

Understanding the Legal System – Part 2: What Happens at Trial?

When cases of sexual violence proceed to court – particularly if the accused pleads not guilty – a lot of different people and processes are involved. In these situations, the accused is said to be **committed to trial** and a trial date is set (although this is often delayed, sometimes repeatedly). The trial is conducted in a court, in front of a judge and (usually) a jury of 12 community members. During the trial, the **prosecution** (the Office of the Director of Public Prosecutions or **OPP**) presents evidence that the accused committed the crime(s) they are charged with; a lawyer or lawyers for the accused (the **defence**) present evidence that the accused did not commit the crime(s) and/or try to undermine the prosecution's case. Each side makes verbal statements (**arguments**) and questions witnesses. (Many of us are familiar with US courts, from watching TV shows and movies, so it is important to know that Australian courts have many differences from US courts.)

Trial processes are stressful and, unfortunately, it is common for victims and witnesses to feel upset, frustrated, and intimidated at times. If you are going to be involved in a trial, it will be important to have support around you and, if possible, to reduce other sources of stress. Contact your local sexual violence service to discuss your support options if this would be helpful – we are used to talking through these options and helping victims/survivors get the support they need.

What do the courts do?

When a person is charged with a crime, they first appear in the **magistrate's court**. One of the magistrate's tasks is to decide whether there is enough evidence for the **defendant** (the person accused of the crime) to be convicted of committing the crime. At a **committal hearing**, the OPP presents evidence against the defendant, including asking questions of witnesses, including the victim (once the case gets to court, the victim is considered a witness). The defendant's lawyer or the defendant themselves may also question the witnesses; this is called **cross-examination**. If the magistrate decides there is enough evidence to proceed to trial, the magistrate will send the matter to the **district court**.

When a trial proceeds to a determination, there are several possible outcomes.

If the accused is found **not guilty**, all legal action against them ends and they are free to go. (This does not necessarily mean that they are innocent, but that the prosecution's case was not considered strong enough to prove that they are guilty.) This is a very distressing outcome for victims/survivors of sexual violence.

If the accused is found guilty, they will be **sentenced**. Sentencing can involve being imprisoned, which is known as a **custodial sentence**. **Non-custodial** sentencing options include community service orders and being freed either without further sentencing requirements, on the basis of time already served (in cases where the perpetrator has been held in jail awaiting trial), or with some restrictions on what the perpetrator can do (in some cases, breaching these restrictions can result in imprisonment).

The purpose of the trial is for the jury to determine whether the accused is guilty and for the judge to decide what will be done (the **sentence**) if they are.

The OPP is tasked with acting in the **public interest**. While they want justice for victims, not all trials provide justice (a guilty person may be found not guilty, for example).

The OPP also has to consider other factors, such as whether the trial has a reasonable chance of a guilty verdict and what kind of sentence would fulfil other responsibilities they have, such as discouraging the accused repeating criminal acts or deterring members of the community from committing the same kind of crime.

If the accused is found guilty and the victim is satisfied with their sentence, they may feel that justice has been done, but it is important to be aware that the victim and their search for justice is only one of the considerations in prosecution. The results of trials can be unsatisfying for victim and their supporters.