

Criminal Justice System and Child Victims/Witnesses

The criminal justice system has two main parts: Investigation and Prosecution.

Investigation

Investigation is conducted by law enforcement (police and sheriffs). The law enforcement agency where the crime happened investigates the case. Usually 911 or uniformed patrol officers take the initial report and the investigation is conducted by detectives. The job of law enforcement is to collect evidence about crimes. Evidence includes interviews with the victim, other people who may know something about the crime and the person who is accused of the crime; medical reports; physical evidence from the victim or the crime scene; forensic tests (e.g., DNA) and any other information that may help solve the crime. After this information is collected in cases where it seems likely that a crime happened, law enforcement refers the case to the prosecutor's office.

Prosecution

Prosecution is carried out by the prosecuting attorney's office in the jurisdiction where the crime happened. The prosecutor reviews the evidence and makes the decision about whether charges can be filed. If charges are filed, there will be legal hearings and other contacts between the prosecutor and the defense lawyers that go on over a period of months. The victim usually does not have to be involved. Many cases where charges are filed will end up with a guilty plea and the victim does not have to testify. If the offender is convicted there will be a sentencing hearing where the victim can submit an impact statement and/or speak to the judge.

Important points to be aware of:

1. Victims have a right to be informed of key decisions. They have a right to an advocate or a support person who can be present during interviews and in court if the victim testifies.
2. The investigation process and the charging decision usually take at least several months. This is because a successful prosecution depends on having a thorough investigation and making a careful decision about legal issues.

Common concerns:

Will my child be harmed by participating in the criminal justice process?

Most likely no. In many cases, the only involvement child victims have is being interviewed about the crime. Only a small percentage of cases go to trial where a child has to testify in court. Even when a child victim testifies there is usually only temporary distress that goes away. This makes sense because testifying is stressful for most people. A counselor or advocate can help child victims prepare for court and teach some stress management techniques.

Why isn't the offender arrested right away and kept in jail?

Sometimes the police can arrest an accused person right away but most often law enforcement needs to complete the investigation first. During the investigation, law enforcement will tell the accused person not to have contact or pressure the victim. If this happens, law enforcement should be notified immediately.

Once an accused person is arrested or officially charged with a crime, there is a hearing to decide if the accused person can be released. In most cases, the accused person will be released because the main reason the law allows people accused of a crime to be kept in jail is if there is a reason to believe they will not come to court hearings.

If charges aren't filed does it mean that the crime didn't happen?

No. Prosecutors have to take into account whether a crime can be proven in court by the legal standard of "beyond a reasonable doubt," not just whether the crime happened. In many cases, prosecutors might believe a crime happened, but because of different factors like a child's age or ability to say what happened in court, lack of evidence or other circumstances, charges cannot be filed. Keep in mind that a prosecutor has to decide that the child victim would be able to testify in court. This means facing the offender and standing up to cross examination by the offender's lawyer.

Why do child victims have to testify in open court? Can't they use a videotape or other witnesses to say what the child reports?

The Constitution gives accused persons the right to face the accuser. There are very few situations where the victim of a crime doesn't have to testify if a case goes to trial.

What if the accused person is acquitted (found not guilty in the trial)? Will my child be psychologically harmed if this happens?

It is always disappointing when an accused person is found not guilty. But this isn't the same as the court deciding the person is innocent. What this means is that the jury or judge did not believe that there was enough evidence to prove the case beyond a reasonable doubt. This is a very high standard. The best way to deal with it is to keep in mind that whatever happened cannot be changed by what a court decides and to make sure the victim knows this. A counselor or advocate can help explain how the system works.

Sentencing

The sentence is the legal consequence of being convicted of a crime. A sentencing hearing happens after an offender is convicted and it is when the judge makes the decision about what will happen to the offender, including how much time in jail or prison and the conditions that the offender has to live by, such as getting counseling, staying away from children, or other rules.

Victims and other people affected by the crime can write an Impact Statement, be in court, and/or speak to the judge at the sentencing. This is a very important chance to tell the judge about the impact of the crime on the victim, the family and others. This is information that only the victim and the family really know. Judges take victim impact statements and what victims say at the sentencing very seriously

and they can make a difference in what the judge decides even though the law sets rules about how long a sentence can be.

Helping Child Victims/Witnesses in the Criminal Justice System

A good way to explain what is happening is to remind child victims that when any crime happens it is important to report it to law enforcement. The victim only has one responsibility and that is to tell the truth about what happened. From then on, it is up to law enforcement and prosecutors in the criminal justice system to decide what happens. The outcome of the case depends on legal factors. No matter what happens legally, the child victim is the person who knows what really happened and nothing can change that. What is most important to the child is that family believes and supports them.

The legal system can be frustrating for victims and families. The process can take a long time. The result can be disappointing. It can help to have a counselor or advocate with whom to discuss feelings and find out facts. Focusing on supporting the victim and getting back to normal activities is usually best for victims.

Participating in the legal system can be empowering for a child victim and the family. Victims and families will always know that they did their part by reporting the crime and giving statements. The legal system is responsible for doing its part in holding the person who committed the crime accountable. Nothing can change what already happened, but taking action to report the crime is one step towards recovery from the impact of the crime.

Legal Terms:

Advocate: person who works for a community agency, LE or the prosecutor's office who keeps the victim informed of the case and can be present during interviews and hearings.

Suspect: a person who is suspected of committing a crime. **Defendant:** a person who has been legally charged with committing a crime.

Probable cause: legal basis for arresting a person before charges are filed. **Arraignment:** legal hearing where a defendant is notified of the crime he/she is charged with.

Bail: Amount of money a defendant puts up to be released from jail until the case is decided..

Trial: legal procedure where the victim and witnesses testify and the case is decided by a jury or judge. If the defendant is a juvenile, there is no jury, only a judge.

Jury: 12 citizens who decide if a case has been proven beyond a reasonable doubt.

Conviction: when the defendant admits the crime and pleads guilty or when the defendant is found guilty in a trial.

Dismissal: when the prosecutor or a judge decides that a criminal case cannot go forward.

Sentencing: legal hearing where the judge decides the consequences for a defendant who has been convicted of a crime.

Impact Statement: information from the victim or family about the impact of the crime on the victim.

Where to get help:

Sexual assault/domestic violence program [(800) 822-1067 for program in your area]]

Crime Victim Service Center [(800) 822-1067 program in your area]

Law enforcement or prosecutor based victim witness advocate.

Harborview Abuse and Trauma center (206-477-1600)
