

## **SECTION 5**

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### **LEGAL RESPONSE AND RESOURCES**



# LEGAL RESPONSE AND RESOURCES

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*Thanks to the generous donations of time and wisdom from attorneys across a range of practice, much of the writing below stems from the professional expertise of our contributors, and written sources are therefore not cited in some cases.*

## INTRODUCTION

An act of sexual violence may be a criminal offense and/or a civil violation. Two legal options may be available to survivors seeking justice: the prosecution of the crime in the criminal court, and/or moving forward in civil court to seek compensation for the damages suffered as a result of the sexual assault. Both legal remedies may be considered by the survivor, and possibly by the survivor's family members in cases when the survivor is a minor or has a guardian.

## MAINE COURT SYSTEM

The Judicial Branch of Maine's government consists of the Supreme Judicial Court, Superior Courts and District Courts (trial courts), and the Administrative Office of the Courts. The Supreme Judicial Court provides administrative and supervisory authority over the Judicial Branch. Its head, the Chief Justice, designates a Superior Court Chief Justice and District Court Chief Judge to oversee the administrative operations of those courts, and also appoints the State Court Administrator, who runs the Administrative Office of the Courts. In the majority of counties in Maine, criminal trials are heard in the District and Superior Courts. Jury trials are always conducted in the Superior Courts. In two counties, Cumberland and Penobscot, the District and Superior Courts have a unified court system with single point entry, with the intent for cases to move forward more quickly. (Coogan, 2004)

### District Court

The District Court does not utilize a jury and hears civil, criminal, and family cases such as divorces, separations, custody, and property disputes. The District Court also hears child protection cases, and serves as Maine's juvenile court. Actions for protection from abuse or harassment, mental health, small claims cases, and money judgments are filed in the District Court. (Coogan, 2004)

Survivors of sexual violence may use the district court system to obtain Protection from Abuse Orders. For more information refer to the subsection about Protective Orders.

### Superior Court

The Superior Court hears all criminal and civil matters that are not the sole jurisdiction of the District Court, or in cases in which the defendant asks for a jury trial. Sometimes the Superior Court hears jury-waived trials in which the judge is the fact-finder and decides the verdict. (Coogan, 2004)

## MAINE CRIMINAL LAW

Crimes of sexual violence in Maine are included in the Maine Revised Statutes under the Criminal Code Chapters entitled "Sexual Assaults," and "Sexual Exploitation of Minors." These criminal statutes have been

## Considerations for Advocates

Maine criminal laws specifically address sexual violence in many of its forms, including sexual assault, sexual abuse, harassment, sexual contact, visual sexual aggression against a child, sexual misconduct with a child, sexual exploitation of minors, possession of sexually explicit materials depicting minors, prostitution and public indecency, stalking, etc.

Because these laws are subject to frequent change, they are not reprinted in this manual. The text of all Maine statutes is available in the most recent hard copy of the Maine Criminal Statutes available at all centers or online by visiting the website of the Maine Legislature: <http://www.mainelegislature.org/legis/statutes/>

Advocates are not expected to give legal advice, and should not attempt to do so. It is not the advocate's role to advise a caller as to what law a crime should be prosecuted under, or how long an offender should have been sentenced. It is important that advocates refer callers to appropriate legal professionals when these issues arise. Callers may have questions about what actions are illegal, how long the statute of limitations lasts, and what they should report to the police. If a survivor would like the police to be involved, only they or a qualified attorney – not the advocate – can answer questions about available legal options. An advocate's role is not to focus on the current status of the laws (which may not even apply if a caller is talking about something that happened years ago), but to focus on providing emotional support, encouragement, and appropriate resources.

revised many times in attempts to accurately define the realities of sexual assault and sexual abuse. Individuals may call for information and support around an experience that may not be illegal under the Maine Criminal Statutes. This does not mean that the experience was not hurtful and possibly traumatic for them. Regardless of the law, advocates provide support to individuals who have experienced sexual violence.

## REPORTING SEXUAL VIOLENCE

Survivors may have questions and concerns about their choices. One decision a survivor needs to make is whether or not to involve the criminal and/or civil legal system.



### Considerations for Advocates

It may be difficult for survivors to make decisions following an act of sexual violence. Their emotional trauma may interfere with their ability to stay focused and think clearly, and they may be unsure about what is the best course of action. The advocate's role is to help callers understand and evaluate their options so that they can make informed decisions. It is important that an advocate does not try to influence or make decisions for the caller.

It is important that survivors be allowed to make their own informed decisions about reporting, rather than relying on the opinions of concerned others or law enforcement. For some survivors, deciding to take legal action helps in their healing process. For these survivors, taking a stand against the offender can be empowering no matter what the outcome. Others feel they are helping society and bringing closure to the incident. Some survivors, however, do not want to engage in a process which may, in part, blame them for the incident. Survivors may feel that the process will repeatedly force them to relive the act with no guarantee of the outcome.

There are four main options when deciding to take legal action:

- No report
- Anonymous report: Identifies the type, location, date, and time of the act of sexual violence, and may offer useful information in an open or future investigation. Some law enforcement agencies will not accept anonymous reports.
- Informational report: Provides information about the act of sexual violence and may name the offender. However, the survivor clearly indicates that they do not want an investigation to move forward. This type of report will be useful if the survivor decides later that they want to make a more formal report. Although it is unlikely, it is important for the survivor to know that once information is provided to law enforcement, the crime then becomes a crime against the State of Maine and it is up to the district attorney's office as to whether the case moves forward or not. In the majority of situations, the legal process will not move forward without the consent of the survivor, although the district attorney's office has the right to do so. It is important to check with individual law enforcement agencies about whether they will accept an informational report.
- Formal report: Provides details about the act of sexual violence, including the offender's name if known. The survivor indicates a desire to see the investigation move forward. As previously mentioned, once information is provided to law enforcement, the crime becomes a crime against the State. The survivor does not control the investigation. The district attorney's office will make decisions about whether and how the case will proceed.

Advocates do not provide information or advice about the statute of limitations. Many factors must be taken into account when determining how long a survivor has to file a civil action, or how long the district attorney's office has to charge an offender. If a caller has a question about the statute of limitations, they can either contact the local district attorney's office or a qualified private attorney to advise them.



### Considerations for Advocates

**The term survivor is used throughout this manual to refer to a person who has survived an act of sexual violence. When working with law enforcement an advocate may find that the term 'victim' is used more frequently. This is not meant to be disrespectful, but is simply the term used in the criminal justice field (just as the term 'patient' is used in the medical field). The word "alleged" is also often used when referring to either party (i.e. victim, offender). This does not mean that the police or medical personnel do not believe the survivor's report, but rather, that there has not yet been a legal finding of guilt or innocence.**

## PRELIMINARY INVESTIGATION AND GATHERING OF EVIDENCE

The legal process is generally set into motion when law enforcement is notified that an act of sexual violence has occurred. The case is most often handled by the law enforcement agency in the municipality where the crime occurred, or depending on the size or resources of a municipality, the case may be investigated by the sheriff's department, the state police, or an investigator assigned by the district attorney's office.

When law enforcement is notified, the first representative to respond may be a uniformed patrol officer. This officer will take a preliminary statement of the facts as described by the survivor. This statement documents the act of sexual violence and determines the next move made by law enforcement.

Depending on the information provided, law enforcement may take steps to pursue or arrest the offender immediately, or they may continue to investigate, collect evidence, and interview witnesses. Additional officers may be brought in to assist this process. Law enforcement may also want to protect the crime scene, control any spectators, and interview any possible witnesses.

If the survivor has not already done so, law enforcement may encourage them to seek medical attention and may provide transportation to the emergency department. In many cases, the survivor will be at the hospital prior to law enforcement being called. They may interview the survivor at the hospital or ask the survivor to go to the law enforcement agency for questioning directly after leaving the emergency department.

Evidence from the act of sexual violence may exist at the scene of the crime, on the body of the survivor, on the body of the offender, and in any other location the survivor and/or offender have been. Evidence collection procedures are designed to preserve evidence from the survivor by collecting materials, taking photographs, and collecting clothing. Law enforcement may also subject the offender to forensic evidence collection in some cases. Refer to the Medical Response and Resources section of this manual for more information.

At the scene of the crime, any objects the offender may have touched, including bedding, rugs, and floor sweepings may be collected. If the crime occurred outdoors, soil samples, footprints, or other objects from the scene may be collected. If the crime occurred in a car, it may be vacuumed and items may be collected. Door handles may be checked for pulled or caught hair, and a vehicle may be checked for fingerprints or other evidence.

(Maine Office of the Attorney General, n.d.)



### Considerations for Advocates

**Advocates may have the opportunity to talk with a survivor about preserving all possible evidence. If preserving evidence is important to them, the survivor can be advised not to do laundry, remove bed sheets, or do anything that may destroy evidence. Depending on center policy, the advocate may want to refer the caller to the SART Advocate.**

## Considerations for Advocates

In most cases, if the survivor chooses, an advocate is allowed to be present during the interview with law enforcement to offer emotional support. If the survivor prefers, the advocate can wait outside during the interview.

Law enforcement has the role of providing an objective atmosphere when conducting their interview with the survivor, though sensitivity to the survivor should be shown. If the law enforcement officer seems abusive in their questioning, the advocate might tactfully ask to speak to the individual privately to point out how the survivor might be feeling at the time. Advocates must not interfere with the law enforcement interview. The advocate's role is to provide emotional support to the survivor and leave all questioning and gathering of evidence to law enforcement. The advocate does not make any comments or ask the survivor or the law enforcement officer any questions.

An advocate may check in with the survivor to assure them that they are doing a great job, to see if they would like a drink of water, or to ask if they need a break.

(Portions reprinted with the permission of the Crime Victim's Council of the Lehigh Valley, Allentown, PA)

### INTERVIEW AND SURVIVOR'S STATEMENT

After the preliminary investigation and evidence gathering, a detective or investigating officer will be assigned to the case. The survivor will be asked to meet with the detective or investigating officer for more detailed questioning. This meeting generally takes place at a law enforcement agency. At that time, a statement or a written account of the survivor's experience may be taken. This process may be recorded. Until the case is turned over to the district attorney's office, the detective or investigating officer is the survivor's primary contact for information.

When accompanying a survivor during a law enforcement interview, advocates may be asked to give their complete name and/or asked to sign as a witness. Advocates generally provide their first names only, although this policy may vary across centers. Advocates do not sign any papers as a witness. While advocates have limited confidentiality and a partial privilege under Maine law (16 Maine Revised Statutes §53-A), no

advocate can guarantee complete confidentiality. Advocates may have to break confidentiality in cases of mandated reporting, cooperating in an investigation, or providing evidence in a child abuse or neglect case in which an advocate obtains information while providing sexual assault services. It is critical that an advocate disclose the limits of confidentiality in advance so a survivor can make an informed decision about what information to share. For more information about confidentiality and mandated reporting, please see the Advocacy section of this manual.

If an advocate is served with a subpoena or approached by a lawyer or law enforcement without a release of information (from the survivor) in place, refer to center's policy and procedures and seek consultation from the center director regarding how to manage this.

### SEXUAL ASSAULT RESPONSE TEAMS

A Sexual Assault Response Team (SART) includes

representatives from the various agencies that typically respond in cases of sexual violence. This includes law enforcement, health care personnel, prosecution, and advocates. There are two main goals of a SART: to improve the criminal justice system's response to the crime of sexual violence and to minimize the trauma that can be experienced when a survivor engages with the system. To achieve these goals all members of a SART work together by meeting regularly to develop guidelines, provide training, review cases of sexual violence, and explore ways they can improve the system. Advocates can refer to specific center's SART program information for additional details about SART.

### **The SART Advocate**

Although the role of the SART Advocate varies from center to center, typically a SART Advocate is a sexual assault support center staff member who is also a member of the SART. They can provide support and information to survivors of sexual violence and concerned others as they go through the criminal justice system. SART Advocates provide accompaniment to health care; law enforcement and legal appointments; telephone support; case management, including resource identification and referrals; and advocacy with other social service providers.

The SART Advocate is available to provide long-term support and assistance to survivors following the initial contact with the agency. This means the survivor will have the assistance of someone who is familiar with their situation, as well as the criminal justice and medical processes that they may need, and reduces the likelihood that survivors and concerned others will need to brief a new advocate on their situation each time they access services.

In their role as liaison between the survivor and other members of the SART, the SART Advocate, with the survivor's explicit, informed, and clearly limited waiver of confidentiality, can directly contact members such as healthcare providers, law enforcement officers, and the district attorney's office. In this way, the SART Advocate

can help survivors get information when they are uncomfortable making contact themselves or if the communication with SART members feels overwhelming and confusing.

In addition to direct service, the SART Advocate coordinates the team by organizing regular SART meetings, maintains ongoing contact with SART members, assists the team in identifying areas of improvement, and coordinates training in support of the SART program.

The SART Advocate's services are available until the survivor no longer needs or wants them. When appropriate, callers are referred to the SART Advocate for more specific information about legal options, the legal process, and to sign necessary paperwork to enroll in the SART program. The SART Advocate cannot give legal advice, but can provide legal referrals. Refer to the specific center's SART Advocate policy for more information.

### **ARREST OF THE OFFENDER**

An arrest is the use of authority or force by a law enforcement officer that significantly deprives an individual of their freedom of movement. The Constitutions of the United States and the State of Maine require that an arrest can only be made if the arresting officer has "Probable Cause to Arrest". This is a reasonable belief based on reliable information that a crime has been committed and that this particular individual committed that crime. If an individual is arrested without probable cause, the arrest may be considered illegal and there is a chance that any item or object seized, statement obtained, or any reference to that item or statement may not be introduced in evidence at trial.

An offender may be arrested immediately after a report, or interviewed, arrested, or summonsed later in the process. Some survivors and family members may feel frustrated by how long this process can take. Law enforcement officers and the district attorney's office want to be sure they have the best information possible to ensure a strong case.

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If an arrest is made, the person is brought to the local holding facility and booked. This is a procedure that includes photographing, fingerprinting, and compiling biographical information about the suspect. After the booking procedure is complete, a bail commissioner is called and bail is set. In most cases, the suspect is released on bail. Suspects have a constitutional right to have bail set at a reasonable amount unless they are arrested for murder.

The suspect may be required to post cash bail or surety bail, usually real estate, or simply required to give a sworn promise that they will appear in court. This is called personal recognizance bail. The type and amount of bail are determined by the:

- Seriousness of the offense
- Suspect's connections in the community
- Suspect's previous record
- Existence of any pending criminal cases
- The suspect's prior history of appearances or non-appearances at other court proceedings
- The safety of the public

Conditions of bail may include a no-contact order that forbids the suspect from having any contact with the survivor. Also, the survivor should be informed by the arresting law enforcement agency or by the local county jail when the suspect has been bailed or bonded out. Because this does not always happen, survivors can call the jail or the law enforcement agency to ask if the suspect is out on bail. If a survivor has a PFA order in place, it will not be affected by the start or completion of the criminal process. In addition, bail conditions may or may not include a no-contact order, and if included may by request be removed at any time. (Coogan, 2004)

### THE CRIMINAL COURT SYSTEM

Once the investigative phase has concluded, the law enforcement agency submits the case to the district attorney's (DA's) office to be reviewed. The prosecutor may ask law enforcement to investigate further, decline the case, or accept the case for prosecution.

Within the structure of our legal system, all committed crimes are considered to be crimes against the State. Therefore, the case is officially between the State of Maine and the offender, now called the defendant, with the DA's office prosecuting the case. The survivor of sexual violence is given the status of "witness" in the process. This means that the DA's office, not the survivor, is in charge of the case and makes decisions about whether or not the case will move forward through the legal system. This decision is based on the strength of the case. The DA's office must believe that either sexual contact



### Considerations for Advocates

**Advocates can provide accompaniment to these meetings, and can refer to specific center's policies regarding accompaniment. It may be helpful for the advocate to assure the survivor that they are believed and did not do anything wrong, despite the decision by the district attorney's office.**

or a sexual act occurred by force and/or without the consent of the survivor, and they must feel confident that they can prove it to a jury “beyond a reasonable doubt”.

As a witness for the State, the survivor does not need to hire a lawyer, but may do so. The prosecutor is not the survivor’s lawyer and the survivor does not have sole power over decisions about the case. However, it is perfectly acceptable for the survivor to contact the DA’s office to discuss the progress of the case. Any legal questions regarding the criminal case can be directed to the DA’s office, specifically to the deputy or assistant district attorney.

In addition to prosecutors, DA’s office staff members also include Victim Witness Advocates (VWAs), sometimes called Trial Assistants (TAs). The role of these individuals varies among DA’s offices. VWAs/TAs may offer supportive assistance directly to survivors, and may be a primary contact for the survivor with the DA’s office, or their primary role may be to support the prosecutor at trial without a focus on direct support and assistance for survivors. VWAs/TAs may be resources for survivors who have legal questions about the criminal case, and may attend meetings with the prosecutor and survivor. In all cases, it is important for advocates to be clear that the role of the VWA/TA is different than the role of a sexual assault support center advocate. VWAs/TAs work within the DA’s office, therefore their primary role involves supporting successful criminal prosecutions. This is a different function than the role of a center advocate, whose primary goal is to support, validate, and provide information and resources to empower survivors healing from sexual violence.

If the DA’s office decides not to go forward with the case, the survivor may request a meeting with the prosecutor who made the decision. This can be an opportunity for the survivor to assert that they would be a strong witness, and to make sure that all relevant information has been forwarded to the DA’s office. This is also an opportunity for a survivor and possibly concerned others to hear why the decision has been made to not move forward with the case.

Many cases of sexual violence are not accepted for prosecution. Advocates can support survivors understand that this is not necessarily because the prosecutor does not believe them, nor is it because the system does not see sexual violence as a serious crime. More often than not, cases do not go forward because the prosecutor does not believe there is enough evidence to get a conviction in the case. (Coogan, 2004)

### **The Grand Jury**

If the DA’s office decides to move forward with the case and it is a felony, the first step may be a hearing before the grand jury. The survivor may or may not be asked to testify at this hearing. A grand jury is a group of 13 to 23 citizens, who have the task of deciding whether there is probable cause to believe a crime has been committed and indict the suspect, charging them with a crime. The grand jury process is informal and confidential, and does not take place in an open courtroom. In general, the suspect is not present, nor is a judge or a defense attorney.

If the survivor is asked to testify, they may have an opportunity to review their statement



### **Considerations for Advocates**

**Since the grand jury hearing is confidential, no one can go into the grand jury room with the survivor. The advocate and other support people can wait with the survivor before their testimony and be there to offer support and information afterwards.**

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and will be asked by the DA to explain what happened to them. The detective assigned to the case usually testifies, and occasionally professionals from the crime lab also testify. The DA and jurors are allowed to ask questions.

Once the evidence has been presented and all questions have been answered, the grand jury decides if there is probable cause to bring the case to trial. The prosecutor can explain the process and what is required. If the grand jury does not find probable cause, the case does not move forward. The case can be brought back to the grand jury only if new evidence is found.

### **The Arraignment**

If the grand jury hands down an indictment, the suspect will have to appear in court for an arraignment. The survivor is not required to be present for the arraignment, but some find it empowering to attend. Since the suspect is now formally charged with a crime, they are referred to as the defendant. At the arraignment, a judge reads the charges established by the grand jury and the defendant enters a plea of:

- Not guilty
- Guilty
- Nolo Contendere (no contest)
- Not guilty by reason of insanity

There is rarely a guilty plea on a sexual assault case during the first court appearance. During the next few weeks, the defendant might ask to plead guilty. If the defendant pleads guilty or Nolo Contendere and the judge accepts the plea, the judge may ask the Department of Probation and Parole to conduct a pre-sentence investigation and delay sentencing, or the judge may accept the plea as agreed to without a further investigation. If there is a not guilty plea, a tentative trial date may be set or is set at another hearing. Nolo Contendere pleas are those in which offenders do not admit guilt, but are convicted and sentenced according to the charge they are facing. These pleas are rare in cases of sexual violence.

The judge may also revisit the conditions of bail at this time. This is a time when a no-contact order or other conditions might be modified, added, or removed.

### **Before the Trial**

After the arraignment and before the trial, there is usually a series of motion hearings. Either the defense attorney or the prosecutor from the DA's office may ask the court to hear motions. Motions are simply the district attorney's or defense attorney's way of bringing issues related to the evidence or procedure to the court's attention before any trial takes place. Survivors aren't ordinarily present for motion hearings, but are occasionally required to attend depending on the nature of the issue raised.

Many cases do not go to trial because the prosecutor and the defense attorney agree on a plea and sentence for the defendant. The judge does not have to accept the recommendation of the prosecutor and can impose a greater or shorter sentence. If a greater sentence is imposed, the offender can withdraw the guilty plea, plead not guilty again, and go to trial. In this case the prosecutor and the defense attorney could work together on another plea agreement. The district attorney's office keeps the survivor informed regarding the specifics of any proposed plea agreement and notifies the survivor when a plea agreement is reached.

## **PREPARING FOR THE COURT PROCESS**

The SART Advocate assists in preparing the survivor and concerned others for the court process. Other advocates may provide emotional support around the court process and may be asked to provide accompaniment to court proceedings if the SART advocate is not available. In addition, the Victim Witness Advocate/Trial Assistant from the DA's office may notify survivors about court appearances, answer questions about the court process, and meet with survivors to help familiarize them with the courtroom and other spaces within



## Considerations for Advocates

**The experience of being in a courtroom with the offender may be difficult for the survivor. It is important for an advocate to talk with the survivor about ways to make the court experience easier. For example, they may want to choose one face in the crowd to focus on while in the courtroom, or only look at the prosecutor and the jury.**

the courthouse.

**Defendant in Courtroom:** The defendant has the right to remain in the courtroom during the entire trial. This may be extremely uncomfortable and intimidating for the survivor.

**Emotional Reactions:** The advocate can discuss with the survivor how they might react to court proceedings in general. Often this is an overwhelming and emotional process for the survivor.

## THE TRIAL

It can take between one to two years for a case to get to trial and cases are often not tried the first time they are scheduled. The postponement of a case to a later date is called a continuance.

When the case goes to trial, the Victim Witness Advocate/Trial Assistant will contact the survivor. Therefore, it is important to keep the court, law enforcement, and the DA's office up to date with current contact information. The survivor is usually also sent a subpoena, which is an official order to come to court as a witness at a specific date and time and/or to provide written materials to the attorney. Willful failure to comply with the subpoena is a crime. If the survivor cannot appear on a date specified, it is important that they notify the DA's office as soon as possible.

As the trial begins, the prosecution and defense attorney will each present an opening statement, outlining what evidence will be presented. Following opening statements, the prosecution will call witnesses. Typical witnesses for the prosecution include the survivor, law enforcement officers, detectives, Sexual Assault Forensic Examiners or other health care providers who examined the survivor, crime lab professionals, and any other people who have direct knowledge about the crime.

As a witness for the prosecution, the survivor will only be allowed in the courtroom during their own testimony. This is true of all witnesses

## Considerations for Advocates

**The advocate may want to explore the survivor's fears and frustrations about going to court. The prosecutor can explain to the survivor the types of questions to expect and to go over any areas that will be confusing. The Victim Witness Advocate/Trial Assistant and the prosecutor will prepare the survivor to testify. The advocate may want to check in with the survivor to make sure they have had all of their questions answered by the prosecutor and the Victim Witness Advocate/Trial Assistant before taking the stand.**



## Considerations for Advocates

**The SART Advocate or another staff member can offer to accompany a survivor to the trial to provide company and emotional support while the survivor is waiting to testify.**

and is designed to ensure that the testimony of some witnesses will not be affected by the testimony of others. This absence from the courtroom can be frustrating to many survivors.

Depending on the case, the length of the survivor's testimony can vary a great deal. It may take a few minutes or a few hours. Both the prosecutor and the defense attorney may reserve the right to call the survivor back to the stand at any time. If neither attorney has further questions for the survivor, they may allow the survivor to watch the remainder of the trial and the closing arguments.

For each person who is called to testify, the attorney who called the witness asks questions, known as the direct examination, followed by questions from the opposing attorney, known as cross-examination. Defendants are not required to testify in their own defense, although they can choose to.

When both sides have called and questioned their witnesses, the attorneys make their closing arguments. These are statements reviewing the testimony, summarizing the state of the case, and arguing for one particular verdict, either guilty or not guilty.

Following closing arguments, the judge will give instructions to the jury. The jury then moves to a separate room to deliberate. Deliberation is the process used to examine the testimony and evidence and share thoughts about whether to find the offender guilty or not guilty. That decision is called the verdict. All jurors must agree in order for a verdict to be reached.

There are four possible outcomes of the deliberation process. When jurors cannot unanimously reach a verdict it is called a hung jury. If this happens,

the case can be tried again by a different jury. It is also possible for a mistrial to be called if there is an irregularity in the trial or if something happens which may unfairly influence the jury. A mistrial can also result in a new trial with a different jury. If the defendant is found not guilty, the case is dismissed and can never be tried again. If the defendant is found guilty, bail will be set and a date for sentencing will be scheduled.

## SENTENCING AND SURVIVOR RIGHTS

If the defendant is convicted or pleads guilty, a sentence can be imposed immediately, or may be scheduled for a future date after a pre-sentencing investigation. This is an investigation into the background of the defendant, conducted by the Probation Department, which will help the judge decide the type of sentence the offender receives.

In Maine, a judge presides at the sentencing hearing. Sentences can vary tremendously. Sentences for the crime of sexual violence can include jail or prison time, and a period of probation.

Probation may carry certain conditions, such as mandated offender treatment, registration as a sex offender, and no contact with the survivor. If the defendant violates these conditions while on probation, they could be sent back to jail for a specified amount of time. Occasionally defendants who repeatedly violate probation may be sent back for the remainder of their sentence.

### Victim Impact Statement

Maine law gives the survivor the right to be heard at the time of sentencing. This is the



## Considerations for Advocates

**There are civil remedies available to survivors in addition to criminal prosecution of crimes related to sexual violence. Sometimes, a case may not be prosecuted criminally. A civil action is still an option for the survivor. An advocate can also help provide the survivor with information on finding a lawyer if they decide they want one to represent them in civil court. It is not the advocate's role to give advice or information about whether a survivor has a strong or valid legal case.**

survivor's opportunity to tell the judge how the crime has impacted them. The survivor can either address the judge in person or submit a statement, referred to as the Victim Impact Statement, which will be read to the judge in open court by the survivor. If the survivor does not want to read their statement, then a Victim Witness Advocate/Trial Assistant, a sexual assault support center advocate, the prosecutor, or some other appropriate individual may read it for the survivor. The survivor may also request that the judge read their statement privately, but the defendant will likely have access to the statement and be able to view it. The defendant and others, such as family members, also have the right to be heard at the time of sentencing.

### **Restitution**

If there is a conviction, the law provides an opportunity for judges to consider restitution for economic loss. This economic loss may be due to medical expenses, destroyed or stolen property and lost work time, but does not include psychological trauma or expenses related to court testimony. If a survivor has sustained economic loss, they can inform the DA's office. The judge in the case can then consider restitution as a part of a possible sentence for the crime(s) committed. Separate from restitution is Victims' Compensation. For more information, refer to the Victims' Compensation subsection which follows.

### **Victim Notification Program**

The Maine Department of Corrections (DOC) is responsible for the Victim Notification Program. Survivors may choose whether or not they want to be notified about the status of the offender after sentencing. Survivors who want to be notified will need to fill out a card with their contact information. The survivor may be told where the offender is incarcerated, when the offender is moved to any other facility, if the offender dies or escapes, if the offender files an appeal, and when the offender is being released back into the community. It is the survivor's responsibility to keep the DOC updated about changes in contact information if they continue to want to be informed about the offender.

Finding out that the offender is being released back into the community can be a particularly difficult and stressful time. Survivors may ask the DOC to facilitate a "safety planning meeting," to include a victim advocate from DOC, local law enforcement, the offender's future Probation Officer (if the offender is being released on probation), and an advocate from the sexual assault support center. It is an opportunity for the survivor to ask questions about what the offender's conditions for release include and to request conditions to help the survivor feel safer. For example, the survivor may feel safer if the offender is not allowed to be in a specific neighborhood or location that is near the survivor's residence, or to contact them. The Protection Order process is always available to the survivor, regardless of the release conditions that are imposed by the criminal system.

## THE APPEAL PROCESS

If the defendant is found guilty and sentenced, the defense attorney may file an appeal with the Maine Supreme Judicial Court. The district attorney will explain this process if a defendant appeals a conviction.

## THE CIVIL COURT SYSTEM

Through the civil legal system, survivors may apply for Protection from Abuse or Protection from Harassment orders. Individuals may also file civil lawsuits seeking financial compensation for their losses, such as wages, medical expenses, or counseling.

In a civil case, the survivor is bringing forward the case, as opposed to the State of Maine. Therefore, the survivor will need to hire their own lawyer for representation, or represent themselves, and will not be represented by the DA's office. The survivor will have more involvement with deciding the course of their case and will work with their attorney, if they hire one, to determine the best course of action.

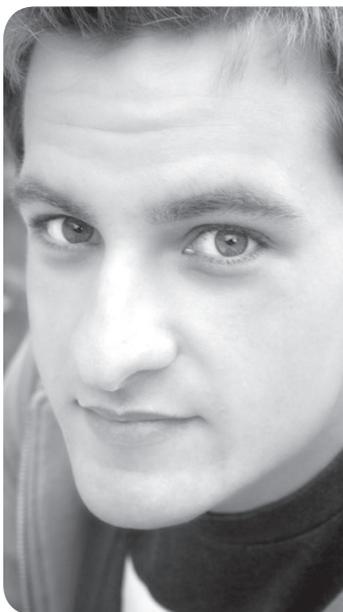
### Protection Orders

A Protection from Abuse (PFA) Order is a civil order issued by a judge mandating that an offender refrain from certain behaviors, and may

include having no contact, direct or indirect, with the survivor. Its purpose is to provide safety to a survivor and may include, in addition to no contact, not stalking or following the survivor and not threatening, assaulting, molesting, harassing, attacking or otherwise abusing the survivor. The PFA may grant other relief, such as money damages, possession of a mutual residence, and custody of minor children of the parties. A Protection from Abuse Order may be granted for up to two years. A Protection from Harassment Order may be granted for up to one year. Obtaining a PFA Order is best done with the assistance of a SART Advocate, another center staff advocate, or by retaining a private attorney or accessing legal services available in the area, such as Pine Tree Legal Assistance. It is very helpful to have an attorney involved in this process from the beginning.

If a protection order is granted, it is important for the survivor to carry a copy of the order at all times and be prepared to show it to law enforcement officers should the offender violate the order. If the offender violates the order, the survivor can contact law enforcement for enforcement of the order. Violation of the order is a crime.

A PFA Order, like conditions of release (probation or bail) in a criminal case, cannot keep a survivor completely safe from an



## Considerations for Advocates

**In cases involving a civil suit for damages (not a protection order), an advocate might suggest that the survivor try to find a lawyer who is willing to take their case on a contingency basis. This means that the attorney would not take money up front but would take a part of the settlement or damages if they are awarded by a jury. For survivors seeking a protection order, an attorney may be willing to take the case pro-bono, or there may be a legal services organization in the area which provides free representation. Advocates can speak with the SART Advocate or other center staff for information on local attorneys who might offer this option to survivors.**



## Considerations for Advocates

**It is important for an advocate to tell the survivor that the decision to issue a protection order is ultimately up to the discretion of the judge. Although the above are the general steps to take to obtain a Protection from Abuse Order, callers may want to gain a better understanding of the system in their area by discussing their options with a SART Advocate or another sexual assault support center advocate.**

offender who may choose not to observe the order. Furthermore, a PFA Order is only as effective as the law enforcement officers who enforce the law and uphold the order. Therefore, PFA Orders are considered as part of an overall safety plan. For information about safety planning, refer to the Advocacy section of this manual.

## Obtaining a Protection Order

### The Temporary Order

In order to obtain a protection order, an individual files a complaint in the District Court. The first step involves filling out a complaint for a temporary order that will be reviewed by a judge. In smaller District Courts, it may be useful to call ahead and be certain that there is a judge available. The law in Maine changed in 2007 so that survivors of sexual assault, who are not in an intimate relationship or a family or household member of the offender, may request Protection from Abuse Orders regardless of the relationship between the parties, instead of a Protection from Harassment Order. Depending on the specific facts of the situation, a Protection from Abuse Order may be more appropriate form of relief.

The process of obtaining a PFA Order is free when sexual assault is involved and does not require that a survivor hire a lawyer, although survivors are encouraged to access local legal services such as Pine Tree Legal Assistance or the Volunteer Lawyer's Project. Only the survivor is required to be present in order to apply for a temporary protection order. This allows the survivor to get to the court house and put the process in motion without first notifying the offender.

The clerk will give the survivor a form to complete. The survivor will fill out an affidavit, swearing to the truth of the statement, and listing out the reasons why the judge should grant a protection order. A judge will review the completed form. The judge may or may not ask to speak to the survivor at this time. The form is the survivor's opportunity to emphasize how dangerous the offender is and how much the order is needed. If the judge feels that it is warranted, a Temporary Protection from Abuse Order will be given and the offender will be served (delivered in person) a copy of this order by the local police in the municipality where they live. The offender will be notified of a Permanent Order hearing date, which is usually within 21 days, at which they can appear if they wish to contest the order.

### The Permanent Order

The survivor must appear at this hearing in order to replace the Temporary Protection Order with a Permanent Order, which can last up to two years. If the survivor does not appear, the order will be dismissed. If the offender does not appear and the survivor does, a Permanent



## Considerations for Advocates

It is important to note that callers can access the court system at all times to apply for a Protection from Abuse (PFA) Order. If, after safety planning with an advocate, the survivor feels that obtaining a PFA order is the best course of action, then the survivor can begin the process. Even though a criminal case might have orders in place (such as no contact with the survivor), that does not serve as a consistent protection in the same way that a PFA Order does. Orders of release can and do change frequently, often without notice to the survivor. The PFA will not change once it is granted unless the survivor has an opportunity to be heard first before the judge makes a decision. Also, if a criminal case is dismissed the order of release goes away with the case, unlike the separate process for a PFA. A separate evaluation of whether to obtain a PFA should always be something discussed with survivors independent of how any other legal action is proceeding. If a PFA or no contact order is violated the survivor can immediately contact the police.

Order will be granted automatically. Having strong legal representation to prepare for the hearing day is helpful and important.

If both parties appear at the Permanent Order hearing, often parties can discuss an agreement regarding the PFA order. The discussion of any potential agreement is conducted through attorneys or court appointed advocates. If the parties cannot agree, the matter will go to a hearing in front of the judge where both sides have the right to present and question witnesses. The survivor will be asked to tell about the act of sexual violence in open court with the offender present. Open court means that others, including members of the public, may be present in the courtroom during the hearing. The offender will have an opportunity to present their case against granting the protection order. After both sides have presented their cases, the judge will decide whether or not to grant the PFA order.

### Victim Compensation

Survivors may experience financial impacts resulting from sexual violence. Maine has a program in place to provide financial assistance to survivors of sexual violence and/or other crimes. Survivors of sexual violence may qualify for assistance with financial costs resulting from the crime(s) through the Maine Crime Victims' Compensation Program (VCP). This program is administered through the Maine Office of the Attorney General and is funded, in part, by fines paid by individuals convicted of crimes in Maine.

Advocates, in particular the SART Advocate, can offer information about the VCP to survivors. Advocates who hear from callers about financial concerns stemming from acts of sexual violence can provide details about the program and assist the survivor in filling out the application. Advocates should never assume that someone else already has provided VCP information to the survivor, although law enforcement officers, Victim Witness Advocates or Trial Assistants within the district attorney's Office, or forensic examiners at healthcare facilities may also provide information about the

program. There are two parts to the VCP. The original program provides benefits based on an application by a crime victim. The second part provides direct payments to hospitals for medical/forensic examinations for victims of the crime of gross sexual assault. The information included in this subsection covers the process for obtaining benefits, and information about the forensic payment protocol is addressed in the Medical Response and Resources section of the manual.

Under the program, a variety of expenses stemming from sexual violence or other violent crimes may be covered, including:

- Medical charges (ambulance, hospital care, doctor's office, dental, eyeglasses, prescription, and any out-of-pocket co-payments). Though the cost of the medical/ forensic exam will not be billed to the survivor, any other medical care performed at the time will be.
- Counseling expenses (these may also be covered for the survivors' family/ household members and others, in some cases)
- Lock repair or replacement
- Income loss
- Crime scene cleaning costs (bio-matter only)
- Security deposit (in limited circumstances requiring an imminent threat and active involvement with

a sexual assault support center or domestic violence organization)

In order for a survivor to receive any of these benefits, there are some eligibility requirements:

- Last payer status – Survivors need to submit bills to health insurance, MaineCare, Workers' Compensation, or any other type of relevant insurance before the VCP can pay.

The survivor must be a victim of a crime covered by the VCP statute. Virtually all violent crimes are covered.

- The crime must be reported within five days of the occurrence. This requirement may be waived for good cause, as explained below.
- An application to the Victims' Compensation Board must be filed within three years of the incident.
- The survivor must cooperate with law enforcement and prosecutors.
- The survivor must not have been committing a criminal act which contributed to their injuries or death.

The Victims' Compensation Board often will review cases and grant a 'good cause' waiver for survivors who do not report to police within five days (though a report must ultimately be made). The advocate can help the survivor complete a statement explaining the reason for the delay and send it along



### Considerations for Advocates

**Victims' Compensation is a great resource for a survivor, and an advocate can assist a survivor in several ways, including assisting a survivor to complete an application fully. If a survivor reaches the limit of his/her ability to cooperate with prosecutors, an advocate may also be able to help the survivor with a statement explaining this to the Board. Advocates and survivors both can contact the VCP office to ask questions or request applications or informational cards. Information about the VCP is available at [www.state.me.us/ag/crime/victims\\_compensation/index.shtml](http://www.state.me.us/ag/crime/victims_compensation/index.shtml) and the governing law is 5 M.R.S.A. §3360-§3360-M.**

## SECTION 5: LEGAL RESPONSE AND RESOURCES

with the application.

It is not necessary for the offender to be charged with the crime nor convicted of the crime in order for the survivor to be eligible for the program. As long as the Board can determine that a crime occurred, an award can be made even though there is no known suspect (if other eligibility requirements are met).

(Maine Office of the Attorney General, n.d.)

### **ADDITIONAL MATERIALS:**

#### **Legal Terms**

**AFFIDAVIT:** A sworn statement.

**ARRAIGNMENT:** The opportunity for a criminal defendant to be made aware of the charges pending against them and enter a plea (answer) to the charges.

**BAIL:** Money or security that is given to insure that the defendant will appear at every stage of the legal proceedings in which s/he is involved.

**COMPLAINT:** A legal document laying out the cause of action against a criminal or civil defendant.

**CONTINUANCE:** The postponement of a case for trial or hearing to a later date.

**DEFENDANT:** The person who is being prosecuted for a crime or sued in civil court.

**DISPOSITION:** The final outcome of a case.

**DISTRICT COURT:** The lower trial court.

**JURY:** A group of people who make a decision about the outcome of a criminal or civil action at trial. A grand jury decides whether there is probable cause to believe a felony crime occurred.

**PERSONAL RECOGNIZANCE:** An arrested defendant's promise to appear in Court for further proceedings

**PROBATION:** A sentencing option for the disposition

of a criminal case if there is a guilty plea or verdict. The defendant will be under the supervision of a probation officer. If the defendant violates his/her probation, the probation can be revoked and the defendant could face incarceration.

**RESTITUTION:** After a conviction, payment by the defendant for certain loss, damage, or injury to the victim of a crime.

**SUBPOENA:** An order issued by the court to compel the appearance of a witness and/or documents at a hearing or a trial.

**SUPERIOR COURT:** The higher trial court.

**THE MAINE SUPREME COURT SITTING AS THE LAW COURT:** This court hears appeals from lower courts. It is the highest court in the State. There are no trials held in this court.

**VICTIM IMPACT STATEMENT:** If an offender has pled or been found guilty and before the judge imposes a sentence, the victim has an opportunity to let the judge know how the offender's actions and the crime have affected their life.

(Adams, 2003)

### **REFERENCES**

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