohol does not mean the assault was your fault and is not a legal defence to sexual assault.**

In addition, leaving important details out can leave you vulnerable to cross examination at trial. The defence may use inconsistencies or omissions to argue you are not credible or are dishonest. It is therefore important to share as much as you can.

If you are not sure about or don't remember some details, just say so. Do not try to make up events, details or dates if you are unsure of them.

After you have told your story, the police will have follow up questions. They may ask you to tell your story again.

If you need to take breaks while talking to the police, ask for them.

If you are reporting a sexual assault that happened a long time ago you may find it helpful to write down some notes about what happened before you go to the police so you don't lose track of everything you want to tell them.M

The police will take notes or videotape what you say to them. This is called your **'statement'**. If videotaped, you may be asked to swear an oath or affirm that the statement is true.

The police may read you a 'caution' before you make this statement, warning you that you could be charged with a criminal offence for making a false statement or lying.

- You will be questioned about your statement in court at length. Anything you say in court that is different from what is in your statement can be used by the defence to undermine your credibility. You must be sure about everything in it. If anything is missing from your statement, tell the police to add it.

The police should listen to what you tell them. They may investigate further.

The police will make their own decision about whether to lay a criminal charge. Legally, they can only lay a charge if they find reasonable grounds to believe that the person assaulted you.

You ***do not*** have to answer questions about your sexual history. However, if you say that you were sexually assaulted by someone you know and police ask you if you have had a prior sexual relationship with that person, it is a good idea to be honest. If you deny having a sexual history with the accused, the defence can bring an application at trial to cross examine you on your sexual history with the accused. Your denial of any past sexual history with the accused will be used to suggest that you are not being honest about the assault itself.

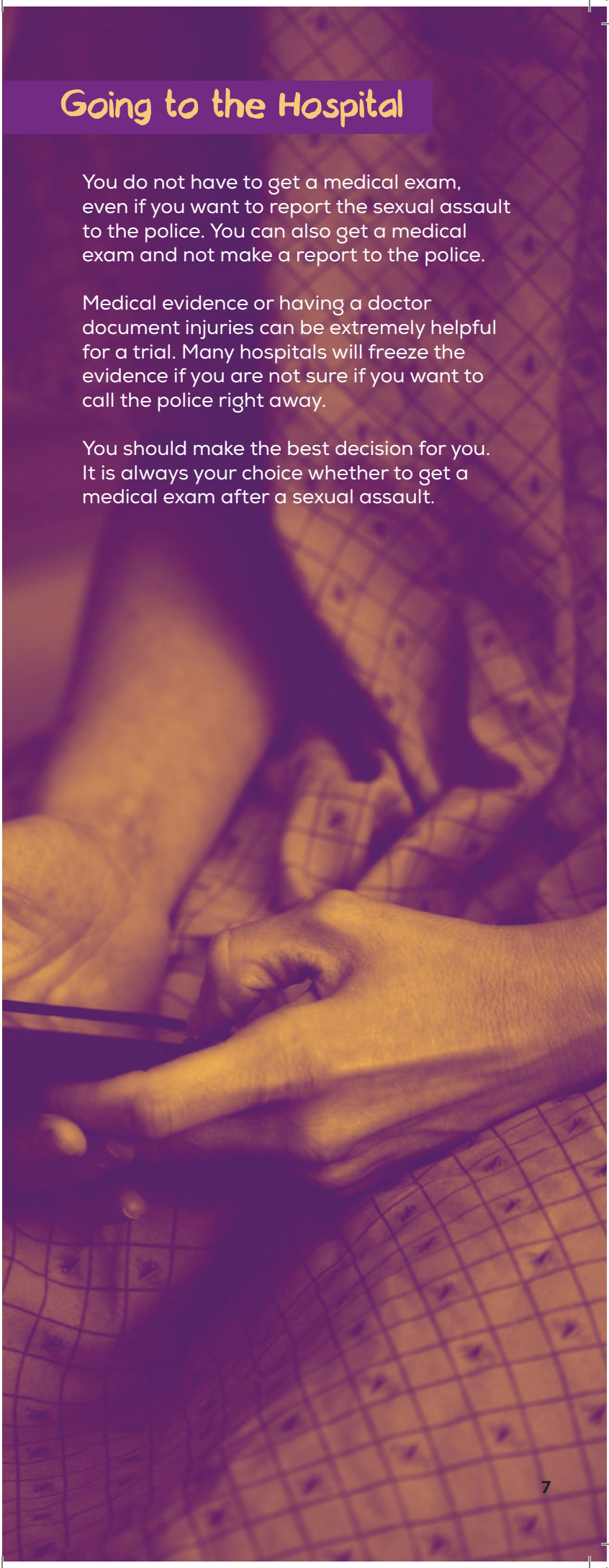
If you feel a police officer has treated you unfairly, you have a right to make a complaint. Keep notes, including the police division, names and badge numbers of the officers you have spoken to. Ask to speak to a supervisor or make a complaint with the Office of the Independent Police Review Directorate (OIPRD). You may also wish to consult with a civil lawyer.

Going to the Hospital

You do not have to get a medical exam, even if you want to report the sexual assault to the police. You can also get a medical exam and not make a report to the police.

Medical evidence or having a doctor document injuries can be extremely helpful for a trial. Many hospitals will freeze the evidence if you are not sure if you want to call the police right away.

You should make the best decision for you. It is always your choice whether to get a medical exam after a sexual assault.



A sexual assault evidence kit **(SAEK)** is used to collect medical evidence from your body and clothes. In many hospitals in Ontario, the SAEK is collected by female nurses with special training in helping survivors of sexual assault.

If you wish to participate in a SAEK, it is a good idea to do it as soon as possible. Physical evidence from a sexual assault is more likely to be collected within 72 hours of the assault. However, evidence can be found up to 12 days after the assault.

If you are unsure of whether you wish to do the SAEK, you can store the clothes worn during the assault in a clean bag in order to give them to the hospital.

If you decide to get the SAEK done immediately following the assault, try not to urinate or shower.

When you decide to have the kit done, a nurse or doctor will:

- Collect your clothes (bring an extra set of clothing if possible. If you were physically injured and went to the hospital right away, you can ask someone to bring you something to wear. If this is not possible, the hospital staff can help you). Your clothes may be taken as evidence by the police and not returned to you.
- Take swabs of your mouth for saliva samples.
- Scrape under your fingernails.
- Take a blood sample to check for alcohol and drug levels.
- Take vaginal and anal swabs, especially to look for the presence of semen or to test for pregnancy.
- Examine you for signs of physical injuries. Photographs will probably be taken to document visible physical injuries.

The nurse will also ask you questions about your sexual activity, including consensual activity, before and after the assault.

This process can be hard and uncomfortable. You may want to have a support person with you through this examination. There may be a support person available at the hospital or through your local rape crisis centre.

Once you complete the SAEK, it is the property of the hospital. If you do not contact the police, it will be stored by the hospital for six months and then destroyed.

If you have gone to the police about the assault and then complete a SAEK, you have to release the kit to the police. The evidence then becomes property of the police. It will remain in police possession, even if the case is withdrawn or remains unsolved.

If you don't know if you want to contact the police, you may still want to have the kit done and stored while you consider your options.

Because the police can store the SAEK longer than the hospital, you can also consider consenting to release your kit to the police while you decide whether or not you wish to proceed with criminal charges. The police can only access the SAEK with your consent.

Laying Charges

After you make a report, the police may decide to lay a charge or charges.

There are many sexual offences other than sexual assault. It is possible that if you report a single incident of sexual assault, the police may lay multiple charges about the same allegation. For example, if you are sexually assaulted when you are a youth by an older person in a position of authority, the accused may be charged with sexual assault, sexual exploitation, and sexual interference. The decision of what charges to lay is up to the police.

The police may investigate further before deciding whether to lay charges. After a further investigation, such as talking to other witnesses, they may lay criminal charges against the person who harmed you.

Legally, the police can only lay a charge if they believe there are reasonable grounds that the person assaulted you. Sometimes in making this decision, the police will consult with a Crown Attorney (lawyer who prosecutes cases on behalf of the government).

It is possible that you can make a complaint to police about a sexual assault and that the police do not lay charges. If this happens to you, you can seek legal advice or make a complaint about the police through the OIPRD.

Police officers do not always tell the survivor if they have decided not to lay charges. You have a right to know what the outcome is of your complaint. If you have not heard from the police after making your complaint, you can call them to get an update on your file. Depending on the police officer, you might have to keep asking for information about the progress of your case. You also have the right to hire a lawyer to help advocate for you.

After the police lay charges, the Crown Attorney (the lawyer who prosecutes the case on behalf of the government) will take over the case.

Bail or Release Orders

If the police decide to charge someone with any sexual offence, they will be arrested. Often, the police will try to contact the accused person to see if they are willing to turn themselves in at the police station. If the accused person cannot be located or refuses to turn themselves in, the police will take out a warrant for their arrest. This can include the ability to enter their home and arrest them.

If wanted for a crime or under arrest, the accused person has a right to know the name of the complainant.

Once arrested, the police decide whether or not to release the accused person from the station or bring them to court for a bail hearing. Whether or not an accused person is released from the police station depends on the seriousness and number of charges and if they have previous involvement in the criminal justice system.

In more serious cases involving injuries or multiple complainants, or where the accused is involved in the criminal justice system, they will likely be brought to court and held for bail. Bail is also called "judicial interim release" or a "release order."

There are no firm rules about who is brought to court and who is released from the police station. It is really up to the officer in charge of the case. Sometimes officers consult with Crown Attorneys to make this decision.

Regardless of whether an accused person is released from the police station or from court, if released, they will have numerous conditions they need to follow. These are called release conditions or **bail terms**.

In any sexual offence case, the accused will be on a term not to contact the complainant. No contact means no contact in any format, like the phone or any type of electronic contact, such as texting or using social media. It also means not to contact the complainant through a third party, like a friend. If the accused breaks any of these conditions, they will be arrested again. Although they have a right to have another bail hearing, they may not get released.

If an accused person is brought to court for bail, the Victim Witness Assistance Program (V/WAP) may reach out to you for input on any safety concerns you have with the accused. In addition, if the matter is domestic (e.g. a sexual assault between parties who are dating or intimate), you can tell V/WAP if you would like to have contact with the accused with your revocable consent. Revocable consent means that you have to file your permission to have contact with the accused with police. Once you file your consent, you can take it away at any time by telling the accused. You can then file your consent with the police again if you want contact in the future.

It is possible that an accused person may not wish to address bail right away, or at all. It is also possible that an accused person may lose their bail hearing. This is called being detained or receiving a detention order. When an accused is in custody and not on bail, they still must follow a **no contact order** which means they cannot contact the complainant in any way. Breaching this order is a separate criminal offence.

Accused persons have an opportunity to address bail at any time in their case. Although they only have one opportunity to run a bail hearing in provincial court, they have a right to a bail review in Superior Court at any time. They also have the right to have their detention reviewed every 90 days.

The Role of the Crown Attorney

- The Crown Attorney is not your lawyer
- Their job is to protect the interests of the public
- The Crown Attorney will not advise you directly and may not represent your needs

What is the Victim/Witness Assistance Program (V/WAP)?

The Victim/Witness Assistance Program is a free program offered by the Ontario Ministry of the Attorney General that provides support and information to the victims and witnesses of violent crime. The Victim/Witness Assistance Program (V/WAP) is available in many, but not all, Ontario Courts. Its role is to advocate and support the victim/witness throughout the court process to ensure that their concerns are heard.

V/WAP acts as a go between for the Crown Attorney's office and victims of crime. This means that they will provide you with updates on your case and provide your input to the Crown, as well as provide support to you throughout the process.

What do they offer?

- Help prepare you for court and help you understand what will happen
- Help you complete a Victim Impact Statement
- Talk to the Crown Attorney about your concerns and provide updates from the Crown and court to you
- Offer you emotional support during the court process
- Refer you to community agencies or other resources you might need, like counselling
- Refer you to a lawyer to represent your interests if you have the right to be represented in certain pre-trial applications (such as a third party records application or an application to cross examine you on your prior sexual history)
- Arrange for interpreters if needed

V/WAP does not:

- Give legal advice
- Receive or discuss evidence
- Discuss what the outcome of the case might be
- Withdraw charges
- Provide or arrange for childcare
- Provide transportation to and from court

More information: **https://owjn.org/2022/09/06/victim-witness-assistance-program-support-for-survivors-of-violence/**

What is a Publication Ban?

A **publication ban** is a court order that prevents any person or media from publishing specific information in a court proceeding. If anyone breaks a publication ban, it is a criminal offence.

In sexual offence cases, the Crown almost always asks for a publication ban of the complainant's names so that your identity is protected. If you are worried about this, please tell V/WAP and they will remind the Crown.

In addition to sexual assault, examples of other sexual crimes and related offences in which publication bans are imposed are:

- Sexual interference;
- Invitation to sexual touching;
- Sexual exploitation and sexual exploitation of a person with a disability;
- Incest;
- Bestiality related offences;
- Parent or guardian procuring sexual activity of a child;
- Making sexually explicit materials available to a child;
- Child pornography offences (including the identification of any minor - even if that person does not testify);
- Luring a child;
- Arranging or obtaining the sexual services of a minor;
- Human trafficking offences;
- Financially benefitting from the sexual services of a minor;
- Indecent act or exposure;
- Abduction;
- Extortion.

For any offence (even if not a sexual offence), the court can also order a publication ban on any witness' name who is under the age of eighteen.

Going to Trial

A criminal trial can be long and frustrating. There are often long delays in the process. Delays can be caused because the accused or the Crown needs to adjourn (postpone) the trial because of busy courts, a backlog of cases, conflicting schedules, unavailable witnesses or because the accused is trying to put the trial off as long as possible.

Crowns and judges often cannot keep up with the number of criminal charges laid by the police.

What happens before and during trial?

1. **Preliminary hearing:** (if there is one). A preliminary hearing (also called a preliminary inquiry) is a hearing where the judge decides if there is enough evidence to go to trial. In a sexual assault case, the complainant's statement to police is enough to go to trial. The hearing is instead used for the defence to cross examine the complainant and build inconsistencies for trial. Preliminary hearings are now no longer available for sexual assault cases with adult complainants. They are available for sexual offence cases involving children, and other sexual offences, such as certain human trafficking offences.

2. **Jury selection:** (if there is one). Depending on the type of offence, the accused may be able to choose whether they want to have a jury.

3. **Pre-trial motions:** In sexual assault cases, third party records applications (applications to get medical or other records) and applications to be able to cross examine the complainant on their prior sexual history are very common. Complainants have a right to court appointed counsel in these motions.

4. **Arraignment:** Arraignment is where the clerk reads the charges to the accused and they enter a plea. This is a formality. In a trial, the accused will plead not guilty.

5. If the matter is in Superior Court, the Crown makes its opening statement to court. If the matter is in provincial court, also known as the Ontario Court of Justice, there is no opening statement.

6. **Examination-in-chief of Crown witnesses**: The Crown calls its witnesses to testify. In a sexual assault case, the complainant is the Crown's main witness.

7. **Cross-examination of Crown witnesses**: The Crown witnesses, including the complainant, are questioned by the defence.

8. The defence calls its witnesses (if any). The accused may testify if they wish to do so. The Crown cross-examines the defence witnesses.

9. Each side gives its closing statement.

10. The jury or judge alone delivers the **verdict**.

The Crown Attorney's Case

In order to get a guilty verdict, the Crown must show **"beyond a reasonable doubt"** that the accused committed the offence.

This means that in order to be found guilty, there should be no other reasonable explanation than that the accused committed the crime. This is a high standard for the Crown to prove.

At trial, the Crown will present their case mainly through the complainant telling their story. This is called **examination in chief**. In an examination in chief, the Crown asks the witness open ended questions, like "what happened next?"

The court needs to hear your whole story again. This is because in most cases, your statement to police, even if on video, is not admissible as evidence in court. Instead, the Crown, judge, defence and accused all must hear your story from you, live in court.

You do this through testifying under oath or by way of affirmation (a non religious promise to tell the truth). If you do not tell the truth, you could be charged with perjury.

The Defence Case

The Defence must try to create a reasonable doubt in the mind of the judge/jury. There are two defences that are commonly raised by an accused.

- That there was consent. This is probably the most common defence, since most criminal charges of sexual assault are laid in circumstances where the victim and perpetrator know one another.
- That the accused had an "honest and mistaken belief" in communicated consent. This means that, even though the victim says they did not consent, the accused honestly believed that they did through their words or actions. This defence must have an "air of reality" to be accepted by the court. This means that the mistaken belief must be based on some evidence. An accused person is expected to take reasonable steps to ensure that there was consent. An accused cannot assume there was consent.

Other defences to sexual assault cases may include a denial that the assault occurred (that the complainant had a motivation to lie) or identity (that the person who assaulted the victim is not the accused).

It is not a valid defence for an accused person to argue that they were so intoxicated that they did not know what they were doing. Only a very extreme level of intoxication, resulting in a completely dissociated state, is a defence.

Will My Personal Records be Used in Trial?

A **"third-party record"** is a document, or other record, that contains personal information about you or another witness. Some common examples of third-party records are:

- notes taken by a therapist or counsellor
- hospital or medical records
- employment or school records
- personal journals or diaries
- records from child welfare or social service agencies
- police occurrence reports from past incidents

Third-party records can be used by the Crown or by the accused's lawyer at trial. The most common purpose of getting the record is to use them to cross examine the survivor.

The accused can get access to your third-party records in three main ways:

- If the Crown has a third-party record, such as a hospital report about your injuries, they should ask you for permission to give it to the accused. If you say yes, this is called **"waiving an application"** and the Crown will give it to the accused. It is important to get your own legal advice before making this decision. Do not feel rushed into making this decision.
- If the Crown has a third party record and you decide to not disclose it to the accused, the Crown has to tell the accused that the record exists, but if the accused wants to see the record, or any third-party record, they have to ask the Court for permission. The accused must make a written application.
- An accused person can also make a written application for third party records where they have not been given notice by the Crown that the record exists. However, there must be some basis in evidence that the record exists and why it is relevant to their defence. For example, in a sexual assault case in which

the parties are known to each other, the accused might know that the survivor has a mental health diagnosis and is in therapy. With their lawyer, they could provide an affidavit that could form the basis of a third party records application for the survivor's therapeutic records.

The Application must include:

- what the record is
- evidence that shows the record's relevance to the accused's defence, such as an affidavit.

The judge will hold a hearing where each side has a chance to explain why the accused should, or should not, get access to the private records.

You have a right to have a lawyer represent you in this hearing that is paid for by the government. The lawyer is often picked by the Crown or V/WAP or may be referred to the survivor from a violence against women organization. The court appointed lawyer will work with you to protect your privacy and provide you with your own legal advice. The court appointed lawyer participates in the hearing and works with the Crown, who will also likely argue that the records should not be disclosed.

The judge will consider your right to privacy, the accused's right to a fair trial and society's interest in having survivors report sexual assaults. The judge cannot rely on discriminatory beliefs, such as that survivors who have a mental health diagnosis are less worthy of belief.

If the judge agrees with the defence that the records should be disclosed, the judge may redact (black out) certain parts of the records that contain irrelevant or personal information. There can also be rules about producing the records to further protect your privacy. For example, your lawyer can ask that the records only be viewed by the accused in the presence of their lawyer to prepare for trial and that the defence only be provided with copies of the record and not originals.

Third party records applications often take place before the trial happens. However, it is possible that they could come up during a trial. For example, if a survivor testifies for the first time (as opposed to in their statement to police) that they had a diary in which they wrote about the assault, the defence lawyer could ask for an adjournment of the trial to bring an application to disclose the diary to the court. The trial would then be paused until the judge decides the application. The trial would continue after the application is completed.

Helping You Testify in Court

Testifying in court can be challenging. Because of this, there are certain accommodations that a survivor can access.

1. In sexual assault cases, the complainant can sometimes **apply to testify outside of court** (by way of video link into the courtroom) or behind a screen. If this application is successful, the survivor testifies in the courthouse, but may be in a different room. You are still under oath and will still be asked questions by the Crown and defence.

   The Crown can also bring an application for you to be able to **testify with a support person**. This could be a friend, family member or social worker. Some V/WAP offices also have support dog programs. These are trained dogs who assist with emotional support. Many survivors find having the dog near them and being able to pet the dog while in court greatly assists with their anxiety.

In some cases, the defence will consent to the Crown's application for the witness to testify outside of the courtroom or with a support person or dog. In other cases, the defence will not agree. This means that the Crown and defence have a hearing where the judge decides if it is appropriate. The complainant does not need to attend this hearing and would not be cross examined at it. The complainant has the right to have counsel appear at this hearing.

2. Another potential accommodation is an order **excluding the public**. Courts are generally open to the public. However, in certain cases, the judge may agree with the Crown that it is appropriate to exclude the public from hearing the case. If the witness is a minor or has safety concerns, it is possible that the courtroom will be closed to the public. This means that, along with the accused, only the lawyers, court staff, judge and police officer assisting the Crown will be present.

3. The final application that may be made is an application by the Crown to appoint defence counsel to cross examine the complainant. This is only done where the accused does not have their own lawyer. Because it would be inappropriate for an accused to personally cross examine the survivor directly, the Crown and court will appoint a lawyer to conduct this part of the trial.

If the Crown is not offering to bring any of these applications in your case, speak to your V/WAP worker and they will advocate for you.

You also have the right to hire your own lawyer to bring these applications on your behalf or to advocate with the Crown to bring them.

What is a Cross-Examination?

After the Crown finishes their examination, the defence will try to convince the judge or jury not to believe you or to try to show that your version of events is not what really happened. You will be asked to sit at the front of the court while the lawyer asks you questions. This is a cross-examination.

The cross-examination is almost always the most difficult part of the trial for a survivor.

There are strict rules about what can and cannot be asked in a sexual assault trial, but defence lawyers sometimes try to get around those rules as much as possible.

Here are some key things to remember when you are being cross-examined:

- Focus on what you know. Say that you do not remember when you are unsure.
- Do not lie about anything.
- Do whatever it takes to make yourself feel comfortable: wear clothes that you like, speak slowly, drink water, pause, ask for a break. Some people find that it is very helpful to focus on a support person in court whom they know believes them.
- Trust that the judge and/or jury will be able to tell the difference between the truth and dishonesty.
- Try to remember that it is the defence lawyer's job to try and make your story look less believable. Try not to react defensively to this. Instead, breathe deeply and take the time that you need to fully explain your version of events.
- Know that it is the role of the Crown to object if there is an inappropriate question. The judge can also intervene.

Will my sexual history be brought up?

Prior sexual history evidence generally is not admitted at trial. In order to do so, the defence must bring an application.

The definition of what is prior sexual history evidence is very broad. For example, if an accused and complainant are known to each other, and used to have casual sex, this fact cannot be admitted at trial, even for context,

unless the defence brings an application and is successful.

An application to admit prior sexual history evidence is called a **section 276 application.** This application can occur before the trial. It may also take place in the middle of a trial if issues about the parties' sexual history come up during the trial. If this is the case, the trial will be put on hold until the application is decided by the judge.

Section 276 hearings almost always take place where the accused and complainant know each other and where they have had previous consensual sex. They are very rare when the sexual assault is perpetrated by a stranger.

In order for the defence to win a section 276 application, they must show that the evidence is not being used for the purpose of a rape myth. Rape myths include that because the survivor and accused had sex before, that the survivor was more likely to consent to the sexual activity that is alleged to be sexual assault. Another rape myth for which sexual history evidence cannot be used is that the survivor is less credible or worthy of belief because of their sexual history.

Even if sexual history evidence is not being used for the purpose of a rape myth, the judge may still refuse to admit the evidence if the court thinks that it is not relevant.

In section 276 hearings, the survivor has the right to a lawyer that is paid for by the government. The lawyer is often picked by the Crown or V/WAP or may be referred to the survivor from a violence against people organization. The court appointed lawyer will argue that the evidence should not be admitted and work with you to protect your privacy. The court appointed lawyer participates in the hearing and works with the Crown, who will also likely argue that the evidence should not be included.

You have the right to hire your own lawyer for a section 276 hearing if you do not want one appointed by the court.

The survivor does not need to attend court for the section 276 hearing. They cannot be asked questions at the hearing. The hearing instead focuses on legal arguments and the complainant is represented by their lawyer. The hearing is not open to the public or the media.

The Verdict

After a trial, there will be a verdict of guilty or not guilty.

It is not unusual to have to wait some time after the trial finishes to find out the verdict. In a judge alone trial (trial without a jury), the judge may need time to consider the evidence. In a jury trial, the jury deliberates. You will be advised by V/WAP what the verdict is.

Court is open to the public and you have a right to be in court if you wish to do so when the verdict is read in court.

- If the accused is found not guilty, the case is over. Any conditions imposed on the accused (such as a requirement that they stay away from you) are no longer in place.
- If the defendant is found guilty, the trial moves into the sentencing phase. Any bail or release conditions remain in effect until sentencing.

If there is a jury, all jury members must agree on the verdict. When this is not possible, the judge will call a mistrial. A new trial may be ordered.

How Does the Judge Decide a Sentence?

If the defendant is found guilty, the judge will listen to arguments from both the Crown and the Defence before deciding on a penalty. The penalty is called a sentence.

- The Defence will ask for less punishment and might argue that the accused is a person of good character. They may bring up hardships the offender has experienced such as childhood trauma, addictions or mental health issues. Defence counsel will also argue that a jail sentence will have an undue negative impact on the offender's life.
- The Crown will argue about the importance of protecting society and will talk about the impact the offence has caused the survivor.
- You will have a chance to prepare a **"victim impact statement."**

What is a Victim Impact Statement?

A victim impact statement is an opportunity for the survivor to tell the court about the impact of the offence. The survivor writes the statement and provides it to V/WAP who will give it to the Crown. The Crown will give the statement to the defence, often ahead of the sentencing hearing.

- You have the option of having the Crown read the statement on your behalf in court or if you wish, you can read it yourself.
- If you wish to read it yourself, you have the option of reading it from behind a screen or if the court has the ability, by way of video or closed circuit television from a different room in the courthouse. You also have a right to a support person.
- You can ask a counsellor, support person or V/WAP to help you write your statement.
- There are certain things that are not admissible in court in a victim impact statement. If you include these things in your statement, they will be edited out or redacted. Examples include your opinion of the offender's character and suggestions of what you think a fair sentence is. The judge always has the ability to not consider parts of your statement if they think it is inappropriate
- It is possible that you could get cross examined by the defence on your statement. However, the judge would have to agree to this and in practice, it is very rare. If the survivor wishes to read their statement, in the majority of cases it is read informally without the victim being under oath or on the witness stand.

- What the court wants to know is how the crime has impacted you. You can discuss impact on you psychologically, physically, financially and socially. You can discuss its short and long term impact, as well as any safety concerns you continue to have.
- If you do not wish to make a statement, you do not have to.
- You may be able to get a close family member, partner or friend to write something on your behalf, depending on the circumstances of the case and the position of the Crown, defence and judge.
- No matter who presents the statement, you have a right to provide the court with a photo of you before the offence, if it is relevant in your case. For example, if you experienced physical injuries as a result of the crime, photos might assist the judge.

There may be a delay before sentencing to allow the two sides to prepare their arguments. As well, the judge may ask for a report about the offender that assists them in deciding the appropriate sentence. Examples of reports could be a mental health report, Gladue report (report about the background of an Indigenous offender) or a pre-sentence report from a probation officer (general report about the offender's background that suggests an appropriate sentence).

After the sentencing hearing, the judge may need time to decide on the appropriate sentence. This means that there can be another delay between the sentencing hearing and when the judge passes sentence (when the sentence is announced in court).

The judge will make a final decision on the punishment as guided by the Criminal Code and the principles of sentencing.
Because the definition of sexual assault in law is broad and includes a range of unwanted sexual conduct, the range of sentences for sexual assault is broad.

The potential sentences in a sexual offence case also depend on if the Crown proceeded by indictment or summarily. Indictment is a more serious crime while summary is more minor. If the Crown proceeded by indictment, harsher sentences are available, and lesser sentences may be unavailable.

The potential sentences available also depend on the type of sexual offence and the age of the victim. Offences against minors come with harsher sentences and may include a mandatory minimum time of jail.

Sentences can include the following:

- An absolute discharge (a finding of guilt that is not a permanent criminal record);
- Conditional discharge – a finding of guilt that is not a permanent criminal record that comes with probation;
- A suspended sentence – a permanent conviction that is an entry on a criminal record that comes with probation;
- Probation (community supervision of the offender with conditions, such as no contact with the victim, completing counselling and community service);
- Conditional sentence (a jail sentence served in the community with many conditions. Typically, this involves a period of house arrest. If the offender breaches any of the conditions, they can be ordered to serve the remainder of their sentence in jail);
- An intermittent sentence (a jail sentence served on weekends. This is only available for sentences of jail that are 90 days or less);
- Imprisonment in either a provincial jail (for sentences less than two years) or a penitentiary (greater than two years);
- A fine or victim fine surcharge (a sum of money);
- Restitution - compensation for injuries, loss or damage to property from the offence.

In addition, the offender will be ordered to provide a sample of their DNA for the national data bank. Finally, the court might impose

other court orders such as a weapons ban or that the offender be put on the provincial and national sex offender registries.

The sentence imposed by the court may not feel fair to you. **Remember: Whatever decision is made by a court does not change what happened to you.**

In addition to the sentence imposed by the criminal court, you may have other legal options to address the harm you have faced, such as a civil suit. A civil suit for sexual assault can be brought following a criminal conviction. Because the civil standard of proof is far less than in criminal court, if an offender is criminally convicted for a sexual offence, the civil suit may have merit, especially if the offender has financial resources.

If you think this applies to your situation, it is important to get legal advice.

Disclaimer: This is general information only. If you need legal advice, you should contact a lawyer

Images from Freepik and Unsplash

Guidebook design by Azza Abbaro
www.azzaabbaro.com

The Law Foundation of Ontario
Advancing access to justice

Ontario

TORONTO

METRAC
ACTION ON VIOLENCE

Disclaimer: The views expressed in these materials are the views of METRAC and do not necessarily reflect those of the funders.