

Navigating the Criminal Justice Process if Your Child Has Been a Victim of Sexual Abuse or Assault

By CJ Scarlet

Note: Before reading this article, I encourage you to read another article on the Freebies page of my website entitled, "If Your Child Has Been Sexually Abused." That document talks about what to do when your child discloses that he or she has been sexually abused or assaulted, how to make a report to Child Protective Services and law enforcement, and whether to press charges, which is a good lead up to this article. Go to www.cjscarlet.com/freebies to access it.

When Your Child Discloses Abuse

It happened. Your precious baby has been the victim of sexual molestation or assault. I'm so sorry this happened to her (or him) and to your family. Know that it wasn't her fault or yours, and that neither of you did anything to deserve it. The perpetrator deserves all the blame for choosing to commit the offense.

The purpose of this article is to inform you how the criminal justice system works and how to navigate it so you and your child experience as little confusion and frustration as possible.

If You Decide to Press Charges

Even if you choose to press charges against the perpetrator, the District Attorney's (DA's) Office ultimately decides whether to criminally prosecute the case. If they don't think their case is strong enough (i.e., there's not enough evidence for a conviction), they may choose to drop the charges. This can be very upsetting for you and your abused child who've endured significant emotional turmoil to get to this point.

Don't despair; you can still bring a civil suit against the offender, which I'll talk about below. First, let's assume the DA has decided to prosecute your case. What does the process look like?

Meeting with the Prosecutor

The DA's Office will handle the prosecution of your child's case. To be clear, they are not *your* attorney; they represent the "state." The DA has a staff of attorneys, called prosecutors, who manage her cases. Unless it's a high-profile case, you're unlikely to meet with the DA herself. You'll meet with an Assistant District Attorney and/or investigator who will conduct a thorough interview with you and with your child (probably separately) to determine the facts of the case.

It may be difficult for your kid to tell her story to a stranger, but that's part of the process and it's good practice for when she testifies in court. Encourage her to tell the truth of what she remembers to the best of her ability. If she doesn't know the answer to a question, she shouldn't make up one to please the prosecutor. It's better to admit she doesn't know than to guess and be accused of lying later in court. You can ask for a copy of your child's statement before the case goes to trial to refresh her memory.

Court Appearances and Hearings

Before the actual trial, there may be several court appearances where they formally charge the offender, and/or a grand jury hearing. The grand jury is a closed event where the prosecutor lays out the basic evidence of the case to a judge or small jury in order to obtain an indictment (a determination that there's a factual basis for criminal charges). The perpetrator, now called the "defendant," usually isn't present at this event and your child probably won't be required to testify or be present.

If the prosecutor decides to file a felony complaint rather than present the case to a grand jury, the defendant is entitled to a preliminary hearing. At that hearing, the prosecutor must show that there's enough evidence to warrant a trial.

Additional hearings will be held and motions will likely be made in the months preceding the trial as the prosecution and defense teams attempt to enter or suppress evidence and witnesses. Your child won't usually need to be present at these hearings. The prosecutor will keep you apprised of any action required on your child's part.

Delays and trial date postponements are common, so don't be surprised if the date of the trial changes several times, sometimes months later than originally planned.

Get Educated

Learn as much as you can about the case, such as the exact charges; the names of the prosecutor, defense attorney, and judge; and whether there's a victim advocate assigned to your child's case (if not, ask for one). Ask the prosecutor to meet with you and your child before she testifies.

Find out if the DA plans to offer a plea deal to the defendant and, if so, what the deal is. A plea deal is a lighter sentence a prosecutor offers the defendant in exchange for his guilty plea. This saves the "state" (which is doing the prosecuting) time and money, and helps them get a win if they aren't sure there's enough evidence to get a conviction. Your child won't have to testify if a plea deal is reached.

It's up to the prosecutor and the DA whether they offer a plea deal or not. Although your opinion and your child's may be taken into consideration, the DA has the final say.

Before meeting with anyone on the prosecution's team, it's a good idea to write down your questions and thoughts so you don't forget them. Keep careful notes in a journal so you can refer to them before your child testifies. This will increase your confidence that you're on top of things.

Ask the prosecutor or victim advocate to give your child a tour of the courtroom before the court date so she knows who sits where and doesn't feel as intimidated on the day of the trial.

Dealing with the Media

By law, the media can't disclose the names of sexual assault victims or juvenile victims, so unless you choose to reveal your child's name to them, they can't include it in their reports. This doesn't guarantee no one will find out who your child is; people do talk and word gets around, but at least your child's name shouldn't be bandied about in the newspapers and on TV.

About the Judge and Jury

If your child's case is going to a jury trial, the prosecution and defense teams need to agree on the selection of 12 men and women they believe will be impartial when considering the facts of the case.

Remember that the offender is considered *innocent until proven guilty beyond a reasonable doubt*. "Guilty beyond a reasonable doubt" means all 12 jurors agree that the prosecution adequately proved the offender committed the crime. They're tasked with basing their decision on reason or common sense, not assumptions, sympathy, or prejudice.

Testifying: The Prosecution

The first day of court may be the first time since the assault that your kid sees the perpetrator and his family and friends, especially if the case involved an assault by a stranger. If it's someone your child knows, maybe even someone she loved, it can be unnerving to face the offender down.

Be sure you and your child are surrounded by friends and family of your own who can offer support and encouragement. Your local rape crisis center may be able to send one of their advocates to sit with you both throughout the process to provide additional support.

It's important to note that you and your child may not be allowed to be present in the courtroom during the trial, with the exception of her time on the witness stand when she's testifying against the perpetrator. The prosecutor's office will be able to tell you if and when you can sit in on the proceedings. Family members and friends who aren't testifying may be able to observe the trial and can keep you informed of what's happening.

If you believe your child can't testify in front of their assailant, ask the prosecutor if she can testify on closed circuit TV. She'll still have to answer the defense attorney's questions, but she won't have to do so while their offender stares her down. This may not be granted, but you can at least ask.

The prosecution always goes first in court and the defense second. Both sides make opening statements which may contain very strong accusations against your child and/or the defendant. As difficult as it is, you must remain quiet and maintain your composure throughout the process, regardless of any mistakes or incorrect accusations the defense attorney makes about

your kid. Speaking when not on the witness stand isn't not allowed and may make you or your child look less credible.

If the defense attorney says something you know isn't true, write a note to the prosecutor (the attorney representing your child's case) to point it out. Work to appear calm and impartial, no matter what's happening.

Next, the prosecutor will call his witnesses to the stand, including your child, to give testimony before the judge and jury. The spotlight will be on your kid, but know that it's the prosecutor's job to make her feel comfortable and to help her tell her story in a logical fashion. He'll begin by asking simple questions, such as your child's name and where she lives, until she begins to relax and become more comfortable with the line of questioning. Next, he'll lead your child on a step by step progression through her memories of the event. Your child should listen to him carefully and answer each question as it comes; he's not going to try to confuse her or make her look bad.

Advise your child to take her time telling her story. It's normal to be nervous, even terrified. If she gets upset and start to cry on the stand, that's okay. She can ask for tissues, breathe deeply a few times, and continue her testimony when she can. If she needs a drink of water or time to collect herself, she can ask the judge if she can take a short break.

Marie De Santis of the Women's Justice Center advises survivors to make a list before they have to testify of all the things they're most afraid will happen in court. Ask the prosecutor or victim advocate what will happen if those things actually occur. Most of the time, they'll be able to reassure your child that such questions aren't allowed.

De Santis reminds survivors to remember they're not the ones on trial. If they're asked a tough question, such as whether they lied to police about using drugs the night of the attack, your child should be honest. It's better for her to calmly say, "Yes, I lied to the police because I didn't think they would believe me about the rape if I told them I was using drugs," than to get flustered and defensive.

It may help your kid to remember that the perpetrator is terrified of *her*; after all, she holds the key to his cage, so to speak, and he's worried she'll prevail in court. She can use that knowledge to empower herself to speak her truth with confidence. She may even find the process of telling her story to be cathartic, releasing some or all of the power the perpetrator holds in her mind.

Testifying: The Defense

Now it's the defense's turn to question your child. The defender's job is to convince the jury that his client is innocent of the charges against him, and he'll use all means at his disposal to strengthen his case, including trying to paint your kid as a bad person, possibly even a liar trying to harm his client with false testimony. Don't worry, the prosecutor will be listening to him carefully so he can jump in to object to any false or inflammatory statements.

The defense attorney may try to rattle your child while she's on the stand, asking probing questions designed to throw her off her story. He may appear friendly one minute and accusatory at the next. His job is to make your child stumble, and to say something that's not in her police or investigator's statement so he can shake the jury's confidence in her and her claim.

Advise your child to keep reminding herself to BREATHE while she's on the stand and continue to go at her own pace, taking as much time as she needs to answer his questions.

The defense attorney may try to find small inconsistencies in her testimony, such as "Five minutes ago you said the defendant had on glasses and now you say he didn't." It's just a desperate attempt by the defense to make your kid feel confused. She should correct herself if she needs to and offer an explanation only if she has to.

Your child can (and should) tell the prosecutor and defense attorney immediately if she doesn't understand a question, and she can turn to the judge and ask if she's required to answer a particular question. Some defense attorneys will ask inappropriate questions that aren't allowed—about things like her past sexual history, whether she's used drugs in the past, etc., knowing the prosecutor is likely to object. He may try to ask these questions anyway hoping to get her to act guilty and defensive in front of the jury. Tell her not to fall for it!

If your child can allow yourself to see the defense attorney as just another guy doing his job, it might help her be more patient and composed under questioning. Remember, if she doesn't recall the answer to a question or feels confused, she should just admit it and make the attorney move to the next question.

Tips for When Your Child is Testifying

The Rape, Abuse & Incest National Network (RAINN.org) offers the following tips to help your child stay focused and calm when she takes the stand. She should:

- **Allow herself to take brief pauses.** If, at any time, she's feeling overwhelmed, she can ask the judge or prosecutor for a short break.
- **Stay hydrated.** She can bring a water bottle and take sips of water throughout her testimony. You'd be surprised how dry one's mouth can become when they're under pressure.
- **If she feels herself getting angry** or frustrated, she should take a moment to pause. Breathe deeply several times to regain her composure.
- **Keep her eyes focused** on the person asking her questions, rather than looking at the perpetrator or his supporters.
- **Always tell the truth.** If she doesn't remember something exactly, it's important to say so. If she says something she didn't mean to, or she thinks something came across in a

way she didn't intend, she can clarify her statement by asking the judge, "May I go back to something I previously said?"

- **This is important:** Your child should answer the questions—and nothing more. She shouldn't volunteer additional information unless she's asked.
- **Every trial is different.** If you or she has specific questions about testifying, check in with the prosecuting attorney or victim advocate.

Closing Arguments and Jury Deliberations

After all the witnesses (including your child) have been questioned, the state (prosecutor) and defense will rest their cases. Now it's time for closing arguments. Once again, the defense attorney will attempt to paint your kid as an unreliable witness at best, and a liar at worst.

Now the case goes to the jury for deliberations and a decision, which may take anywhere from a few hours to several days. Possible outcomes include:

- **A guilty verdict**, which means all 12 jurors decided the defendant was guilty of his crime and will be sentenced by the judge immediately or at a future date.
- **An innocent verdict** means all 12 jurors agreed the defendant was not guilty of the crime. Upon announcement of the "not guilty" verdict, the person is no longer in custody and is free to go. Due to double jeopardy laws, the offender can't be tried twice for the same crime if he's found innocent.
- **A "mistrial" or "hung jury"** means the 12 jurors couldn't agree on whether the defendant was innocent or guilty based on the facts presented. Even if 11 of the 12 people agree on his guilt, a mistrial will be declared if the 12th juror doesn't change her vote of innocence. At this point, the prosecutor may elect to completely drop the case or she may choose to retry the case with another jury.

Sentencing

Sentencing may be handed down by the judge immediately, or a sentencing date may be set weeks or months in the future. That doesn't necessarily mean the convicted predator (now a felon) goes free until then; it's most likely he'll go to jail until his prison sentence is announced.

Before determining the sentence, the judge may hear arguments by the defense for a minimal sentence and by the prosecution for the stiffest sentence possible. In many states, survivors (and possibly you, the parent) can offer a victim impact statement, in person or in writing, expressing the impact the crime and offender has had on her life and the lives of her family. The victim impact statement may argue for a greater or lighter sentence, which the judge will consider when making her decision.

The Appeals Process

After a conviction, the felon has the right to file an appeal against his conviction. He may also apply for bail (release) while waiting for a ruling on his appeal. The prosecutor's office should notify you if an appeal has been filed and inform you of any hearings so your child can be present to testify, if needed.

Many states now have automated victim notification systems that enable you to sign up to receive phone calls or texts before your child's offender is to be released from custody so you can take precautions for her safety, if necessary. Ask the prosecutor or victim advocate if such a system exists in your state.

Suing the Perpetrator in Civil Court

Whether the perpetrator is found innocent or guilty, you have the right to sue him in civil court where monetary damages may be awarded. The verdict here is based on the less demanding "preponderance of the evidence," meaning the jurors (or judge) agree that it's more likely than not the crime was committed by the defendant. You will have to hire your own attorney to prosecute your child's case in civil court, which may be costly.

According to the National Crime Victim Bar Association, the civil justice system doesn't attempt to determine the innocence or guilt of an offender, and offenders are also not put in prison if you win the civil suit. Civil courts only determine whether an offender or a third party is liable for the injuries sustained because of the crime.

Civil suits are another way to punish the defendant for his actions and allow for things like compensatory damages, such as emotional distress, lost wages, and medical bills; nominal damages for injuries whose affect can't be measured; and punitive damages, which are awarded for actions that are especially malicious or oppressive.

Suing Third Parties

You may also sue other individuals or companies that failed to adequately maintain property or provide security, or who were negligent in the hiring or retention of employees. Examples include landlords who don't provide sufficient lighting on their premises, businesses that don't provide adequate security, schools that fail to protect students, and churches that don't fire abusive priests.

Badass Grandma's Two Cents

To learn how to empower your child to avoid dangerous people and defend herself (or himself) if necessary, please read either:

- *Badass Parenting: An Irreverent Guide to Raising Safe, Savvy, Confident Kids*, which is for parents of kids 0 to 9 and is super swearsy and snarky, or

- *Heroic Parenting: An Essential Guide to Raising Safe, Savvy, Confident Kids*, which is also for parents of kids 0 to 9 and is the PG-rated version of *Badass Parenting*, or
- *Badass Strategies to Predator-Proof Your Kids: A Snarky Guide for Parents of Tweens & Teens*, which is for parents of kids 10 to 18 and contains some profanity.

You can find these books on Amazon, as well as a TON of free articles on my website at www.cjscarlet.com.