



The Criminal Justice Process from Charge to Sentencing

The Steps

1. Call to police
2. Investigation/Complainant's Statement
3. Charges Laid – Mandatory Charging
4. Victim Witness Services
5. Arrest or Release
6. Bail
7. First Appearance
8. Crown Screening & Vetting
9. Crown Resolution Meetings, "Plea Bargains"
10. Preliminary Inquiry and/or Trial
11. Testifying and Cross-Examination
12. Standard of Proof
13. Sentencing
14. Victim Impact Statement

The RCMP Respond to a Call

RCMP are called and attend Mary and Jill's homes.

- Officer will speak to the person reporting the crime, the victim (if not the person who reported)
- Officer will take enough information to complete a police report
- Officer will assist the complainant in getting the medical attention he/she may need or, if it is a sexual assault, to a specialized sexual assault unit in hospital



The Complainant's Statement

• Investigator will interview the Complainant (the person reporting the crime) and all other persons who may have knowledge about the incident. In most cases, the complainant will be required to give a videotaped statement, under oath or affirmation, describing what has happened. This is called a "KGB videotaped statement."



- Investigator will interview the person accused of committing the crime where possible
- Investigator will try to gather as much evidence as possible from the scene of the crime
- Investigators should be made aware of any items or documents that might be of help to the police investigation as soon as possible such as a weapon; for e.g. clothing, physical injuries, damage to property (cut telephone cords), etc.

Will the police lay charges?

- Once a police officer has thoroughly investigated a complaint, the officer then has to decide whether or not there is enough evidence to lay a criminal charge against an individual(s). The decision whether to lay a charge rests solely with the police and not with the complainant. Their views may be taken into account by the officer, but their opinion is not definitive.
- The test that the officer has to apply is: *whether or not the officer has reasonable and probable grounds that an offence has been committed.*



Mandatory Charging Policy

- RCMP members are required to lay charges in all cases where there was believed to be an assault against a spouse.
- Every complaint of violence in relationships must be investigated and documented.
- The RCMP protocol for intervening in spousal assault cases is to arrest the person who is believed to have assaulted their partner.
- When this person is released, the RCMP is to contact the partner and tell them under which conditions the abusive person is released.
- By following this policy, the goals are to:
 - 1) remove responsibility (and blame) for the decision to lay charges from the victim,
 - 2) increase the number of charges laid in spousal abuse cases,
 - 3) increase the reporting of incidents in spousal abuse cases,
 - 4) promote victim co-operation in the prosecution of cases.
 - 5) reduce re-offending
- From: Supporting Northern Women – A Northwest Territories Family Violence Shelter Worker Training Program (June 2010)

Pros and Cons of Mandatory Charging

- Whether or not these goals are met is a topic that is debated by many. While the mandatory charge policy does send a strong message about the unacceptable nature of violence in intimate partner relationships, there are pros and cons about its use.
- **Pros:**
- It takes the responsibility off the victim when it comes to having to press charges
- It sends a message to the offender that it is unacceptable to abuse their partner
- It provides the police with the ability to remove the offender from the home to protect the victim from further harm at that time

Pros and Cons of Mandatory Charging

- **Cons:**
- If it is not clear what happened, or if the offender has evidence that he was also assaulted in some way (which commonly happens when the victim tries to protect themselves), it is possible that the victim may also be charged. If the police does not lay charges for some reason, it sends a message to the victim and the offender that whatever happened is 'ok'
- The victim may feel the need to 'prove' to her partner that she does not want the charges to be laid so she may become resistant or volatile with the police, which can be difficult for the police to understand
- The victim 'loses control' of the legal process because charges may be laid and he may be prosecuted regardless of what her wishes are
- Victims may be less likely to report violence to the police if they are afraid that their partner will end up in jail

Common Domestic Violence Offences

- • assault
- • assault causing bodily harm
- • sexual assault
- • sexual assault causing bodily harm
- • assault/sexual assault with a weapon
- • criminal harassment (sometimes called "stalking")
- • uttering threats
- • mischief
- • intimidation
- • forcible confinement
- • attempted murder
- • murder

Violation of a protective court order, such as a peace bond or a protection order can also result in charges.

Who is Mary Referred to?: Victim Services

- Victim Services will provide information on and assistance with:
 - The Criminal Court Process
 - Being a Witness
 - Contacting the RCMP
 - Preparing Victim Impact Statements
 - Emergency Funding
 - Referrals to other agencies

Jack & John Are Charged: Now What? Release without Arrest

- Once a police officer has decided to charge an individual with a criminal offence, they can arrest them and take them into custody.
- However not all people who are charged end up being arrested.
- Depending on who is releasing the person charged they may be released on:
 - A *Summons to appear in Court at a later date*
 - A *“promise to appear”, “recognizance” or “undertaking” to appear in Court*
- In most cases, a promise to appear is followed by an undertaking which contains conditions which protect the complainant, such as no-contact; and non-attendance at their place of residence/schooling/employment.
- Undertaking to officers-in-charge can also contain a prohibition against weapons and/or drugs.

Considerations for Release/Conditions for Release ODARA (Ontario Domestic Assault Risk Assessment)

- Score each item 1 or 0
- 1. Prior domestic assault (against a partner or the children) in police records
- 2. Prior nondomestic assault (against any person other than a partner or the children) in police records
- 3. Prior sentence for a term of 30 days or more
- 4. Failure on prior conditional release; bail, parole, probation, no-contact order
- 5. Threat to harm or kill anyone during index incident
- 6. Confinement of victim during index incident
- 7. Victim fears (is concerned about) future assault
- 8. More than one child altogether
- 9. Victim has a biological child from a previous partner
- 10. Violence against others (to any person other than a partner or the children)
- 11. More than one indicator of substance abuse problem: alcohol at index, drugs at index, prior drugs or alcohol, increased drugs or alcohol, more angry or violent, prior offence, alcohol problem, drug problem
- 12. Assault on the victim when she was pregnant
- 13. Victim faces at least one barrier to support: children, no phone, no access to transportation, geographical isolation, alcohol/drug consumption or problem
- Raw total (sum of items scored 1)
- Adjusted Score (see Table Adjusted scores for assessments with missing information)

- Who uses the ODARA?
 - • RCMP officers
 - • Crown attorneys
 - • Shelter workers
 - • Victim services workers
 - • Health care professionals
 - • Social workers
- When can the ODARA be used?
 - • Police investigations
 - • Bail hearings
 - • Court process
 - • Safety planning with victims

John is Arrested: Now What? Detention & Bail

- John is arrested and brought to the police station.
- He has to be taken before a Justice of Peace within 24 hours following his arrest. The reality, however, is that it can take days before the person can be brought before a bail court.
- When an accused is taken into custody and held for court, the Crown can either;
 - agree to release the accused either with or without a surety and with conditions OR;
 - the Crown can oppose the release of the accused from jail.
- A surety is someone who will act as the accused's "jailor" in the community.

The Bail process

If the Crown opposes bail, then a bail hearing is held. At that stage, the Crown reads in the evidence collected so far in the investigation. The complainant is not called as a witness on this procedure by the Crown.

The Crown also files the criminal record, if any, of the accused and any prior relevant occurrences or knowledge that the police have about this accused.

At this stage, input from the complainant is crucial. Victim witness workers will normally contact the complainant once an accused has been arrested and brought into bail Court to obtain their views on the charge/arrest.

While a Crown always has to consider the views of the complainant, their views are not determinative of whether or not the Crown will oppose/agree to the bail of the accused.

Moreover, a complainant cannot normally be a surety for the accused.

The Bail process (cont'd)

A Justice of the Peace (not a Judge) normally determines the issue of bail. The issues to be decided are:

- i) whether or not the accused will attend Court (or flee) (*the primary ground*)
- ii) whether or not the accused, if released, will commit further offences or interfere with the administration of justice (*the secondary ground*); and
- iii) whether the public's confidence in the administration of justice would be eroded if the accused were to be released (*the tertiary ground*)

In most cases, the onus is on the Crown to establish that the accused should be detained. However, in certain cases, called "reverse onus situations" (for e.g. in cases where the accused is already out on bail), the onus shifts to the accused to show cause why he/she should be released.

Common Bail Conditions

- Common conditions for bail or other forms of release (like an undertaking) in spousal violence cases include:
 - No communication or contact with complainant (or child if the child is a victim)
 - Required to stay a certain distance from complainant's home or family home, place of employment, school
 - If there are children, restrictions on access
 - No use of alcohol or drugs
 - No possession of weapons
 - Could include a prohibition on using a cell phone
 - Keep the peace and be of good behaviour
- If the accused is ordered detained, a J.P. can order that the accused not communicate with any victim or witness while in custody. (s. 515(12) of the *Criminal Code*).

“First Appearance”

John is released on bail with conditions.

He will be required to attend court for a “first appearance” within 4-6 weeks following release.

Crown Screening and Vetting

- In the meantime.....A Crown will review the police brief.
- Vetting means taking out any personal information about the complainant and/or witnesses, for e.g. addresses/phone numbers and other confidential information.
- Screening means reviewing the charge and determining
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 - i) if the charge should proceed;
 - ii) whether diversion is more appropriate;
 - ii) if the correct charges are laid;
 - iii) if further investigation needs to be done;
 - iv) how the Crown elects to prosecute the matter;
 - v) gives a preliminary sentencing position.

“Diversion” and “Peace Bonds”

- “Diversion” is an alternative to a criminal charge and conviction.
- One form of post-charge diversion is that of a peace bond.
- A peace bond is an Order of the Court that requires an accused person to keep the peace and be of good behaviour for the maximum period of 1 year. The person has to post a bond of \$500.00 to pledge compliance. The peace bond can have minimal terms such as:
 - No contact;
 - Not to attend a place of residence
 - Not to possess weapons.
 - However, normally terms that would require supervision, i.e. “attend and actively participate in treatment” would not be a term of a peace bond as it would require some kind of supervision.
- Peace Bonds can either be
 - a) common law or
 - b) pursuant to s. 810 of the Criminal Code (if there are “reasonable grounds” to fear that the person charged will cause injury to the woman and/or her child/family)
- It is a criminal offence to breach a s.810 peace bond.

What happens at John's "First Appearance" in Court?

- The question the Court wants to know is whether John plans to plead guilty or not guilty.
- If he pleads guilty, he is "**arraigned**" on his charges and enters a plea of guilty. Sentencing may proceed on that day, or be adjourned to another day to obtain victim input or a pre-sentence report (to be discussed later).
- However, most accused "**remand**" or "**adjourn**" the matter for a month or two to review the file (the Crown "**disclosure**") with their lawyer and decide what to do. If that is the case, then the accused is given a remand date, a month or so down the road.

Crown Resolution Meeting/Plea Bargains

- Before a trial date is set, the Crown and the lawyer for John will meet.
- They will talk about the strengths and weaknesses of the case and the possibility of an agreement on charges and sentence ("joint submission") if John agrees to plead guilty ("plea bargain" or "plea resolution").
- Neither the man (John/accused) or woman (Mary/complainant) are part of these discussions.
- Through Victim Services, the Crown should get input from the woman/Mary before the Crown Resolution Meeting and inform Mary about the results of the meeting afterward, but this doesn't always happen.
- Even if the woman has given input, it is ultimately the Crown's decision how to proceed
- If the Crown and defence don't come to an agreement, a trial date will be set on the next appearance in Court

Why are there plea bargains?

- Plea bargains may be in everyone's interest, as long as the outcome is a just one.
 - The victim will not have to testify at court.
 - The government does not have to pay for a long and expensive trial.
 - The accused can start serving the sentence right away.

John Pleads "Not Guilty": Preliminary Inquiry and/or Trial

- **Not Guilty Plea**
 - Trial date or preliminary hearing date is set. Normally these dates are approximately 6 months down the road.
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 - **Preliminary Inquiry**
 - The purpose of a preliminary hearing is to see if the Crown has enough evidence to justify sending the case to trial. It also gives accused and the defence lawyer a chance to hear the details of the case against the accused. Defence counsel will cross-examine the complainant.
- If there is enough evidence presented by the Crown, the judge will send the accused to trial ("commit the accused for trial"). A trial date will THEN be set for another 6 – 8 months down the road.
- **Does the victim need to testify?**
 - Yes, most often, the victim and other witnesses will have to testify at the preliminary hearing. If the judge sends the accused to trial, the witnesses will likely have to testify again at the trial.
 - If there is a preliminary inquiry, it means that the woman will need to testify twice and will be cross examined twice.
 - This is an intimidating and difficult process. It is important that a woman be prepared to give testimony.

Mary tries to change her mind
“Recanting” Witnesses

- What happens if as the trial gets closer, Mary decides that she doesn’t want to testify against John.
- She may not want to testify for a variety of reasons:
 - She’s scared that John will punish her or “come after” her if he’s acquitted or after he’s released;
 - She loves him and wants to reconcile;
 - She just wants the violence to stop but doesn’t want John to lose his job, go to jail, or have a criminal record

- What should Mary do?
- Mary should speak to Victim Services and the Crown
- Mary should know that she can be “compelled” to testify and can be arrested if she fails to appear
- Crown can rely on Mary’s videotaped statement if she gave one

Preparing to Testify and Testifying

- “Testifying” means telling your story in Court, “under oath”, in front of the Judge, Crown, accused and his lawyer (“defence counsel”)
- Courtprep.ca is a good website to see what court looks like and for tips on preparing
- Testifying is stressful and intimidating – important to have a support person attend trial with you
- “Defence counsel” will ask questions to raise doubts about your story
- You will be “excluded” from Court until you testify
- The accused is not required to testify and often does not testify

Who represents the woman in the criminal trial process?

- Victim witness services provides support and information but does not represent the woman
- The Crown is the lawyer for the government/public interest, not the woman
- Except where the accused is attempting to obtain a woman’s private records (eg. medical, counselling, etc.), she has no right (standing) to be separately represented in a criminal trial.

Burden of Proof “Conviction” or “Acquittal”

The Judge or Jury will consider the evidence and decide whether they are convinced **“beyond a reasonable doubt”** that John is guilty of the offence charged.

This is a very high “burden” or “standard” of “proof”

If they are convinced “beyond a reasonable doubt”, John will be “found guilty” or “convicted”.

If they are not convinced that the evidence meets this high test, John will be found “not guilty” or “acquitted”

Sentencing

- If the accused is found "guilty" the judge must choose from a range of sentences set by law and decide on the appropriate sentence.
- The judge will consider:
 - the circumstances of the crime
 - the offender’s criminal record
 - the offender’s personal history
 - the impact of the crime on the victim (and any “Victim Impact Statement”)
 - the amount of responsibility that is taken by the offender
 - Any “Pre-Sentence Report”
 - If the offender is Aboriginal, “*Gladue*” considerations under s.718.2(e) – the judge has a duty to consider all options other than jail
 - In some communities the judge conducts a sentencing circle

Victim Impact Statement

- A woman who has experienced violence may wish to prepare a “victim impact statement”: to tell the court about the impact the violence has had on her and her family
- She can file a statement but is not required to
- Victim Services can help her with the statement
- The judge is required to consider the content of the statement in sentencing
- She can be cross examined on the statement

Pre-Sentence Report

Often a pre-sentence report will be prepared by the probation officer.

It will contain information on the offender's:

- Mental health history
- Access to weapons
- Drug/alcohol history
- Plans for the future
- If the offender is Aboriginal, the *Gladue* considerations may be in the PSR or in a separate *Gladue* report. These considerations include whether the offender:
 - attended residential school or is the child of parents or grandparents who attended residential school;
 - grew up in a home with abuse or addictions;
 - was in the child welfare system;
 - and the community and other options and resources

The woman should have the opportunity to provide information and her views and concerns in this process

Types of Sentences

- An *absolute discharge*. This means he or she will not be punished.
- A *conditional discharge*, which means he or she will have to fulfil certain conditions for a period of time. This is instead of a prison term or other punishment.
- To pay a *fine* up to many thousand dollars. The government will collect and keep this money, not the victim.
- Pay money or *restitution* to a victim for any injuries or to replace any property that was taken or damaged.
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- A release on *probation* for a period of time. The offender is to be of good behaviour and tell the probation officer or youth worker of any changes of address, school or work. There may be special conditions that he/she needs to follow. Contact or no contact with the complainant may be a term in a probation order.

Types of Sentences

- A *conditional* sentence where the accused serves time (less than two years) under supervision in the community along with certain conditions instead of jail.
- Imprisonment or *jail*. This is the most serious sentence because it takes away a person's freedom. An offender who is sentenced to jail for less than two years will stay in a provincial correctional institution and may be on *probation* after that time. The offender will have to follow certain rules and report to a probation officer regularly.
- An offender sentenced to two years or more serves the time in a federal penitentiary. After serving at least one third of the sentence, an offender can ask for *parole*. Parole allows the offender out of jail, with strict rules and supervision before the sentence is completed. An offender on parole who does not follow the rules may be returned to jail.
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- An *intermittent* sentence where the offender will go to jail for blocks of time such as every weekend.
- A person who commits a very violent crime against another person may be declared a *dangerous offender* and sentenced to stay in a federal prison for as long as he or she is considered dangerous. In some cases, this will be indefinitely. A special request and hearing must be held to declare an offender a dangerous offender.

Victims of Crime Emergency Fund

- **OF CRIME EMERGENCY FUND**
- **ELIGIBILITY**
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- This program is designed to help victims of crime with their emergency financial needs. To be eligible for this emergency financial assistance, the following criteria must be met:
- You must be a resident of the NWT
- You must be a victim of a serious violent crime such as homicide/attempted homicide, sexual assault, forcible confinement, assault with serious personal violence (including domestic violence), and any other situation deemed suitable by the Manager of NWT Victim Services
- The serious violent crime must have been committed in the NWT
- Funds are to be spent in the NWT
- There is an immediate need for emergency expenses
- The victim has not received funding from the VCEF for the same offence
- The crime must have happened between September 1, 2008 and March 31, 2016
- You must apply for the funding within two months of the date of the offence
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- It is important to note that if you contributed to your injuries or you were injured while committing a crime, you are not eligible for emergency financial assistance.
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Victims of Crime Emergency Fund

- **ELIGIBLE COSTS AND MAXIMUM AMOUNTS**
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- This program may provide emergency financial assistance to cover costs associated with:
- Short-term immediate counselling
- Crime scene clean-up
- Emergency home repairs for immediate safety
- Emergency accommodation
- Emergency child care and dependent care
- Certain transportation costs
- Medical expenses (eyeglasses, dental care, prescription replacement, etc.)
- Other items considered as emergency needs at the discretion of the Manager, NWT Victim Services
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- The program **cannot cover** the following expenses:
- Lost wages or business income due to time off work
- Pain and suffering
- Injuries covered by the Workers' Safety and Compensation Commission
- Injuries sustained in any event that was not the result of a serious violent crime
- Injuries sustained outside the NWT
- Stolen items/money
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- **Up to a maximum amount of \$1000** may be awarded per client, however, higher amounts may be dispersed depending on the client's needs and location, particularly regarding emergency groceries in smaller communities. When a victim is approved to receive emergency assistance, they choose a vendor of their choice and have the vendor submit their invoices to the Inuvik Justice Committee, one of the organizations which sponsor victim services. This is to ensure that the money is spent on the emergency items. The only exception to this is in Yellowknife, where the program may provide victims with grocery cards and Wal-Mart cards in some cases.

