

REPORTING TO POLICE

Flowchart Detailed Information

POLICE INVESTIGATION

If the person chooses to report the sexual violence to the police, the police will first take a statement. It is important to know, that this statement is videotaped and will be used as the person's "official statement" regarding the sexual violence in court. However, the videotaped statement does not eliminate the need for the person to give testimony in court. The victim/survivor can bring a support person to the police station, but the support person cannot be in the room when the victim/survivor gives their statement.

The statement and any further communication with the police about the event will be disclosed to both the **Crown** and the **Defence** lawyers and can be used or shared in court by either party.

If the sexual violence happened recently, the police will also collect evidence, which could include clothes, items from the location in which the assault took place, and pictures of any marks or injuries. They may also interview any witnesses who were present or have relevant information.

The police will then question the person who perpetrated the violence (called "the suspect" during the investigation and the "accused" if charges are laid).

The officer in charge should communicate with the victim/survivor throughout the investigation.

It is important to note that it is the police who lay charges and the Crown Attorney who pursues those charges. The Crown Attorney is the lawyer who represents the province, not the victim/survivor, in court. This means that the Crown Attorney is not the victim's/survivor's lawyer and the victim/survivor does not get their own lawyer. A victim/survivor can hire a lawyer for support and guidance but they cannot represent you at most court hearings, such as Trial and Sentencing.

Some people may opt to get legal advice regarding, for example, their statement to police, or what they could reasonably expect before they report.

The Independent Legal Advice (ILA) program provides free, independent legal advice to survivors of sexual assault who are 16+ years old. The program respects survivors' privacy and their right to make their own decisions. Call 211 to receive program registration. Participants will not be identified to government. You can speak with a lawyer before reporting to police.

<https://novascotia.ca/sexualassaultlegaladvice/>

When the Victim/Survivor is Under 16 (or under 19 when the person who perpetrated the violence is a parent or guardian)

If the person you are supporting is under 16 (or under 19 when the person who perpetrated the violence is a parent or guardian), then you must alert your local child protection office, even if this information was told to you in confidence.

Child protection social workers will then work with local police to conduct a joint investigation, which will include an interview with the child/youth (a social worker and police officer will be present). Whether investigators contact the child/youth directly, or a parent or guardian, to set up the interview will depend on their age and the circumstances of the violence.

If required, Child Protection Services can help arrange a physical exam, and will discuss additional supports with the child and/or parent(s) or guardian(s).

SANE- If the assault(s) took place within the last five days, the victim/survivor will be able to access the services of a Sexual Assault Nurse Examiner (SANE). If the person you are supporting is pre-pubescent, it is recommended that they see a SANE within 24 hours as it can be difficult to collect evidence. They are still able to access a SANE if it has been longer than 24 hours.

These registered nurses have advanced training in providing non-judgmental, confidential support as well as conducting medical exams and collecting forensic evidence. People of any gender can access this service so long as they are 13 years and older (except in the Halifax region, where Avalon's SANE program serves all ages).

NO CHARGES



The victim/survivor still has access to all supports, including Victim Services.

If the police do not lay charges it is because they do not believe they have enough evidence to proceed; it does not mean that the police do not believe the victim/survivor.

ARREST/LAYING OF CHARGES



Charges will only be laid if police determine that there are reasonable and probable grounds to believe the person committed an offence. If charges are laid, the case could take months or years to work its way through the courts.

Once a person has been arrested and charged with a crime, they become “the accused”.

If the person is arrested, they are usually released within 24 hours, sometimes with an order not to contact the victim/survivor. If police do not release the accused, they must be brought before the court for a bail hearing within 24 hours. A bail hearing is where a judge decides if the person charged with an offence should be released or held in custody until trial. The accused can also be released with consent from the Crown at court without a bail hearing.

If the person you are supporting is worried that the accused will try to contact or harm them, they should contact the Sexual Violence and Human Trafficking Crown Attorney
<https://novascotia.ca/pps/prosecution-model-for-sexual-violence-and-human-trafficking.asp>.

Victim Requests that Charges are Withdrawn

In Nova Scotia, if the victim/survivor decides that they do not want charges laid or that they want charges withdrawn, the police and/or the Crown Attorney should respect their request and not proceed with the charges. If the police do lay charges, only the Crown Attorney can drop, or change, those charges later on.

Though the victim/survivor cannot technically withdraw charges after they are laid, they can ask the Crown not to proceed. However, if the victim/survivor (who is the key witness) withdraws from the legal process, it is likely that the Crown will drop the charges.

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VICTIM SERVICES & SUPPORTS

The Provincial Victim Services Program, through its four regional offices, can provide you with information, support, and assistance as your case moves through the criminal justice system. The victim/survivor has access to these supports

throughout the process, even if charges aren't laid. The victim/survivor can also access other supports including Sexual Violence Trauma Therapy, SANE, and legal and community supports.

CROWN ASSESSMENT

The Crown will proceed with the case if they believe there is a realistic prospect of conviction and think it is in the public interest to do so. This

is a higher legal test than the one that the police use in deciding whether to lay a charge.

FIRST APPEARANCE

The first appearance is the first time the accused will be in front of a judge.

If the suspect self-identifies as Indigenous (they do not have to have status or live on reserve), the judge, Defence, or Crown may request what is called a Gladue Report.

Prepared by an independent Gladue Writer, the report is a pre-sentencing or bail-hearing report that takes into consideration factors such as (but not limited to) the person's history with residential schools, child welfare, and sexual or physical abuse.

The report also takes into account any learning disabilities, mental illness, fetal alcohol syndrome, past trauma, or substance use or abuse. The

report also includes the impacts of racism and poverty on the person's life.

The report can also include if the person has taken part in traditions, celebrations, or family gatherings such as fishing, sweat lodges, powwow or other cultural events. It will also identify sentencing options that are available in the person's community.

The Gladue Writer may interview the victim/survivor. This process may be difficult for the victim/survivor as they will have to re-tell their story in detail.

The report is taken into consideration when the judge determines eligibility for bail as well as a sentence.

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PLEA

The accused pleads guilty or not guilty.

NOT GUILTY PLEA PRELIMINARY HEARING

The first time the victim/survivor will have to appear in court as a witness is for the preliminary hearing (a mini trial in front of a judge). This is where the judge decides if there

is enough evidence to go to trial. The accused will also be present and other witnesses may be called.

Note: There is not always a preliminary hearing.

TRIAL

If the person pleads not guilty there will be a trial where both the Crown and Defence lawyers will ask the victim/survivor and other witnesses or experts what happened before, during, and after the incident.

Because of the presumption of innocence the accused is not required to testify on the stand and be cross-examined. The trial will take place before a jury or judge.

A trial can be a difficult, stressful, and triggering experience. If a person chooses to report sexual violence and it goes to trial, it is incredibly important that they have a strong support network and practice self-care before, during, and after the trial.

The victim/survivor can ask the Crown to request courtroom aids such as a translator, a screen to block their view of the accused, bringing a support person or attending by CCTV.

In Canada there is a law referred to as the "rape shield" law, which prevents Defence lawyers from using a victim's/survivor's sexual history as well as records such as texts, journals, or therapy notes, against them in court.

Unfortunately this law can be overturned and/or ignored. If an application is made by the defendant to have the rape shield law overturned, the victim/survivor will be entitled to free legal representation on this specific matter.

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VERDICT



A verdict is the formal decision or finding made by the judge or jury.

In order for someone to be found guilty of a sexual assault three things must be proved in court:

- Occurrence - that the assault actually happened.

- Identity - that the accused person is the one who perpetrated the assault.
- Consent - that it was not consensual.

The judge or jury may take hours, days or much longer to reach a verdict (a decision of guilt or innocence).

ACQUITTAL



If the jury/judge decide the accused is not guilty, they will be acquitted.

CONVICTION



If the jury/judge find the accused is guilty, they will be convicted. This means they will receive a sentence. A sentence is the punishment given to a person convicted of a crime.

APPEAL



Both the Crown and Defence are able to appeal the verdict or sentence within 30 days.

GUILTY PLEA

If the person pleads guilty there will be no trial, but instead a sentencing hearing where the judge will impose a sentence.

SENTENCING HEARING

The judge determines an appropriate sentence for the offender (accused who has been determined guilty). A sentence may include jail time, community service, and/or registry with the National Sex Offender Registry. Before sentencing, an Impact of Race and Culture Assessment (IRCA) can be completed for individuals of African descent. Similar to a Gladue report, it will outline the offender's history of exclusion and marginalization to be considered when determining a sentence.

VICTIM IMPACT STATEMENT

The victim/survivor will have the opportunity to file a "victim impact statement" in court outlining how the sexual violence has impacted their life. The victim/survivor can choose whether or not they want to read the statement in court.