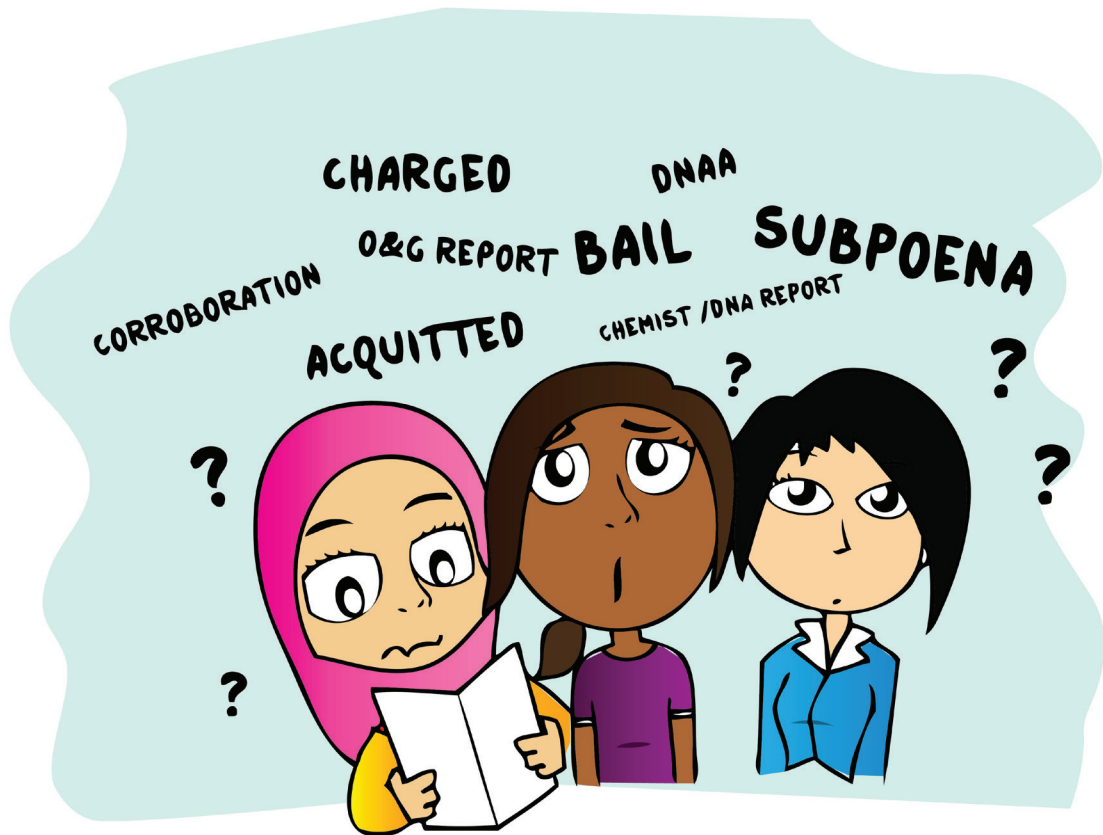


UPDATED  
2019

# Surviving Court

A Guide to Understanding the Criminal Court Process



**Published by:**

Women's Centre for Change  
241, Jalan Burma, 10350 Pulau Pinang, Malaysia.  
Tel: 04-228 0342  
Website: [www.wccpenang.org](http://www.wccpenang.org)

**All rights reserved**

Any part of this publication may be copied, reproduced, or adapted to meet individual or group needs provided that the Women's Centre for Change, Penang is acknowledged.

Copyright © 2013, Women's Centre for Change, Penang

ISBN 978-983-44784-7-6

First Edition, 2013

Second Edition, 2019

**Written, edited and proofread**

Melissa Mohd Akhir, Prema Devaraj, Loh Cheng Kooi, & Hasanah A. Akhir

**Updated in 2019 by**

Hastiny Subramaniam, Lim Kah Cheng, Loh Cheng Kooi, Norhidayah Nadila, & Karen Lai

**Illustrator**

Jian Goh Kheng Swee, Akiraceo Studio

**Design and layout**

Liz Tan, C-Square Sdn Bhd

**Printed**

Phoenix Printers Sdn Bhd

The "Surviving Court" video series is available  
in English, Malay, Chinese and Tamil languages  
at WCC website: [wccpenang.org](http://wccpenang.org)

# Contents

<b>FOREWORD</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>3</b>
<b>SECTION A: THE COURT PROCESS</b>	<b>5</b>
REPORTING, INVESTIGATION AND CHARGING	<b>5</b>
Reporting a Crime and Police Investigation	
Charging of the Suspect	
FULL TRIAL	<b>10</b>
Preparation for Full Trial	
Introducing the Courtroom	
Trial Process	
<i>Prosecution Stage</i>	
<i>Defence Stage</i>	
<i>Submission</i>	
<i>Decision</i>	
<i>Appeal</i>	
<b>SECTION B: BEING A WITNESS IN COURT</b>	<b>21</b>
PREPARATION BEFORE A COURT TRIAL	<b>21</b>
Rights of a Witness in Court	
Briefing by Deputy Public Prosecutor	
GIVING TESTIMONY	<b>25</b>
Taking the Witness Stand	
Helpful Tips	
Useful Information	
FACILITIES IN THE COURT BUILDING	<b>29</b>
<b>MESSAGE TO VICTIMS AND THEIR FAMILIES</b>	<b>31</b>
<b>APPENDIX</b>	<b>32</b>
Glossary	
Laws for Offences against Women and Children	
Victim Impact Statement	
Types of Court	
Difference Between a Criminal and a Civil Case	
Useful Contacts	
Court Locations in Penang	

# FOREWORD

In 2005, the Women's Centre for Change, Penang (WCC) embarked on a research project on sexual crimes and their court trials. This research resulted in the publication of the book *Seeking Justice for Victims of Sexual Crime*<sup>1</sup>. One of the key findings was the high number of cases which resulted in Discharge Not Amounting to an Acquittal (DNAA) often due to the victims of sexual crime and domestic violence dropping out of the court process. Among the reasons for the victims dropping out were the complexity of the court process itself as well as the lack of support provided to the victims and their families. Many of the victims ended up not getting justice and the perpetrators not held accountable for their crimes.

In 2008, WCC began working with the Penang Hospital and then in 2012 with the Seberang Jaya Hospital, to provide emotional support for victims of sexual crime and domestic violence. Through this work, it became clear that most victims and their family members have very little knowledge or understanding of the criminal investigation and trial process, leaving them feeling disempowered and anxious.

Hence, WCC produced this guidebook to help

them and other witnesses to better understand the police investigation and court process. Through this guidebook, WCC hopes that victims and their families as well as other witnesses will be empowered and better prepared when seeking justice through the criminal justice system.

In 2017, various reforms were carried out by the government to provide for better protection for women and children. The Sexual Offences Against Children Act 2017 (SOAC), the Legal Aid (Amendment) Act 2017 and the Domestic Violence (Amendment) Act 2017 were passed and implemented. Special Courts for sexual crimes against children were also set up to expedite the disposal of such cases. WCC represented the Joint Action Group for Gender Equality (JAG) in the 'Task Force on Sexual Crimes' set up in the Prime Minister's Department to draft the SOAC. WCC was also made one of the committee members to draft the Special Guidelines for Handling Cases on Sexual Offences against Children.

In the light of these positive changes, this guidebook has been updated. This guidebook is dedicated to the many victims who step forward to report the crime in the hope that justice will be done.

## WCC Advocacy Team

Lalitha Menon, Karen Lai, Chang Mei Leng, Susan Siew, Mariam Lim, Christine Khor, Shakila Manan, Lim Kah Cheng, Melissa Mohd Akhir, Prema Devaraj, Loh Cheng Kooi, Hasanah A. Akhir, Hastiny Subramaniam & Norhidayah Nadila

1. Women's Centre for Change, Penang (2009), *Seeking Justice for Victims of Sexual Crime*, Penang, Malaysia.

# INTRODUCTION

**W**hen a crime has been committed, the victim should lodge a police report so that action can be taken against the perpetrator. This report starts off the process of seeking justice through the criminal justice system. However, the process of filing a police report, giving a statement for the investigation and being a witness in a criminal court trial<sup>2</sup> can be frightening as one is unsure of what to expect or the outcome of the process.

A victim will have to attend court as a witness to give evidence. Many victims or witnesses who attend court feel anxious and worried about having to face their assailant(s), and having to relive the assault through the giving of their testimony.

Victims or witnesses also often have little understanding of the court process. The court process, which is meant to provide justice for victims of crimes, may instead turn into another painful experience if the victim is ill-prepared and intimidated by it.

This guidebook is produced to help crime victims<sup>3</sup> understand the court process so that they will be more informed and better prepared. It is divided into two main sections; **Section A: The Court Process** explains what happens from the time a victim reports a crime and the procedures which follow, up to what is involved in a full court trial. **Section B: Being A Witness In Court** deals with the rights of the victim in court, important points in giving testimony and useful tips for attending court. In the **Appendix**, a glossary on legal terms, the relevant laws, useful contacts and court locations are appended.



2. The difference between a criminal and a civil case is explained in the Appendix (pg. 32)

3. WCC recognises that the majority of sexual crime and domestic violence victims are women and girls. This guidebook will be using the female pronoun (she/her) when referring to a victim, and the male pronoun (he/him) when referring to an accused person, solely for the purpose of convenience and consistency.



# SECTION A: THE COURT PROCESS

## REPORTING, INVESTIGATION AND CHARGING

### Reporting a Crime and Police Investigation

The road to obtaining justice begins with the lodging of a police report. When a crime has been committed, the victim or her family member should lodge a police report at a police station. The person who lodges the report is called the complainant. Once a report is lodged, a police investigating officer (IO) will be assigned to investigate the crime. The victim will usually be asked by the IO to go to the nearest district police headquarters (IPD) where the crime has been committed to give a detailed statement of the incident.

The IO will also interview other witnesses to take their detailed statements about the crime. If the crime is a sexual assault or a domestic violence incident, the IO will then refer the victim to the One Stop Crisis Centre (OSCC) at the Emergency and Trauma Unit in a government hospital for a medical examination to ensure that the victim is given the appropriate medical care and to collect evidence of the crime.

The collection of evidence by the IO may take weeks and sometimes even months. It involves interviewing the victim and other witnesses, collecting physical evidence, visiting the crime scene and obtaining reports and statements from various experts such as medical practitioners.

## Charging of the Suspect

Once the investigation is completed, the IO will then compile the evidence in the investigation papers (IP) which contain a recommendation on whether or not to charge the suspect. The IP will be referred to the Deputy Public Prosecutor (DPP), a government lawyer, who will then decide whether or not there is sufficient evidence to charge the suspect for the crime. Sometimes the DPP may instruct the IO to get more evidence. This means that the investigation will continue for a few more weeks, after which the IP will be revised and referred again for the DPP's decision. At this point, one of two things can happen:

- i) The DPP decides that there is enough evidence to charge the suspect. The suspect will be brought to court to be **charged** with the crime. The suspect is hereafter referred to as the accused.
- ii) The DPP decides that there is not enough evidence to charge the suspect. The case will be closed and classified as No Further Action (NFA) and the suspect is a free person. However, if new evidence arises (for example, a missing witness is later found), the case may be reopened for further investigation and the process of collecting evidence continues until the DPP decides that the IP is complete, and a decision of whether to charge could be made.



### What does “CHARGE” mean?



The suspect is brought to court by the IO following the DPP's decision to charge. In court, the DPP will present the charge sheet which states important details of the crime. The charge sheet will be read to the suspect, now known as the accused or Orang Kena Tuduh (OKT), and he will be asked if he pleads guilty or not guilty to the crime. He will have to choose either one of these options as his plea.



- **When the accused pleads guilty**

If the accused pleads guilty, there is no need for evidence to be shown or arguments to be heard. A date is set to record the guilty plea and for the sentence to be imposed. The judge will consider a suitable **sentence** according to the law and depending on the severity of the crime committed. The victim or her family may attend this part of the court process and inform the DPP about the suffering caused by the crime. This information will be considered by the judge before deciding upon the sentence. The court process is completed with the sentencing of the accused.

### What is a “SENTENCE”?



A sentence is the punishment given to the accused by the judge. To decide on a sentence, the judge must refer to the criminal laws, which states the type of punishment provided for the crime committed. In most cases, the judge is given the discretion to determine the severity of the punishment by looking at the seriousness of the crime committed. The sentence must not exceed the limits set by the laws.

- **When the accused pleads not guilty**

If the accused pleads not guilty, the case will have to go for a full trial. This means that all the evidence collected by the IO in their investigation must be examined in court before the judge can decide whether the accused is guilty of the crime. In the meantime, the accused will usually be released on **bail**. If it can be clearly shown that he may interfere with the witnesses or the court process, the court may order that the accused be detained in a lockup while the trial goes on.



### What does “BAIL” mean?



Bail is a type of guarantee, usually a set amount of money given to the court in the form of a fixed deposit certificate, to ensure that the accused will attend court during the trial.

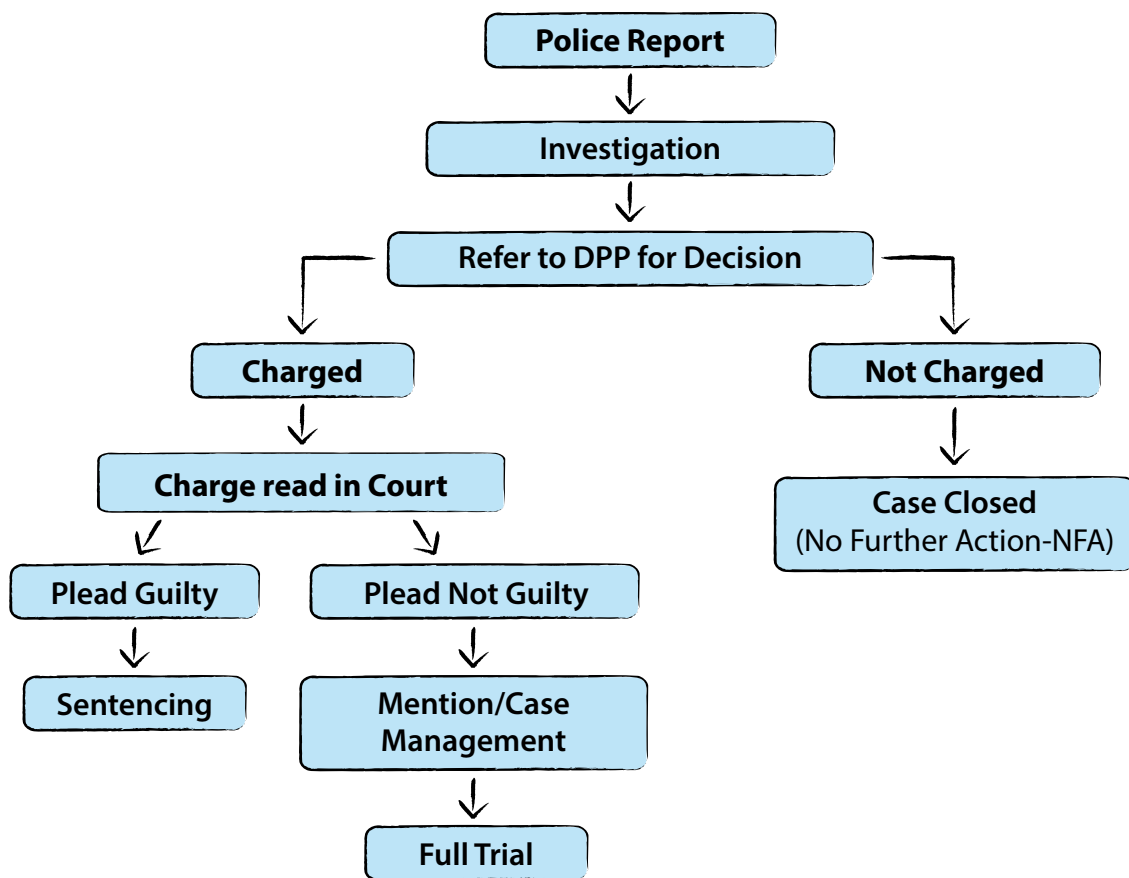
The person who makes the payment to the court is called a bailor and is usually a family member or a friend of the accused. If the accused cannot raise bail, he will be detained in a lockup.

If bail is paid and the accused fails to attend court, the money will be forfeited by the court if the bailor cannot show good reason for the accused's absence and a warrant will be issued for the accused's arrest.

There may also be other conditions imposed on the accused to make sure he attends court and does not disturb the trial process, e.g. surrender of passport, prohibition from approaching the victim and other witnesses, and reporting to a police station at certain imposed times.

- **Pre-trial process**

Several matters may have to be dealt with by both the DPP and the defence/accused before the full trial begins. Dates set by the court to hear applications or arguments from the DPP or the defence/accused (before the trial, generally), are known as mention or case management dates. It is a process to ensure that all parties have legal representation, correct documents and information before proceeding with the full trial. This may even include an application by the defence/accused to have the case dismissed before the full trial begins. Neither the victim nor witnesses need to attend court during the mention or case management dates.

**Figure 1: Reporting, Investigation, Charging**

# FULL TRIAL

When an accused pleads not guilty, a full trial will take place. The judge sets a date for the full trial. A full trial involves opposing parties and a set of procedures to ensure fairness and justice for the victim/complainant and the accused. The following sections will explain the preparation, the courtroom set-up, the parties involved and the process of a full trial.

## Preparation for Full Trial

It is the DPP's duty to ensure that all evidence is ready to be presented during the full trial. This includes ensuring witnesses appear in court on the correct date. The victim, as a key witness, together with other witnesses, will receive a **subpoena** from the police informing them of the date that they have to attend court. In preparation, the victim and witnesses may be asked by the police or the DPP to reread their statements which they gave at the time of investigation, to refresh their memory of the crime. The victim may also request for briefings by the DPP about the process of giving evidence.

### What is a "SUBPOENA"?



A subpoena is a blue-coloured court order that informs the witness of the date and time that she has to attend court. If a witness does not comply despite having received the subpoena, the DPP or the defence lawyer may ask for a warrant of arrest for that particular witness.

Upon attendance in court, a witness may find that the case has been postponed or another date has been given for the case to be continued. It is important for witnesses to get their subpoena endorsed by the DPP to verify attendance on that day and to obtain the next date they are to attend court. The endorsed subpoena may be shown at the claims counter at the related district police headquarters (IPD) to claim for travelling costs to the court.

## Introducing the Courtroom



### The Courtroom

The following explains the general layout of a courtroom with each person's usual seating position and a brief description of their duties.

As with all cases in court, there is a judge who presides over two opposing sides. In criminal cases, the two opposing sides are the government (prosecution) and the accused (defence).

*Note: Seating positions may vary according to each courtroom but the people involved will be more or less the same.*

### The Judge

The judge oversees the running of the trial and considers the evidence and arguments by the opposing sides. The judge will then decide whether or not to convict the accused and pass a sentence as allowed by law.

### The Victim / Witness

The victim of the crime will be called by the DPP as a witness to give evidence in court to prove the crime. Other witnesses will also be called by the DPP to give evidence in court.

## The Accused

The accused is the person charged with the crime. The place where the accused sits is called a dock. The accused is usually represented by a lawyer who is called the defence lawyer or defence counsel. The court may allow the accused who does not want to appoint a lawyer to handle the defence of his own case.

## The Deputy Public Prosecutor (DPP)

The DPP's role is to prosecute a person charged with a crime in the interest of the general public. The DPP does this by bringing the accused to court to face the criminal charge, presenting evidence to prove that the crime happened and getting a punishment imposed on the accused.

The DPP works for the government and does not represent the victim or witness. The victim does not need to pay for the DPP's services. There may be more than one DPP who conducts the case.



## The Defence Lawyer

A defence lawyer is the lawyer engaged by the accused to protect the accused's interest. It is the accused's choice whether to appoint a defence lawyer. The defence lawyer's role is to present evidence and arguments to show that the accused is not guilty of the crime. The lawyer will question the victim or other witnesses about the crime, trying to raise doubts about the case so that the accused is found not guilty. There may be more than one defence lawyer during the trial.

## The Watching Brief Lawyer

The victim may also engage a private lawyer known as a "watching brief lawyer" to represent her interests during the investigation and the court trial. A watching brief lawyer must ask the judge for permission to represent the victim and to speak on behalf of the victim during the trial. The lawyer's roles are:

- To request for updates on the status of the case;
- To explain what happens in court to the victim and her family;
- To prepare the victim for court by liaising with the DPP;
- To inform the DPP and the court whenever the victim's rights are affected in court, such as when she has been questioned unnecessarily or harshly by the defence lawyer; and
- To highlight the suffering of the victim due to the crime for purposes of sentencing and compensation (*see Victim Impact Statement, pg. 39*).

## The Legal Companion

With the Legal Aid (Amendment) Act 2017, the family members of a child sexual crime victim can apply for a legal companion. A legal companion is an officer from the Legal Aid Department whose role is to protect the interests of the child victim. The legal companion's role is similar to that of the watching brief lawyer, including:

- To advise the guardian / protector of the child victim on legal matters;
- To accompany and represent the child victim in any trial in court; and
- To advise on civil actions that can be taken by the child victim.

### Interpreter or Other Court Staff

The interpreter or other court staff assists the judge by calling up cases, and reading out the charge against the accused. The interpreter ensures that court procedures are conducted smoothly and carries out interpreting duties where needed.

### The Court Police

Court police are present to ensure safety in a courtroom, including escorting the accused to the dock. The court police officer on duty also calls the required witness into the courtroom when it is his/her turn to give evidence.

### Other People Who May Be Present

As there may be other cases heard in the same court, there may be other lawyers waiting for their cases to be called in court. There are sometimes journalists who report on the case or other cases. If the judge has ordered a closed court, other lawyers and the media will not be allowed in court.

### The Public Gallery

This is where members of the public may sit. This includes the family members and supporters of the victim or the accused. However, if they are witnesses in the case, they are not allowed to sit at the public gallery when the trial starts, or to discuss the case with others. If the case is ordered by the judge to be held in closed court, the public gallery will be cleared.





## Trial Process

A full trial has several stages and each stage is explained below.

### Prosecution Stage

A full trial for a criminal case begins with the prosecution calling its witnesses to give their testimony of the crime. Testimonies are oral statements given by witnesses during a full trial. The DPP will use these testimonies as well as any documents or objects to prove that a crime has been committed. This stage of the trial is also known as the **prosecution stage**. There is a three-step process that is followed for each witness during the prosecution stage:

The DPP calls the witness to give evidence by asking the witness a series of questions which will help the witness explain how the crime was committed by the accused as written/detailed in the charge. After all the questions have been asked by the DPP and answered by the witness, the next step follows.

**Step 1:**  
**DPP questions witness**  
(Examination-in-Chief)

The defence lawyer cross-examines the witness by asking a series of questions to get answers that show that the witness is not telling the truth, could be mistaken or has a reason to lie. This is done to cast doubt as to whether the accused really committed the crime. After the defence lawyer completes the cross-examination, the next step follows.

**Step 2:**  
**Defence lawyer cross-examines witness**  
(Cross-examination)

The DPP re-examines the witness by asking questions in order to get answers that explain any doubtful or contradictory answers given earlier by the witness under cross-examination.

**Step 3:**  
**DPP re-examines witness**  
(Re-examination)

### Submission (End of Prosecution)

After all the witnesses have been called by the DPP and all the supporting evidence has been presented, the prosecution stage of the trial ends. Both the DPP and defence lawyer will argue before the court for a decision as to whether there is a *prima facie* case at this stage. Having a *prima facie* case means that there is strong enough evidence to show that the accused had committed the crime.

## Decision: (End of the Prosecution)

- i) If the judge decides that the evidence presented is strong enough to show that the crime occurred, i.e. there is a *prima facie* case, the trial proceeds with the next stage, known as the defence stage.
- ii) If the judge decides that the evidence presented is not strong enough to show that the accused committed the crime, the court will acquit and release the accused. An acquittal means the accused is not guilty and is now free. An appeal can be made by the DPP at this point.

Sometimes the judge may decide on a Discharge Not Amounting to an Acquittal (DNAA) due to lack of witnesses or evidence or for other reasons. This means that the accused is set free, but may be charged again in the future if, for example, the missing evidence or witness is subsequently found.

## Defence Stage

It is now the defence lawyer's turn to call witnesses who will provide oral evidence, documents or objects to show that the accused did not commit the crime or to cast doubt on the evidence of the DPP. If the accused does not appoint a lawyer, he has to personally handle the defence stage.



The accused is the first person who gives evidence at this stage, followed by other witnesses. The same three-step process mentioned above will take place for each witness but at this stage, the examination-in-chief will be conducted by the defence lawyer, the cross-examination by the DPP and the re-examination by the defence lawyer. The victim and her family may choose to attend the trial during this time if they are not called as witnesses for the defence.

## **Submission (End of Defence)**

Once the defence stage is over, the trial process is at its final stage. Both the DPP and the defence/accused will present their arguments or submissions based on all the evidence presented at the trial and the judge will decide whether or not the accused is guilty. The judge may postpone giving a decision and another date will be set for that. The victim and her family may choose to attend at this stage to listen to the arguments and the decision of the judge. Sometimes, the judge may request that arguments be submitted in writing. The judge will then set a date for the decision to be given.

## **Decision (End of Defence)**

### **The Accused is Found Guilty**

If the judge finds that the evidence is strong enough to convict (beyond reasonable doubt), the accused is pronounced guilty.

Before sentencing, the defence lawyer will be given an opportunity to tell the court why the sentence should not be a heavy sentence. This is called mitigation. The DPP then usually tells the court why the sentence should be a heavy sentence.

The DPP may call the victim or her family to court to explain to the judge the pain and suffering caused by the crime, for example, the injury and recovery from the trauma suffered. The other option is for the DPP to read out a statement provided by the victim or her family regarding the suffering. This statement is called a Victim Impact Statement (VIS).

After considering all of the above and the public interest factor, the judge will pass a sentence on the accused. The victim or her family members may choose to attend this part of the court process.

## The Accused is Found Not Guilty

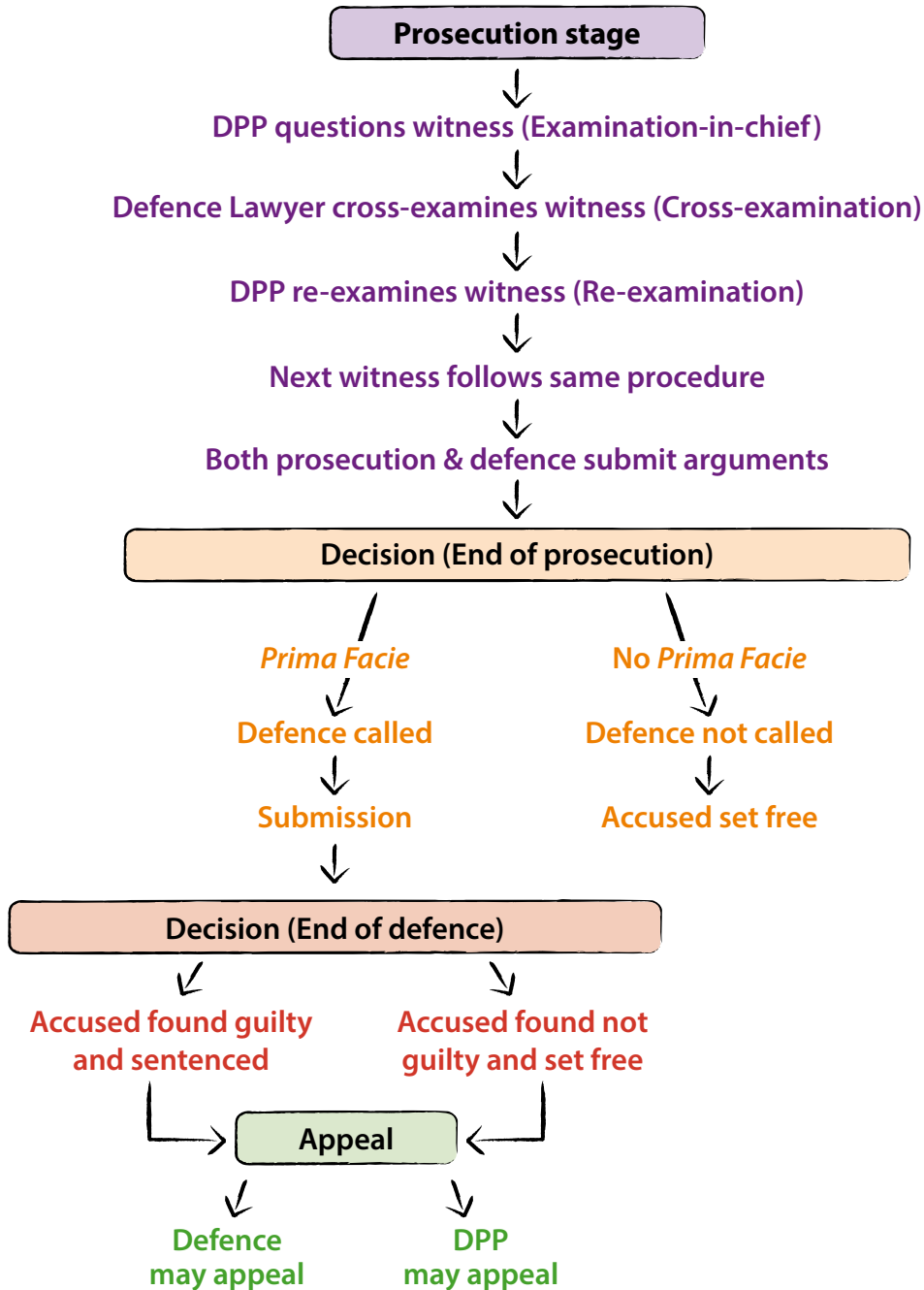
If the court thinks that the evidence is not strong enough to find the accused guilty or sufficient doubt has been raised, the accused will be acquitted of the crime and set free.

## Appeal

Once the accused is found guilty and a sentence has been passed or if the accused is acquitted, the DPP or the accused may make an appeal to a higher court. An appeal can be made if a party is dissatisfied with the decision or the sentence.

Documents will have to be filed for the appeal and a date will be set for its hearing. The victim and her family may choose to attend court on the date or have a watching brief lawyer or a legal companion apply to be present on their behalf.

After hearing arguments from the DPP and the defence lawyer and considering the evidence submitted at the full trial, the higher court will decide if the decision should be maintained, changed or a retrial be carried out. This decision can also be appealed against until the case reaches the highest level of court which may be the Court of Appeal or the Federal Court, (depending on where the trial was first heard). A diagram of the structure of courts in Malaysia can be found on *page 40*.

**Figure 2: Full Trial Process**



# SECTION B:

## BEING A WITNESS IN COURT

It is common for a witness to feel nervous and anxious when it is time to appear and to testify in court, especially if the witness is a victim who has suffered from the crime. The following section describes the rights of victims/witnesses and the forms of support that can help a witness to be more prepared for full trial.

## PREPARATION BEFORE A COURT TRIAL

### Rights of a Witness in Court

A victim/witness is given certain rights in court and knowledge of these rights will help to alleviate some of his or her anxieties. The DPP, IO, the legal companion or the watching brief lawyer should arrange beforehand for special measures protecting the rights of the victim/witness to be made available during the full trial. A victim/witness has the right to ask for the following:-

- **Order to prohibit accused from harassing the victim and other witnesses**

Sometimes before the court case begins, the victim or other witnesses may be harassed or contacted by the accused or third parties, so that the case does not proceed. If such harassment occurs or is likely to occur, the DPP, the legal companion or the watching brief lawyer should apply to the court for an order to prohibit such harassment. The prohibition can be made as one of the bail conditions that must be complied with by the accused when he is released under bail. The court may retract the bail if the accused breaches the bail conditions imposed.

- **To be accompanied by family members, friends or other supportive persons**

Emotional support for victims/witnesses when facing a full trial is crucial. Adult witnesses, especially the victim, should have a family member, friend or other supportive person with her while waiting to be called to testify during the full trial. If allowed by the court, the victim/witness may also be accompanied in the court while giving testimony in the trial. For child victims/witnesses, a request can be made for a social welfare officer, a court staff, a family member (who is not a witness) or a social worker to sit beside the child while the child is giving his or her testimony.

- **To have the use of a screen or video live-link in court**

A victim/witness who does not want to see the accused while giving evidence may request to be shielded by a screen. If the victim is a child below 16 years of age, giving evidence through video link is usually

allowed by the court. This means that the

child gives evidence from another room which is then transmitted to the court via the video link. A social welfare officer, a court staff, or a family member (who is not a witness) may be allowed to sit beside the child while the child is giving his or her testimony in the video live-link room. For adults, permission may be asked from the court for the use of the video link or a screen in special cases.





- **To give evidence via an interpreter**

A victim/witness has the right to ask for an interpreter so that he or she is able to give evidence and have questions translated into his or her preferred language or dialect. Again, this must be made known to the DPP before the full trial. If the witness is a young child, a family member or a child expert may be called to help in interpreting the child's evidence.

- **A closed court and restrictions on publishing details of the case (gag order)**

If a victim is concerned about the publicity of the case, a request can be made by the DPP, the legal companion or the watching brief lawyer for the trial to be carried out in a closed court. This means the public and media would not be allowed in court during the trial. In addition to this, a request can be made for a gag order. In this case, the judge may order that certain details about the victim or the case not be published in the media. For child victims, publishing information that may identify them is a crime, and their evidence is usually given in a closed court.

- **Protection for a victim during questioning by the defence lawyer**

Non-relevant questions such as a victim's past sexual history are not allowed to be asked during trial. A victim should also not be subjected to any insulting or scandalous questions. If this happens, it is the DPP's duty to object to the questions. A legal companion or a watching brief lawyer may also object to such questions. For child witnesses, the judge usually plays a role in making sure the lawyers do not confuse the child and the child understands the words used during questioning.

- **To ask for a break during testimony**

If a victim/witness feels upset or distressed, the DPP, the legal companion or the watching brief lawyer may ask the judge for a brief break from the questioning process. The victim/witness may also inform the court if a toilet break is needed.



- **To give a Victim Impact Statement**

A Victim Impact Statement (VIS) highlights the suffering and trauma the victim went through because of the crime. The witness/victim can choose to either tell her story in court, or prepare a statement which will be read in court. The VIS will be used by the judge when considering the seriousness of the sentence to be imposed on the accused. If the victim is a very young child, a parent or a guardian may attend court to provide the VIS on her behalf.

- **To request for compensation for the crime committed**

Before imposing a sentence on the accused, the DPP or the legal companion may ask the court to make a compensation order which will state an amount to be paid by the accused to the victim for the suffering endured as a result of the crime. In order to arrive at an amount, the judge may ask the victim or other relevant persons about the following matters: the extent of the injury (or injuries) suffered, amount of loss of income or amount of loss of property.

## Briefing by Deputy Public Prosecutor (DPP)

The DPP should be available for a pre-trial briefing and to answer any concerns that the victim/witness may have regarding the full trial. Arrangements for the briefing can be made through the IO. Victims/witnesses can also request for a subpoena from the IO if it has not been given.

Victims/witnesses should go through the list of available rights listed above, so that requests and arrangements could be made in advance for assistance to be given during the trial. It is helpful to ask the DPP to explain the arrangements to the witness concerned.

During the pre-trial briefing, a victim/witness can be accompanied by a legal companion or a watching brief lawyer, a family member or a friend.

# GIVING TESTIMONY

## Taking the Witness Stand

- The court police will call the required witness to enter the courtroom and be seated at the witness stand.
- An interpreter will request for the witness original IC and an oath will be taken in the language the witness is most comfortable in. An interpreter will be available to assist the witness. An oath is a verbal promise to tell the truth and it states “I hereby swear to state the truth and nothing but the truth”. Witnesses who are subsequently found to be lying under oath can have legal action taken against them.
- The interpreter will then ask the witness to state his or her full name, address, age and occupation. The witness’s address need not be disclosed, by informing the DPP before the trial begins.
- The DPP usually tells the witness to answer questions clearly and to face the judge so that the witness can be heard. A witness should speak up if the trial is conducted in a courtroom that has video recording facilities.
- After evidence is given, the witness will be released from his or her oath by the court. On rare occasions, the witness may be asked to come back to court. This is when there is a portion of evidence that needs to be asked again or when there is a person that needs to be identified in court. This is known as recalling the witness.

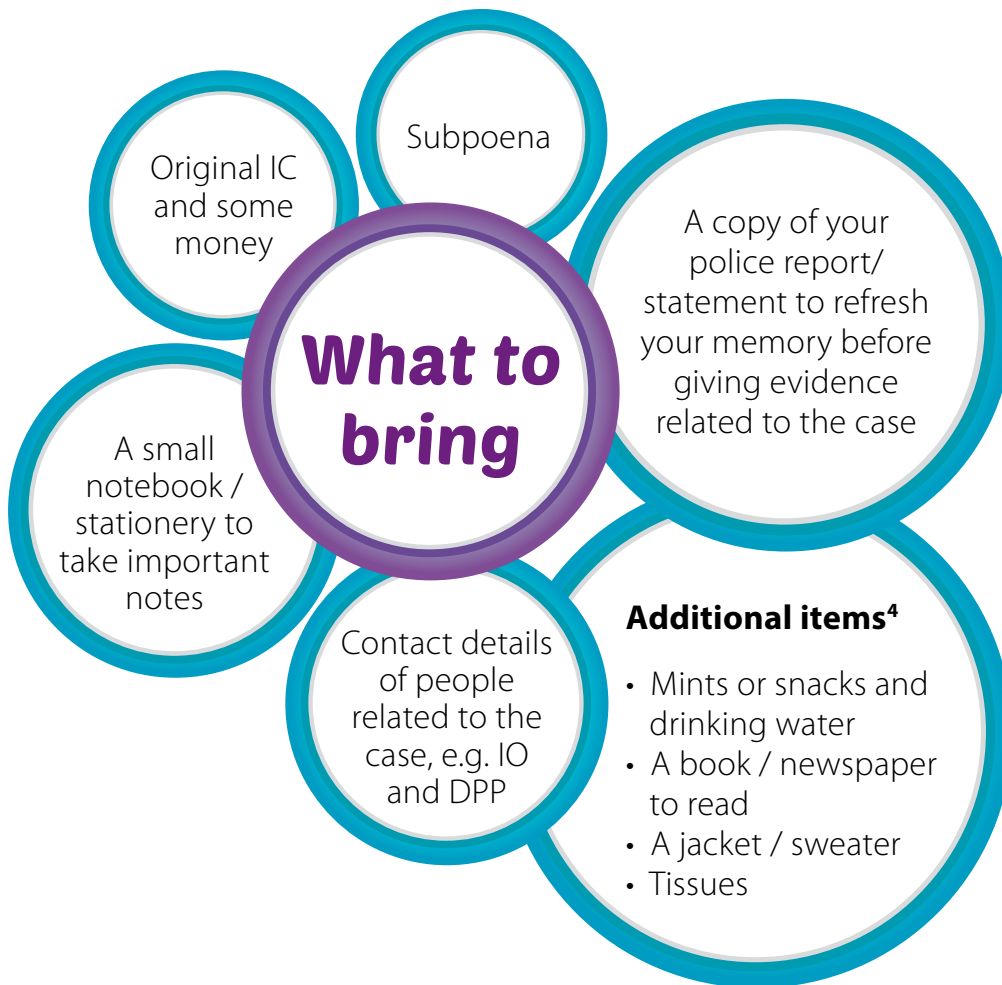


## Helpful Tips

**Here are some helpful tips to remember when giving evidence in court:**

- Think carefully before answering the questions.
- When feeling nervous, take deep breaths to calm down and answer slowly.
- Try not to be contradictory especially at the cross-examination stage.
- Ask for questions to be repeated or clarified where necessary.
- Do not giggle or answer in a careless manner.
- Use proper and formal terms for clear understanding.
- Address the judge as “Yang Arif” in the High Court, “Tuan/Puan Hakim” in the Sessions Court and “Tuan/Puan Majistret” in a Magistrate’s Court.
- If there is a need to go to the toilet or if feeling ill or upset, ask the judge for a short break.

## Useful Information



### What to wear

A court trial is a formal process and the court requires that all attendees be decently or modestly attired. This means jeans, shorts, sleeveless dresses, mini-skirts, skimpy or revealing attire and slippers are not allowed.

4. There have been instances where women experience their menstrual period due to the stress of the trial. Therefore it is good to be prepared by bringing sanitary napkins or a change of attire.



### Travel claim

A witness may claim for travel expenses for each date of attendance in court. After the end of each court session for the day, a witness is to show his or her subpoena to the court police. The court police will ensure that the court date on the subpoena matches the date of the court session and the DPP will certify it accordingly. The certified subpoena is to be submitted at the claims counter at the related district police headquarters (IPD) for payment to be made. The court police should be able to provide assistance in this procedure.

If a subpoena has not been given, a request can be made with the DPP or the IO and a subpoena will be issued in court.

## FACILITIES IN THE COURT BUILDING

Several facilities are provided within the court building for the convenience of witnesses and the public. Knowledge of these facilities will help witnesses be better prepared when attending court.

### Information / registry counter

The information or registry counter is usually located at the main entrance of the court. A witness may ask for directions to the courtroom as well as directions to other facilities. The counter staff should be able to assist and provide general court-related information.

### Witness waiting room / Witness room

This is a room for witnesses to wait in as they are not allowed in the courtroom when the trial is going on with other witnesses. Witnesses will be called by the court police or bailiff when it is their turn to give their testimony. The witness waiting room is usually located right beside the courtroom. It is best to enquire with the court police or interpreter to confirm the location of the witness waiting room. However, do make this enquiry before court begins at 9.00am.

The witness waiting room is air-conditioned and usually has benches but not tables. Most importantly, using this facility means that the witness need not face the accused or his family before giving evidence.



## Washroom

It may be a long wait before a witness is called to give evidence, so trips to the toilet may be necessary. Toilets may not be found on every floor of the court building so it is best to make enquiries at the information counter. When the court has started, it is important for the witness to inform the court police or the DPP before going to the toilet to ensure the witness remains contactable.

## Surau

Muslims may use the surau area to pray and rest. The surau may sometimes be locked during non-prayer times, so do ask about this first at the information counter. Again, please inform the court police or the DPP before leaving for the surau to ensure the witness remains contactable.

## Canteen / Cafeteria

All court buildings have canteens. However, it is advisable to have a proper meal before going to court. Food and drinks may be consumed in the witness waiting room but not in the courtroom. Should a trip to the canteen/ cafeteria be necessary when the court has started, the DPP must be informed to ensure the witness remains contactable.





# Message to Victims and Their Families

As a victim of a sexual crime or domestic violence, going to court is a chance for you to tell your story and obtain justice for the crime inflicted on you.

By reporting the crime and subsequently speaking up as a witness in court, you are able to get the accused person to stand trial and account for his criminal actions. We recognise that it may have been very difficult and stressful for you to do this but you have shown immense strength and courage in going through the court process. We hope the trial ended with the conviction of the perpetrator and the justice that you and your family sought has become a reality.

However, the court's decision depends on many technical legal requirements, including the strength of the evidence presented in court. If the outcome is not what you had hoped for, we want you to know that your commitment to the process of seeking justice through the criminal justice system is extremely valuable. Your strength and perseverance will serve as an inspiration to others in similar situations.



WCC is here for you should you need us. You can contact us at:

 011-3108 4001 / 016-439 0698

 04-228 0342 / 04-398 8340

 WCC Penang

We wish you all the best!

# Appendix

## Glossary

The following are explanations of terms commonly used when dealing with sexual crimes and domestic violence cases.

**Accused:** A person who has been charged with a crime(s).

**Chemist / DNA report:** Report of a scientific expert, usually about samples of evidence the police had found relating to the case, for example, from blood, semen, saliva etc.

**Child:** A person under the age of 18 years as provided in the Child Act 2001.

**Child Grooming:** When an adult befriends and establishes an emotional connection with a child to lower the child's inhibitions with the intention of sexually abusing the child.

**Child Offender:** If the person who commits the crime is under the age of 18 years, he will be referred to as a child offender and the case will be tried in the Court For Children. Punishment for a child offender is lighter than that for an adult offender.

**Complainant:** Victim/the person who has lodged a police report on the crime which had happened.



**Consent:** When the victim of her own free will agreed to have sex with the accused.

**Corroboration:** Supporting evidence to show that the testimony given regarding the crime is true. For example, a teacher who saw the victim crying and was told about the incident soon after the rape can provide corroborating evidence in court.

**DPP / TPR:** Deputy Public Prosecutor or Timbalan Pendakwa Raya, a government legal officer who prosecutes the person charged with the crime.

**IO:** An Investigating Officer, i.e. the police officer in charge of investigating the crime and finding the necessary evidence to prove the case. The IO also assists the DPP with contacting, handling, etc., of witnesses during the trial.

**Legal companion:** A legal companion is a lawyer who acts as a guide to help, advise and clarify court proceedings to families of child victims of sexual crimes. The services of legal companions are provided by Legal Aid Department offices throughout the country.

**Mention / Case management:** Preliminary/brief proceedings in court before witnesses are called to give evidence. For example; to check if the accused has appointed a lawyer.

**O & G report:** Obstetrics and Gynaecology report is a medical report from the doctor who examined the victim's body for physical evidence after a sexual crime has been reported.

**Psychological report:** A report on the psychological condition of a victim, to assess her state of mind and emotional injury following the reported incident.

**Statutory rape:** When a man has sexual intercourse with a girl under 16 years of age, with or without her consent.

**Suspect:** The person against whom a crime has been reported or investigated.

**Victim Impact Statement:** A statement from the victim or her family on the suffering and trauma experienced by her and/or her family as a result of the crime. The statement may be verbal or written, and is given to the court after a conviction has been obtained but before the sentencing is decided upon.

**Watching brief lawyer:** A private lawyer appointed by the victim or the victim's family to represent the interests of the victim during the court trial with the consent of the judge.



# Laws for Offences against Women and Children

## Penal Code

Sections	Offences	Punishments
321 & 323	Voluntarily causing hurt	Imprisonment maximum 1 year or fine maximum RM2,000 or both
322 & 325	Voluntarily causing grievous hurt	Imprisonment maximum 7 years and fine
324	Voluntarily causing hurt by dangerous weapons or means	Imprisonment maximum 10 years or fine or whipping or any two such punishments
326	Voluntarily causing grievous hurt by dangerous weapons or means	Imprisonment maximum 20 years and fine or whipping
326A	Causing hurt to spouse, former spouse, child, incapacitated adult or other member of family	Imprisonment for a term up to twice of the maximum term for which he would have been liable for that offence
354	Molestation (Assault or use of criminal force on a person with intent to outrage her modesty)	Imprisonment maximum 10 years or fine or whipping or any two of such punishments
355	Assault or use of criminal force with intent to dishonour a person, otherwise than on grave provocation	Imprisonment maximum 2 years or fine or both
372	Exploiting any person for purposes of prostitution	Imprisonment maximum 15 years with whipping and liable to fine
375 (a, g) & 376	Rape (Sexual intercourse by a man with a woman who is not his wife and without her consent). Statutory rape is sexual intercourse with a girl under 16 years of age with or without her consent.	Imprisonment maximum 20 years and whipping
375A	Husband causing hurt to his wife in order to have sexual intercourse	Imprisonment maximum 5 years

375B	Gang rape	Imprisonment minimum 10 years, maximum 30 years
376 (2) (d, e)	Statutory rape without a girl's (below 16 years of age) consent and sexual intercourse with a girl below 12 years of age with or without her consent	Imprisonment minimum 10 years, maximum 30 years and whipping
376 (4)	Causes death of the woman while committing or attempting to commit rape	Death or imprisonment minimum 15 years, maximum 30 years and whipping minimum 10 strokes
376A & 376B	Incest (Sexual intercourse with someone whom that person is not allowed to marry, whether under the law, religion, custom or usage)	Imprisonment minimum 10 years, maximum 30 years and whipping
377A & 377B	Sodomy (Carnal intercourse against the order of nature which is sexual connection with another person by introduction of the penis into the anus or mouth of the other person)	Imprisonment maximum 20 years and whipping
377C	Committing carnal intercourse against the order of nature without consent, or putting the other person in fear of death or hurt to the other person or any other person	Imprisonment minimum 5 years, maximum 20 years and whipping
377CA	Sexual connection by the introduction of any object into the vagina or anus of another person without consent	Imprisonment minimum 5 years, maximum 30 years and whipping
377D	Outrages on decency	Imprisonment maximum 2 years
377E	Inciting a child under 14 years to an act of gross indecency	Imprisonment minimum 3 years, maximum 15 years and whipping
509	Word or gesture intended to insult the modesty of any person	Imprisonment maximum 5 years or fine or both

## Child Act 2001 and the Child (Amendment) Act 2016

Sections	Offences / Terms	Punishments
15	Restrictions on media reporting and publication – Any mass media shall not reveal the name, address or educational institution, picture or include any particulars calculated to lead to the identification of any child involved in any criminal court proceedings or under this Act	Liable to imprisonment maximum 5 years or fine maximum RM10,000 or both
27, 28 & 29	Duty to inform – a medical officer or medical practitioner, or member of the family, or childcare provider who believes that a child is physically or emotionally injured due to being ill-treated, neglected, abandoned or exposed or is sexually abused, shall immediately inform a Social Welfare Officer	Failure to inform – Liable to imprisonment maximum 2 years or fine maximum RM5,000 or both
29A	Duty to inform – any person other than those referred in Sections 27,28,29 who believes that a child is physically or emotionally injured due to being ill-treated, neglected, abandoned or exposed or is sexually abused, may inform a Social Welfare Officer	No penalty
31(1)	Ill-treatment of children – any person who having the care of a child— (a) abuses, neglects, abandons or exposes the child or acts negligently in a manner likely to cause her physical or emotional injury; or (b) sexually abuses the child or causes or permits her to be so abused.	Liable to a fine maximum RM50,000 or imprisonment maximum 20 years or both. In addition, may be ordered to execute a bond for good behavior and perform community service.
32	Children not to be used for begging or any illegal activities – any person who causes a child to carry out any such activities will be punished	Liable to a fine maximum RM20,000 or imprisonment maximum 5 years or both. In addition, may be ordered to execute a bond for good behavior and perform community service.

33	Any person leaving children without reasonable supervision will be punished	Liable to a fine maximum RM20,000 or imprisonment maximum 5 years or both. In addition, may be ordered to perform community service.
116	Any person who gives any information that a child is in need of protection shall not incur any liability for defamation or otherwise and shall not be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct for giving such information.	No penalty

## Sexual Offences Against Children Act 2017 (SOAC)

Sections	Offences	Punishments
5	Making, producing, directing the making or production of child pornography	Imprisonment maximum 30 years and minimum 6 strokes of whipping
6	Making preparation to make, produce or direct the making or production of child pornography	Imprisonment maximum 10 years and liable for whipping
7	Using a child in making, producing, directing the making or production of child pornography	Imprisonment maximum 20 years and minimum 5 strokes of whipping
8	Exchanging, publishing of child pornography	Imprisonment maximum 15 years and minimum 3 strokes of whipping
9	Selling child pornography to a child	Imprisonment maximum 15 years and minimum 5 strokes of whipping
10	Accessing child pornography	Liable to imprisonment maximum 5 years or fine maximum RM10,000 or to both
11	Sexually communicating with a child (except for education, scientific/medical purposes)	Imprisonment maximum 3 years
12	Child grooming	Imprisonment maximum 5 years and liable for whipping

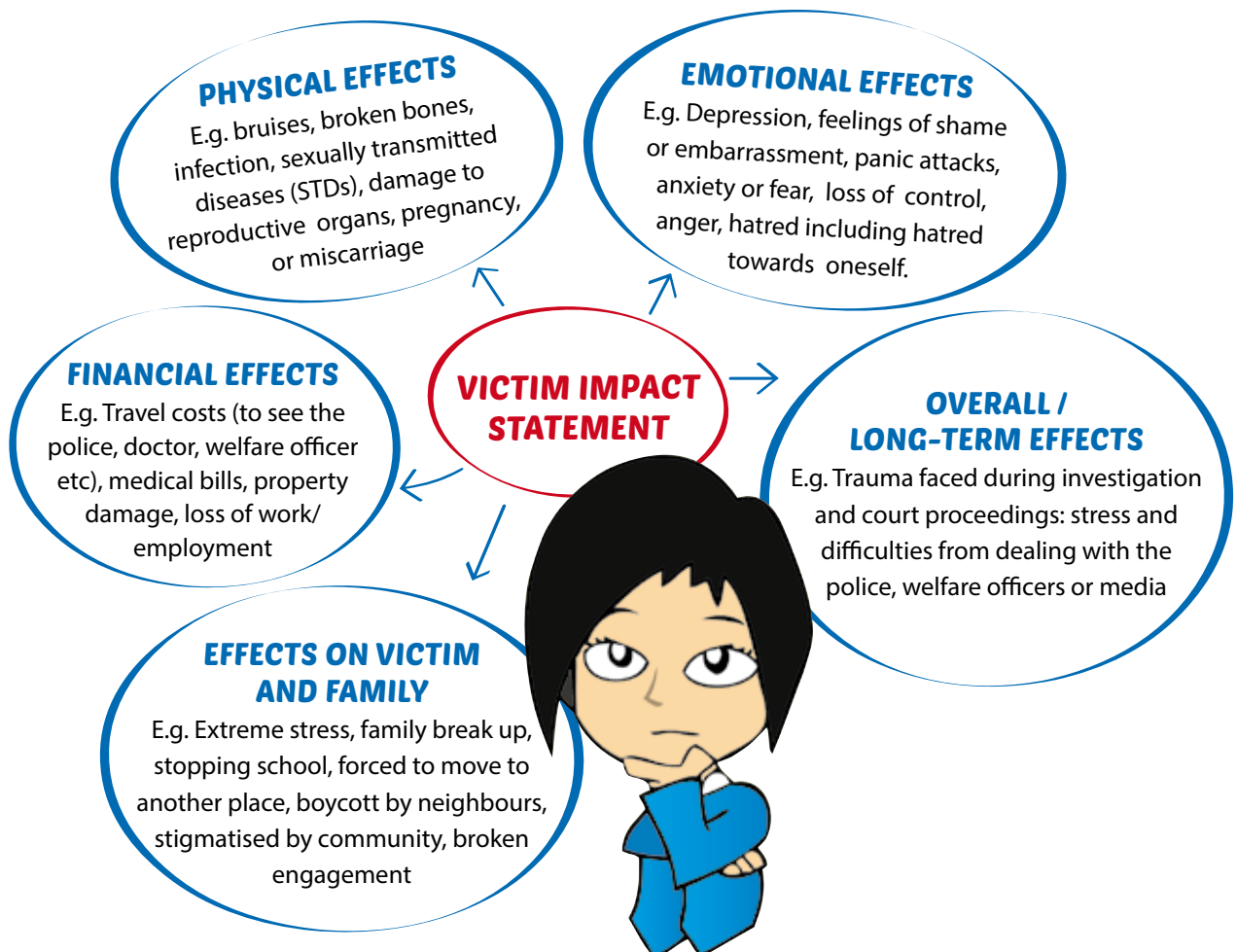
13	Meeting following child grooming	Imprisonment maximum 10 years and liable for whipping
14	Physical sexual assault on a child	Imprisonment maximum 20 years and liable for whipping
15	Non-physical sexual assault on child e.g. makes a child exhibit the child's body to be seen by others for sexual purposes	Imprisonment maximum 10 years or fine maximum RM20,000 or both
16	If a person in a relationship of trust commits any offence under this Act, punishment will be more severe. Persons in relationship of trust include: a) parent/guardian/relative b) babysitter c) teacher/lecturer/warden d) healthcare providers e) coach f) public servant	In addition to punishment for such an offence, will be punished with further imprisonment maximum 5 years and whipping minimum 2 strokes
19	Failure to give information – Any person who fails to give information of any child sexual abuse case to the police commits an offence	Liable to a fine maximum RM5,000
25	Provisions regarding whipping: if a person convicted under this Act is a male over 50 years of age	Is still liable for whipping
26	Rehabilitative counselling	The court may, in addition to any punishment imposed, order a period of rehabilitative counselling during the period of his detention
27	Police supervision	When a person is convicted of any offence under this Act, the court shall direct that he be subject to the supervision of the police for a period of not less than one year and not more than three years after the expiration of the sentence passed on him



## Victim Impact Statement (VIS)

VIS is a statement from the victim on the suffering and trauma experienced by her and/or her family as a result of the crime. The victim can also include the damages and costs she and her family had suffered such as medical expenses, inability to work, etc. The statement can be given in court orally or in writing, either by the victim herself or a member of her family after the accused is convicted or found guilty and before the accused is sentenced by the court.

The following diagram is a guide for preparing the VIS. It shows a few common effects of the crime on the victim and/or her family.



## Types of Court

### What is a Court?

A court is a place where a trial for a criminal/civil case is conducted. Usually the case is conducted in the court located within the general district where the police report was lodged.

**Figure 3: Structure of Courts in Malaysia**

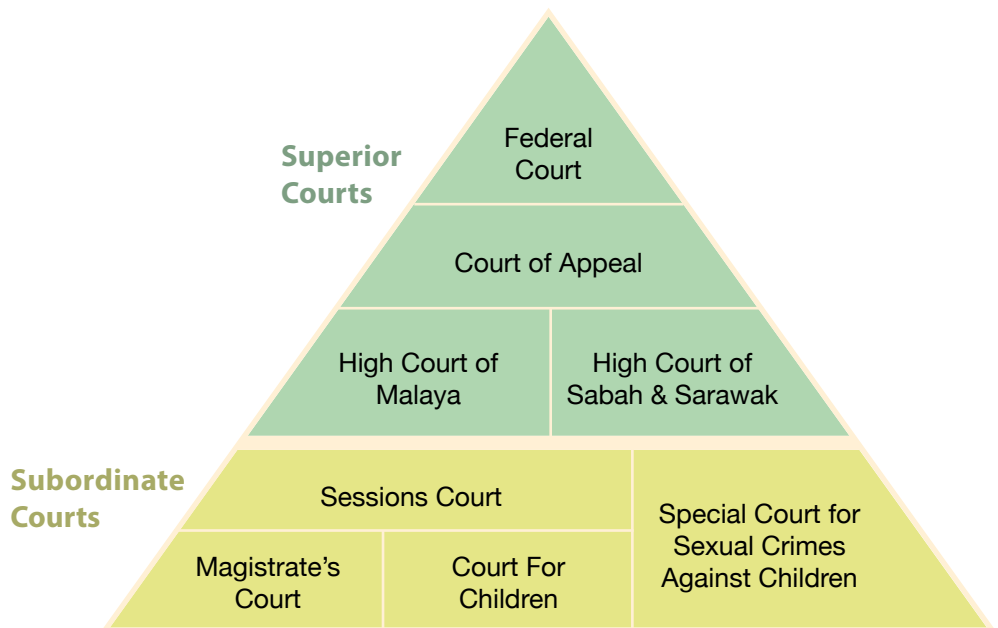


Figure 3 shows the structure of courts in Malaysia. The type of court hearing the case will depend on the type of offence committed.

## Subordinate Courts

The **Sessions Court** has the jurisdiction to hear all criminal cases other than offences punishable by death. For example, rape and sodomy cases are usually tried in the Sessions Court.

The **Magistrate's Court** has the jurisdiction to try all criminal offences for which the maximum sentence does not exceed 10 years' imprisonment or is only a fine. For example, molestation and domestic violence cases are usually heard in the Magistrate's Court.

The **Court For Children** (*formerly known as Juvenile Court*) hears and determines any charge against a child other than offences punishable by death. This court consists of a Magistrate and two advisers.

The **Special Court for Sexual Crimes Against Children** was established in 2017 in Putrajaya to expedite the disposal of such cases. The court is presided by a Sessions Court judge with the expertise in law relating to child sexual assault cases. The court is in the process of being set up in other states.

## Superior Courts

An appeal against a decision made in the Sessions or Magistrate's Court will first be heard in the High Court and lastly in the Court of Appeal. An appeal against a decision made in the High Court will first be heard in the Court of Appeal and lastly in the Federal Court.

## Difference Between A Criminal And A Civil Case

### Criminal Case

A crime such as theft, rape, robbery, molestation, murder, etc. is considered a crime against the victim and society as a whole. To ensure public safety, the police investigate the crime in order to bring the suspect to court. The aim in a criminal case is for the state to punish wrongdoers and deter others from doing the same.

A person charged with a crime is known as the accused. He can defend himself in court or can appoint a lawyer to act for him.

The victim of the crime (who is also often the complainant) is only a witness in the court process. The victim is not represented by a lawyer unless she appoints a legal companion or a watching brief lawyer to help guide her in the court process.

It is the responsibility of the government's legal officers known as Deputy Public Prosecutors (DPPs) to prove that the crime happened and that the accused committed the crime, and to ask for a punishment that fits the seriousness of the crime and its impact on the victim and society. The standard of proof of a crime is very strict. The evidence must show beyond a reasonable doubt that the accused is guilty. If found guilty, the types of punishment that may be ordered by the court against the accused include imprisonment, whipping, payment of fines, orders to supervise his future behaviour, and/or counseling to rehabilitate him.

The victim and/or her family can and should be asked about the impact of the crime on their lives in order to determine the punishment. The law provides for the DPP to ask for compensation in the form of money to match the victim and her family's pain and suffering as a result of the crime.

## Civil Case

A civil case is when one party who suffers a wrong or damage (the plaintiff) due to the actions of another, files a case in court against the other party (the defendant) to get a court decision for compensation and/or action for the wrong or damage done.

Civil cases may be filed by or against any individual, company, organisation or government agency.

Both parties in a civil case can either argue the case by themselves or through their own private lawyers, on whether the wrong or damage had happened, who caused it, and how serious the loss or damage suffered was.

The standard of proof in a civil case is lower than in a criminal case i.e. the evidence must show that, more likely than not, the damage or suffering happened as alleged by the plaintiff.

The civil court may order that compensation be paid by the defendant to the plaintiff if the plaintiff is able to prove her case, or the court may make other orders as applied for by the plaintiff depending on the facts of the case.

## Useful Contacts

### **PENANG STATE POLICE**

24-Hour Hotline	04 - 269 1999
Penang State Police Headquarters (IPK)	04 - 222 1522
District Police (IPD) – Timur Laut (Georgetown)	04 - 218 1822
District Police (IPD) – Barat Daya (Balik Pulau)	04 - 866 2222
District Police (IPD) – Seberang Perai Utara (Kepala Batas)	04 - 576 2222
District Police (IPD) – Seberang Perai Tengah (Bukit Mertajam)	04 - 538 2222
District Police (IPD) – Seberang Perai Selatan (Jawi)	04 - 582 4222 / 04 - 583 1304

### **PENANG STATE PROSECUTION ( DPP )**

State Prosecution Unit (DPP) – Main office	04 - 227 5944
State Prosecution Unit – Butterworth Office	04 - 329 7715

### **PENANG STATE SOCIAL WELFARE DEPARTMENT**

Talian Nur	15999
Penang Social Welfare Department	04 - 650 5259
District Social Welfare Office, Timur Laut	04 - 226 4531
District Social Welfare Office, Barat Daya	04 - 866 8442
District Social Welfare Office, Seberang Perai Utara	04 - 575 8715
District Social Welfare Office, Seberang Perai Tengah	04 - 538 2584
District Social Welfare Office, Seberang Perai Selatan	04 - 582 1798

## Court Locations in Penang

### 1. Georgetown Sessions and Magistrate's Court (Criminal)

Bangunan Sri Pinang,  
Lebuh Light, 10200  
Georgetown, Penang.  
Tel : 04 - 251 4310  
Fax: 04 - 251 4201

### 2. Penang High Court

Penang Court Complex,  
Lebuh Light, 10200  
Georgetown, Penang.  
Tel : 04 - 251 4000  
Fax: 04 - 251 4141  
Bus Route: Jetty - Court  
Rapid Penang buses No: 104,204, 502, CAT

### 3. Balik Pulau Sessions and Magistrate's Court

Jalan Balik Pulau,  
11000 Balik Pulau, Penang.  
Tel : 04 - 869 1610 / 869 1612  
Fax: 04 - 866 6819  
Bus Route: Komtar-Balik Pulau Bus Terminal  
Rapid Penang buses No: 403, 404, and 501

### 4. Butterworth Sessions and Magistrate's Court

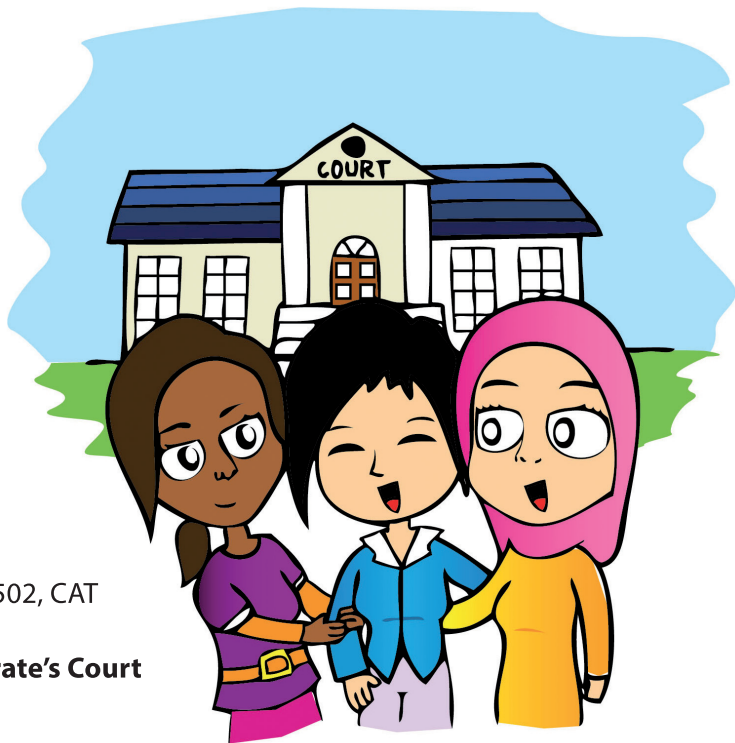
Jalan Bagan Jermal,  
12300 Butterworth, Penang.  
Tel : 04 - 310 6200  
Fax: 04 - 331 4522  
Route: Butterworth Bus Station (Jetty)  
- Kepala Batas Bus Station  
Rapid Penang buses No: 601, 603, and 608

### 5. Bukit Mertajam Magistrate's Court

Jalan Betik, Sg Rembai,  
14000 Bukit Mertajam, Penang.  
Tel : 04 - 530 4285 / 538 2205  
Fax: 04 - 530 9148

### 6. Jawi Magistrate's Court

Jalan Serindit,  
14200 Sungai Jawi,  
Seberang Perai Selatan, Penang.  
Tel : 04 - 583 1300  
Fax : 04 - 582 0631  
Rapid Penang buses No: 801 and 802



The Women's Centre for Change, Penang (WCC) is a non-profit, tax exempt organisation dedicated to the elimination of violence against women and children, and the promotion of gender equality and social justice. WCC provides counselling and temporary shelter for women and their children in crisis, irrespective of their ethnicity, religion or social background. WCC also provides emotional and court support to victims of sexual assault and domestic violence. WCC is part of a coalition of women's rights organisations, the Joint Action Group for Gender Equality (JAG), which actively advocates for legal and policy reforms affecting women and children.



ISBN 978-983-44784-7-6



#### **WCC Penang Office**

241, Jalan Burma, 10350 Pulau Pinang, Malaysia.

T: +604 - 228 0342 F: +604 - 228 5784

H/P: 011-3108 1001 E: [wcc@wccpenang.org](mailto:wcc@wccpenang.org)

#### **WCC Seberang Office**

13, Lorong Sutera 6, Taman Sutera,

13700 Seberang Jaya, Pulau Pinang, Malaysia.

T: +604 - 398 8340 F: +604 - 398 8341

H/P: 016-439 0698 E: [wccseberang@wccpenang.org](mailto:wccseberang@wccpenang.org)

Website: [www.wccpenang.org](http://www.wccpenang.org)

