



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

Guide to Criminal Justice Processes

For MSD Court Support Service providers

Authors

Māori, Communities and Partnerships, Ministry of Social Development

Disclaimer

MSD has made every effort to ensure the information in this report is reliable and accurate but do not accept liability for any errors.

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1. About this Guide

This guide provides sexual violence Court Support Service Providers (Provider), with background information on the applicable procedural and evidential rules. The Guide will enable Providers to support and inform complainants¹ of sexual offending about what to expect during the Court process. This Guide will cover the following topics:

- a) Police investigations from the decision to charge the defendant including, the complainant's Police interview and the Providers role with that interview
- b) The types of charges that are likely to be encountered and the relevant legislation
- c) The commencement of the prosecution
- d) Name suppression, what it means
- e) Decisions surrounding a defendant's remand in custody or on bail and the complainant's rights in that process
- f) A summary of stages of a prosecution
- g) Who prosecutes the charges and the difference between a Police prosecution and a Crown prosecution
- h) The lead up to trial and the role of the Court Victim's Advisor
- i) The defendant's plea of either guilty or not guilty and what happens after the plea
- j) What to expect at the trial and how Providers can help the complainant through that process
- k) If the defendant is found not guilty, and how Providers can support the complainant's understanding of this
- l) Sentencing and Victim Impact Statements
- m) Victim Notification Registers and Victim's Rights to be informed
- n) What avenues are open to a defendant to challenge their conviction.

This guide is designed to be read in conjunction with the [Court Support Service delivery guidelines](#). The guide is intended to offer Providers a snapshot of the criminal justice process and highlight the areas which may be particularly difficult for complainants, as well as providing an idea of the other stakeholders involved in the process (i.e. Court Victims Advisors and Judges).

It is important that Providers meet with other stakeholders involved in the system to ensure you are aware of each other's roles in the system. The Court Support Service Guidelines also provide a description of the stakeholders involved in the system.

¹ Until the defendant is convicted, the victim is referred to as the complainant. After a finding of guilt they are then referred to as the victim.

2. The Police investigation

The Police investigation begins with an official complaint. In cases of sexual violence, the complaint is usually made by the complainant. The complaint may be made immediately after the event/s or years after the event/s, especially in the case of offending against children. Once a complaint is received, the Police will carry out an investigation which follows specific rules and guidelines.

The Police investigation will have multiple stages, especially with more serious offending. This will include speaking to witnesses, taking items of property to examine, a medical examination of the complainant (where samples and swabs are taken for further analysis), examining scenes in an attempt to discover what has gone on, analysing electronic records including text messages, emails and other types of messages, and finally speaking to the suspect or suspects.

A key part of any sexual violence investigation is the interview with the complainant (Police call this a Level 3 interview). The complainant is an invaluable source of information and many of the lines of enquiry in the case (such as those set out above) will flow from that interview, guiding Police in their investigation process.

Often complainants will be highly stressed and traumatised at the time of the interview and benefit from having a support person with them. However, with very few exceptions, it is important during the interview (for the purposes of best evidence gathering and fair trial process) that the complainant is alone with the interviewer (a Police Officer). Interviewers are trained in how to build rapport with the complainant and to obtain the highest quality information for Police investigators.

What the complainant says will assist Police in deciding where to look for evidence, whether to carry out a medical examination, what electronic records could assist the investigation, who else to speak to and what locations or items of property could be important to the investigation.

It is important that the complainant is aware that their interview will be electronically recorded and is often given to the defendant's legal team if a charge is made and the case goes to trial.

The interview follows a set methodology designed to obtain as much information from the complainant as possible. The interview starts with an information gathering phase where the complainant is allowed an opportunity to "free recall" events. During this phase complainants tell their story as they remember it without the interviewer directing them on the topics to be covered. The interviewer will take notes during the free recall phase of the interview. During the interview, it is likely, the complainant and the interviewer will be the only ones in the room.

Once the complainant has told their story, the interviewer may ask further questions on specific information they see as important. This could include more information about clothing items, people of interest, important dates or places. It is designed to provide a clearer picture to the investigator of where to go, who to speak to and what to look for. This part may be distressing for the complainant as they may not understand why this line of questioning is required. It is important that Providers provide support and advocate for the victim during this time.

Once the interviewer has the information they require, they leave the interview to speak to the monitor (a Police Officer taking notes in another room). The interviewer may then ask the complainant some specific questions from the monitor before the interview is concluded. Once the interview is completed the recording of the interview is secured in

locked storage for when it is needed at court.

It is now increasingly common that the interview, discussed above, is played as the complainant's [evidence in chief](#) at trial. This is a shift from when complainants in sexual violence cases were required to recount events in court despite having given detailed and lengthy statements throughout the Police investigation. This means that the complainant does not have to go through the trauma of retelling their story again and again. However, while it is common for complainants' interviews to be played as evidence in chief at trial, this is not a requirement and prosecution are required to apply to the judge for evidence to be played in this way.

After the interview, Police Officers will undertake the investigation by following any lines of inquiry they consider necessary, speaking with people they think could help the inquiry, going to places where events have happened, looking for items of interest, and obtaining court orders to allow them to access to important evidence.

If a medical examination of the complainant has not been previously undertaken, this may take place (in cases of recent alleged offending). This is undertaken by a specialist doctor who will be looking for signs of sexual assault. The doctor will take swabs and samples for the purposes of further investigation including DNA comparison which may be significant for identification purposes, or to prove penetration.

In most cases, once all of the relevant lines of inquiry have been undertaken, the suspect is then spoken to. This is as Police Officers want to have all available information before speaking to the suspect/s so they can interview them only once, explain the key evidence and decide whether to charge them.

Once the investigation is concluded (including the interview with the suspect) Police need to decide whether to prosecute. The decision to prosecute is directed by the [Solicitor General's Prosecution Guidelines](#) (Solicitor-General's Guidelines). These guidelines set out the test for deciding whether to prosecute. In the lead up to the decision, Police will consider whether there is sufficient evidence to commence a prosecution against the suspect/s.

Key information: While you want to assist the complainant as much as you can, it is essential that you let the Police Officers do their job during the interview phase. You might not be present in the interview itself, however you should provide support to the complainant before and after the interview. Your role is to provide information to the complainant around how the process works, support them, and understand the potential that retelling their story has to retraumatise them.

3. The decision to charge

The Solicitor-General's Guidelines were issued in 2019 in response to concerns raised by sexual violence victims/survivors and their supporters. These provide special guidance for the prosecuting of sexual violence and note:

"Prosecuting sexual violence crimes raises challenging issues for the criminal justice system and its practitioners. Sexual violence is an area where the traditional cornerstones of the rule of law, fair trial rights, evidential standards interact.

The need for change in this area has been widely recognised notably by the Law Commission's findings in the 2015 Report of Justice Response to Victims of Sexual Violence.

Victims and witnesses of sexual violence crimes are often vulnerable or young - frequently both. For people in these groups particular care is needed to ensure the system enables their participation in the justice system. The importance of this is recognised in existing obligations such as the requirement to respect the rights of children to be heard (under the UN Convention of the Rights of the Child). In New Zealand, the importance of the interests of the complainant and victims are being recognised in the provisions of the Victims Rights Act 2002.

All of this support is a shift to a tailored approach to prosecutorial practice in this area. For example, if vulnerable witnesses or victims may require additional measures to support them in providing full and accurate evidence. This is vital to ensure that, as individuals, they realise their rights to access to justice. It is also part of ensuring a fair and thorough trial in full compliance with the rule of law."²

Prosecuting an individual is a powerful exercise of power by the State and needs to be done in a fair and proper fashion. The Solicitor-General's Guidelines governs the decision to prosecute. While these specialist guidelines do not change the fundamental test for whether to prosecute (discussed in the following paragraphs), they provide a process of best practice focussed on the needs of complainants in cases of sexual violence.

There are two parts to the decision to prosecute. The first focusses on whether there is enough evidence (the sufficiency test), and the second focusses on whether it is in the public interest (fair and right) to prosecute.

The sufficiency test requires a prosecutor to evaluate whether there is a reasonable possibility of a conviction in the case by looking at all the available evidence. The prosecutor assesses whether the evidence is credible and reliable, as well as deciding whether there is a reasonable possibility that a judge or a jury hearing would determine that evidence is satisfied to the criminal standard of beyond reasonable doubt that the defendant is guilty.

If the prosecutor decides that the test is not satisfied, then no prosecution will be brought. If the Police have completed all their enquiries at that point, the defendant will not be charged (unless further evidence is found in the future). If the evidential sufficiency test is met, then the prosecutor must consider whether it is in the public

² Law, C. (2019). Solicitor-general's guidelines for prosecuting sexual violence. *Wellington: Crown Law*. <https://www.crownlaw.govt.nz/assets/Uploads/Solicitor-Generals-Guidelines-for-Prosecuting-Sexual-Violence.PDF>

interest (whether it is right or fair) to prosecute the defendant. With sexual violence offending there is a strong presumption that it is in the public interest to prosecute but there are a wide range of factors that must be considered including:

- the seriousness of what happened, the level of violence involved
- whether it was offending while the defendant was on bail or another sentence
- if it is likely to be repeated conduct
- if the defendant has done it before
- if it is common offending
- or if it was premeditated or carried out by a group of people.

The types of factors that can reduce the likelihood of prosecution are:

- it is relatively minor offending
- a one-off offence unlikely to be repeated or if it occurred a long time ago
- that the prosecution would likely have a detrimental effect on the victim or on witnesses
- the age of the defendant (either very old or very young)
- the defendant has not done it before or is suffering from physical or mental ill health
- if the complainant considers that the harm is being rectified.

The public interest phase is very much an exercise in balancing several factors.

Once the prosecutor has decided both parts of the test for prosecution are complete, then charges will be filed against the suspect.

Key Information: It will be important that the complainant is aware that once a charge has been filed and public interest has been met, the case becomes state v. offender.

4. Prosecution and the High/District Courts

Sexual violence charges can be made by either a prosecutor employed by the Police Prosecution Service (Police Prosecutor) or by an independent Crown Prosecutor.

Most criminal charges are made by a Police Prosecutor, but a significant portion of sexual violence charges will end up being made by a Crown Prosecutor from a local Crown Solicitor's office. A Crown Solicitor is a lawyer in any court district where jury trials take place. The Crown Solicitor is appointed by the Government to act as an independent prosecutor to deal with serious offences. The Crown Solicitor will work for a law firm and that firm will assist the Crown Solicitor to prosecute these charges. Some charges are so serious that they must be prosecuted by a Crown Prosecutor.³ As well as those charges, a Crown Prosecutor also prosecutes all charges heard by a jury or cases heard in the High Court.

It is common in cases of sexual violence that defendants choose to have their case decided by jury. So, it is likely many cases which are supported by Providers, are handled by the local Crown Solicitor's office, although some cases may also be prosecuted by Police Prosecutors in a Judge Alone Trial.

The majority of the complaints Providers are likely to be supporting will have cases taking place in the District Court, but some may be transferred to the High Court. The decision to transfer a case is made by a High Court Judge and is based on several factors including, the seriousness of the case. The case will be run in the same way, whether heard in the High or District Court.

If the case is prosecuted by a Crown Prosecutor, they are responsible for making decisions about how a case proceeds. The Crown Prosecutor does a separate case review to ensure the prosecution guidelines and prosecution test are satisfied. If the Crown Prosecutor considers the test for prosecution is not justified, then it is likely the prosecution will end at that stage, although such an outcome is rare.

Instead, it is common for the Crown Prosecutor to make changes to charges at this stage. If the Crown Prosecutor decides to make radical changes to the charges including withdrawing some or all of the charges, then the Crown Prosecutor would usually take into account the complainant's views of the changes. Sometimes this will include a meeting between the complainant and the Crown Prosecutor to discuss what is happening and why. If the charges are going to be withdrawn, then it would be expected that the Crown Prosecutor would meet with the complainant and explain the reasons for what is happening, this can sometimes also involve the Court Victims Advisor.

As a Provider, you may be able to advocate for the victim/survivor if changes are being made to the charges or charges are being withdrawn. If you decide to advocate for the victim/survivor here, you will need to be realistic and have a clear understanding of the reasons for why charges may be changed or withdrawn.

³ The list of those types of charges are set out in the Crown Prosecution Regulations 2013.

5. Charges and proving the charge

If the Solicitor-Generals Guidelines are met, the prosecution begins with the criminal charge or charges being filed against the defendant. This contains a statement of how exactly the criminal law was allegedly broken.

The law requires the prosecution to prove any criminal charge beyond reasonable doubt (known as the [burden and standard of proof](#)). All criminal charges can be broken down into several elements that the prosecution must prove. If the prosecution fails to prove (beyond reasonable doubt) even one of those elements, then the defendant will be found not guilty.

Most of the charges in the cases of the complaints Providers are likely to be supporting will be found in a statute called the [Crimes Act 1961](#). One part of this statute ([Part 7](#)) contains sexual violence offences. The charges vary depending on how it has been alleged the defendant offended against the complainant.

Charges of sexual offending roughly fall into three broad groups which determine their seriousness:

- Charges that involve penetration of the complainants' body are the most serious types of charges and have the highest maximum penalty.
- The second tier of charges are contact offences which do not involve penetration.
- The final type of charges are ones involving filming someone without their consent.

Charges that involve penetration of the complainants' body

Penetrative sexual offences are rape and other forms of sexual violation. These cases will be Crown prosecutions, so if the defendant pleads not guilty, a Crown Prosecutor will handle the case. There are three parts of the charge that the Crown Prosecutor must prove to successfully prosecute a charge of this type:

- The first is the act of penetration of the complainant's body.
- The second is that the complainant did not consent to the physical act.
- The third is that the defendant did not believe on reasonable grounds that they were consenting.

Consent means agreement. It must be freely given and can be withdrawn at any time. While consent seems a simple concept, in many cases (particularly rape cases) a lot of the trial is focused on whether consent was given in the circumstances.

Section 128A of the Crimes Act 1961 provides some guidance on what consent means.⁴

1. *A person does not consent to sexual activity just because he or she does not protest or offer physical resistance to the activity.*
2. *A person does not consent to sexual activity if he or she allows the activity because of*
 - a) *force applied to him or her or some other person; or*
 - b) *(the threat (express or implied) of the application of force to him or her or some other person; or*
 - c) *the fear of the application of force to him or her or some other person.*
3. *A person does not consent to sexual activity if the activity occurs while he or she is asleep or unconscious.*

⁴ Section 128A of the Crimes Act 1961, <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM329057.html>

4. A person does not consent to sexual activity if the activity occurs while he or she is so affected by alcohol or some other drug that he or she cannot consent or refuse to consent to the activity.
5. A person does not consent to sexual activity if the activity occurs while he or she is affected by an intellectual, mental, or physical condition or impairment of such a nature and degree that he or she cannot consent or refuse to consent to the activity.
6. One person does not consent to sexual activity with another person if he or she allows the sexual activity because he or she is mistaken about who the other person is.
7. A person does not consent to an act of sexual activity if he or she allows the act because he or she is mistaken about its nature and quality.
8. This section does not limit the circumstances in which a person does not consent to sexual activity.

The courts have also provided some guidance on the issue of consent and have made the following observations:⁵

"Consent" means true consent freely given by a person who is in a position to make a rational decision. There is no presumption of law that a person is incapable of consenting to sexual connection because of age. Lack of protest or physical resistance does not, of itself, amount to consent. There are some circumstances where allowing sexual activity does not amount to consent, including:

- a) *the application of force to the complainant or the threat or fear of such application of force; or*
- b) *the complainant's intellectual or mental development is such that she cannot consent or refuse to consent to the activity; or*
- c) *the complainant is mistaken about or incapable of comprehending the nature and quality of the act of sexual activity.*

The final thing that prosecution must prove is that the defendant did not believe on reasonable grounds that the complainant was consenting. Then the focus switches from what the complainant was thinking to what the defendant was thinking. There are two parts to this element:

- What did the defendant believe about whether the complainant was consenting?
- Would a reasonable person in the defendant's shoes have believed that the complainant was consenting?

If the defendant genuinely believed that the complainant was consenting, but it is believed that a reasonable person would not have, the defendant will be guilty of the charge.

Charges are contact offences which do not involve penetration

The second group of offences involve non penetrative sexual assault. These are called indecent assault (section 135 of the Crimes Act) which is another name for 'sexual touching'. The charge is one that can be either a Crown prosecution or a Police prosecution. This can be anything from an unwanted kiss through to offending that is almost rape or sexual violation. There are four things that must be proven:

- a) the physical act
- b) the events had circumstances of indecency (usually this means a sexual overtone)
- c) the complainant did not consent to the defendant's actions. Consent has the same meaning as it did for the first group of offences

⁵ Courts of New Zealand, <https://www.courtsofnz.govt.nz/for-lawyers/question-trails/sex-offences/sexual-violation-by-rape-section-128-crimes-act-1961/>

- d) the defendant did not honestly or genuinely believe that the complainant was consenting.

A key difference with this type of offence is the defendant will be found not guilty if they had an honest but unreasonable belief that the complainant was consenting.

Similar to the first type of charges discussed, the case could focus on whether or not the event actually took place, or it could focus on consent issues where there will be the same clear emphasis on the complainant's actions.

Charges are ones involving filming someone without their consent

The third group of offences are ones that are becoming increasingly common because of the availability of smart phone technology (Harmful Digital Communications Act 2015). These are ones involving the defendant secretly recording sexual activity without the persons consent and then, perhaps, posting it online. Or the dissemination of an intimate image not intended to be publicly shared. This charge can be either a Crown prosecution or a Police prosecution.

Other charges

Cases may also have physical violence charges as well as sexual violence charges. These charges are found in a different part of the Crimes Act ([Part 8](#)). If the defendant has allegedly both physically and sexually assaulted the complainant, there will be a range of physical offences as well as sexual ones. The other type of charges that Provider may routinely provide support for complainants in, are ones where the complainant and the defendant are partners and the complainant has a Protection Order against the defendant. In these cases, the defendant may have an additional charge of breaching that order.

There might be charges from other statutes, however these are the main categories of charges that Providers should be familiar with to assist in supporting the wellbeing of the complainant.

Because consent/belief in consent is often the crucial issue at the trial, the evidence will focus heavily on the complainants' actions. This can make the complainant feel like they are the one on trial not the defendant. It is important for Providers to support the complainant's wellbeing and enable them to understand that this is not the case. They may need additional explanations from Providers that this is an integral part of the trial process and they are not the one on trial. This is because of the presumption of innocence and the requirement for the prosecution to prove each element of the charge beyond reasonable doubt. This means that often the complainant's actions will be important in deciding if they did consent or whether in those circumstances a reasonable person would have believed that the complainant was consenting. It's therefore beneficial for Provider's to support them to understand that close examination of the complainant's actions is needed for the judge or jury to have all the necessary information to properly decide the issues in the case especially, consent or belief in consent.

By way of example, in a rape case, it could be that the defendant denies that there was any penetration (which is necessary for a charge to be made). In that case, the jury's or judge focus would be on deciding on whether or not that physical act took place. In another case, the defendant may admit that the physical act happened but claim either that the complainant was consenting to what took place or that they believed on reasonable grounds that the complainant was consenting. Then, the outcome of the trial will be determined by what the jury makes of their (the complainant and the defendant) versions of events. Another example would be that the defendant

might deny their involvement and so the focus of the case will not be on whether the crime itself took place but rather whether the defendant was the person who carried out the crime.

Key Information: It is important that Providers are generally familiar with the kinds of charges and what needs to be proven for them. This will help you understand why some cases focus on the complainant's actions.

6. Stages of a criminal prosecution

The stages of criminal prosecution are controlled by a statute called the [Criminal Procedure Act 2011](#). This Act came into effect on 1 July 2013. It sets out the process for all stages of a criminal prosecution from start to finish.

A prosecution begins with the Police Officer in charge of the investigation filing a document called a [charging document](#) to the court. The charging document is the formal court document which sets out the defendant's details and what crime/s the defendant has alleged to have committed. The charging document is usually filed electronically in the court by Police. All charging documents are filed in the District Court and most remain in that court although, occasionally charges are transferred to the High Court for hearing. Why this can happen is detailed in [section 4](#).

The prosecution is required by law to provide the defendant with the evidence recorded of the complaint, this is called disclosure. This information is crucial to defendants and their lawyer deciding whether to defend the charges at trial (plead not guilty) or plead guilty.

Early on, the judge must decide whether the defendant can be safely released into the community (with conditions) or whether they should spend the time up until the trial remanded in custody. Decisions on bail are difficult and complicated and can have some of the most serious consequences. Bail is considered in more depth in [section 7](#).

Another important decision that may be made is whether the defendant's name should be suppressed. Again, this is considered in detail in a [later section](#) of the guide. Often decisions about bail and name suppression will be made the first time the defendant appears in court.

The complainant should be informed at this stage about bail and in some bail decisions, they have the right to be consulted and have their views placed before the judge (see [section 7](#)).

One of the hallmarks of criminal cases is that it is not uncommon for the case to be adjourned a number of times before it is determined. In some cases, there may be more than a dozen adjournments, as the case slowly moves through the court processes to trial. There is no doubt that this part of the process is especially hard on complainants, and a Providers support during this time is crucial.

Usually a defendant will enter a plea the second time they appear in court. The defendant can request a sentencing indication from the judge which indicates the sentence they will receive if they plead guilty. The complainant should be advised of the sentencing indication hearing and be asked to update their Victim Impact Statement for the judge to consider when making this decision.

If the defendant pleads guilty, the case will be set down for a sentencing hearing (see [section 14](#)). The complainant should be informed as soon as the defendant pleads guilty and be asked to prepare a Victim Impact Statement.

- If the defendant pleads not guilty then the case diverts to trial to determine the defendant's guilt. Again, the complainant should be informed that the plea has been entered and the case is going to trial. There are two different types of trials: In front of a judge who decides the outcome on their own.

- A jury trial (with charges that have a possible penalty of at least two years imprisonment, the defendant has the right to elect trial by jury and with some very serious charges, the case must almost always be heard by a jury).

A jury trial involves twelve members of the public who are responsible for the decision about whether the defendant is guilty or not guilty. At the stage of entering the plea, the defendant makes a decision on whether to have a jury trial (if that is an available option). The process is only slightly different depending on whether it is a Judge Alone trial (JAT), or a jury trial.

The phase immediately after entering the not guilty plea is the case management phase. This phase is designed to see if the case can be resolved through discussions between the parties, and if not, what is required by trial and how is that best facilitated. Case management discussions in a jury trial often occur at a later stage because a Police Prosecutor will be handling the case management discussions, but a Crown Prosecutor will be the person appearing at the trial.

After the case review hearing, the process splits depending on whether the case is going to JAT or jury trial. After the case management process has been completed in a JAT case then it should be ready to be set down for trial. If it is a jury trial, there is a separate stage of case management once a Crown Prosecutor has taken over the case. With jury trial cases there is another case management phase called the trial call over stage where there are discussions between the parties about the case and the evidence to make sure that the case is in shape to be heard by a jury.

With JATs the trial will usually be set at or around the time of the case review hearing. The complainant should be asked for dates they are unavailable before the trial is set down and be advised as soon as the trial date is set. If the case is expected to take less than a day, then it will be likely set down in a JAT list. This is where several cases are set down on the same day and the judge decides which case will go ahead and which will not. With cases that take longer than a day, a firm fixture date will be given.

Jury trial cases go into the jury trial management process. Once a Crown Prosecutor becomes involved, there is a phase where they reconsider the case and can change the charges faced by the defendant (see section [above](#)). The case then gets case managed by a judge and a number of pre-trial issues are dealt with at this stage. Once the case is ready for trial, the court allocates a trial date. In some courts, a case is first allocated a back-up trial date which means that it will only proceed if another case does not go ahead. This can be hard on complainants because they have to deal with uncertainty.

Once the case gets to trial, the judge or jury decide the outcome. If it is not guilty the case will end there. If it is guilty on some or all of the charges, then defendants go to a sentencing hearing. Defendants also can appeal against the outcome of the case. The appeal is made to a "higher" court (see [section 15](#)).

Key information: It is important to be familiar with the various stages that the criminal prosecution follows. This will help you manage the complainant's frustrations if the case is delayed or takes a long time to get resolved.

7. Bail

A judge must decide whether to give the defendant bail or remand the defendant until the trial. This decision is based on principles set out in the [Bail Act 2000](#). The presumption is that a person will be given bail unless, there is "just cause for their continued detention". The three main concerns a judge will look at in deciding whether to grant bail are:

- a) If the defendant will turn up for court. When deciding this issue, the judge will look at things like the defendant's previous history of coming to court and any reasons that he or she might have for not wanting to go to court. If the defendant is at risk of fleeing the country then they will be likely to end up on remand in custody until the trial.
- b) The second reason the defendant will be remanded in custody is if the judge is concerned that they will continue to offend. The judge will look at past patterns of offending, the types of crimes they may have previously committed as well as any other factors pointing towards a risk of reoffending in order to decide whether there is too high a risk if the defendant remains in the community.
- c) The final factor to be considered is whether there is a risk that the defendant will interfere with witnesses. The judge may consider whether the defendant could attempt to intimidate important witnesses like the complainant or destroy evidence. If there is a serious risk of this happening, the defendant will likely end up on remand until the trial.

In serious violent offending (including most sexual violence cases) the complainants views are an important guide to the judge and must be provided to the judge.

It is therefore important that the complainant is properly advised of these rights and given an opportunity to set out their views as this will have weight in the decision of whether a defendant is granted bail, and the conditions. The Court Victim Advisor is likely to discuss this with the complainant, but Providers can play a key role in helping to support the complainant as their views are put before the judge.

As well as having the right to have their views heard by the judge, complainants and victims of specified offences also have the right to be notified of the outcome of bail decisions and any applications to vary bail conditions. This information is provided to the complainant by the Court Victims Advisor or Police.

Key information: It is important to understand that the defendant can be in custody or in the community while the case is waiting to be resolved and the reasons for this.

It is important that Providers are familiar with the fact that the complainant's views can be considered by the judge and work with the other stakeholders to help support the complainant as their views are put before the judge. However, Providers should be aware that while complaints views can be considered, there are other factors a judge will need to consider, Providers should ensure complaints understand this and will support them regardless of the outcome.

8. Name suppression

An important consideration that can come up at the beginning of prosecution is name suppression. The presumption is that information around court cases are publicly accessible so there should be strong reasoning for name suppression. When deciding whether or not to grant name suppression, the judge is balancing the interests of the defendant, or other person affected, with the public's right to know what is going on in the courts.

The complainant's name in cases of sexual violence is always automatically suppressed under section [203](#) and [204](#) of the Criminal Procedure Act 2011.⁶ But the defendant also has the right to apply to have their name suppressed until the trial or longer.

Name suppression can be made on a temporary or permanent basis. Sometimes there will be a temporary order called interim name suppression made at the start of the case. Then, once the case is finalised, a decision is made on whether name suppression should be made permanent.

[Section 200](#) of the Criminal Procedure Act 2011 sets out the reasons why name suppression can be given. The threshold for granting such applications is high and the most common reason why a defendant's name is suppressed is if there will be serious consequences (the exact term is extreme hardship) for them (or other people closely connected to them) if the defendant's name is published. Another ground is if publication will harm (cause undue hardship) to the complainant in the offending.

Further reason for name suppression is if the publication of the defendant's name will identify someone whose name is suppressed. In a case of sexual violence where the complainant's name is automatically suppressed and there is a close connection between the complainant and the defendant, name suppression is given to ensure the complainant is not identified.

A relatively common reason for suppression is to preserve the defendant's fair trial rights. This occurs where the defendant has more than one trial for separate offending. Short term name suppression is granted to enable the defendant's right to a fair trial as if the jury in one case knows about the other offending being dealt with at a separate trial, it can affect the defendant's right to a fair trial. This will usually only justify suppression until the trials are wrapped up.

Key Information: Providers should understand the reasons why defendants are given name suppression to be able to support the complainant to understand these, if required. Providers should also be aware that care needs to be exercised when defendants are given name suppression, particularly around the publishing of the defendant's name in any communications from the Provider or complainant.

Providers should also be aware that complainants in sexual violence cases have automatic name suppression so you can, if required, ensure complainants are not concerned about being identified in the case. It is also worth noting that name suppression is a court decision and is therefore out of the complainant's hands (even if they do not wish for it).

⁶ This is mandatory under the Criminal Procedures Act (ss 203 and 204).

9. The pre-trial phase

The pre-trial phase of the prosecution, though important can be where the complainant may feel forgotten and out of the loop. Important decisions about how the complainant is to give their evidence is often made at this stage, as are decisions about what evidence the prosecution can call, what the charges should be and even if the prosecution continues or ends. Usually the complainant will play little, if any, role in this phase of the case. Complainants will be asked to give their preference for how they would like to give evidence and the reasons for this but otherwise will not be involved in this phase.

Sometimes, but not very often, the complainant might be required to give evidence at the pre-trial hearing. If this happens, Providers may need to help them manage the anxiety of being a witness.

The complainant may be advised by the Court Victims Advisor (it is the complainant's choice if they wish to be informed of this) that pre-trial hearings are happening even if they are not being called to be a witness, this is a normal and ordinary part of the process.

Both the prosecution and defence have a right to appeal pre-trial decisions that they believe are wrong. That can sometimes delay the trial while the appeal is decided.

It is important that the complainant is kept properly informed and does not feel forgotten. The Police Officer in charge of the case or the Court Victims Advisor should oversee this, but Providers may be able to assist. Understanding what happens in this part of the process is key to Providers being able to assist the complainant to understand that this is a normal and expected part of the process.

Key information: It is important to be familiar with the various stages that the criminal prosecution follows. This will help manage the complainant's frustrations if the case is delayed or taking a long time to get resolved.

10. Alternative means of giving evidence

The most common way a witness gives evidence is the witness box. In legislation a judge is given discretion to allow the complainant (or a witness) to give evidence in different ways. There are a wide variety of ways that witnesses can give evidence without being in the courtroom and without seeing the defendant.

As discussed earlier, it is now common for Police Officers to record the initial interview of complainants (see [section 2](#)). This also provides the opportunity for the complainant to give part of their evidence by way of that recorded interview being played to the judge or jury. It is common for those interviews to form the basis of the complainant's evidence in chief in sexual violence cases. This is designed to avoid retraumatising the complainant and to get the best possible evidence before the judge or jury because the statement was given at a time when events were fresher in the complainant's memory.

Another way that the complainant can give evidence is by a screen being placed between the defendant and the complainant. This is usually done by a television camera being placed on the screen which shows the evidence through a TV screen in the courtroom, however, courts across New Zealand may have different methods. The advantage of this is that it prevents the complainant from feeling scared to speak in front of the defendant. It also prevents the defendant from deliberately intimidating the complainant. While, often, the complainant cannot see the defendant, the defendant can see the complainant through the screen. This can be difficult and worrying for the complainant. It may be something Provider's need to support the complainant to manage and understand.

Screens have been a commonly used method of assisting complainants and sometimes witnesses who feel they will be overwhelmed by seeing the defendant while giving evidence. To help further prevent the complainant and witnesses feeling overwhelmed, the Provider, or Court Victims Advisor, should also assist with getting the complainant and witness into and out of the court room without coming into contact with the defendant, where possible.

The use of CCTV or audio-visual link (AVL), where the complainant gives evidence from a separate room and the evidence is shown on a TV screen in the court rather than the witness being in the courtroom, is increasingly common. The use of CCTV means the complainant can be taken to and from that room without going through public spaces. As a result, it removes the opportunity for the defendant or their supporters to intimidate the complainant or try to get complainants to change their evidence.

In cases of children, but less commonly with adults the evidence can be pre-recorded before trial and that can be played to the jury, due to the fragility of children's memory.

Ultimately, the judge hearing a pre-trial application will decide whether an alternative method of giving evidence will be used and what that will be. It is important to manage expectations with complainants because it could create disappointment if the impression is given that complainants can simply choose the way they give evidence. While options can be suggested by complainants, it needs to be made clear to them that their suggestions may not be the chosen method. The courtroom familiarisation visit, undertaken by Court Victim Advisor's, is a good time to discuss the way the complainant is going to give evidence, if not already discussed and applied for, so that complainants can visualise the different ways to give evidence.

In the lead up to trial, the complainant should be given the opportunity to watch their initial Police interview or at the very least to read over a transcript of the interview.

Key Information: It would be helpful to know the different options for how a complainant can give evidence, so you are able to help them to understand the options, if required. But the complainant should receive advice that they don't get the right to choose the way that they give evidence and it is up to the judge to make that decision.

The Court Victim Advisor will conduct the court familiarisation visit with the complainant and re-watching of their interview, but Provider's may also be able to assist in supporting the complainants emotional, spiritual and physical needs.

11. The trial phase

The trial phase of the court process can be intimidating to complainants and is one of the hardest things the complainant may ever do. This section of the guide is designed to give Providers a working understanding of this phase to assist complainants through this part of the criminal process.

Under the Solicitor-General Guidelines for Prosecuting Sexual Violence it is expected that the prosecutor will meet the complainant before trial. The purpose of this meeting is not to discuss the evidence or to coach the complainant as to the evidence they should give, but is designed as a matter of courtesy to meet with the complainant, introduce the prosecutor to the complainant and build rapport ahead of the court date. It is worth letting the complainant know that though the prosecutor will be prosecuting their case, they are not the complainant's lawyer and they do in fact work for the Crown. It is also designed as an opportunity for the prosecutor to explain to the complainant what they can expect from the court process and provide information about what could happen at the trial phase of the case. This may be done at the prosecutor's office, at a Police station or at the court as part of the complainant's familiarisation visits. The visit will be facilitated by the Court Victims Advisor and can also be attended by the Provider, working in conjunction with each other. This is a crucial part of the complainant getting familiar with the court and learning what to expect when they are being cross-examined.

12. Judge Alone Trial

The process used in a Judge Alone Trial (JAT) is similar to the one used for jury trial cases, although there are some subtle differences.

With a JAT, hopefully there is only one case set down that day but sometimes it will be in a list where there may be more than one case. If so, it is up to the judge to set the priority and work out which case will go first. Usually cases involving sexual violence will be given priority and proceed first. But unfortunately, there may be other cases that may also require priority. Where the trial is set down in a Judge Alone list there is always a possibility that the case may not go ahead, and unfortunately in some cases that can occur multiple times which is frustrating and unsettling for complainants, witnesses and other people involved in the justice system.

There are large number of reasons why cases can end up not proceeding at the last minute. Defendants can plead guilty before the trial starts or after the trial has begun, defendants cannot be brought from prison, defendants on bail failing to appear, other important witnesses failing to show up, illness of the judge or lawyers or witnesses and technological difficulties.

The first morning of the trial can be hectic. Sometimes the complainant will be set down to meet the prosecutor that morning. A JAT progresses fast. Sometimes at the start of the day the judge will deal with administrative issues with the lawyers before the prosecutors present a relatively short opening address explaining to the judge what the case is about. The prosecutor does this because in a JAT case, the judge knows almost nothing about the case and so essentially picks the case up as it goes along. After the opening, the complainant is likely to be the first witness in court. As a result, in JAT cases, the complainant can be giving evidence relatively early with court starting at 10am.

If the complainant is giving evidence by an alternative method, then this should have been set up in advance. If necessary, court staff will take the complainant to the room where they are set to give evidence from. Often the complainant will give evidence by way of a pre-recorded interview. In those cases, the interview is played, and the complainant watches the interview as the first part of their evidence. After this occurs the complainant may be asked additional questions from the prosecutor either for the purposes of settling the complainant into giving evidence before they are cross examined or to cover topics not dealt with in the DVD interview. This includes referring to photographs or other evidence that came up after the interview as part of the Police investigation or from the interview of the defendant.

The complainant will then be cross examined by the defence lawyer (see [Jury Trial](#) for more information on cross examination). After the cross examination, the prosecutor has limited opportunity to cover off topics that came up during cross examination and give the complainant a chance to explain aspects raised during cross examination (called re-examination).

After the complainant has finished giving evidence, the prosecution will call the rest of their witnesses. Often this will include the playing of an interview of the defendant by a Police Officer which sometimes has been recorded in a similar way to the complainant's interview. After all the prosecution evidence has been heard, the prosecution closes its case.

After the prosecution evidence is finished, the defendant has to decide whether they will give evidence or call other witnesses. If the defendant decides not to, then the case

proceeds to the judge determining a decision. See [Jury Trial](#) for more information on the defendant choosing to give evidence)

If the defendant does give evidence, then the case proceeds in the same way as it did with the prosecution evidence, evidence in chief, cross examination then re-examination for all the witnesses until the defendant's case has finished. Then, the judge determines the decision.

Ordinarily with a JAT, the decision is given immediately after the trial has finished, but sometimes the judge will give the decision at a later date (reserve their decision). In that case, there can be a delay of days, weeks or longer for a judge to give a decision after the hearing. Alternatively, a decision may be provided close in time to the trial but the written reason (by the Judge) will be available later.

The written reasons for the decision (verdict) means everyone including the complainant, will be able to understand the judge decision. To receive this information, written permission from the presiding judge must be sought, the Court Victims Advisor should be able to assist with this.

Key Information: The Provider should be familiar with the trial process, so they are able to support the complainant as they understand what is going on and how the process works, if needed.

13. Jury trial

The process for a jury trial is more complicated and time-consuming than a JAT. The trial date is usually allocated a long time before the trial, sometimes as much as a year in advance. The complainant will have notice of the date well before the trial is to take place. In some courts the backlog in allocating trial dates is long. Such delays are obviously frustrating and difficult for complainants. Providers can play an important role in helping manage that.

On the day of the trial the Police Officer in charge will normally liaise with the complainant and arrange for the complainant to get to court. Providers can assist by making sure that the complainant is aware of the arrangements and help to facilitate them if necessary.

With a jury trial, the court summons several members of the public to act as jurors in the case. The jurors turn up on the first morning and are given an induction into their role as a juror and then wait to be called to court. The introductory phase of a jury can take some time before witnesses give their evidence. The judge and lawyers may still be dealing with administrative issues and possibly deciding on the admissibility of evidence before the trial can start. Once preliminary matters have been sorted out, the next phase is jury selection. A panel of potential jurors are allocated by the court staff to each courtroom. First the charges are read to the jury and the prosecutor reads out a list of the witnesses so jurors can ensure they do not know the people involved.

After that, the registrar randomly selects jurors from a barrel containing all the potential jurors' names. Lawyers have a chance to veto (challenge) up to four of the potential jurors without giving any reason and by doing so they exclude those jurors from being on the jury. Potential jurors can also ask to be excused if they have personal reasons why they cannot be a juror or if they know people who are involved in the trial.

The jury selects a foreperson. The foreperson is the spokesperson for the jury and leads the deliberations. The foreperson is responsible for contact between the jury and the court staff. The jurors are sworn (take an oath or make an affirmation). The defendant then formally enters the plea of not guilty so that the trial can begin. The judge will explain the basic ground rules to the jury. The prosecutor will give an opening address (speech) explaining to the jury what the case is about because they know almost nothing about it up until then.

Following on from the opening address(es), the complainant will usually be called to give evidence. It is not uncommon for this to be late morning or even into the afternoon on the first day. In some cases, it can even be much later. As a result, the complainant, may already have been waiting at the court for quite some time before they give evidence. It is worth thinking in advance of ways for them to occupy that time as this is often unavoidable.

There is currently a pilot running to look at a different way for sexual violence cases to be heard.⁷ The pilot operates under guidelines designed "to reduce pre-trial delays and to ensure flexible and workable trial arrangements". The pilot covers most sexual violence charges and cases enter the pilot at the case review hearing. Specialist Judges preside over cases in the pilot and are meant to actively case manage them. Judges are meant to intervene and stop lawyers from asking unacceptable questions of witnesses especially the complainant.

⁷ <https://www.districtcourts.govt.nz/reports-publications-and-statistics/publications/sexual-violence-pilot-court/>

Like a JAT, if there are alternative ways of the witnesses giving evidence, then they will be set up and administered by the court. After that, the complainant will either be called into court or taken to the room that they are giving evidence in. Sometimes they will not even be in the courthouse or the city where the trial is taking place.

If the complainant's recorded interview is being played as their evidence in chief, then this will be played first. Otherwise, the prosecutor will ask questions to help the complainant to tell the jury their account of what has gone on. Even if the recorded interview is being played, the prosecutor will likely ask supplementary questions to familiarise the complainant with the process of giving evidence and to elicit information about events since the interview was made. The part of the trial where the prosecutor helps the complainant tell their version of events is called evidence in chief. The prosecutor is only allowed to ask open questions and cannot lead a complainant on what to say.

After the prosecutor has asked their questions, it is the defence lawyer's turn. This is called cross-examination. It is in many ways the opposite of evidence in chief. The lawyer asks closed (leading) questions, this often feels confrontational to the complainant and can get quite heated.

The way the complainant manages cross-examination can play a factor in deciding the outcome of the trial. It is important that the complainant listens to the question and understands before answering. It is okay if the complainant either cannot remember or does not know the answer to a question. Providers can help the complainant to prepare for this by reminding them of these things and teaching them self-soothing and other stress management techniques.

The final stage of a witness's evidence is called re-examination. It is a last opportunity for the prosecutor to give the witness a chance to provide more detail on the points the defence lawyer made during cross examination. After this, unless the judge has any questions, the complainant has finished their evidence and is able to leave the courtroom. If the judge does ask questions, both parties are given an opportunity to ask follow-up questions about what the judge asked. The jury is also entitled to ask questions. The usual process for the jury to advise the judge is in writing (through the foreperson) and the judge, sometimes after asking the lawyers, will decide whether the question should be asked.

After the complainant has finished giving evidence, the same process of evidence in chief, cross examination and re-examination takes place with all the other prosecution witnesses in the case until the prosecution has finishing calling witnesses. If the defendant has talked to Police before the trial then this recorded statement will likely be played as part of the prosecution's evidence.

At that stage, it is the defendant's turn to call their own witnesses (offer evidence). The defendant has the choice of deciding whether to offer evidence. If the defendant decides to call evidence then the same process is followed (with the prosecutor cross examining any defence witnesses). It is important to remember that the defendant has a right (under s25 of the [New Zealand Bill of Rights Act 1990](#)) to not to talk to the Police and the right not to give evidence (be a witness at the trial). This might seem frustrating and unfair to the complainants (who have to give evidence and be cross-examined) but it is the central aspect of the presumption of innocence.

Once the defendant has completed all of their evidence (or decides not to give evidence), then the trial moves onto its final stage. The lawyers for each side can make a final speech (called a closing address) to the jury explaining why their case should prevail.

The final part of the trial is when the judge gives a summing-up. This is a mixture of legal directions detailing what the jury needs to know and is designed to help jurors deal with any issues to do with the evidence and understand the case from the both sides. As part of the summing-up, the judge will tell the jury that the defendant must be found not guilty if they think it possible, probable, or even very likely that he is not guilty. They will also be told that beyond reasonable doubt requires them to be sure of the defendant's guilt.

Once the summing-up is completed, the jury go to a deliberation room and stay in that room discussing the case until they either have reached a verdict or they get to a stage where they cannot decide on the charges. The jury must try to reach a unanimous verdict (one that all of them agree with). But after they have been deliberating for four hours, the judge can allow them to give a majority verdict (a verdict where all but one of the jurors agree). After the jury have decided on the verdict, the foreperson delivers that verdict in open court with everyone who wants to be present, there to hear it.

If the jury cannot reach either a unanimous or majority verdict, then the jury is discharged, and the case may be re-tried before a different jury. Sometimes the case will not be re-tried if the complainant does not want to give evidence again. The complainant will need time and support to make this decision.

The verdict in a jury trial can either be guilty or not guilty and the jury are not required to explain why they have reached their verdicts or provide reasons for the verdict (in fact, it is an offence to ask the jury what happened as part of their deliberation).

If the verdict is not guilty then that can be very unsatisfying to a complainant. Providers should explain to the complainant that a not guilty verdict does not mean they were disbelieved, and it does not mean that the jury thought they were a liar. What it means is that the prosecution did not reach the very high standard of beyond reasonable doubt. That can be the case even if the jury believed the complainant, especially in cases where there is no supporting evidence that the jury can use to support the account given by the complainant.

Providers should support the complainant to prevent them from feeling disbelieved if the defendant has been found not guilty. In a rape case, for example, it is possible that the jury believed the complainant did not consent but could not be sure that the defendant did not have reasonable grounds to believe consent was given. If a jury (or judge in a JAT) finds the defendant guilty on one or more of the charges, then the judge will enter convictions against the defendant and move onto the penalty phase (sentencing).

Key Information: Be familiar with the trial process so Providers can help the complainant understand what is going on and how the process works. In not guilty cases Providers should explain to the complainant that a not guilty verdict does not mean they were disbelieved but means that the prosecution did not reach the very high standard of beyond reasonable doubt.

14. Guilty verdict and sentence

Sentencing is final phase of the court process and the judge hears from the lawyers and considers written materials (including a Victim Impact Statement) to decide the sentence to impose.

The judge is responsible for working out the sentence based on the decision at the trial. Rarely will this happen straight after the trial is completed and it can be months or sometimes longer before the sentence is imposed. This is due to the judge needing to obtain several reports to assist in the decision. The probation service will usually prepare a pre-sentence report providing background information on the defendant, canvas the available sentencing options to see if they are realistic in the particular case and then make a recommendation on the sentencing outcome.

If there are drug and alcohol issues in the defendant's life, then a report to make recommendations about treatment options can be obtained. The judge can also order a report from a psychologist or psychiatrist to assess the part that mental health difficulties may have played in the offending and assist the judge to work out what sentence should be imposed.

The law requires, if there is a victim⁸ of the offending, that the judge must consider whether to order a restorative justice process. This will involve a facilitated meeting between the defendant and the victim where the defendant has the opportunity to apologise and try to make amends for what they have done. This is designed so that the complainant feels heard and is more involved in the process than at the trial. Restorative justice will then be arranged by an external agency who facilitates the meeting between the defendant and victim. Both the defendant and the victim must consent to the process or it cannot take place. A report on the outcome will be provided to the court and it may make a difference in the sentence imposed on the defendant.

An important way that the victim can play a part in the sentencing is through making a Victim Impact Statement. It sets out the effect that the offending has had on them so that the judge can better understand the impact on the victim. It is not an opportunity for the victim to talk about other offending by the defendant. Instead, it is an opportunity to tell the judge any financial, emotional, or physical effects the offending has had on them, for the judge's consideration. The statement is often written by the complainant in conjunction with the Police Officer in charge, however at times others may be involved too, for instance, the Court Victim Advisor or the Provider. Sometimes the Victim Impact Statement is read out by the victim, a Court Victim Advisor, or by the prosecutor. It is the judge decision whether this occurs, who reads the report and whether the court is closed to the public at the time.

In cases of sexual violence, especially serious sexual violence, the sentence can be imprisonment, although there are lesser options available such as home detention, community detention, community work or supervision. These are all possible outcomes and should be explained to the victim in order to manage their expectations. With short sentences of imprisonment (no more than two years) defendants are released after serving half of their sentence, whereas for longer sentences of over two years, they will not be released until the Parole Board decides they can safely be released. With short sentences, the sentencing judge can impose release conditions which impose restrictions on the defendant after they are released from prison. If the sentence is over two years imprisonment, then release and conditions are left to the Parole Board.

Home detention is a sentence where defendants are confined to their home for up to 12

⁸ The complainant is called a victim after the defendant has been found guilty.

months. They are electronically monitored with an anklet, an alarm is activated if the defendant leaves their home and they will be arrested. Community detention is imposed for up to six months and is a lesser form of detention than home detention. Defendants are only confined to home for part of the day (usually a night-time curfew preventing them from going out). Supervision means they are under the supervision of a probation officer who can control what they do and try to get them assistance for any of the areas of concerning behaviour identified. Community work involves the defendant undertaking a certain number of hours in work which benefits the community.

Sometimes in sexual violence cases defendants can be ordered to pay emotional harm reparation for the damage caused to the victim by their offending. This is intended to compensate victims for the harm suffered by them at the hands of the defendant.

Key Information: Providers should be familiar with the sentencing process so they can support the complainant as they understand what is going on and how the process works.

Providers may also assist with the preparation of the Victim Impact Statement if required (liaise with Police, the Crown and the Court Victims Advisor about this) and explain the sentence options so complaints are not overwhelmed if imprisonment is not the result.

Providers should be aware that it is the Judge's decision if others involved (for example the Provider, Court Victim Advisor, or prosecutor) can read out aloud the Victim Impact Statement, and Providers should make sure the victim is aware of this and advocate for what they want.

15. Appeals

After the case has been completed and the defendant has been sentenced there is a possibility that the defendant will make an appeal. Most of the time defendants do not appeal but they have the right to challenge both the conviction and/or sentence as well as cases where the defendant is not given name suppression.

It is also possible for the Crown to make an appeal at this stage. However, it is the Crown's decision if this occurs (not the victims).

In an appeal, the appeal court (either the High Court or the Court of Appeal), will look to see if anything went wrong in the trial court or if the outcome is wrong. In those cases, the appeal court can quash the conviction, otherwise the conviction will stand. The appeal court can also change the sentence if it was too high or in rare cases if it was too low and impose a new sentence. An appeal will be made to the court that is above it in hierarchy. Appeals often only involve legal issues rather than factual issues, although factual issues can sometimes be important in an appeal.

During the appeal process, Providers are best to be guided by whoever is handling the appeal for the Crown.

Occasionally the defendant or the prosecutor can make an appeal before trial if they do not agree with a pre-trial decision (about the admission of evidence, for example). This type of appeal has the potential to increase the time it takes to resolve the case.

The prosecution has a very limited right to appeal against a not guilty finding but a broader right to appeal a lenient sentence.

16. Victims' rights

Victims have a number of specified rights. These are contained in the [Victims' Rights Act 2002](#).

Victims of serious violence offences also have additional rights ([Victims' Rights Act 2002 Section 29](#)). A victim has a right to be placed on a Victim Notification Register. This is a register of the people that a particular defendant has harmed. There are certain rights that flow from being on that register. A victim will be notified of key events in relation to the person who offended against them. The victim can also have their voice heard at any parole hearings when the defendant is being considered for release from prison and they also have a right to know when the defendant is to be released.

If it is proposed to deport the defendant from New Zealand, the victim has a right to have their views heard during the deportation process.

The prosecutor is required to bring the victim's views on bail to the court's attention. In such cases the victim has a right to their views being put before the court and the court will take their views into account in deciding the issue of bail (see [section 7](#)).

17. Criminal Case Review Commission/Pardons

Once a defendant has exhausted all the possible appeals, there are few options left to challenge the conviction. Historically, the Governor-General had an ability to refer convictions and sentences back to the courts to be reconsidered. This power was part of what was called the Royal prerogative of mercy.

On 1 July 2020, this was replaced by the creation of the [Criminal Case Review Commission](#). Now the Commission will consider claims of wrongful conviction. The process involves the person applying to the Commission. The Commission will consider the case and if it considers it is valid, then the case will be referred back to the courts.

The Governor General retains the ability to pardon a convicted person, but it seems likely that this will be used sparingly.

18. Glossary

Acquittal - This is a judgment that a defendant is not guilty of a crime or charges as charged.

Adjourn - To postpone a court sitting, or any meeting, to another date and/or location.

Admissible - Evidence is admissible if it is of such a character that the court is bound to accept it during the trial so that it may be evaluated by the judge or jury.

Bail - If charged with an offence, the person may apply for bail. Bail is when you are released from court or Police custody most likely on conditions, including that you return to court for their next required appearance. For more information see the [Bail Act 2000](#).

Burden of proof - Refers to the responsibility of proving a disputed charge or allegation. In criminal cases, the prosecution has this responsibility and the standard of proof that applies is beyond a reasonable doubt. This means that it is the prosecutor's role to prove beyond a reasonable doubt that the defendant is guilty of committing the alleged offence(s); the defendant does not have to prove their innocence.

Charging document - a document filed by prosecution alleging an offence and outlining the offence including what Act it has been filed under (e.g. Crimes Act, Family Violence Act etc).

CMM (Case Management Memorandum) - A memorandum setting out the particulars of a case, including any change in plea or charges, request for sentence indication, transfer to High Court (protocol offence), trial arrangements, disclosure and pre-trial applications. It is jointly completed by prosecution and defence counsel, and filed by the defence counsel.

Complainant - the person who alleges the offence.

CRH (Case Review Hearing) - A hearing at which any matters raised in the CMM (Case Management Memorandum) can be addressed. A case review hearing is held to examine whether a charge can be resolved without the need for a trial. For example, if the prosecution withdraws the charges against the defendant, or if the defendant pleads guilty to the charges there would be no trial.

Cross examination - Following an examination in chief, this is when the lawyer for the opposing side has an opportunity to ask the witness questions to challenge the other side's case.

Crown prosecution - A proceeding for an offence which must be prosecuted by a lawyer representing the Crown.

Defendant - The person charged with a criminal offence.

Disclosure - Disclosure is a copy of the evidence that the Crown and Police have collected to prosecute the case.

Evidence - The various things presented in court to prove alleged facts, including written or spoken testimony from witnesses, and other material such as documents, maps etc.

Evidence in chief - This is when the lawyer for one side calls their witnesses and asks the witness's questions in court to support their case.

Inadmissible evidence - Evidence that is not admissible. In other words, evidence that cannot be received into evidence at a trial for consideration by the judge and/or jury. For example, irrelevant evidence.

Judge-alone trial - A trial conducted by a judge or judicial officer, without a jury. Previously called a defended hearing. This is the default trial for category 1, 2 and 3 offences, although a defendant charged with a category 3 offence may elect jury trial if the prison sentence is over 2 years.

Judgement - A formal decision given by a court, including the reasons the judge has given their decision.

Jury trial - A trial conducted with a jury. This is the default trial for category 4, and by election for category 3.

Name suppression - In most cases, the media has the right to publish a person's name if that person has been charged with an offence. In cases where publication of a person's name might lead to undue hardship for that person or another person, the court can grant either interim or permanent name suppression (s 200 - Criminal Procedure Act 2011).

Oath - A declaration made according to the law to tell the truth.

Offence categories - Offences are categorised 1-4 by the seriousness of the offence. This categorisation replaces summary/indictable.

Offender - A person convicted of a criminal offence. The alleged offender is referred to as the suspect until the point they are charged when they will be referred to thereafter as the defendant.

Plea - A plea is a defendant's response to the charge before the court - namely guilty or not guilty.

Pre-trial admissibility hearing - A hearing to determine the admissibility of evidence before a trial.

Prosecution - The party taking the case against the defendant. This can either be the Police, Crown Solicitor or private prosecutor. In the High Court the prosecutor will always be either a Crown Solicitor or private prosecutor.

Prosecutor - The person who is conducting the case against the defendant, can be a Crown Prosecutor, Police or another government department with an enforcement arm (e.g. Corrections, MSD, IRD etc). Police can prosecute category 1 - 3 cases, Police includes sworn Police Officers at Sgt level and legally trained lawyers hired as Police Prosecutors. Sworn Police Officers can work as prosecutors under the Criminal Procedure Act 2011 but cannot work in the civil jurisdictions.

Re-examination - This is when the lawyer who carried out the examination in chief gets a chance to question their own witnesses again to clarify points arising out of the cross-examination.

Registrar - A court official who makes sure that the formal processes of the court are followed and that accurate records of hearings are kept, and who gives effect to any direction from the judge.

Remanded - After one court appearance the defendant will be "remanded" to the next appearance. This means they will either be: remanded at large, which means they are

free to go until the next appearance; or remanded on bail, which means they are released on bail. There are usually conditions that they must comply with (such as having to live at a particular place, having no contact with the complainant, or having to report to Police regularly); or remanded in custody, which means they are held in prison until the next court date. Following the defendant's court appearance, the defendant will usually need to stay at court until the appropriate paperwork has been prepared for the defendant.

Restorative justice - Refers to a voluntary facilitated meeting between a victim and defendant, and their respective support people, usually before sentencing. The aim of these meetings is to allow victims to have a say and focus on their needs, while defendants can take responsibility for their actions and for putting things right. A report of the meeting, and any recommendations arising out of it, go to the judge and are taken into account at sentencing. Not all courts offer access to restorative justice and it is not suitable for all offences.

Sentencing Indication - A statement by the court that provides the defendant with the possible outcome they would be likely to receive if they were to plead guilty at this particular stage of the proceedings.

Sentencing - If the defendant pleads guilty or is found guilty a pre-sentence report may be ordered by a judge. These are prepared by probation officers. A pre-sentence report contains details of the defendant's personal circumstances, information about when the offending occurred and the probation officer's recommendation about the type of sentence. The sentencing judge will consider these reports along with the sentencing submissions by the prosecutor and defence. Statements from the victim/s are taken into account at this stage and in certain circumstances, their statement can be read out in court. The severity of the sentence will depend on the maximum penalty of the offence/s and the seriousness of the offending. It will also be influenced by any materials that the judge has been provided with (e.g. restorative justice, cultural and pre-sentence reports).

Submission - An argument that is presented to the court in support of an application. It can be written or oral.

Verdict - The decision that is made at the end of a trial about whether the person is guilty or not guilty of the charges against them.

Victim - A person against whom an offence is committed by another person, causing physical injury, or loss of, or damage to, property. It also includes the parent or legal guardian of a child, or young person, who is the victim of an offence, unless that parent or guardian is convicted in relation to that offence. A victim is also a member of the immediate family of a person who dies or is rendered incapable because of an offence committed against them, unless that family member is convicted in relation to that case. More information about victim's rights is available in the [Victims' Rights Act 2002](#).

Victim Impact Statement - is a written and/or oral statement that is made as part of the judicial legal process which allows victims of crime the opportunity to inform the judge about the impact the crime has had on their and their whānau lives. Victims may be able to read their Victim Impact Statement in court or have someone read it for them.

19. Appendix One: The Court Victim Advisor

The Court Victim Advisor will initiate contact and make an offer of services for victims/survivors as soon as possible following the defendant's first appearance in court. Initial contact would normally be by phone when the Court Victim Advisor will explain the service offered by Court Service for Victims on behalf of the Ministry of Justice. The service is free and confidential to assist the victim to take part in the court process from first appearance through to sentencing and any appeals. The service offered is client focussed, the client determines how they wish to be contacted and how frequently. The Court Victims Advisor will discuss safety needs and facilitate access to support agencies and programmes.

Within this role Court Victim Advisors will:

- discuss the victim's/survivor's safety needs and facilitate access to Specialist Sexual Harm Services, as required.
- advise the victim of their rights under the Victims' Rights Act 2002.
- provide information about the case and assist the individual to take part in the court process⁹ They will explain the next steps as well as what to expect from any future appearances of the defendant, and keep the victim fully informed of the court process by regular contacts.
- provide procedural information, information about the case/court appearances¹⁰ and alternative ways of giving evidence.
- prepare the victim for court by discussing alternative ways of giving evidence, familiarising them with the courtroom, AVL and preparing a waiting area. They will liaise with the Officer in Charge, Crown, Court Security and the victim and their support person/agency in preparation for trial. Court education for young witnesses is also provided by the Court Victims Advisor.
- ensure the Victim Impact Statement is completed and before the court for sentencing, discuss with the victim if they wish to read their Victim Impact Statement and alternative means of presentation. They will advise/seek the approval of the court for the victim or their representative to deliver the Victim Impact Statement.
- liaise with the Court Support Service worker to ensure the victim is well supported at court and may share information with the victim's consent.

⁹ This may also include seeking their views on topics such as bail, name suppression, sentencing outcomes and present those views to the court, when possible.

¹⁰ This can include information from the court room for instance, the bail outcome and conditions, or, if the perpetrator is remanded in custody as well as the next steps.