

Reporting Sexual Violence to Police

Criminal justice system basics for adults who have experienced sexual violence

Taylor is at a party with friends. Someone comes up to Taylor, grabs their buttocks roughly without saying anything, and then walks away. Taylor did not give this person permission to touch them. Any sexual touching without consent is sexual assault.

Parker is 16 years old. One day, the coach pulls Parker aside and asks Parker to text a picture of their genitals. The coach tells Parker not to tell anyone or else the coach will bench Parker. Parker is scared and complies with the request. The coach is creating child pornography.

Morgan's ex posts online a video of them in a sexual position. Morgan did not give their ex permission to post the video. Publishing an intimate image without consent is a criminal offence.

If you have had an experience like Taylor, Morgan or Parker, you are not alone.

You have options.

Canada's *Criminal Code* sets out criminal laws and offences. These laws apply across Canada. Many criminal offences cover various types of sexual violence.

You can report sexual violence to the police at any time, even years later. This includes sexual violence that older adults experienced as children.

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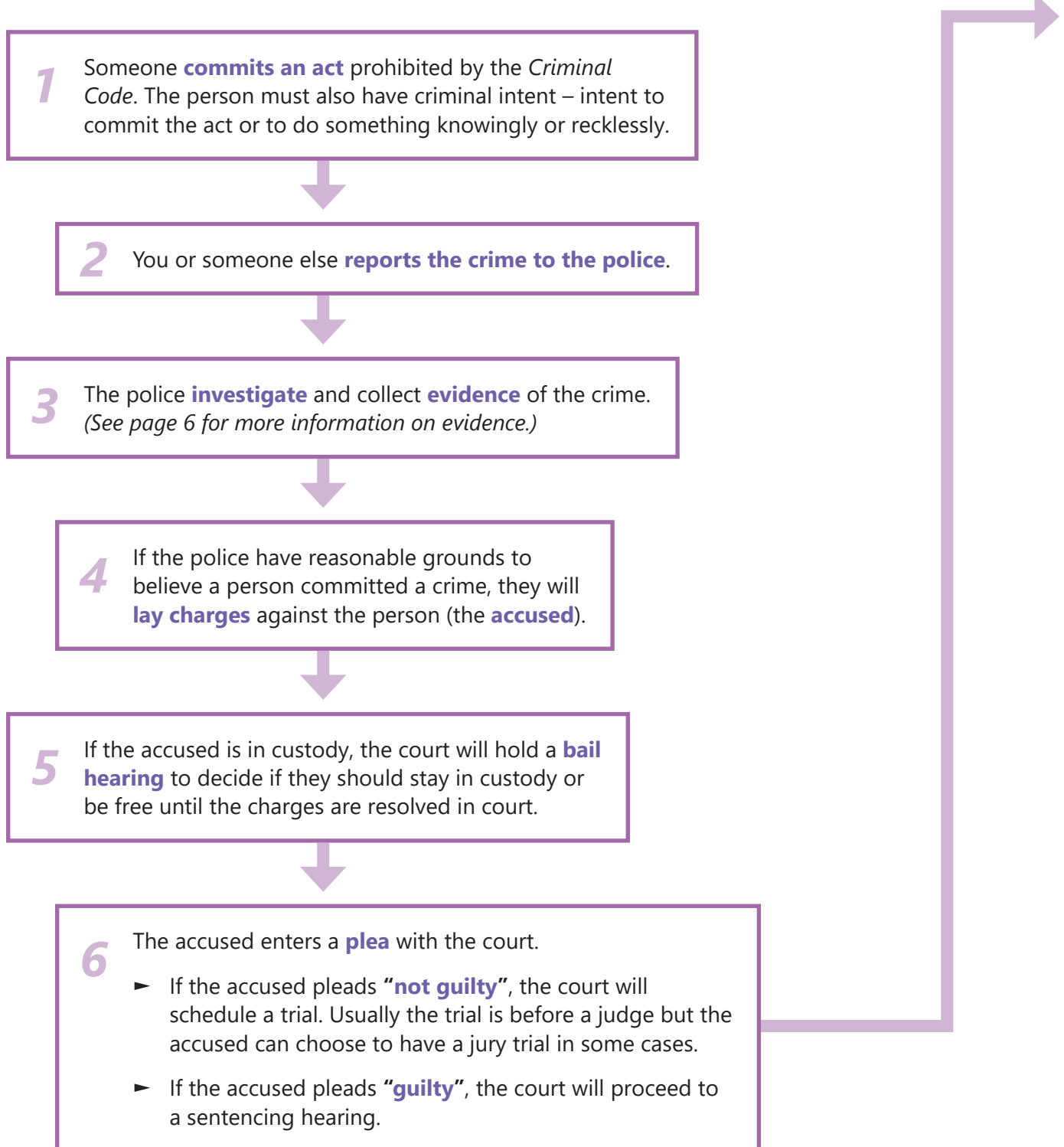


This tip sheet describes legal responses to sexual violence. It does not cover all responses available to those who have experienced sexual violence. Read on for more info on organizations that can provide support. The other tip sheets in this series are available at: www.cplea.ca/sexual-violence/

The Criminal Justice System

Canada's criminal justice system prosecutes the person charged with a criminal offence (the **accused**). Crimes are wrongs against society. Even though you may be a victim of crime, it is not a private matter between two people. Crimes are prosecuted by Crown prosecutors.

The following is an overview of the criminal justice system:



7 For some charges where the accused may be sentenced to 14 years or more in prison, the court will schedule a **preliminary hearing**. At the preliminary hearing, the Crown prosecutor tells the court what evidence they have against the accused. You will likely have to testify at this hearing. The judge can decide if there is enough evidence to proceed to a trial. If there is not enough evidence, the Crown prosecutor can withdraw the charges and the accused is free to go. The Crown prosecutor can also **stay the proceedings**. To stay the proceedings means to stop the trial process. This might be to allow time to gather more evidence. The Crown prosecutor can restart stayed proceedings within one year.

8 At the **trial**, the judge or jury will hear evidence from the Crown prosecutor and defence counsel. The judge or jury will then decide if the accused is guilty or not guilty and announce their verdict.

- ▶ If the judge or jury finds the accused is guilty (convicted) of the charges, the court will schedule a **sentencing hearing**.
- ▶ If the judge or jury finds the accused is not guilty (acquitted) of the charges, the accused is free to go.

9 At the **sentencing hearing**, the judge will hear from the Crown prosecutor and defence counsel as to what the sentence should be. The judge will also consider **Victim Impact Statements**. The judge makes the final decision. The judge can sentence the accused to probation or jail or a combination of both.

- ▶ The accused may be eligible for parole after some time in jail. Parole is another form of sentence. While on parole, they will have to follow certain rules. At the end of the parole period, the accused is free to go.

10 If the accused or Crown prosecutor are not happy with the verdict or sentence, they can **appeal** (challenge) it. There are legal tests for when a decision can be appealed.

Reporting a Crime to Police

The role of police is to protect the public and lay charges. They investigate crimes and consider many things when deciding whether to lay charges. However, the Crown prosecutor makes the final decision about prosecuting the accused, based partly on whether they believe a conviction is likely.

You can report a crime to police by:

- reaching out to a police and court support advocate, who can talk with you about your rights, and offer options or referrals
- calling 911, if you are in immediate danger or need immediate help
- calling the non-emergency police line in your area
- going to a police station
- for sexual violence, speaking with a **Sexual Assault Response Team (SART) nurse/doctor** at the hospital

“What happens if the police do not press charges?”

Sometimes the police will decide not to lay charges against the person who caused harm.

There are many reasons why, such as:

- The police do not have reasonable grounds based on the evidence to believe the person has committed the crime.
- The police do not believe it is likely the evidence will lead to a conviction.
- The police have not properly investigated what happened.

“What is an adjournment?”

An adjournment is a postponement of a court process. It is a normal part of the court process and may occur often. The court can adjourn hearings for many reasons, including to give time for the accused to find a lawyer.

“What is a Victim Impact Statement?”

A Victim Impact Statement is an opportunity for you to tell the court how the crime has affected you physically, emotionally, economically and socially. The Crown prosecutor will ask if you want to provide one. You can read it out at the sentencing hearing. Or you can give a copy to the Crown prosecutor for the judge, defence counsel, accused and Crown prosecutor to read silently.

“What if I am not happy with how the police respond?”

You can:

- Make a complaint against the police. Check with your local police on how to make a complaint.
- Request copies of police records relating to your complaint. You can submit your request in writing to the police under the *Freedom of Information and Protection of Privacy Act*. The police may charge you fees for this service. Contact the Office of the Information and Privacy Commissioner of Alberta for more information.
- Start a **private prosecution** at the courthouse against the person who caused harm. You must follow a specific process. Contact your local courthouse or a police and court support advocate for information. The Crown prosecutor will take over the case and choose whether to prosecute the accused.

The People

accused The person charged by the police with committing a crime. They are also called a **respondent**.

court clerk The person who helps the judge during court proceedings. The court clerk will swear the witnesses to tell the truth and take care of all the paperwork in the proceeding.

Crown prosecutor A lawyer who works for the provincial or federal government and represents the public interest in criminal proceedings. For sexual assault cases, the Crown prosecutor works for the Government of Alberta. The prosecutor acts in the public interest and not on behalf of the victim. The prosecutor helps witnesses share their evidence in court.

defence counsel A lawyer who represents the accused, defending their rights and ensuring they have a fair trial. The accused can hire their own lawyer or ask for one through Legal Aid if they cannot afford a lawyer. Defence counsel will try to show the Crown prosecutor has not proven their case beyond a reasonable doubt.

judge The person who oversees the proceedings. The judge makes decisions about the law and what evidence can be admitted. The judge also decides the verdict (unless there is a jury) and, if the accused is found guilty, determines the sentence.

jury Twelve (12) members of the public selected by the Crown prosecutor and defence counsel for a trial. The jury listens to all the evidence and the judge's interpretation of the law before deciding the verdict. The jury does not sentence the accused.

victim The person who experienced sexual violence. The victim is also called the **complainant**.

Role of the Victim

Your role is to provide evidence in the case against the accused.

The criminal justice system recognizes crimes as wrongs against society. This means that even though you may be the person who was harmed, the Crown prosecutor is in charge of the case. They decide if and what charges will be laid, and how to prosecute the accused, as well as make recommendations to the judge about sentencing. The Crown prosecutor will likely meet with you to get your evidence. They will also decide whether you will be a witness. In sexual assault cases, the victim is often a key, and sometimes the only, witness to the crime. You can ask the Crown prosecutor to keep you informed of what happens. The Crown prosecutor is not your lawyer, however, and ultimately makes all decisions about the prosecution.

“What if I am a witness?”

You may be asked to testify (give oral evidence) at the preliminary hearing and trial. As a witness, the Crown prosecutor will ask you questions about your experience. The defence counsel can also ask you questions. The defence counsel may suggest other versions of the event. Stay patient and calm. The defence counsel is only doing their job, even though it may seem unfair.

If you are testifying (giving evidence) against the accused at a preliminary hearing or trial, tell the truth and say only what you remember. If you cannot remember details, do not guess.

“Do I get a lawyer?”

No. The Crown prosecutor works for the government on behalf of society, not for individuals. While the Crown prosecutor will meet with you to talk about the case, they are not your lawyer. For some parts of the criminal process – section 276 or 278 applications – you can have your own lawyer to represent your best interests. Keep reading for more information. You can also access supports (including having someone with you in court or asking questions about the process) at your local sexual assault centre, Victim Services Unit or other organizations who support people through the criminal justice process.

Evidence

The police need evidence to charge an accused with a crime. The Crown prosecutor uses the evidence to try to prove the accused committed the crime. The accused is innocent until proven guilty. A judge or jury decides whether the accused is guilty of the crime beyond a reasonable doubt.

Most of the evidence will come from you – the person who experienced the sexual violence.

If you choose to report the assault right away, you can help the police gather evidence by NOT:

- showering or bathing
- changing or throwing away your clothes
- washing your hands or combing your hair
- taking any drugs or alcohol
- disturbing the area of the act

If you report the assault within three days, the police may be able to collect touch evidence if skin-to-skin or oral-to-skin touching occurred.

Sometimes up to seven days after the assault, you can go to a hospital for medical care and evidence collection. Some hospitals have SART nurses or doctors available to help you.

There is no time limit for reporting to the police. The sooner you report to the police, the easier it is for police to collect forensic evidence that can help prove the charge.

Section 276 Applications: Evidence of Complainant's Sexual Activity

The court cannot accept evidence that you engaged in sexual activity, with the accused or another person, to show that you are more likely to have consented to the sexual activity in question or that you are less worthy of belief.

Defence counsel can ask the court to consider evidence of your sexual activity if the judge decides all the following are true:

- Defence counsel is not using the evidence to show that you are more likely to have consented to the sexual activity in question or that you are less worthy of belief.
- The evidence relates to an issue at trial (such as consent).
- The evidence is of specific instances of sexual activity.
- The evidence proves something important and does not harm the integrity of the justice process.

The judge decides whether to accept the evidence.

RIGHT TO COUNSEL

If you are involved in a section 276 application (because defence counsel wants to use evidence of your sexual activity) or a section 278 application (because you hold a record), you have a right to have your own lawyer at the court hearing. Your lawyer will represent your interests in the application.

Contact Legal Aid Alberta for a lawyer to help you, regardless of your financial situation. Visit www.legalaid.ab.ca or call 1.866.845.3425.

Section 278 Applications: Third Party Records

Defence counsel and the accused cannot get certain records about you or witnesses unless the judge gives them permission. These records are any form of record that has personal information for which there is a reasonable expectation of privacy.

Third party records include:

- Medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records
- Personal journals and diaries
- Records with personal information for which disclosure is protected by other laws (such as privacy laws or solicitor-client privilege laws)

Third party records do not include records made by the person responsible for the investigation or prosecution of the offence, such as police officer notes.

The *Criminal Code* sets out a process that the Crown prosecutor and defence counsel must follow to get the judge's permission.

Defences Available to the Accused

The accused has rights too. Their rights include:

- the right to have a trial (have a judge or jury decide if they are guilty or not) within a reasonable time. An accused should be tried within 18 months of being charged unless there are good reasons for the delay.
- the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal
- the right not to be denied reasonable bail without just cause

The accused also has the right to defend themselves. Some common defences to charges of sexual assault are:

- **Mistaken belief in consent**
The accused believed you voluntarily agreed to engage in the sexual activity in question. This defence is not available if the accused is charged with an offence against someone who is under 16 years of age.
- **Mistake of age**
If the charge is an offence against a child, the accused can show they took all reasonable steps to determine the age of the victim.
- **Sexual activity never happened**
The accused can raise doubts that the sexual activity ever happened. The accused can do this by showing contradictions or improbabilities in your evidence.

YOU ARE NOT ALONE.

There are support services available to help you. These include counselling services, and support before, during and after the legal process.

To connect with supports in your area:

- Call or text **Alberta's One Line for Sexual Violence** (1.866.403.8000)
- Call the **Canadian Human Trafficking Hotline** (1.833.900.1010) or chat live at www.canadianhumantraffickinghotline.ca
- Call or text **Alberta 211** (2-1-1) or chat live at www.ab.211.ca
- See a list of sexual assault centres across Alberta at aasas.ca/get-help

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You should NOT rely on this publication for legal advice.
It provides general information on Alberta law only.

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The other tip sheets in this series are available at:
www.cplea.ca/sexual-violence/

Sexual Assault Centre of Edmonton

SACE supports children, youth, and adults who have experienced sexual abuse or assault, and educates the public about sexual violence.

www.sace.ca

Elizabeth Fry Northern Alberta

EFry supports women and girls who are or may be at risk of becoming criminalized.

www.efrynorthernalberta.com

Centre for Public Legal Education Alberta

CPLA makes the law understandable for Albertans by providing reliable and free legal information.

www.cplea.ca