

A Guide to Pre-Trial Consultation in Rape Cases

For many rape survivors, the experience of going through the criminal trial is extremely distressing. Although major advances have been made in this area, the prospect of further traumatising through the criminal justice process remains very real, and often forms the basis for a survivor's decision not to report the case to the police.

South Africa's prosecuting authorities now generally acknowledge the importance of the trial prosecutor consulting with the survivor before she gives evidence in court. However, overwhelming case loads often mean that these consultations either can't take place or that there is insufficient time during the brief consultation to address the survivor's questions and concerns.

For this reason, Rape Crisis Cape Town initiated a 'pre-trial consultation' programme aimed at providing survivors with a better understanding of how the criminal trial works and what they can expect when giving evidence. This information can help to reduce the potentially traumatic impact of the criminal justice process and improve the evidence placed before the court.

In addition to setting out the Rape Crisis pre-trial consultation model, this booklet also contains detailed notes to enable rape counsellors to understand the emotional demands that a trial places on survivors.

We hope that this booklet will be of use to other organisations that already offer or wish to design similar services, as well as to prosecutors specializing in sexual assault cases.



A Guide to PRE-TRIAL CONSULTATION *in Rape Cases*



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Introduction

BACKGROUND

For many rape survivors, the experience of going through the rape trial is an extremely distressing one. Although major strides have been made in reforming the law and in addressing the attitude of criminal justice personnel towards rape survivors, the reality remains that the criminal trial can inflict harm on the survivor in the form of secondary victimization.

Overburdened courts and weary criminal justice staff can also contribute to a less than satisfactory experience for the survivor. For example, while the prosecuting authorities now generally acknowledge the importance of the trial prosecutor consulting with the survivor before she gives evidence, overwhelming case loads often mean that these consultations either do not take place or that there is insufficient time during the brief consultation to address the survivor's questions and concerns.

For this reason, Rape Crisis Cape Town initiated a 'pre-trial consultation' programme aimed at providing survivors with a better understanding of how the criminal trial works and what they can expect while giving evidence. This information can help to reduce the potentially traumatic impact of the criminal justice process.

Specific care was taken to ensure that pre-trial consultation would not 'interfere' with the integrity of survivors' evidence in court. The pre-trial consultation sessions are designed to augment the consultation between the prosecutor and the survivor, and are not intended in any way to replace such consultation.

The pre-trial consultation programme has been in operation at Rape Crisis since 1994 to date, and recently a need was identified to share the expertise developed in the programme in the form of this booklet. We hope that the booklet will be of use to other organizations that already offer or wish to design similar services.

WHO IS THIS BOOKLET FOR?

The Rape Crisis model described in this booklet relies on the involvement of two persons in each pre-trial session, namely the person providing the pre-trial consultation services ('the advisor') and a counsellor. It is extremely important to understand the emotional demands and impact that a trial places on survivors. These issues must be explored with the survivor during counselling to prepare her emotionally for the trial. Information about the processes alone, without building up the emotional strength of the survivor and exploring strategies for coping with the system may disempower her further. It is for this reason that the pre-trial consultation model set out here involves a counsellor as well.

This booklet is aimed at the advisor as well as at the counsellor assisting in this process.

HOW TO USE THIS BOOKLET:

The booklet provides two types of information:

- Information aimed at the advisor
- Information aimed at the counsellor.

(In some instances, information is relevant to both advisors and counsellors.)



The booklet is divided into five sections:

Section 1 gives information on how to plan and prepare for pre-trial consultation.

Section 2 contains essential background information that advisors and counsellors should be familiar with before starting pre-trial consultation work.

Section 3 contains the information that should be conveyed to the survivor. It explains who the different role-players in the rape trial are, and explains how the trial process works.

Section 4 deals with additional information about the trial and the criminal justice system based on concerns that survivors often raise during pre-trial consultation.

Section 5 contains examples of a court checklist and pre-trial consultation record form, as well as a list of useful contact numbers.

THE LANGUAGE USED IN THIS BOOKLET:

We recognise that rapists and sexual offenders target both women and men. However, this booklet will refer to survivors of rape as 'women'. The reason for this is that women are more frequently the targets of sexual offences than men.

Note:

Rape Crisis Cape Town believes it is important for society and the law to recognise sexual offences against boys and men.

There are different terms used for the rape survivor, depending on who is using these terms. Some of these include:

- **'Survivor'** – often used by organisations providing counselling and other services to survivors. This term recognises her strengths and what she did to survive the rape.
- **'Victim'** – this is the most commonly used term in society. The police refer to a rape 'victim'.
- **'Complainant'** – this is a legal term referring to the person against whom a crime was committed. Prosecutors often use the term 'complainant'.
- **'Chief witness'** – the complainant is usually the chief or most important witness in a case.

In this booklet, we use the term 'survivor' throughout.

There are also different terms used to describe the rapist or perpetrator. These include:

- **'Suspect'** – this term is used before the person is formally charged with the crime, when he is still only under suspicion.
- **'Accused'** – when the person is formally charged with committing the crime.
- **'Defence'** – the person or team defending themselves against the criminal charges of rape.

In this booklet, we use these terms interchangeably.

In the rest of this booklet, we use the following abbreviations:

- **CJS:** 'criminal justice system'
- **PTC:** 'pre-trial consultation'

SOME PRACTICAL RECOMMENDATIONS:

We recommend that the advisors do the following to equip themselves to do PTC:

1. Carefully read through this entire booklet.
2. Attend and observe rape trials.
3. Establish good working relationships with the public prosecutors and police at your local courts and police stations.
4. Network with legal experts in the field of violence against women.

It will be helpful to obtain a copy of the *'National Legal Manual For Counsellors Of Raped And Battered Women'*, published by Tshwaranang Legal Advocacy Centre. This manual provides detailed information regarding many aspects of the criminal justice system and is available from the Tshwaranang Legal Advocacy Centre. (See back of this booklet for contact details.)

We also advise that 'The Sexual Assault Survivors' Guide' (published by Rape Crisis Cape Town) should be given to survivors who have reported their cases to the police. This booklet is aimed at survivors and provides information regarding the entire process from the time of reporting through to the trial. Copies can be obtained from Rape Crisis Cape Town.

Section One:

Planning and preparing for pre-trial consultation

WHAT IS THE PURPOSE OF PTC?

The purpose of PTC is to offer information to the rape survivor about the trial process so that she has a better understanding of what to expect at court and is better prepared for the trial. The consultation should:

- Inform the survivor of her rights and responsibilities regarding the trial.
- Provide the survivor with the opportunity to raise any concerns that she has about the upcoming court case.

The PTC process should be committed to supporting women in making informed decisions. It is not about convincing her of what her best options will be.



Important information:

The term PTC is sometimes misunderstood to mean 'coaching' the survivor or coming up with a version that would sound good in court. This is not the case at all. It is extremely important for the advisor not to tell the survivor what to say in court. At all times the survivor must understand that she must tell the truth and it must be according to her own knowledge and understanding of what happened. Everything that she tells the court must be in her own words. If the court finds out or believes that the

survivor was told what to say by her counsellor or the pre-trial advisor, the court will disregard her evidence and this may lead to the perpetrator being found not guilty. This will not only impact on that particular case but may also lead to prosecutors refusing to work with the advisor's organization.

WHO SHOULD DO THE PTC?

The person who does the pre-trial consultation should not be the survivor's counsellor. This is because many of the issues raised can be difficult for a survivor to hear and it is more beneficial if she has a counsellor whose role it is purely to focus on her feelings and needs. The person doing the PTC can focus on giving the survivor the information that she needs.

Although the person doing PTC does not need formal legal qualifications, the information to be conveyed is quite technical and can be difficult for the survivor to understand. For that reason it is crucial that the advisor is comfortable with this information herself.



Look at page 8, where we make suggestions on how the advisor can equip herself for PTC.

WHAT IS THE ROLE OF THE COUNSELLOR IN PTC?

The counsellor should:

- Offer emotional and counselling support to the survivor throughout the process.
- Assist the survivor in obtaining information and documents about the case from the police and the court.
- Try to attend the trial with the survivor to offer support.

Some survivors feel empowered to liaise with the police and court personnel themselves but many others may feel very intimidated by the system. In these cases it is better for an informed counsellor to do the liaison.

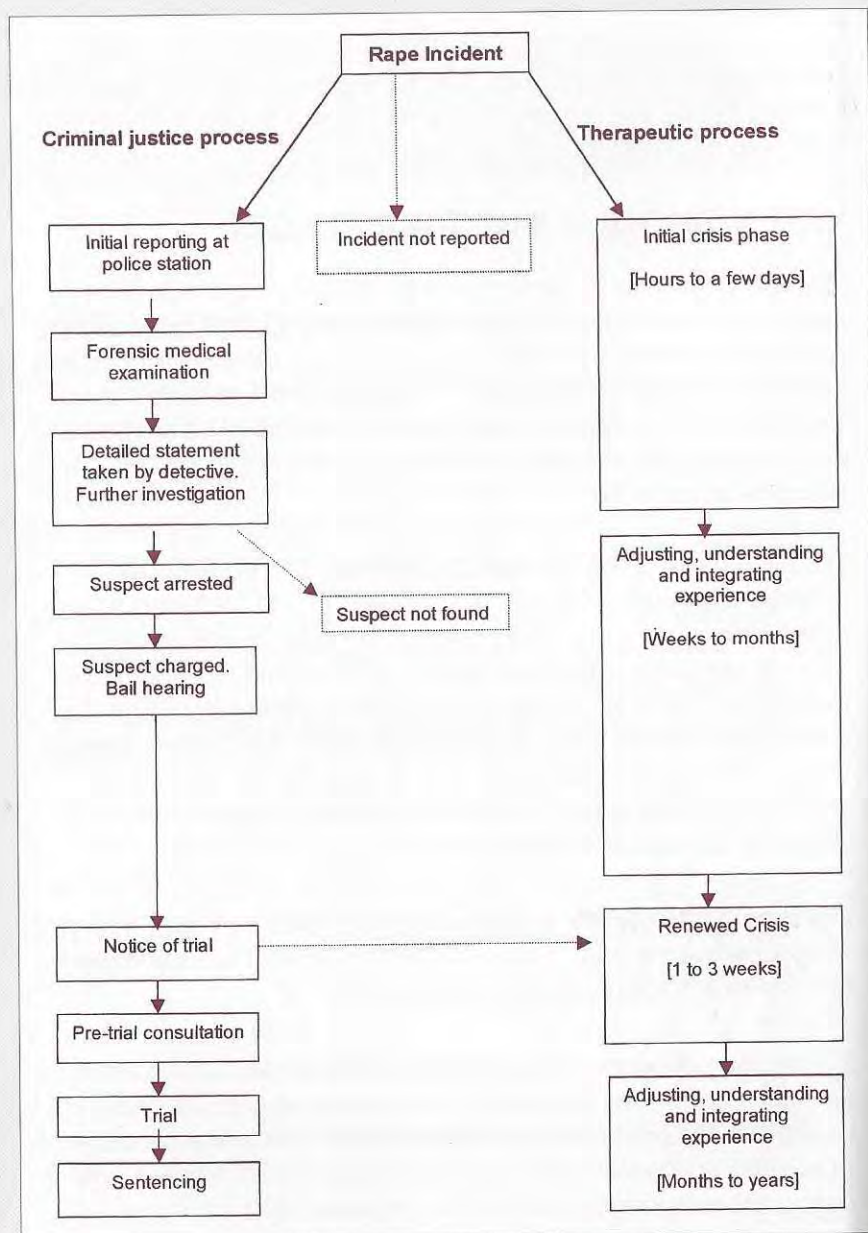
WHEN SHOULD PTC TAKE PLACE?

It is useful to bear in mind that the survivor who chooses to report the rape to the police experiences two processes simultaneously, namely the events in the criminal justice process and her own therapeutic process. To illustrate this we have set out the broad outline of what happens in the criminal justice process and how this relates to the therapeutic process in the diagram on page 12.

We have divided the therapeutic process into three broad phases: the initial crisis phase, followed by the 'outward adjustment' phase, with the final phase of integration and resolution. You will see on the diagram that the PTC should happen close to the trial. There is usually a long waiting period between the arrest of the rapist and the court case itself. The police contact the survivor quite close to the trial date to let her know that she must appear in court to testify. This can happen from two weeks to the day before the case.

It is best that wherever possible the PTC sessions start two weeks before the trial. This will give the advisor or counsellor time to sort out any problems that arise.

Where the police only inform the survivor of the court case a few days before the trial, it will only be possible to do one session of PTC. Although we describe the two sessions separately below, we also give you some guidelines for cases where only one session is possible. Look at page 19.



Important information:

The PTC usually comes at a time when the survivor has dealt with many aspects of her experience and is trying to move on with her life (integration and resolution phase). The trial and the PTC can cause the survivor to return to a state of crisis. Furthermore the PTC will remind the survivor of the details of the traumatic experience and in some cases cause her to relive aspects of the rape, including re-experiencing feelings of loss, fear and helplessness. This is another reason why it is essential for the counsellor to be present during the PTC sessions.

WHAT NEEDS TO BE DONE BEFORE THE PTC SESSIONS?

1. The survivor should obtain a copy of her statement. We strongly recommend that the advisor does **not** read the statement. Doing this can result in the advisor suggesting to the survivor what to say in court even if she doesn't mean to do so, or it can create the impression that the advisor is coaching her on what her evidence in court should be.
2. Find out the date of the trial, which court it will be at and if possible the name of the prosecutor.



Hint:

When the police tell the survivor to come to court, they should give her this information, preferably in the form of a written document called a **subpoena**.

3. We recommend that organisations develop a standard document where all the information about the court case can be recorded. Look at the example on page 74.

- Find out background details about what happened to the survivor, for example, whether the perpetrator was known to her before he raped her or if there was more than one perpetrator. It is helpful for the advisor to have an idea of the circumstances of the rape in order to understand the needs of the survivor better.

Note to counsellor:

The counsellor must have an introductory session to explore the survivor's expectations of the court case. Find out what her fears are and what she hopes to achieve from the trial. Discuss what she stands to gain and what she stands to lose from the process. It may be necessary for the survivor to assess how she will cope with the potential losses and difficulties that can accompany the trial.

Getting Information: From the Police -

If you do not have the police CAS (case) number -

- Find out at which police station the incident was reported.
- It might help if you have the full name of the accused or if you have the date when the matter was reported to the police. This will assist the police in tracking down the case in the computer system.

Once they have the CAS number you can find out who the investigating officer (IO) is.

The IO will have information about the court dates, the statement and any other information about the case that you need.

The survivor has a right to get a copy of her statement, and the police may not refuse to give it to her. She does not have to pay for the copy.

Getting Information: From the Court -

Most rape cases are heard at the regional magistrate's court. When phoning the court firstly make sure that you are phoning the right court. You will also need the name and surname of the accused and the date of the trial.

Ask to speak to the regional court control prosecutor. The prosecutor deals with administration and should be able to tell you who the actual court prosecutor of the case will be. Once you know who the prosecutor of the case will be you can make contact with her/him to discuss specific issues about the case.

Some courts don't know until a few days before the trial who the court prosecutor will be. If this is the case, ask to speak to the Senior State Prosecutor, who is responsible for all of the prosecutors and will be able to assist you with this.

WHAT HAPPENS DURING THE SURVIVOR'S CONSULTATION WITH THE PROSECUTOR?

It is important to arrange a consultation between the survivor and the prosecutor before the trial in order for her to discuss her statement in detail with the prosecutor. She must also have an opportunity to address inaccuracies in her statement with the prosecutor before going into court.

Many prosecutors will make arrangements to consult with the survivor a few days before the trial. Unfortunately not all prosecutors manage to do this, either because they are too busy or because they don't realise the importance of a consultation. It is therefore helpful for the counsellor (or the

survivor) to telephone the court in the week before the trial to make an appointment for this consultation. Often the consultation takes place early in the morning on the day of the trial. This is not ideal but might be the only time possible for the prosecutor.



Hint:

During the consultation the complainant should ask the prosecutor to show her the court room and where she and everyone else will be sitting so that she will get an idea of what the room looks and feels like.

WHAT TO DO IF THE PROSECUTOR REFUSES TO CONSULT WITH THE SURVIVOR

The National Directives (professional rules) for prosecutors instruct them to consult with sexual offence survivors in all cases. Therefore if a prosecutor refuses to meet with her for consultation, the advisor or counsellor should report this immediately to the senior prosecutor at that court.



Look at page 79 where we give more information about lodging complaints against prosecutors.

WHAT DO THE TWO PTC SESSIONS LOOK LIKE?

The first session takes approximately 2 hours and the second about 1 hour. The length of the sessions varies according to the specific needs of the client.

Both sessions are divided into three sections: introduction, main content and closure of the session.

SESSION 1

The first session deals with the process of the trial, the layout of a courtroom and the roles and responsibilities of all who will be present at the trial. A further aspect of the first session is to alert the survivor to the importance of raising inaccuracies in the statement with the prosecutor and ensuring that the prosecutor is aware of all possible witnesses and evidence in the case.

Introduction:

1. Explain what the PTC process is about and describe a broad outline of the sessions.
2. Explain the role of the advisor and of the counsellor in PTC.
3. Ensure that you have all of the necessary information about the case, and check the information out with the survivor.
4. Briefly explore the survivor's expectations of the court case as already discussed with her counsellor.
5. Find out if the survivor has any questions or concerns about her case.

The main content of the session:

1. Find out if she has ever been to court so that you do not give her information that she already knows.
2. Using a diagram of the court, discuss the roles of the different people who will be present in the court. (See page 28 to 33)
3. Go through what the survivor can expect on arrival at court before the trial starts. (See page 34)
4. Go through the process of the trial (See page 37)
5. Explain the potential outcomes of the trial (See page 50)
6. Explain the process of the sentencing hearing. (See page 51)
7. Discuss the potential for postponement of the court date with the survivor. (See page 56)

Closing the session off:

1. Make sure that the survivor leaves with clear guidelines about what must be done. Preferably do this in writing. (Look at the example on page 72.) These guidelines could include -
 - The necessity of reading through her statement before meeting with the prosecutor and of informing the prosecutor if the statement is wrong or incomplete.
 - Writing a victim impact statement.
 - The need to arrange consultation with the prosecutor.
2. Ensure that the survivor and counsellor are clear about who will be responsible for the different tasks.
3. Confirm the date of the next PTC session.

SESSION 2

The second session aims to build the survivor's confidence in her ability to testify in court. It is best if the second session takes place after the consultation with the prosecutor, if possible.

Introduction to the session:

1. Discuss whether the follow up tasks were completed.
2. Ask the survivor if she has any specific questions or concerns to discuss.

The main content of the session:

1. Recap the process of giving evidence, including cross-examination and explain the reasons for the different questions. (See page 40)
2. Explain different defence tactics that might be used to attack her credibility. (See page 46)

3. This session should raise understanding of how commonly believed myths and misconceptions regarding rape influence the questioning by the defence. It should also explore ways of coping with the emotional impact of cross-examination.
4. Discussing the survivor's rights and responsibilities while testifying

**Important information:**

It is not the purpose of this session to prepare the survivor's evidence nor to instruct her on what information to give to the court. Do not discuss the actual evidence of the survivor. Examples that are given should be generalised and not specific to the case.

Closing the session off:

1. Ask if the survivor has any further questions about the process.
2. Ensure that the counsellor and survivor know what to do next, and that this is noted on the court checklist. (Look at the example on page 72.)
3. Request that the survivor or the counsellor inform you of what takes place in court.

**Hint:**

We recommend that the survivor and her counsellor have a further counselling session at this time to address the emotional impact of the PTC sessions.

What to do if you only have time for one session:

If there is not enough time for both PTC sessions, extend the length of the first session to discuss some of the issues contained in the second session. It is important to cover all of the information of the first session. Ensure that the survivor has a clear idea of what to expect in court.

Section Two:

Key information on the criminal justice system

This section contains background information with which both **the pre-trial advisor** and **the counsellor** must be familiar.

BACKGROUND TO THE SOUTH AFRICAN CRIMINAL JUSTICE SYSTEM

The criminal justice system is set up to punish criminals and deter crime. The CJS includes the South African Police Service (uniform police and detectives), the health professionals who perform the forensic medical examination (doctors), the National Directorate of Public prosecutions (prosecutors), the Department of Justice (courts and magistrates) and the Department of Correctional Services (prisons).

The Bill of Rights in the South African Constitution says that everybody has the right to be free from violence as well as the right to have their dignity respected and protected. These rights are obviously important to survivors. However, the Bill of Rights also makes provision for the rights of people accused of crimes to ensure that innocent people do not get punished wrongly. This is especially important to consider because of South Africa's history of detaining people without trial and limiting people's access to a means of proving their innocence.

These different sections of the Bill of Rights sometimes work against each other and this contributes to the feeling that criminals are 'protected' by the constitution.

The CJS in South Africa is a rigid, disorganised and under-resourced system. It is male dominated, intimidating and biased in favour of the rights of the accused rather than the rights of victims. The attitudes and biases of society in general and of the old apartheid regime are still present in the system so that it does not work equally for every one.

The general attitude found in our society of questioning and blaming the survivor for the actions of the rapist are reflected in the CJS and in the attitudes and questions of the role players in the investigation and trial. The following is taken from a research study on institutional reactions to rape in the USA in 1978 and outlines the police criteria for a rape case as a kind of ideal composite of the rape victim they want to see:

'... the perfect case would be one in which all the information checks out, there are police witnesses to the crime, the victim can provide a good description of the assailant, there is supporting medical evidence including sperm and injuries, the story remains completely consistent and unchanging, the victim was forced to accompany the assailant, was previously minding her own business, a virgin, sober, stable emotionally, upset by the rape, did not know the assailant who has a prison record and a long list of current charges against him.' Reference: Ann Burgess and Lynda Holstrom. 1978. *The Victim of Rape: Institutional Reactions*. (John Wiley & Sons: New York)

If you think of the 'perfect' case, most of the cases that you will see are far from perfect.

Because of the serious consequences of a criminal trial, a high standard of proof is needed before someone can be found guilty. This is what it means when we say the state has to prove its case *'beyond reasonable doubt'*. This is because the law wants to protect innocent people from being wrongly



punished for crimes they didn't commit. The rule of *'reasonable doubt'* means that there is no guarantee that the perpetrator will be found guilty.

In rape and other sexual offence cases it is often frightening for the survivor to testify in the court environment and in front of the accused as well as to be cross-examined by the defence lawyer. Testimony inevitably requires remembering and reliving the rape experience. These factors are among many others that make the process traumatic for survivors.

Members of the CJS tend to carry heavy workloads and often don't understand the needs of the complainants in their cases. The result of this is that they generally cannot give the case as much attention as it should get. Rape survivors receive little information about the processes and procedures of the CJS and poor feedback regarding the status of their case.

EXPECTATIONS OF THE CRIMINAL JUSTICE SYSTEM

People who report their experience of sexual assault to the police do so for many different reasons and have different expectations of the system. These include:

- **Justice:** The expectation that the severity of the wrong done by the rapist and the pain and damage that he caused will be formally recognised by the CJS.
- **Punishment of the perpetrator:** Part of achieving justice includes the punishment of the perpetrator. For many survivors it is expected that this punishment will be imprisonment for a period of time related to the serious impact of the sexual assault. Some survivors need for the rapist to pay for what he has done to her.
- **Protection:** There is the crucial need for protection from the perpetrator and currently the CJS is the only legitimate

means of achieving this in South Africa. Many women feel extremely helpless when the CJS is unable to offer the necessary protection.

- **Being believed:** Because the survivor knows exactly what the rapist did to her, she will often assume that the court will understand this. It is sometimes unexpected and shocking to the survivor when this reality is questioned and challenged in the way that it is challenged during the trial. For many survivors there is the expectation that the prosecutor and the magistrate will take her seriously and protect her from the accused and his attorney through the trial process.
- **Closure:** Some survivors may expect a sense of closure to come about at the end of the court case and for all of the negative emotions that they have been experiencing to disappear as a result.
- **Efficiency:** There is often the anticipation of a speedy process and resolution. This is often made worse by the courtroom dramas on television, since these programmes have resulted in many people being more familiar with American trial procedure and rules than with the South African ones.

The reality is often very different to the expectations of survivors. This is why we recommend that the survivor and her counsellor explore her expectations of the court case and also discuss strategies of how to deal with unmet expectations.

THE ROLE OF THE RAPE SURVIVOR IN THE CASE

The law says that when a crime is committed it is extremely serious and it harms not only the victim of that crime but also our whole society (the state). For this reason the state will open a case against the person accused of the crime. This means

that a criminal case is between the state and the accused, and not between the survivor and the accused. The state (police and prosecutors) can make decisions about the case without taking into consideration the needs and wishes of the complainant.

The rape survivor is viewed as the chief witness in the state's case, but not as one of the main parties to the trial. This has an effect on how much say she has in what happens with the case and how much information about the case she has access to. Importantly, it also means that she will not have her own lawyer.

Pros and cons of the state prosecution system:

Positive	Negative
It recognises the seriousness of the offence.	Some prosecutors are overburdened with cases and are unable to give each case the attention it deserves. Others do not understand the seriousness of some rape experiences.

Note to counsellor:

The complainant does not get to choose who will prosecute her case. This means that the prosecutor may not understand the issues regarding sexual violence and may believe many of the general misconceptions regarding the causes and effects of rape. This can add to the burden of responsibility on the survivor. She should be prepared emotionally for this possibility so that the possible negative impact can be minimised.

Positive	Negative
The complainant is not expected to carry the expense of hiring a legal representative.	The complainant is not an official party to the case. Instead she is the chief witness. This means that the accused and his attorney and the state prosecutor have access to more information about the case and more decision-making power than the complainant does.
Note to counsellor: This is disempowering to the survivor and contributes to the feeling of not being in control of the case, which is extremely important to the survivor on a personal level.	
Prosecutors at specialised sexual offence courts should have specific training and experience in the area of sexual offences. See page 65 for more information.	Where there are no specialised courts, sexual offence cases are often prosecuted by inexperienced and untrained prosecutors. These prosecutors face better prepared and more experienced defence lawyers in court.

The survivor's lack of access to information and her inability to control the decisions about something that is deeply personal reflect the lack of control experienced during the rape. This along with the attitudes and behavior of the CJS personnel is a major cause of secondary victimization of rape survivors by the CJS.

Note to counsellor for the counselling session preceding the PTC:

- The pre-trial consultation process, in addition to providing the survivor with information, is helpful in pointing out the options that she has and to explore ways in which she can take control, even if it is only of part of the process.
- It is always important to affirm her strengths and point out to her what she has already achieved and survived.
- Help her to set achievable goals separate from the goals of the trial. Help her prepare for and anticipate what she will face in the system, be it the procedures and the laws or the ignorant and often blaming statements from members of the CJS.
- Preparing the survivor for the possibility of being faced with insensitive attitudes by some members of the CJS will help to prevent her internalizing these attitudes and believing that these people are right. This will minimise the potential for secondary victimization.
- Make strong clear statements that the rapist is to blame, not the survivor. Even when she has questions about her actions, remind her that the rapist chose to rape her and she did not want it.

THE SURVIVOR'S STATEMENT TO THE POLICE

The statement is usually taken down at a time when the survivor is in a state of shock and confusion. It is written down in English or Afrikaans, which may not be the survivor's first language. In some cases the police official who takes the statement may write her/his own interpretation of what s/he hears the survivor say. The importance of the statement is

seldom explained to the survivor and emotional fatigue and embarrassment may result in information being left out of the statement. Sometimes the police official does not ask the right questions and if the survivor does not know that certain information is important she may not mention it.

These factors influence the accuracy of the statement. If the statement is not accurate this must be brought to the attention of and discussed with the prosecutor before the trial. It is important that the statement be a true and accurate reflection of what the survivor experienced. If there are gaps in the initial statement it is possible for the survivor to make a second supplementary statement. She must arrange to do this with the prosecutor or the detective.

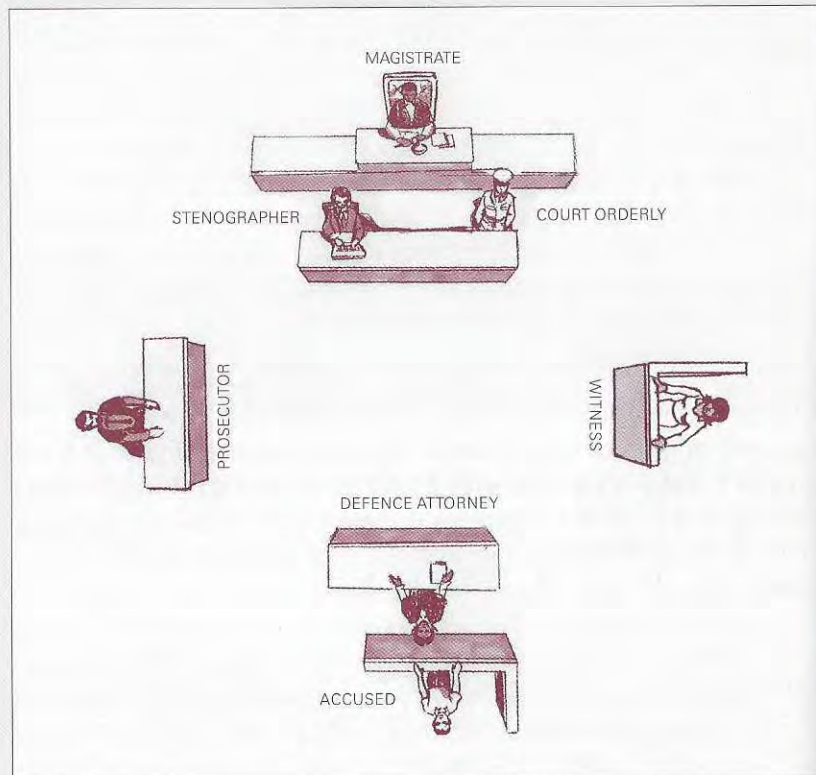
Because of possible difficulties in communicating with the prosecutor, it is a good idea for the survivor to write down anything inaccurate or left out of the statement and give this to the prosecutor at their consultation. If there is any other information, such as witnesses to part of what happened or letters from the accused about the case that the police do not know about, this information must also be given to the prosecutor so that the prosecutor can decide whether to use it or not.

A lot of time passes between the time when the survivor reports the rape to the police and makes her statement and the start of the trial. It is common that during this time she may forget aspects of the experience. Reading through her statement in the time before the trial helps to remind her of these details.

Section Three: Essential information about the criminal justice system and the rape trial

1. THE ROLE-PLAYERS IN COURT

This diagram illustrates what a courtroom looks like. It also shows the role-players in a criminal trial.



THE MAGISTRATE:

The magistrate is the 'judge' in the case. S/he will listen to all of the evidence from both sides, and will then decide if there is enough proof to find the accused guilty. The magistrate will also decide on the punishment of the offender if he is found guilty.

If the case goes to the High Court, instead of the regional court, the person making the decision will be called a judge.

The magistrate knows nothing about the case before the trial starts except the charge and the name/s of the accused. S/he will try to remain impartial throughout the case and should not choose sides until all of the evidence has been presented to the court.

Due to the need to remain impartial, most magistrates will not show much expression on their faces while listening to a case. They should only ask questions when they require clarity on an issue. Many survivors, when faced with this while giving their evidence or being cross-examined, feel that the magistrate does not believe what they are saying.

Note to counsellor:

Magistrates have an enormous amount of responsibility and power over people's lives. Many magistrates have not had the opportunity to challenge the commonly held stereotypes and misconceptions regarding rape. There are currently training programmes for magistrates that try to address different issues of diversity including gender bias. Help the survivor to understand that as much power as the magistrate has, s/he can be wrong and may not understand everything (even when the magistrate behaves and speaks as if s/he knows everything).

THE PROSECUTOR:

The survivor will not be able to get her own lawyer in court because the state appoints its own 'lawyer' who is called the public prosecutor or state prosecutor. It is the task of the prosecutor to prove that the accused committed the offence. The prosecutor will be on the survivor's side in court.



Look at page 79, where we explain how to make a complaint against a prosecutor if you believe s/he didn't handle the case properly.

THE DEFENCE LAWYER:

In the majority of cases the accused will hire a lawyer to represent him. If the accused cannot afford to pay the legal costs, a legal aid lawyer will be appointed. An accused can also decide not to be represented by a lawyer.

The purpose of the defence lawyer is to ensure that their client is not found guilty. If the accused is found guilty the defence lawyer will try to ensure the lowest possible sentence. In order to achieve this the lawyer will support and promote what the accused says has happened.

THE ACCUSED:

The accused will be in the courtroom throughout the trial. This is often one of the most frightening aspects of the trial for the survivor. It is important to understand that even if the accused is not showing it, he is likely to be nervous and afraid of the pending trial. The accused is facing the consequences of his actions and potential imprisonment if the court finds him guilty. The implication of this is that the accused will do whatever is necessary to ensure that he is not found guilty. The accused may appear confident and in control and that he is unafraid of

the trial process. This may have the effect of making the survivor feel that she will not succeed with the case even before the trial has started and can affect the quality of her testimony to the court.



Hint:

When the survivor is giving evidence she may find it useful to turn her back slightly on the accused and face towards the magistrate. If the accused tries in any way to distract her while she is giving her evidence she should make the court aware of this and ask that it be stopped.

Note to counsellor:

Because the nature of sexual assault is both a physical and a psychological attack, seeing the accused in court can be anxiety provoking and an emotionally unsafe experience for the survivor. It is often useful to point out what the perpetrator has to lose. This provides some context and indication of the control that the survivor does have over the situation. Although it is as a result of the actions of the perpetrator that he is in court, it is also because the survivor has taken a stand against what the perpetrator did to her. In this way she is 'taking her power back'.

WITNESSES:

The survivor is the chief witness in the state's case. She will sit in the witness box opposite the prosecutor. She will be able to see the accused. Unfortunately there are few options for protecting the survivor from having to give her testimony in the courtroom.



Look at page 65, where we explain the protective measures for adult and child witnesses.

THE COURT ORDERLY:

It is a requirement that a court can only hear cases if a court orderly is present. The court orderly will be a member of the South African Police Service. It is the duty of the court orderly to provide security to the court.

If your client feels afraid for her physical safety in the courtroom remind her that there is a police official present.

THE STENOGRAPHER:

It is important that everything that is said in court is recorded so that if there are any questions about the fairness of the case at a later stage the court recording can be checked. The person who is responsible for this is called the stenographer. This person will make sure that the equipment is recording throughout the trial. There will be a microphone at the witness box. This microphone doesn't make the witness's voice louder – it ensures that everything that is said in court is recorded.

MEMBERS OF THE PUBLIC:

There are often other members of the public in the courtroom. This can include witnesses in other trials waiting for their cases or the friends and supporters of the accused. The law says that while the survivor in a sexual offence case is giving her evidence these people can be asked to leave the courtroom. This is called having her evidence heard '*in camera*'. This means that she gives her evidence in a 'closed court' (there are no cameras at all, it is just confusing legal terminology).

Many magistrates will automatically decide that the survivor's evidence be heard *in camera*. However it is a good idea for the survivor (or her counsellor) to remind the prosecutor to ask for

this at the consultation. This information should be included in the checklist for the survivor - see page 72 for an example of this.

It is very important to understand that this legal rule only means that members of the public who are in the court must leave. All of the court role-players, including the accused, will remain in the court.

The survivor may ask that one or two people who support her be present, such as a counsellor or family member. The person whom she chooses cannot be another witness in the case who has not yet testified. A counsellor who is also going to testify in the case cannot be present to support the survivor.

Note to counsellor:

If the survivor's supporters make any disturbance during the trial they will be asked to leave the court and the survivor will have to continue without their support. It can be difficult to watch someone you care about being questioned and verbally attacked in the way that often happens in court. Under no circumstances should the supporters make a noise, call out or move around in court, since this is not in the best interest of the survivor.

2. AT COURT BEFORE THE TRIAL STARTS

It is important to prepare the survivor for what will happen at the court before the trial starts. In the following section we explain this process and we also give some practical hints.

WILL THE SURVIVOR HAVE TO SEE THE ACCUSED OUTSIDE THE COURTROOM?

It is common that survivors arrive at court on the appointed day to be confronted outside the court by the accused and/or his family and friends. Sometimes they try to intimidate the survivor. At the very least this can be unsettling and disquieting to the survivor. It is crucial to avoid this contact if at all possible. This can be done by arranging with the prosecutor (or the court social worker) that the survivor will arrive as early as possible and that they make a separate waiting area available for her to wait in until the trial starts.

Many courts have a special waiting room for survivors in sexual offence cases. If the court does not have such a separate waiting room the survivor can ask if they can try to make an office available for her to wait in. This must be arranged with the prosecutor before the morning of the trial. Make sure the survivor knows where she must go and to whom she must report when she arrives at court.



Important information:

Wherever the survivor waits, make certain that the prosecutor knows where to find her if s/he needs to.

At most courts witnesses are asked to leave the court building during lunchtime. This can mean that the survivor has no option

but to wait outside the building with the accused. To avoid this she can ask the prosecutor to arrange for her (and people who are there to support her) to wait inside the court building during the lunch break.



Look at the court checklist on page 72.

AT WHAT TIME WILL THE TRIAL START?

It is not often that a trial will start at 9:00 in the morning. Even though the survivor and other witnesses will be told to be at the court at 9:00 they will often have to wait for long periods of time before the trial starts and they are called to testify.

Note to counsellor:

This waiting can be made less difficult if the survivor takes something with her to help pass the time. This can be a book or magazine to read, knitting, or she can take a notebook and pen to write down her feelings about being at court. (This is also a useful activity before and after the day of the trial, because of how successfully it deals with and distracts from anxiety.) She can also ask a friend to go with her for company, which will help to distract her from the anxiety as well. Remind her to take small comforts, for example, chewing gum or sweets, cigarettes, a flask of tea or change for a vending machine. She should also take a packed lunch, even if she struggles to eat because of anxiety. It is important that she try to keep her energy levels up by drinking liquids and getting sugar into her body. Nibbling on dried fruit is an excellent way to do this.

Court toilets seldom stock toilet paper, so taking toilet paper or tissues is helpful.

WILL THE SURVIVOR BE ABLE TO TALK TO THE PROSECUTOR BEFORE COURT STARTS?

It is important for the survivor to let the prosecutor know that she is present at court. (If the prosecutor has not yet consulted with the survivor, it becomes even more important for the survivor to arrive early and immediately find the prosecutor.)



Look at page 15, where we discuss the consultation with the prosecutor.

It may be difficult to find the prosecutor. This is because the prosecutor normally has more than one case to manage and so her/his attention is often divided. The prosecutor may look quite intimidating as s/he rushes around and this can be off-putting when the survivor needs to get information about what is happening with the case.

If the survivor's counsellor or a supportive friend or family member is accompanying her to court, it may be better for this person to take responsibility for communicating with the prosecutor.



Hint:

It sometimes takes persistence to get understandable information from the prosecutor. Very few survivors understand the court process and may get confusing information as explanation. If the case is postponed or 'thrown out' ask the prosecutor to write down the reasons why. The survivor is entitled to this information.

3. THE TRIAL

The purpose of the trial is for the state to prove that the accused is guilty by presenting evidence about what happened to the court. The defence will try to show that the accused is not guilty by presenting evidence that he did not do it or by making the magistrate question or doubt the evidence that the state presents. The magistrate will listen to all of the evidence presented by the state and the defence and then make a decision as to whether s/he can find the accused guilty or not guilty according to the law.

THE ACCUSED'S PLEA:

At the start of the trial, the accused will be asked if he pleads guilty or not guilty to the charges.

If the accused pleads guilty the court will not have to listen to evidence to decide whether the accused is guilty or not. It will move directly to making the decision on the accused's punishment.

If the accused pleads not guilty, the prosecutor must bring evidence to convince the court that the accused is guilty. In other words, the trial will go ahead as we describe below. Most people accused of rape plead not guilty.

THE STATE PRESENTS ITS CASE:

The state will put its case to the court first. It is most common that the survivor is the first witness who is called.

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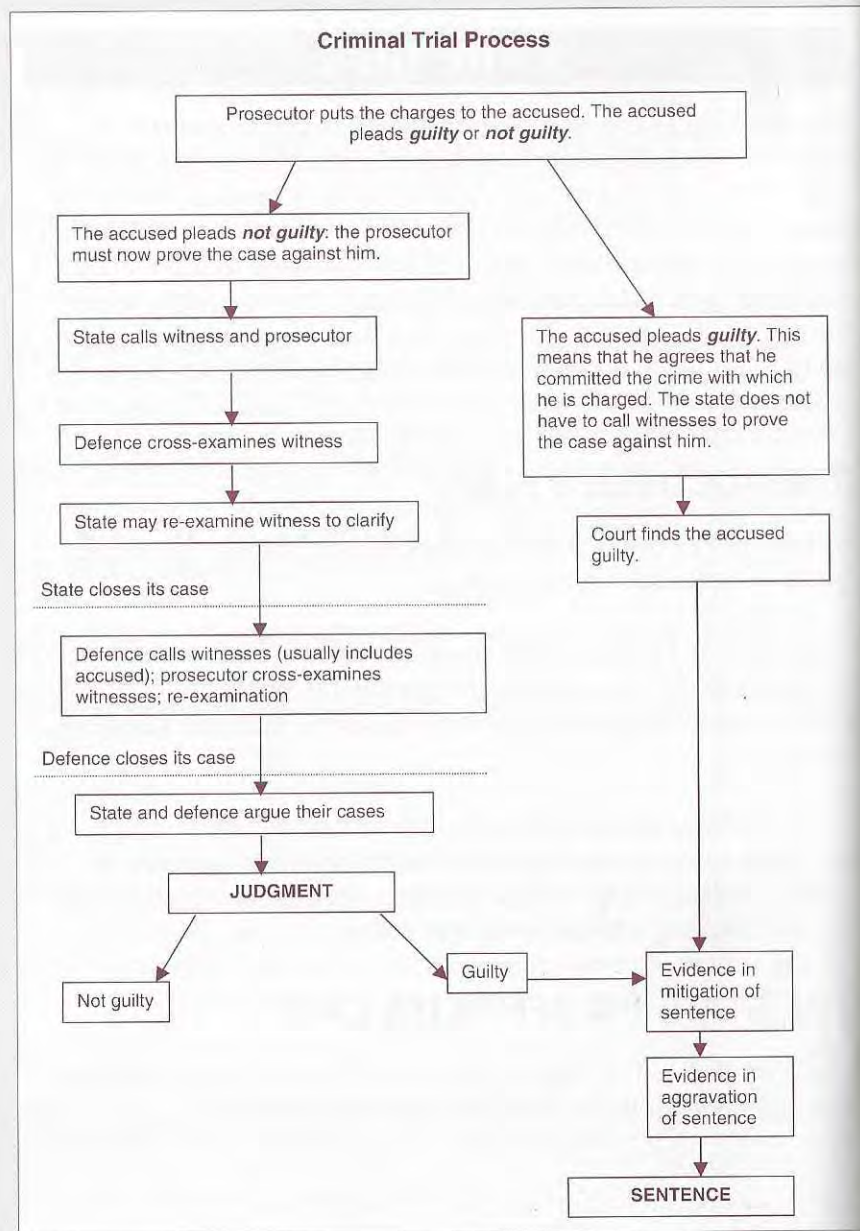
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Note to counsellor:

The court environment is usually unfamiliar to the survivor. Even when the members of the public are asked to leave the courtroom while she testifies, there will still be a number of people who are comfortable with the court environment (the magistrate, prosecutor and defence lawyer). It can therefore be intimidating for the survivor to walk in and to be faced with all of these people as well as the accused. The accused might try to intimidate her at this time and some defence lawyers have been reported to act in a hostile way, for example by looking at the complainant as if she is 'worthless'. These are tactics aimed at making the survivor feel uncomfortable, because it will help the defence to win their case if the survivor feels scared or defeated before they have even begun.

It may happen that that survivor feels intimidated or overwhelmed by the social status of the defence lawyer. Unfortunately defence lawyers often use this to make the survivor feel inferior. Differences in race, wealth, education, gender and language are all factors that can be used to create a feeling of worthlessness. The survivor must have an understanding of how important she is to the trial and of her right to assert herself through the trial process.

Point out to the survivor that by having to go to court, the accused is being forced to face the consequences of his actions. The majority of accused are afraid of the possibility that they will go to prison if they are found guilty. They will do everything possible to win the case and escape responsibility for their actions. He is unlikely to show his fear to the survivor and will want her to believe that he still controls her as he did during the rape.

Even if the survivor is fearful of the trial, recognise the courage that brought her to the point of the trial. When she is giving her evidence, she is the most important person in the courtroom. Everyone else present in the courtroom at that time is there for the sole purpose of hearing what the survivor has to say.

Before she walks into the courtroom the survivor must prepare herself for seeing the accused. It is helpful to use visualisation techniques for this.

LANGUAGE:

The language used in courts is usually very formal and may be difficult to understand, especially when technical legal terms are used. The survivor has the right to ask for clarity.

The survivor also has the right to give her evidence in her first language. If it is necessary the court will appoint an interpreter for this purpose.



Hint:

Court interpreters are usually fluent in the African languages spoken in that area and English or Afrikaans. If the survivor needs an interpreter for a language that is not generally spoken, for example, German or Swahili the prosecutor must be informed of this well before the trial to arrange for a special interpreter. The same applies in the case of sign language.

GIVING EVIDENCE:

Giving evidence is divided into three sections:

1. **Evidence in chief** – the witness is questioned by the prosecutor
2. **Cross examination** – the witness is questioned by the defence lawyer
3. **Re-examination** – the prosecutor questions the witness on issues that were raised by the cross examination that need to be clarified.

1. Evidence in chief

It is vital that the survivor ensures that she tells the magistrate everything that she needs to about what happened. The defence would be carefully prepared and they will ensure that everything that they wish to say to the magistrate is said. The survivor must know that the magistrate does not have information about the details of the case beforehand and must make her/his decision based only on what s/he hears in the courtroom.

Before starting her evidence the survivor will be sworn in and asked if she is prepared to tell the truth. She will be asked to state her name and other personal details to the court.



Hint:

If the complainant does not want the accused to know her home address, she should tell the prosecutor this before going into the courtroom. (Look at the court checklist on page 72.)

The prosecutor will ask the survivor questions about what happened. This may include questions about:

- If the survivor knew the accused before the rape and the nature of their relationship.
- The events that took place leading up to the rape.

- Details about the rape. This will include questions about the exact physical acts. The survivor must explain exactly what happened, using the names of the parts of the body. Many survivors find these questions extremely invasive and don't understand why it is not sufficient to say 'and then he raped me' or 'he had sex with me'. The legal definition of rape is very specific and it is therefore important for the survivor to give these details for the state to prove that what the accused did falls within the legal definition of rape.
- Where the accused alleges that the survivor consented to sexual intercourse, she will be questioned about what she said or did to let the perpetrator know that she did not want to have sexual intercourse with him.

Note to counsellor:

Many survivors struggle with questioning about what she did to let the rapist know that she did not want him to rape her. She may feel that they are blaming her for what happened. People have a natural tendency to question themselves after experiencing trauma. If the trauma was a car accident caused by someone else, other people would respond to this self-blame and questioning by saying 'but you couldn't have known'. When rape (which is caused by someone else – the rapist) takes place, society usually responds by saying 'yes, why did you...'

It is important to address the issue of self-blame and questioning during the counselling process. Although there will be many 'if only's' and 'what if's', the survivor should be given the opportunity to voice her concerns and self doubt in the counselling environment. Some rapists intentionally make the survivor believe that it is her

fault (who she is, what she did, or what she said) that he raped her. This can be extremely difficult for the survivor to come to terms with and it may cause her to feel responsible. It may be helpful to reflect that the rape happened because the rapist decided to do it. The rapist is therefore responsible. The survivor was not in control at the time, the rapist was. It can also be helpful for the survivor to reflect on what she did to survive the attack. Discussing these issues in counselling can impact on how the survivor feels about being questioned in court about her actions. Because these are such painful issues some survivors avoid them in counselling.

- What happened immediately after the rape, and what her frame of mind was at the time.
- Who the first person was that the survivor told about the rape. If the survivor took a long time or a few days to tell someone what happened she will be asked questions about why she didn't tell somebody sooner. Many survivors feel blamed about not telling somebody immediately, even though rape is one of the most difficult things for anyone to talk about. It is important that the survivor explain all of her reasons for not telling. She should include how she was feeling and describe the quality of the relationship that she has with people with whom she came into contact but did not tell. This will help the court to understand her actions and reasons.

2. Cross-examination

In most cases the accused will have a lawyer to assist in his defence. The role of the defence lawyer is to act on behalf of the accused.

The goal of the defence is to have the accused found not guilty. The defence lawyer will do everything possible to cause the magistrate to doubt that the survivor is telling the truth. This is because the defence attorney does not have to prove that the accused is innocent, s/he only has to cause the magistrate to have 'reasonable doubt' that the accused did what the survivor is saying. The purpose of cross-examination is therefore for the defence to show the magistrate that the survivor should not be believed. If the accused does not have a lawyer, the accused will cross-examine the witnesses.

Depending on what the accused's story is, the defence lawyer may try to make the court believe that the survivor -

- Is lying and has good reason to lie.
- Wanted to have sexual intercourse with the accused.
- Led the accused to believe that she wanted to have sexual intercourse with him by the way that she dressed or behaved.

Where the accused is denying that he was the person who raped the survivor, the defence will try to show that the survivor is confused about who the rapist is. In order to create '*reasonable doubt*' in the mind of the magistrate the defence lawyer may try to unnerve and confuse the survivor by -

- Making her feel unimportant by the manner in which they address her.
- Making her feel stupid by the type of questions and the tone in which the questions are asked.
- Repeating the same questions, asking them slightly differently each time.
- Using the survivor's own words and twisting them around.
- Making her feel responsible for the rape.

These defence tactics can make the survivor feel defeated by the questioning and the accusations. This can result in her withdrawing and giving quieter and shorter answers to the court, or it can make her angry, aggressive and careless in how she answers

This is what the defence aims for. It often comes as a shock for the survivor to have a supposedly respected member of society (a lawyer) attacking her in this way.

Note to counsellor:

The defence antics can make the survivor feel that the lawyer is an extension of the rapist and that the power that the rapist exerted over her during the rape is extended into the formal environment of the court. This may attack her confidence and strategies for coping with this must be discussed in counselling beforehand.

In the majority of rape cases the defence will rely on myths and common misconceptions about rape in order to win the case.

They tend to focus on issues such as:

- Alcohol and drug use
- Previous relationships
- The way that the survivor was dressed
- The behaviour of the survivor towards the accused before the attack

The defence may imply that because the survivor was drinking, that she was inviting sexual contact or that by drinking she displayed poor moral judgement. They may hint that she has had many previous sexual relationships and therefore it is likely that she willingly had sex with the accused. They might imply that by her way of dressing she invited sexual attention towards herself, or that by greeting the accused, laughing at his jokes or accepting a lift with him, she conveyed to the accused that she wanted to have sex with him. The defence will hope that the survivor feels guilty about this and try to get the survivor to say that she shouldn't have done or said what she did.

After asking their main questions in cross-examination, the defence must put the accused's version of what happened to

the complainant and ask her to respond. Remember that the defence lawyer is legally required to do this.

Common defence stories

That the accused and the survivor were in a sexual relationship and when the accused broke the relationship off the survivor made up a story that he had raped her to get revenge on him.

That the survivor was flirting with the accused and wanted to have sexual intercourse with him. That because he didn't like her or was married or in a relationship already he said no. To get back at him the survivor made up the story that he raped her.

That the survivor may have been raped but that the accused has never seen her before and cannot understand why she thinks that it is him.

And many other stories all aimed at trying to convince the magistrate that the survivor cannot be believed.

The stories made up by the accused are often distressing to the survivor, especially since they are put to the court in such a way that they sound plausible. The accused may take things that really happened and use them as the starting point for the lies that follow. This may be even more frightening than when outright lies are told.

Note to counsellor:

Remind the survivor that it is normal for the accused in rape cases to make up lies to tell the court. As distressing as this is, encourage the survivor to concentrate on what she has got to say to the court and to try not to take the lies of the

accused on. Some survivors find this so distressing that they experience extreme anxiety at the thought of the accused making up these terrible stories about them. The effect of this can be to defeat her before she even goes into court (if she hears these lies beforehand) or to make her feel defeated while she is giving her evidence. (It is helpful to remember that the accused will have to lie in order to escape responsibility for his actions.)

3. Re-examination by the prosecutor

When the defence is finished with the cross-examination, the prosecutor has an opportunity to ask the survivor questions about anything that was raised by the defence in cross-examination and may have left the court with an inaccurate impression. The prosecutor is not allowed to ask questions about any new issues at this time.



Important things for the survivor to remember when giving evidence:

- Always tell the truth. In the face of the accused's lies a survivor may be tempted to add or leave out details that she feels make her look bad. For example, she might say that she had two beers to drink when she actually had six or seven. If the defence can then prove that she lied about the amount of beer she drank, they will say that she is also lying about being raped.
- The witness must answer all of the questions asked, even if they seem repetitive, silly or annoying.
- If she does not understand a question she must ask that the person repeat it and use different words if necessary.

- If she does not know the answer to a question it is okay to say so. However she must not say that she does not know the answer to a question if she does and is trying to avoid answering.
- If she needs to take a break to go to the toilet, drink some water or just to take some time she should ask for one. (The magistrate may not always say yes to this.)
- If she needs to think about a question she must take her time to do so. This is better than giving the court the wrong information. Remember that the defence will make certain that the court hears everything that they want the court to hear, and it is important that the survivor tries to do the same.
- She does not have to give the court the same information over and over again. If the defence keeps asking the same question repeatedly, the prosecutor should try to put a stop to this by objecting to the questions. If the prosecutor does not stop this, the survivor can ask the magistrate if she must answer the question again.
- The survivor does not have to answer questions about previous sexual relationships with other people (besides the accused) unless the magistrate says that it is relevant to the case. The prosecutor should stop this type of questioning as well.
- The survivor is not allowed to have a copy of her statement or any written notes with her when she gives evidence.
- Although most cases are recorded, magistrates usually also make written notes of all evidence. It can therefore happen that the magistrate will interrupt the survivor while she is giving evidence so that

s/he can take these notes properly. This interruption does not mean that s/he is feeling irritated or impatient with the survivor. It is important for the survivor to speak slowly and clearly.

- The magistrate may ask questions if there is anything that s/he does not understand. Although this usually happens at the end of re-examination, the magistrate can also ask questions as the evidence goes along.

THE REST OF THE STATE'S CASE:

Other witnesses for the state can include -

- The doctor or the district surgeon who performed the medical examination.
- The first person that the survivor told about the rape.
- Any people who witnessed the rape or events leading up to it.

These witnesses will, like the survivor, be questioned by the prosecutor, cross-examined by the defence lawyer and possibly re-examined by the prosecutor.

When the state prosecutor has called all of its witnesses and presented all of the evidence it has to prove the case beyond a reasonable doubt, s/he will close the state's case. This means that the state cannot call any further witnesses.



Hint:

After the complainant has given her evidence she can choose to sit in court and listen to the rest of the case. This is because it does not matter if she hears what other witnesses say as it cannot influence what she tells the court any longer.

THE DEFENCE CASE:

If the defence feels that the state has not proved its case they can ask that the case be finished at this point without even presenting their evidence. It is not unusual in a rape case for the defence to do this as they might rely on their cross-examination of the survivor to win their case. The magistrate must then decide whether the case finishes at this point or whether the defence must go ahead to present their side. If the magistrate decides that the case is finished at this point the accused will be found not guilty.

If the magistrate decides that the case goes on, the defence will present its side by calling witnesses to support the accused's version of what happened. Usually the accused is the first witness called for the defence side. (The accused can choose not to be a witness if he doesn't want to be.) The process for the defence witnesses, including the accused, is the same as for the state witnesses. The difference is that the evidence in chief of these witnesses is led by the defence lawyer and they are cross-examined by the prosecutor.

THE MAGISTRATE'S VERDICT:

After hearing all of the evidence in the case the magistrate will consider this information as well as the relevant legal rules and make a decision as to whether the accused can be found guilty or not. The accused can only be found guilty if the state has proved its case beyond a reasonable doubt.



Look at page 21, where we discuss the term 'reasonable doubt'.



Important information:

The survivor might ask during PTC if her case is legally strong and what her chances are of success or failure. This kind of discussion is best left up to the prosecutor as there are many different factors that influence the outcome of a case.

FINDING OF NOT GUILTY:

Because of the principle of 'reasonable doubt', many guilty people unfortunately go free. A finding of not guilty does not necessarily mean that the magistrate believes that the accused is innocent. It simply means that there was not enough evidence to take the state's case 'beyond reasonable doubt.'

Once an accused is found not guilty, there is nothing further that can be done by the survivor to change the outcome of the criminal case. The accused will go free and be able to continue with his life. However, she can still make a civil case against him.



Look at page 69, where we discuss this option.

Note to counsellor:

Some people believe that if the accused is found 'not guilty' by the court it means that that person is innocent and that he did not commit the crime. At times it can be family or community members of the survivor who believe this. It is especially difficult when these people choose to believe in the rapist. Some survivors feel that they have personally failed if the accused is found not guilty and it feels as if it is a reflection on her performance in court. It is important that the shortcomings of the system be highlighted for the survivor, so that she has a better perspective of the reasons for the court's decision.

FINDING OF GUILTY AND DECISION ABOUT SENTENCE:

If the magistrate believes that there is enough evidence the accused will be found guilty of rape. It will then be necessary to decide on an appropriate punishment. In order to make this decision the magistrate may listen to evidence as to why the perpetrator should receive a light punishment (called mitigating factors) and evidence as to why he should receive a harsh sentence (called aggravating factors).

MITIGATING FACTORS:

The defence lawyer will present the mitigating factors to the court. They will present information to make the magistrate 'go easy' on the accused. Possible mitigating factors include -

- That the perpetrator is very young or very old.
- That the perpetrator has a family to support.
- That this is the first time the perpetrator has been found guilty of an offence.
- That the perpetrator is sorry for what he did and shows remorse.
- That the perpetrator is prepared to get treatment or counselling
- That the perpetrator is prepared to make up for his wrong doing, for example by doing community service.

AGGRAVATING FACTORS:

The state prosecutor will present the aggravating factors. The purpose of this is to encourage the magistrate to give an appropriately heavy punishment for the crime that was committed. Possible aggravating factors include:

- The degree of violence and disregard for other people in the crime.
- The extent of the harm and the effects of the rape.
- That the perpetrator has been convicted of similar crimes in the past
- That the perpetrator has shown no remorse.
- The fact that society regards this as a serious crime and that the levels of rape in South Africa are extremely high.
- That the perpetrator is incapable of benefiting from treatment or counselling.

Note to counsellor:

At this point, the counsellor may be called to testify about the impact of the rape on the survivor. See page 67, where we discuss this.

VICTIM IMPACT STATEMENT:

Unfortunately the severity of the impact of rape on someone's life is often misunderstood and underestimated, even by magistrates. It can therefore be helpful to the court if the survivor prepares a statement that gives details about all of the aspects of her life that have changed as a result of the rape. Issues that could be included are:

- Emotional impact.
- Changes in sleeping and eating patterns.
- Changes in lifestyle and relationships.
- Impact on health.
- Issues of employment or schooling.
- Changes in socialising activities.
- Medical expenses and therapy costs.
- Her view of the future.

**Hint:**

When preparing this statement it is vital that the counsellor does not prompt the survivor at all. All information must come from the survivor and be in her own words. The statement should be given to the prosecutor at the consultation before the trial starts. The prosecutor can ask the survivor questions about the impact of the rape on her life when she gives her evidence in chief during the trial on merits. This would mean that the survivor does not need to give evidence again at the sentencing hearing.



Look at the checklist on page 72.

WHAT SENTENCE WILL THE ACCUSED GET?

It is very difficult to predict what the sentence will be, since there are no hard and fast rules and the general principle is that the magistrate must decide on a sentence that fits each individual case and each individual accused.

MINIMUM SENTENCING LEGISLATION:

Because there was a big difference in the sentences that were given in different courts for very similar offences, minimum sentencing legislation was introduced in 1998. This legislation is not permanent and will change when new sentencing laws are put in place. The intention of this legislation is to ensure that the seriousness of the crime is recognised by the punishment that is given.

This law says that the first time that someone is found guilty of rape they must receive a sentence of ten years; the second time someone is found guilty they should be sentenced to fifteen

years and the third time to twenty years. In circumstances where the survivor was under sixteen years old; when a lot of violence accompanies the rape; when it is a gang rape (more than one rapist) or when the rapist knows that he is HIV positive when he rapes the survivor the sentence that should be given is a life sentence. This is the general rule, but the magistrate is allowed to give a lighter sentence if s/he believes that there are good reasons to do this.

If the case is heard in the regional court and the sentence that should be given is more than fifteen years, the case will be referred to the High Court for the sentencing hearing. The High Court has the power to give any length of sentence.

**Hint:**

If the survivor is unhappy with the sentence given to the rapist, she can discuss the possibility of the state appealing against the sentence with the prosecutor. She must do this as soon as possible after the end of the case no longer than one week, because the prosecutor has a very short time in which to register the appeal. The decision whether or not to appeal against the sentence is with the prosecutor.

Section Four: Additional information

In this section, we explain additional information about the trial and the criminal justice system based on concerns that survivors often raise during PTC.

It will not be possible to discuss all of this information in detail with the survivor during your PTC sessions. However, it is important for the person doing PTC to be familiar with this information in case the survivor has questions on any of these issues.

POSTPONEMENTS OF THE TRIAL DATE

A major concern for survivors in the build up to the trial is the long waiting period for a trial date to be set. It also often happens on the date set for trial that the case is again postponed without the trial starting. The first trial date is usually set anywhere between four to eight months after the case is reported to the police or from the time that the perpetrator is arrested. (It can be even longer than this.) This delay is caused by the high number of cases waiting to be heard in our courts.

A state prosecutor and a magistrate are assigned to each courtroom. More than one case is booked for a courtroom on any given day (usually three or four trials per day). The witnesses for all of these cases will be subpoenaed to come to court on that day. The reason for this is so that if for any reason the first case cannot continue there will be another case, ready to go to trial so that the court is not left unused and the time of the prosecutor and the magistrate assigned to that court is not wasted.

Reasons for cases not going ahead on the planned trial date can include:

• **Witnesses not arriving at court**

This may be because the witnesses were not informed that they must go to court. The investigating officer is supposed to deliver a subpoena to all witnesses to inform them that they must be at the court on a specific day. If the police do not deliver the subpoena to the survivor she will not be at court on the day of the trial and the court may decide to strike the case off the roll (throw it out) instead of postponing it, without even informing the survivor. If a case is thrown out for this reason it can usually be reinstated.



Hint:

If the survivor's case is 'thrown out' because she was not at court on the trial date, she must immediately contact the prosecutor to explain why she was not at court and to discuss the reinstatement of the case.

• **Priority cases**

If a case is postponed halfway through the trial, it will be prioritised on the postponement date above cases where the trial has not yet started. This means that if the survivor's trial starts and then has to be postponed at the end of the court day because it is not yet finished or because all of the witnesses were not present, it must go first on the next court date before any new trials begin.

• **Delaying tactics of the defence**

All people accused of a crime in South Africa have the right to legal representation. To ensure that the accused has a fair trial the state provides legal representation for the accused if he can't afford this himself. The accused can also choose to represent himself and not have a lawyer at all.

It is a common defence tactic to use the accused's right to legal representation to create delays in the trial. These delays often demoralise the survivor, and the defence may hope that if they are able to get the case postponed enough times the survivor might decide to let the matter drop so that she can continue with her life and move on.

The way that this plays out in practice is that an accused who initially said that he didn't want a lawyer, can come to court on the trial date and say that he has changed his mind and has decided that he now wants a lawyer. Alternatively the lawyer who was hired can claim that the accused has not paid her/him and s/he can therefore no longer represent him. This means that the accused will now be able to apply for a state lawyer, who will need time to prepare for the case. In both these cases the court will have to give the accused a postponement to ensure that he has a lawyer and that the lawyer is properly prepared for trial. These tactics can postpone a trial two or three times. Where there is more than one accused, these delays can stretch the case out even more.

The magistrate has the discretion to allow as many postponements to the case as they believe necessary to ensure a fair trial for the accused. If the magistrate feels that a matter has been postponed on too many occasions and that the defense is purposely delaying the case, s/he may order that the case go ahead regardless. However, magistrates are reluctant to do this, because denying the accused his right to legal representation can mean that the finding of guilty in the case is ultimately set aside if the accused appeals to a higher court after the trial.



Hint:

It may sometimes be necessary to ask the Senior State Prosecutor at the particular court to ensure that the court prosecutor opposes any further requests for postponements by the defence.

Note to counsellor:

Survivors may become very disheartened by these postponements because of having prepared themselves to testify and then being let down. The frustration may cause the survivor to lose hope and confidence in the trial process.

WITHDRAWAL OF CHARGES OR REFUSAL TO PROSECUTE

Withdrawal of the charges by the survivor:

Survivors sometimes decide that they want to withdraw the criminal charges after reporting the case to the police. Because the state has taken responsibility for the case, it is no longer up to the survivor to decide whether or not to take the case to trial. In most of the cases where the survivor asks that the case be dropped, the state will allow this. However, if the prosecutor feels that the case is very strong, they may refuse her request to 'drop' the charges and decide to continue with the trial regardless.

Withdrawal by the state:

The prosecutor may decide that there is not enough evidence to take the matter to trial and prove the case beyond 'reasonable doubt'. In some cases, this decision not to prosecute is taken without consulting with the survivor or taking her wishes into consideration. This is a clear example of the unfair nature of the system.



Hint:

Where the prosecutor decides to withdraw the charges against the accused, the survivor is entitled to ask the prosecutor for written reasons for this decision.

BAIL

'Getting bail' means that the court can decide that an accused who has been arrested should be allowed to deposit a certain amount of money and then be released. This means that he will be 'outside' instead of staying in prison until the case finishes. When bail is given there will always be certain conditions. The most important condition is that the accused must come to court on all the court dates. If he is not at court and he can't give a good reason for his absence, he can be re-arrested. His bail can be cancelled and the state will keep his bail money. Other conditions for bail can be that the accused is not allowed to contact, intimidate or threaten state witnesses (including the survivor). If the accused does not breach (break) any of his bail conditions, his bail money will be returned at the end of the trial, regardless of whether he is found guilty or not guilty.

After the suspect is arrested there will be a bail hearing in court. The purpose of this hearing is to decide if the accused should be given bail or if he will be kept in custody (prison) until the trial finishes. The bail hearing should take place within 48 hours of the arrest of the suspect, although the hearing may be postponed for 7 days at a time to allow the police to check the accused's details or for the accused to get a lawyer.

The magistrate should take into account many different factors when deciding whether or not the accused should be granted bail. These factors include whether –

- The accused is likely to leave the country to avoid the trial.
- There is a chance that the accused will commit another crime while waiting for the trial.
- The court should also try to find out if the accused made any threats to the survivor during the sexual assault or if the accused is likely to intimidate the survivor in the time period before the trial.

Unfortunately it happens in many bail hearings that the evidence about threats to the survivor and the possibility of intimidation by the accused is not brought to the attention of the court. This means that accused are given bail when they shouldn't be. Information about threats or the possibility of intimidations must therefore be brought to the attention of the investigating officer as soon after the assault as possible so that the court can be told about this at the bail hearing.

INTIMIDATION BY THE ACCUSED

Many survivors are exposed to intimidation, coercion, manipulation or pressure from the accused or his family and friends during the period after the rape and before the trial. This can range from threats against her or her family's lives to offers of money to the survivor and/or her family to try to get her to drop the charges. The rapist and his friends may also spread malicious rumors and gossip to discredit the survivor and make people believe that she is lying.

These are strategies that the rapist uses to create doubt in the survivor about her ability to succeed with the case. These strategies are designed to make her believe that he is still in control and to keep her feeling helpless. Some perpetrators even say that they will sue the survivor for telling lies about them.

It is important to remember where the accused has been released on bail on condition that he is not allowed to contact, intimidate or threaten the survivor. She must immediately report any breach of this condition to the investigating officer or prosecutor. She will be asked to give a sworn statement about the threats, and the accused will be called to court to explain why he should not be kept in custody and his bail money taken away.

Note to counsellor:

Intimidation tactics can be frightening for the survivor, because during the rape, the rapist managed to overpower and violate the survivor. The damage caused by this is psychological and spiritual as well as physical. Survivors might believe that the rapist will be able to continue to control her.

It might help for the counsellor to reflect to the survivor that in standing up and making a case against the perpetrator she is taking her power back. The potential consequences of the trial are serious for the perpetrator and he is now fighting for his freedom. One of the ways that he will do this is to make the survivor believe that he still has control over her and the case and that he is able to cause the same pain to her as he caused when he raped her.

WITNESS PROTECTION

Some perpetrators may threaten the life or safety of the survivor or her family members. In the majority of these cases, the perpetrator does not follow through on his threats. However, there are cases where they have done so. The fear experienced by the survivor is based on the experience of the rape where the perpetrator did carry out his threats. It is therefore important to always take these threats seriously.

Unfortunately, the options available to rape survivors in this position are very limited. Although the state currently runs a Witness Protection Programme, this programme is not always effective in addressing the needs of rape survivors. To enter the programme the survivor must be prepared to move to a new town and must agree not to make any contact with the

people who support her. This means that she is cut off from the majority of her family and friends who form a crucial support system in the time after the rape. The Witness Protection Programme is, however, still an important resource to consider if the survivor's life is at risk. To find out more about witness protection speak to the investigating officer or the prosecutor handling the case.

Another option available to a survivor who is being threatened is to move to a place where the perpetrator does not know where she is, such as with friends or extended family living in a different area. Some community shelters (for example, shelters for abused women) may also be able to help.

The survivor might decide that the best way to protect herself is to drop the case against the perpetrator. If she chooses this she may feel that the perpetrator is still controlling her. It is important to respect her decision and to assist her in whatever way possible to make informed decisions.

CORRUPTION

The current crime situation in the country is extremely serious. Organised crime is rife. For organised crime and serious criminals to succeed they often enlist corrupt members of the CJS to assist them in destroying cases through contaminating or losing evidence.

Due to the general mistrust of rape survivors by society and the inaccessibility of the CJS, the survivor may feel that she is fighting alone against the whole system as well as the perpetrator. Her lack of faith in the CJS may lead her to suspect corruption. Accurate information about the procedures of the CJS may help to dispel these concerns.

When corruption is taking place it is very difficult to prove. Corrupt activities generally take place in secret and so are not witnessed by anybody. The suspicion of corruption is often explained away as paranoia or as an innocent mistake by the official.

Where survivors disclose concerns of corruption it is important to gather as much factual information about the suspected corruption as possible. While there is no guarantee that the corrupt officials will be caught and the damage to the case set right again, these suspicions must be brought to the attention of the Independent Complaints Directorate (ICD) who will decide whether or not to investigate the matter further.

In the event of evidence being lost, contaminated or destroyed, it is possible that the Director of Public Prosecutions (DPP) will decide not to prosecute the rape case due to a lack of evidence to support the charge. The DPP will only be able to continue with the case if the lost evidence can be recovered or collected again (for example, by retaking of statements) or if new evidence supporting the charges comes out.

Note to counsellor:

When corruption leads to evidence going missing it can be shocking and frustrating to the survivor who has already shown so much courage in taking the case as far as she has, and may lead to an overwhelming sense of helplessness in the face of the rapist. In this situation these aspects must be addressed in counselling to assist the survivor to cope with this.

SPECIALISED SEXUAL OFFENCE COURTS

Because sexual offences are such difficult cases for the state to prove, specialised Sexual Offence courts (SOCs) have been established at many of the regional courts. These courts hear only sexual offence cases. The prosecutors in these courts should have special training in understanding and prosecuting sexual offence cases. These courts also have special facilities such as separate waiting rooms for witnesses and special evidence rooms and equipment for child witnesses. Most of the sexual offence courts are currently situated in urban areas and only cases that happen in an area that is covered by the SOC's jurisdiction will be heard there.

PROTECTION OF WITNESSES WHILE GIVING EVIDENCE

Protective measures for adult witnesses:

There is a legal provision that allows an adult witness under certain circumstances to give their evidence in another room using a **closed circuit television system** (CCTV). The way that this legal rule is written puts a number of barriers in the way of using CCTV and as a result of this magistrates very seldom allow its use.

At this point in time the CCTV system is hardly used at all. It is important that you do not get the survivor's hopes up that she will be able to use CCTV. The court will only allow it to be used in exceptional cases. In the majority of cases the complainant will have to give her evidence in the courtroom.

It is worthwhile to ask the prosecutor to consider asking the magistrate to use this system and to explain to the prosecutor why this is important and will be helpful. Even if the prosecutor

does not apply or if the magistrate does not allow it, they will start to be more educated about the difficulties experienced by survivors in testifying in court.

If the prosecutor does want to apply to the magistrate to use the CCTV system for the survivor, the counsellor might be asked to write a report or give evidence to the court about why this system would help the survivor to tell the court what happened to her.

Note to counsellor:

The fear of facing and speaking in the presence of the accused is great for many survivors. The prospect of being spared this by using the CCTV system would come as a great relief for many. To discover on the day of the trial that she must testify in court can be extremely disempowering for the survivor. It is better that she is fully prepared for giving her evidence in the courtroom.

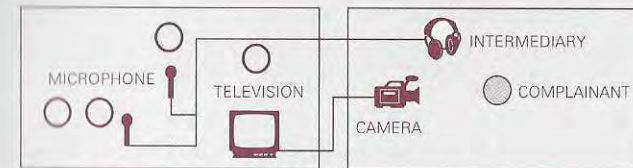
If the accused does not have a lawyer, he will be entitled to put his questions to the survivor himself. This means that even where the CCTV system is used, the voice she will hear cross-examining her will be that of the accused. It is important that she should also be prepared to deal with this possibility.

Protective measures for child witnesses:

When the survivor is under the age of 18, the prosecutor may apply that the **intermediary system** is used when the survivor gives her evidence. This means that the survivor will be in a separate room and the CCTV system will be used. A person (usually a social worker) will also act as an intermediary. The intermediary will wear headphones and listen to what is being

said in court. (The survivor does not directly hear the questions put by the prosecutor, defence attorney or magistrate.) The intermediary will then convey the question to the survivor whose answer will then be viewed and heard by the court via the CCTV system.

The intermediary system is not used automatically in all cases, and the prosecutor must apply to the magistrate to allow the use of this system. The magistrate has the power to decide whether or not the system should be used.



WHEN CAN A COUNSELLOR BE CALLED TO GIVE EVIDENCE?

The counsellor can be called to give evidence at different stages during the criminal trial. These are –

- Before sentencing (where the accused has been found guilty and the magistrate has to decide on his sentence). The counsellor may then be called to give evidence about the emotional impact of the rape on the survivor.
- Where the court has to decide whether or not to make use of the CCTV system or the intermediary system (if the survivor is under the age of 18 years). As explained above, there are certain ‘tests’ that the court must use to decide whether to use these protective measures, and some of the aspects that the court must consider include the emotional state of the survivor and how she would respond to giving evidence in the presence of the accused. The

counsellor can often provide important information on these aspects.

- It is also possible for the counselor to be called to give evidence during the 'main' stage of the trial (where the court determines whether or not the accused is guilty). However, this is very unusual.
- Alternatively the counsellor may be asked to write a report only without actually having to testify.



Important information:

As a general rule, it will always be the prosecutor who calls the counsellor to give evidence. It is crucial for the counsellor to meet with the prosecutor beforehand and to discuss the questions that she will be asked. It is also important to discuss the issue of confidentiality of counselling records, since defence lawyers occasionally ask counsellors questions about these records and may even ask the court to order the counsellor to bring these records to court. It is essential to discuss such a defence request thoroughly with the prosecutor as well as your organization before bringing confidential records to court.

APPEAL AGAINST THE OUTCOME OF THE CASE

It is not possible for the survivor to appeal against the outcome of the case. This is because a criminal case is between the prosecution ('the state') and the accused, and not between the survivor and the accused. This means that only the accused and the prosecutor can appeal if they disagree with the outcome of the case.

At present, the prosecutor can't appeal against a finding that the accused is not guilty. The prosecutor can only appeal against the sentence (in other words, where the accused has been found guilty, but the prosecutor believes that the sentence given by the court is too light). At the same time, the accused can appeal both against a finding that he is guilty and against his sentence.

Note to counsellor:

Clearly this is very unfair to the survivor. Ask her how she feels about this and offer support and counselling to her if it is necessary.

MAKING A CIVIL CASE AGAINST THE RAPIST

In addition to laying criminal charges with the police, the survivor can also choose to sue the perpetrator in the civil court (regardless of whether or not the criminal court has found him guilty). In a civil case it is easier for someone to be held responsible for their actions as the basic principle is that the magistrate's decision will be based on a '*balance of probabilities*'. This is easier to prove than the proving your case '*beyond a reasonable doubt*'.

If the civil court finds the rapist to be responsible, he will not go to prison but will have to pay money to the survivor. It is therefore pointless to sue a rapist if he does not have any money or other property.

In order to make a civil case, the survivor must hire a lawyer, which usually costs a lot of money. This means that this course of action is not open to many South African women.

Note to counsellor:

DEALING WITH ANXIETY

This section was written by Kathleen Dey, Counselling Coordinator, Rape Crisis Cape Town.

Anxiety is a constant battle for survivors facing trial and this is where counselling before the trial plays an important role.

As a counsellor you can use all of this wisdom to help the survivor but you will also need to deal very specifically with the anxiety relating to the trial. Together you need to work on strategies for coping with panic without making it worse. The following suggestions have been useful for survivors in the past:

- Rescue Remedy – an alternative homeopathic remedy for panic with no harmful side effects. Drops are taken in a glass of water. (Available at most chemists).
- Beta Blockers – a prescribed medication used to treat high blood pressure that has side effects taking away the physical response to anxiety. They stop the heart racing, trembling, sweaty palmed, nervous stomach feelings that make anxiety worse. A doctor's prescription is needed, so this has to be arranged in advance.
- Give the survivor something to hold in her hand to focus on in court, such as a semi-precious stone or a worry bead. Any small object that symbolises support and care can be a tangible reminder when she is alone giving her evidence.
- Advise her to ignore the accused completely and to face only the prosecutor or the magistrate. When speaking in court and answering the questions of the defence she

can turn her body to face the front of the court. She may prefer to look steadily at the accused or his defense attorney with contempt.

- She may request water in court, if this is available. Remind her to take small sips as needed to beat dryness of the mouth.
- Let her know that it is okay to break down in court if that is what she needs to do, as it can show the magistrate the very real and immediate way how the rape has affected her. (She should not be coached to cry – simply tell her that she should not worry about trying to appear a certain way in court)
- Help her to realistically evaluate her expectations and to focus on her own achievable goals for appearing in court.
- Reassure her that she has all the information she needs through the court preparation and that she is as ready to do this as she will ever be. (Be careful not to make it sound like it will be easy because it won't be. Rather reflect on her strengths and the experiences that she has survived to illustrate her courage up to this time – let her know that you believe in her.)
- Let her know that there are people at your organisation who believe in her and will be thinking of her and wishing her well through this process.

In addition to this there are readings that you can give to her if she is the kind of person who finds reading useful. See page 110.

Section Five: Resources

COURT CHECKLIST

Date of trial: _____

Court and courtroom: _____

Prosecutor: _____

Telephone number at court: _____

Before going to court:

1. Write out a list of all of the areas of your life that have changed since the incident. Include different aspects such as emotional changes or practical changes. The purpose of this is to give the court an idea of how the rape has affected you.
2. Try to arrange a meeting with the prosecutor before the trial. The detective in your case or your counsellor can help you with this if necessary.

When you meet with the prosecutor:

1. Before going to court to meet the prosecutor, read through your statement and make a note if anything is not correct or was left out of the statement. Write this down. Explain why it is not correct. Give this to the prosecutor at the consultation before the trial.
2. Ask the prosecutor to show you the courtroom and where you and everyone else will be sitting so that you can get an idea of what the room looks and feels like.
3. Ask the prosecutor if you can give your evidence to the court in a 'closed court' (which means the public will be

asked to leave). Remember that you can ask to have someone who supports you in the courtroom such as a counsellor or a family member. You can also ask the prosecutor to ask the magistrate to use the closed-circuit TV system (which means that you could be allowed to testify in a room separate from the courtroom where the accused is).

On the day of the trial:

1. When you arrive at court ask if there is a separate waiting room for witnesses that you can sit in. If there is no special room at the court ask if there is another place that you can wait that will help you to avoid seeing the accused and his supporters before the trial starts. Make sure that the prosecutor knows where to find you for the trial.
2. Remember that you can ask for financial assistance to cover your transport costs for traveling to court. You can also ask for a note to confirm that you were at court if you need this for your work. Speak to the prosecutor or the court orderly to arrange this.

Remember these things when you are testifying:

- Always tell the truth
- If you are unsure of a question ask for it to be repeated
- If you need to take a break, ask for one
- Try to turn your back on the accused and face the magistrate
- Take a token to hold in your hand to remind you of a safe place and of people who love and believe in you.

Notes:

PRE-TRIAL CONSULTATION RECORD RAPE CRISIS, CAPE TOWN

This information is confidential and may only be accessed by members of Rape Crisis, Cape Town, with the client's consent

The counsellor must fill in this document before referring her client for pre-trial consultation.

Name of pre-trial advisor: _____

A. CLIENT INFORMATION:

Brief evaluation of your client's current emotional state and feelings regarding the trial:

Briefly describe the details of the rape incident (who, where etc) and any other information that may be important to the case:

B. POLICE AND MEDICAL INFORMATION:

Police station: _____ IO: _____

CAS # : _____

DS/state doctor? Yes No

Copy of statement attached? Yes No

Copy of J88 attached? Yes No

Other documents attached? Specify: _____

C. COURT INFORMATION:

Date of trial: _____ Which court?
 District Regional High court

Court room # : _____ Name of prosecutor _____

Has a consultation with prosecutor been arranged? Yes No
When? _____

Number of accused: _____ Name/s of accused: _____

Does the accused have a lawyer? Yes No

Was bail granted? Yes No

Has accused had any contact with complainant since the attack?
 Yes No

If yes, describe:

Did the complainant take any steps against the accused subsequent to this contact (e.g., by contacting the police)? If yes, describe.

D. POSTPONEMENTS OF THE TRIAL:

Is this the first trial date? Yes No

If no, describe any postponements to the case include dates and reasons given for postponing.

E. THE TRIAL:

The accused's plea: Guilty Not guilty
 Defence argument/s: _____

Is a report required from the counsellor? Yes No
 (if yes attach a copy of report)

Is counsellor required to testify in court? Yes No

Was case heard *in camera*? Yes No

Intermediary system Yes No

Other protective measures (e.g. closed-circuit TV):

Did complainant give evidence re the effects of the incident on her life? Yes No

F. OUTCOME OF THE TRIAL:

Guilty Not guilty Other

Specify other: _____

Sentence:

G. COMPLAINANT'S GENERAL COMMENTS ABOUT THE CRIMINAL JUSTICE SYSTEM:

CONTACT NUMBERS

Organisations working in the field of violence against women who offer legal advice and support.

Rape Crisis Cape Town Trust

Telephone: (021) 447 1467 Fax: (021) 447 5458
 (021) 633 9229 Fax: (021) 637 9432
 (021) 361 9228 Fax: (021) 361 0529

POWA

Telephone: (011) 642 4345 Fax: (011) 484 3195

Tswaranang Legal Advocacy Centre

Telephone: (011) 403 4267 Fax: (011) 403 4275

Regional Networks on Violence Against Women

The regional network office in your region will be able to give you contact details for and information on counselling and related services in the region.

National:	Tel: (012) 348 1231	Fax: (012) 3481235
Eastern Cape:	Tel: (040) 654 0200	Fax: (040) 654 1221
Free State:	Tel: (051) 447 6898	Fax: (051) 447 6694
Gauteng:	Tel: (011) 838 0411	Fax: (011) 838 7043
KwaZulu Natal:	Tel: (031) 304 6928	Fax: (031) 304 6928
Limpopo:	Tel: (015) 295 7393	Fax: (015) 295 7393
Mpumalanga:	Tel: (013) 947 3907	Fax: (013) 947 2773
Northern Cape:	Tel: (053) 831 4856	Fax: (053) 831 4856
North West:	Tel: (018) 464 3202	Fax: (018) 464 3653
Western Cape:	Tel: (021) 633 5287	Fax: (021) 637 0785

COMPLAINTS ABOUT MEMBERS OF THE CRIMINAL JUSTICE SYSTEM

Police:

Concerns regarding the conduct of a police official should be directed to the station commissioner of that police station. The telephone numbers for all police stations can be found in the blue pages at the back of the Telkom telephone directory.

Complaints should be directed to the Station Commissioner, the Independent Complaints Directorate (ICD) and the SAPS provincial commissioner in the province. Write down the exact nature of your complaint including all details about the case.

The Independent Complaints Directorate (ICD)

The ICD is an independent body that has been established to address complaints that are made against SAPS members.

National	Tel: (012) 320 0431	Fax: (012) 320 3116
Eastern Cape	Tel: (0436) 42 1667	Fax: (0436) 43 3615
Free State	Tel: (051) 430 8100	Fax: (051) 430 8852
Gauteng:	Tel: (011) 838 2875	Fax: (011) 834 2118
KwaZulu Natal	Tel: (031) 305 8370	Fax: (031) 305 8214
Limpopo:	Tel: (015) 295 5561	Fax: (015) 295 3409
Mpumalanga:	Tel: (013) 752 4316	Fax: (013) 752 2602
Northern Cape	Tel: (053) 831 7390	Fax: (053) 832 5615
North West	Tel: (018) 381 1154	Fax: (018) 381 1495
Western Cape	Tel: (021) 426 0700	Fax: (021) 426 0705

SAPS Provincial Management

National	Tel: (012) 393 1000	
Eastern Cape	Tel: (040) 608 8414	Fax: (040) 608 8416
Free State	Tel: (051) 507 6000	Fax: (051) 507 6500
Gauteng:	Tel: (011) 407 0000	Fax: (011) 407 0436

KwaZulu Natal	Tel: (035) 874 2782	Fax: (035) 874 2781
Limpopo:	Tel: (015) 291 2945	Fax: (015) 295 8979
Mpumalanga:	Tel: (013) 249 1111	Fax: (013) 249 1026
Northern Cape	Tel: (053) 838 4204	Fax: (053) 833 1275
North West	Tel: (018) 299 7000	Fax: (018) 299 7002
Western Cape	Tel: (021) 483 3871	Fax: (021) 483 3874

Prosecutors

Queries about a specific case should be directed to the senior state prosecutor at the court at which the matter is to be heard. Complaints about the case or about decisions made by the prosecutor should be made to the relevant regional director of public prosecutions. It is best for the complaint to be made in writing.

NATIONAL	Tel: (012) 845 6000	Fax: (012) 421 0797
EASTERN CAPE		
Grahamstown:	Tel: (046) 603 4400	Fax: (046) 622 4693
Port Elizabeth:	Tel: (041) 542 1400	Fax: (041) 586 0807
FREE STATE		
Bloemfontein:	Tel: (051) 447 2704	Fax: (051) 448 2671
GAUTENG		
Johannesburg:	Tel: (011) 333 9000	Fax: (011) 337 8190
Pretoria:	Tel: (012) 401 9000	Fax: (012) 323 0866
KWAZULU NATAL		
Durban:	Tel: (031) 365 2561	Fax: (031) 304 4466
Pietermaritzburg	Tel: (033) 845 4410	Fax: (033) 394 6891
NORTHERN CAPE		
Kimberly:	Tel: (053) 807 4500	Fax: (053) 832 9434
WESTERN CAPE		
Cape Town:	Tel: (021) 481 2100	Fax: (021) 424 7825

READING LIST

Counsellors might find the information in *The Courage to Heal: A Guide for Survivors of Child Sexual Abuse* (pages 201-215) helpful in assisting the survivor with issues of anxiety before the trial. Although it is a book for survivors of childhood abuse, much of its wisdom is useful for adult and teenage rape survivors, and the information will be helpful when counseling someone who is approaching a court case.

Reference: E Bass and L Davis. 1994. *The Courage to Heal: A Guide for Survivors of Child Sexual Abuse*. (Harper Perennial: New York).

The *National Legal Manual for Counsellors of Raped and Battered Women* compiled by the Tshwaranang Legal Advocacy Centre also has many useful chapters.

Reference: J Fedler (ed). 1999. *National Legal Manual Counsellors of Raped and Battered Women*. (Tshwaranang Legal Advocacy Centre: Braamfontein).

