



**YWCA**  
C A N A D A

A TURNING POINT  
FOR WOMEN

UN POINT TOURNANT  
POUR LES FEMMES

# **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 Services Unit
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

# Police Respond to a Call

- 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



# Investigation & 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.

# Investigation

## What happens for crimes like a sexual or physical assault?

- After reporting to police, the complainant/victim of crimes such as a sexual assault may be:
  - Interviewed by a specially trained investigator. These interviews normally take place at the police detachment, where videotape facilities are available. If the interview takes place in a hospital setting, the interaction will normally be recorded by way of either videotape (if available) or audio-tape.
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- The victim of a sexual assault also becomes a part of the crime scene. Ideally, the police will be able to obtain evidence from the victim. This can be done by doctors and nurses at a hospital emergency department or a Sexual Assault Care Centre. Evidence gathered at the hospital by the doctor and nurse examining the complainant may include:
  - Making notes about any injuries
  - Taking photographs of injuries
  - Collecting physical evidence such as the clothes and medical evidence, such as bodily substances from the complainant

# Will the police lay charges?

- Once a police officer has 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. The officer may also consult a Crown Attorney.
- 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.*



# Pro-Charging Policy

The **Domestic Violence Guidelines for Alberta Police Services** provides that charges should be laid in all domestic violence occurrences where there are reasonable grounds to do so.

It further says that the following factors **should not** be determinant when making the decision to lay a charge(s):

- Marital status/cohabitation of the parties.
- Disposition of previous police calls involving the same victim and suspect.
- Verbal assurances by either party that the violence will cease.
- The officer's concern about reprisals against the victim by the suspect.
- Gender, race, ethnicity, disability, socioeconomic status or occupation of the victim and suspect.
- The officer's belief that the victim will not cooperate.
- Denial by either party that the violence occurred (providing evidence exists to support a charge).

# Mandatory Charging, “Dual Charging” and Charging the “Primary Aggressor”

- The Domestic Violence Guidelines discourage “dual charging” and encourage charging of the “primary aggressor” [other words used for this are “principal excessive aggressor” or “dominant aggressor”]
- Police are encouraged to:
  - • Distinguish assault from defensive self-protection;
  - • Recognize abusive behaviours/characteristics;
  - • Recognize victim behaviours/characteristics;
  - • Determine the context of relationship to assist in identifying abusive partner;
  - • Ascertain injuries consistent with victim;
  - • Establish injuries consistent with abuser.



# Goals of Mandatory Charging

- The goals of mandatory or “pro-charge” policies is 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 or Pro-Charging Policies

- 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

# Problems of Mandatory Charging for Women

- 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 woman (“victim”) may also be charged. If the police do not lay charges for some reason, it sends a message to the victim and the offender that whatever happened is ‘ok’
- The woman 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
- Woman ‘loses control’ of the legal process because charges may be laid and she may be prosecuted regardless of what her wishes are
- Women may be less likely to report violence to the police for protection if they know their partner will be charged and/or jailed. There are many reasons why women may be reluctant to contact police if charges will be laid, including:
  - Risk/Fear of retaliation from the partner
  - Loss of income/support if the man is employed and sent to jail
  - Ostracization/pressure/isolation by family, friends, community

# 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 an emergency protection order, is an offence

# Police Attend – Who is the Woman Referred to? Victim Services Unit

- Victim Services Unit offers:
  - Crisis intervention
  - Emotional support
  - Case specific information (court dates, bail conditions)
  - Court orientation and accompaniment
  - Needs assessment
  - Referrals to community agencies
  - Assist in applications for restitution, financial benefits and other financial benefits

This means VSU **can**:

- Answer questions about the criminal justice system and process
- Help you understand what to expect at each court date and trial
- Provide you with copies of court papers such as bail conditions and probation orders
- Assist you in contacting the Crown attorney or the police officer in charge of your case
- Offer ongoing emotional support through the court process
- Arrange for language interpreters in domestic violence cases and/or accommodate special needs
- Provide information about ways to apply for restitution and other compensation or financial benefits
- Help you understand how to complete a victim impact statement

## VSU cannot:

- Receive or discuss your evidence
- Withdraw charges
- Change bail conditions or conditions of release (e.g. no contact orders)
- Provide for or arrange childcare
- Provide transportation to and from court

# Victim Services and the Context of Aboriginal peoples

The Alberta Domestic Violence Guidelines for police require that:

- “police procedures should recognize the history and circumstances of Aboriginal peoples so that they can deliver culturally sensitive services”.
- procedures should recognize that:
  - O the victim’s resources may be very limited.
  - o their support system may be in the very community in which they live.
  - o Their perpetrator could be an important member of the community.
  - o The perpetrator may have possession of the house.
  - o Suspicion about the justice system may discourage many Aboriginal people from seeing it as an option.
  - o Victims may be reluctant to put a perpetrator in a system that is viewed as racist.
  - o Many victims in cases of spousal violence fear police will take their children.
  - o In some communities culturally appropriate services may be limited or not exist at all. In many instances there are no culturally appropriate services.



# Charge: 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” or “recognizance” to the officer in charge*
- In many 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.
- The Domestic Violence Guidelines for Police Services in Alberta provides that Police should speak to the Complainant before deciding to release

# Considerations for Release/Conditions for Release Risk Assessment - Family Violence Investigation Report

## SUSPECT HISTORY:

### 1. Suspect's Criminal Violence History:

Does the suspect have a history of investigations, charges or convictions for violence and/or sex assaults?      **YES**       **NO**       \*\*\* **Officer's Notes**

### 2. Previous Domestic Violence History:

Is there a history of violence or abusive behaviour in the relationship or with a previous intimate partner?      **YES**       **NO**       \*\*\*

## COMPLAINANT:

### 3. Complainant's Perception of Personal Safety:

Does the complainant believe the suspect will disobey terms of release (e.g. no contact orders)?      **YES**       **NO**       \*\*\*

### 4. Complainant's Perception of Future Violence:

Does the complainant fear further violence if the suspect should be released from custody?      **YES**       **NO**

\*\*\* **What is the basis of victim's fear and what access is there to the victim?**

### 5. Alcohol/Drugs:

Does the suspect have a history of drug or alcohol abuse?      **YES**       **NO**       \*\*\*

### 6. Mental Illness:

Does the suspect have a history of mental illness (e.g. depression or paranoia)?      **YES**       **NO**       \*\*\*

**7. Suicidal Ideation:**

Has the suspect threatened or attempted suicide?

**YES**       **NO**

**\*\*\* If yes, when and how?**

**RELATIONSHIP BACKGROUND**

**RELATIONSHIP:**

**8. Current status of relationship:**

Is there past, recent or pending separation in the relationship?

**YES**       **NO**

**Officer's Notes**

**9. Escalation in Abuse:**

Is there escalation in the frequency/intensity of violence or abuse towards the complainant, family members, a pet or another person?

**YES**       **NO**

**10. Children Exposed**

Are there children under 18 in the home at any time?

**YES**       **NO**

**Children's Services Notified?**

**YES**       **NO**

**Who are the parents and is there a custody dispute?**

**11. Threats**

Has the suspect ever threatened to kill or harm the complainant, a family member, another person, children or a pet?

**YES**       **NO**

**12. Firearms**

Does the suspect have access to firearms? **YES**  **NO**

**13. Use of Firearms and Other Weapons:**

Has the suspect used or threatened to use a firearm, other weapon (ex. knife) or thing, that can be used to cause death or injury (ex. baseball bat) against the complainant, family member, children or an animal? **YES**  **NO**

**14. Court Orders:**

Has the suspect ever violated a court order? **YES**  **NO**

**15. Employment Instability:**

Is the suspect unemployed or experiencing financial problems? **YES**  **NO**

**16. Forced Sex:**

Has the suspect ever forced sex on the complainant? **YES**  **NO**

**17. Strangling, Choking or Biting:**

Has the suspect ever strangled, choked or bit the complainant? **YES**  **NO**

**18. Stalking:**

Has the suspect displayed jealous behaviours, stalked or harassed the complainant or a previous intimate partner? **YES**  **NO**

**19. Other Information:**

Any other relevant information (e.g. is the complainant socially/ physically isolated; unwilling to leave the home; cultural barriers inhibit complainant etc ...)? **YES**  **NO**

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

# Arrest: Now What?

## Detention & Bail

- Accused 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.

# Contact with Complainant about Bail

- The procedure in all domestic violence occurrences should be that officers will obtain the following information prior to speaking to bail:
  - Whether there is a history of violence;
  - When available, the details of previous domestic violence charges and convictions to be included in police report;
  - Whether the victim fears further violence and the basis of that fear;
  - The victim's opinion on the likelihood that the suspect will obey a term of release, particularly a no contact order; and
  - Whether the suspect has a history of alcohol or drug problems or mental illness

# 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.

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.



# BAIL: FACTORS CONSIDERED BY THE J.P.

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*).

# Bail and Aboriginal Accused

- Aboriginal Court worker
- John Howard Society
- Elizabeth Fry (if the accused is a woman)
  
- If accused identifies as Aboriginal, obligation on Court to consider non-custodial options for bail and sentencing
  
- “*Gladue*” factors that a judge must consider when setting bail or deciding sentence for Aboriginal accused

# Crown Screening and Vetting

- After charge and release or detention and before the accused next appears in Court the 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
  - 
  - 
  - 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.

# “First Appearance”

The man is released on bail with conditions.

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

# What happens at the accused's “First Appearance” in Court?

- The question the Court wants to know is whether the accused manplans 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.

# “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.

# Crown Resolution Meeting/Plea Bargains

- Before a trial date is set, the Crown and the lawyer for the accused man 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 the man agrees to plead guilty (“plea bargain” or “plea resolution”).
- Neither the man (accused) or woman (complainant) are part of these discussions.
- Through VWAP, the Crown should get input from the woman before the Crown Resolution Meeting and inform the woman about the results of the meeting afterward, but this doesn’t always happen.
- In cases of domestic violence (among other crimes) the Crown should get input from the complainant before determining
  - i) whether to not proceed with a prosecution and
  - ii) any final resolution of the matter on a plea bargain or sentencing.
- 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.

# Complainant Meeting with the Crown

- There are a number of stages at which the Crown may wish to meet with or obtain input from the complainant:
  - Screening phase
  - Assignment of file in more complex cases
  - Bail
  - Crown Resolution Meeting
  - Preparation for Preliminary Inquiry or Trial
  - Sentencing
- Alternatively, a complainant may ask to meet with a Crown.
- Crown's cannot discuss evidence directly with a complainant without a police officer being present to record the discussion. Therefore, if a complainant "drops in" to see or speak to a Crown, they are usually advised to come back after a meeting has been scheduled.

# A Plea of “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.

# What if the Woman tries to change her mind

## “Recanting” Witnesses

- What happens if as the trial gets closer, the woman decides that she doesn't want to testify against the accused man?
- She may not want to testify for a variety of reasons:
  - She's scared that the accused 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 her man to lose his job, go to jail, or have a criminal record

## What should a woman in this situation do?

- speak to VSU, the officer in charge, and/or the Crown
- She should know that she can be “compelled” to testify and can be arrested if she fails to appear
- She may testify as a witness adverse to the Crown and the Crown will cross-examine her
- The Crown can rely on her 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 the accused man is guilty of the offence charged.

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

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

If they are not convinced that the evidence meets this high test, the accused man 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

# 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

# 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

# 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.

