

## Victims and the Prosecution Process

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Participating in the court system can be a frustrating, confusing and painful experience for crime victims. Most courthouses seem full of busy attorneys, judges and police officers struggling with overwhelming caseloads. The system seems to have its own language not easily understood by the outsider, and its size, pace and complexity can easily make someone feel lost and intimidated. A crime victim often feels like an outsider to the system and is sometimes the only person involved in the case who has never been in court before on a criminal proceeding.

Despite these frustrations, being involved in the court process provides crime victims with the opportunity to directly observe and participate in our society's system of justice. The court process enables a victim to hold an offender directly accountable for his or her actions and can be a very empowering experience. This chapter provides information to help you anticipate some of the difficulties and rewards of participating in the court process and to help make your involvement in the system more understandable. It presents an overview of key players in the court process, explains what happens during the prosecution of a case, and describes the rights and services available to you as a crime victim.

## People in the System

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Victims and their families are likely to come in contact with many different people playing different roles in the criminal justice system. Police officers, prosecutors, victim witness advocates, judges, defense attorneys, jurors, clerks and probation officers are some of the people victims may encounter during their journey through the system. The following descriptions should help you figure out "who's who" in the criminal justice system and what their roles are. They are listed chronologically in the order that a victim is likely to encounter them.

**Victim:** Anyone who is physically, sexually, psychologically or financially harmed or threatened with harm as a direct result of a crime or attempted crime is a victim. Although the victim is the person most directly affected by the defendant's crime, and charges are frequently brought as a result of that crime, the victim is not a formal "party" to the criminal proceedings in which the defendant is prosecuted. Rather, the Commonwealth of Massachusetts and the defendant are the actual parties, and the victim may function as a witness in the criminal proceedings against the defendant. Although the victim is almost always called by the

Commonwealth as a prosecution witness, technically the victim does not “belong” to either side in a criminal case. A victim may also be referred to as the complainant, witness or alleged victim during the prosecution process. During the prosecution of a case, the surviving family members of a homicide victim are entitled to the same rights as primary victims.

**Defendant:** The person who is accused of committing a crime is known as the defendant. Depending on the stage of the investigation or prosecution, the defendant may also be referred to as the suspect, accused, offender, criminal, perpetrator, inmate or prisoner. The constitutions of the United States and the Commonwealth of Massachusetts give defendants certain rights as the case against them goes through the criminal justice system. These include the rights to be presumed innocent until proven guilty, to have a speedy trial, a competent defense and an impartial jury, to confront one’s accusers and witnesses face to face, to be protected from unreasonable search and seizure, and to not be compelled to testify against oneself. In some cases, there may be several defendants charged with committing a crime.

**Police Officers:** When someone is victimized, his or her first contact with the criminal justice system is usually through an officer from the local police department or the State Police. In addition to their initial response to the scene of a crime, police officers write official police reports about the crime, investigate crimes and arrest suspects. Many local police departments in Massachusetts have specialized officers who respond to and investigate crimes in a specific category, such as homicide or sexual assault. If a criminal case goes to trial, the police officers who investigated the crime will probably testify in court as witnesses.

**Victim Witness Advocate:** Either after the report of a crime or after a suspect has been arrested for the crime, the District Attorney’s Office becomes involved in the case. Victim witness advocates, who are employed by the District Attorney’s Offices, are assigned to all serious cases in which victims were injured or threatened. Advocates serve as a link between the victim and the prosecutor and are the victim’s primary contacts throughout the prosecution of a case. They offer a number of services to help victims, including giving information about victim rights and the court process, notifying the victim of court dates, updating the victim on the case status, providing crisis intervention and referrals to social service agencies, accompanying the victim to court, and helping the victim in filing applications to obtain victim compensation, witness fees and offender information. If an arrest has not been made in the case involving you, you can still contact a victim witness advocate to assist you with your rights.

**Prosecutor:** Each District Attorney’s Office has a team of lawyers, known as prosecutors or assistant district attorneys, whose job it is to pursue the criminal charges against a defendant in court. In a criminal trial the prosecutor must prove the charges against a defendant “beyond a reasonable doubt.” To accomplish this, the prosecutor reviews evidence gathered by the police,

determines the specific charge(s) to be prosecuted, presents evidence in an effort to construct a convincing legal case, and argues that case before a judge or a jury in order to convict the person charged. It is important to keep in mind that the prosecutor is not the victim's attorney. The prosecutor represents the Commonwealth -- that is, the state of Massachusetts -- in the criminal proceedings and must comply with certain ethical standards in performing his or her responsibilities. The prosecutor is authorized to make final decisions about the strategy and prosecution of a criminal case, but the victim will have input into many of the most important decisions a prosecutor is required to make. As a result, it is generally unnecessary for a victim to hire a private attorney for the criminal proceedings. The amount of contact that the victim has with the prosecutor will vary depending on the needs of the case and other demands on the prosecutor's time. In addition to the District Attorneys' Offices, the Attorney General's Office has prosecutors known as Assistant Attorneys General to pursue cases that fall within its jurisdiction, and in some counties police officers serve as prosecutors in less serious criminal cases. It may be helpful to know that prosecutors and defense attorneys sometimes address each other as "my brother" or "my sister" during court proceedings. The use of these terms is simply a professional practice, not an indication that the attorneys are related.

**Defense Attorney:** The defense attorney is the lawyer representing the accused in the court proceedings. Since the Constitution guarantees every citizen the right to a defense, the court will appoint a defense attorney, known as a public defender, to represent the accused if he or she cannot afford to hire an attorney in any case in which incarceration is a possibility. The defense attorney in a criminal trial is not required to prove the innocence of the defendant. Instead, the defense attorney is obligated to safeguard the defendant's right to a fair trial and to provide a "zealous defense" of the defendant by challenging the strength of the prosecution's case. The defense attorney or an investigator for the defense has the right to contact the victim before trial to request information about the case. It is the victim's right to choose whether or not to speak with those persons. Victims are only required to speak with the defense when they are testifying on the stand at trial or through some other court-ordered process.

**Judge:** The judge is a public official appointed to oversee legal proceedings. It is helpful to think of the judge as a referee who must be fair and neutral in applying and interpreting the rules of law for both sides -- the prosecution and the defense. The role of the judge varies depending on the stage of the criminal proceedings. In cases tried before a jury, the judge decides questions of law and procedure. In cases in which a defendant chooses to waive his or her right to a trial by jury, the judge will decide whether a defendant is guilty or not guilty. In addition, the judge determines what the punishment will be once the defendant has been found guilty or pleaded guilty to a crime. Prosecutors, defense attorneys and others in the courtroom often address the judge as "Your Honor" or "the court."

**Jurors:** Every defendant has the right to be tried by a jury of his or her peers. If a case is to be tried, and the defendant chooses to be tried before a jury rather than a judge, jurors must be picked from the general public. Juries are comprised of six or twelve people and are chosen by a two-stage process. First, a computer randomly selects the names of ordinary citizens from government population lists. After this selection, the prosecution and defense have a more detailed process in which potential jurors are screened for their ability to evaluate the facts of the case without bias and return a fair verdict. Jurors listen to the evidence presented by both sides during the trial, then decide whether a defendant is guilty or not guilty of the charge(s). They can only find a defendant guilty if they are all convinced “beyond a reasonable doubt” of the defendant’s guilt. Even if jurors believe a defendant to be guilty, if they feel the evidence does not prove guilt “beyond a reasonable doubt” they must find the defendant “not guilty.”

**Court Officers:** Court officers are employees of the court who assist the judge in maintaining order and safety in the courtroom. They are uniformed officers who announce the beginning and end of court sessions, direct victims and witnesses to where they should be seated in the courtroom, and escort defendants and jurors into and out of the courtroom. Court officers are also designated to protect victims and witnesses if a defendant or someone else becomes violent in the courtroom.

**Court Clerks:** Court clerks are employees of the court who run the court sessions and keep the court schedules. They call the list of cases, state the charges, read the judge’s decisions on bail and sentencing, record the official decisions of the judge, and swear in all witnesses. Clerks also conduct preliminary hearings and decide whether there is probable cause to bring charges against a person.

**Probation Officers:** The probation officer is an employee of the court whose main responsibility is to supervise convicted defendants who are not incarcerated and have been sentenced to a term of probation. Depending on the stage of the criminal proceedings, probation officers also investigate the personal and financial circumstances of a defendant for determining indigency, bail and ability to pay restitution; write “presentence reports” to assist the judge in determining the appropriate punishment for a defendant; inform the judge of a defendant’s criminal record, if any; and make recommendations about whether a defendant would be a good candidate for probation.

## Criminal Court Proceedings

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Once a suspect is charged with a crime, the case shifts from the police department which investigated the crime to the District Attorney's Office for prosecution. The length of the court process varies, depending on the type of crime charged, the type of evidence, and whether a defendant pleads guilty or goes to trial. Cases in which a defendant pleads guilty will generally be concluded within a shorter period of time. Cases in which the defendant wants a trial can take much longer -- up to one year or more for the most serious charges.

If you expect to attend the court proceedings, it is important to remember that judges often impose strict standards of behavior for all people in the courtroom. For instance, some judges demand that there be no talking, reading or displaying of strong emotions in the courtroom. If a judge perceives someone's behavior to be out of line, he or she may issue a general warning to the courtroom or have the disruptive person removed. In general, you may leave and reenter the courtroom as needed, but no one is allowed to enter or exit when the judge is reading the jury instructions. Finally, everyone is required to stand when the judge or jury enters and exits the courtroom.

The District Attorney's Office normally sends victims case status letters to inform them of developments in the case. It is particularly important for you to respond to these letters from the prosecutor whenever you are requested to provide information about the case, such as your estimated financial losses for restitution. If you do not respond to these letters, it is possible that the case may be resolved without your input. Similarly, you must maintain an updated address and telephone number with the victim witness advocate so that you can be informed of case developments. The following section describes the various stages of the court process and the victim's role during court proceedings.

### Initiating a Criminal Case

Cases come into the criminal justice system in several ways, including police complaints, citizen complaints and indictments. A complaint is a sworn statement that identifies the law violated by the accused and states the facts upon which the accusation is based. Police complaints are issued by a clerk magistrate in District Court based on information supplied to them by police officers. Citizen complaints are also issued by a clerk magistrate in District Court, but are based on information provided to them by both the victim and the defendant. Before a criminal complaint is issued through the complaint process, the clerk may hold a "show cause hearing" to give the person accused of the crime an opportunity to answer questions about the alleged crime. In order for a criminal complaint to be issued, the crime must have occurred within a set time

period, known as the statute of limitations. For most felony crimes in Massachusetts, the criminal statute of limitations is six years. There is no statute of limitations for murder, and the statute of limitations for felony sex crimes is ten years. If a criminal complaint is issued, a prosecutor will be assigned to the case.

In the Superior Court, some cases begin through the grand jury process. A grand jury is composed of 23 citizens who are brought together to determine whether there is “probable cause” to believe that the accused committed the crime. The grand jury deliberates after hearing testimony and reviewing other evidence from witnesses and police officers. If a majority of 12 members of the grand jury believe that a crime was probably committed by the person accused, the grand jury will issue an indictment against that individual. An indictment, like a complaint, is the piece of paper charging a person with having committed a crime. Neither the defendant nor the defendant’s attorney is present for grand jury proceedings, which are secret and closed to the public. In rare instances, however, a defendant may testify as a witness before a grand jury. You may also be called to testify as a witness before the grand jury. Your victim witness advocate, family members and friends may accompany you to the grand jury proceeding, but cannot be in the room with you when you testify. A prosecutor will be present to ask you questions. Sometimes grand jurors may ask you questions as well.

### Arraignment

Once a complaint or indictment has been issued, the defendant will either be arrested or summoned to court for an arraignment. The arraignment is the first public court proceeding in which the accused is formally charged with a crime. During the arraignment, the defendant appears before a judge, is told what the charges are, and is asked to plead guilty or not guilty to those charges. The defendant is also advised of certain rights, including the right to an attorney. If the defendant cannot afford to hire an attorney, arrangements are made for an attorney to be assigned for legal representation. Almost all defendants, regardless of their guilt or innocence, plead “not guilty” at arraignment. The act of pleading not guilty is routine and sets the prosecution of the defendant into motion. Nevertheless, it is often emotionally difficult for victims to hear defendants pronounce themselves “not guilty” to the charges.

In some cases, the judge will order that a defendant be evaluated at a state mental hospital to determine whether he or she is competent to stand trial. In order for criminal proceedings to occur, a judge must be satisfied that the defendant has the mental capacity to understand the charges and to assist the defense attorney in providing an effective defense to the charges. This process may delay or prolong criminal proceedings.

The **Victim Bill of Rights** gives you the right to request that personal information about you and your family, such as a home address, telephone number, and place of employment or

school, be withheld from public view. It is important to make this request before or during the arraignment since much information about the case will otherwise become part of the public record at this time. If you have concerns about protecting this information, you should notify a victim witness advocate as soon as possible.

### Determination of Bail

Some defendants may be released at arraignment if they are able to meet the bail requirements. Bail is an amount of money or property set by a judge or clerk magistrate that the defendant must present to the court to guarantee his or her appearance at future court proceedings. Defendants may also be “released on their own recognizance” at arraignment, which means that the defendant signs a promise to appear in court whenever notified to do so and is not required to post bail. This kind of release is common for defendants who have strong ties to the community, are not considered dangerous, and are not likely to flee before trial. It is important to remember that the amount of bail a judge sets is not a reflection of the guilt or innocence of a defendant.

Although the primary purpose of bail is to make sure the defendant returns to court when necessary, judges are permitted under Massachusetts law to consider the defendant’s dangerousness in deciding bail. If certain crimes are charged and the defendant is deemed dangerous by a judge, a prosecutor may request that the defendant be held in jail without bail until the case is resolved. If you feel threatened by the potential release of the defendant, you should convey these concerns to the prosecutor or victim witness advocate assigned to the case. This information may affect whether the defendant is released or detained before trial, or may cause the judge to order the defendant to stay away from you until the case is resolved.

Defendants are entitled to a bail review hearing if they believe the amount of bail set by the judge is excessive. A bail review hearing can occur at any time during the court proceedings once bail has been set, but usually occur within a few days of the arraignment. If a judge denies an initial request by a defendant to reduce bail, there are generally no further bail review hearings unless unusual circumstances arise. If a defendant is released on bail while the case is pending, you may or may not be notified depending on the practice of the House of Correction in your county. The District Attorneys’ Offices and the County Houses of Correction are not required to provide notification of a defendant’s release on bail, but some have developed informal procedures to make these notifications to victims.

### Pre-Trial Conferences and Hearings

The defendant’s arraignment is usually followed by a pre-trial conference and one or more pre-trial hearings. A pre-trial conference is held between the arraignment and the pre-trial hearing to allow the prosecutor and the defense attorney to exchange information and discuss how the case

may proceed. Both sides have certain obligations under the law to provide each other with certain types of information about the case; this process is called “discovery.”

At the pre-trial hearing, the prosecutor and the defense attorney present the outcome of the pre-trial conference to a judge. If all the parties agree to the facts of the case, the defendant may plead guilty to the original charge or to a lesser charge, or “admit to sufficient facts,” which means that a defendant admits that there is sufficient evidence to result in a guilty finding if the case went to trial. If a plea agreement has been proposed, the **Victim Bill of Rights** mandates that the prosecutor confer with the victim before making a sentence recommendation to the judge. When no agreement on the case is reached, the judge will usually set a trial date.

### Juvenile Transfer Hearings

In cases involving juveniles between the ages of fourteen and seventeen who have previously been committed to the Department of Youth Services or who have been charged with threatening or inflicting serious bodily injury on another person, a prosecutor may request that a transfer hearing be held to determine whether the juvenile defendant should be tried as an adult. For certain violent crimes, including murder in the first or second degree, manslaughter, armed assault with intent to rob or murder, rape, forcible rape of a child, kidnapping and armed robbery, a transfer hearing *must* be held. Except for cases involving juveniles charged with murder, all juvenile transfer hearings and court proceedings are closed to the public. However, under the **Victim Bill of Rights**, victims still have the right to attend these proceedings unless a judge orders otherwise.

The transfer hearing process is very lengthy. During the first part of the transfer hearing (known as “Part A”), the judge must determine whether there is probable cause to believe that the juvenile committed the crime. During the second part of the transfer hearing (known as “Part B”), the judge must determine whether the juvenile poses a danger to the public and whether the juvenile can be rehabilitated through the juvenile justice system. Part B of the transfer hearing takes place after an extensive investigation into the juvenile’s life, including a psychological evaluation. For the violent crimes listed above, there is a “rebuttable presumption” that the juvenile is dangerous and not likely to be rehabilitated, and prosecutors are only required to prove this by a preponderance of the evidence.

If the judge determines that the juvenile is not inherently dangerous and can be rehabilitated by the juvenile system, the juvenile will be tried in Juvenile Court. If the judge determines that the juvenile is dangerous and is unlikely to be rehabilitated, the juvenile will be transferred to the adult system. The juvenile has the right to appeal the transfer, which can cause further delays before any trial occurs. If a case is transferred, a new criminal complaint is issued in the adult system and charges in Juvenile Court are dismissed.



### Motion Hearings

During the pre-trial period, the prosecutor and the defense attorney may file motions with the court about certain pieces of evidence or points of law which they feel are important to their case. Motions are formal requests to the judge to hear and decide legal questions, and are usually made in writing. Motions are made for a variety of reasons, such as a motion to keep a particular item out of evidence or to obtain additional information. The judge may listen to arguments from the prosecution and the defense with respect to a motion or may simply decide a motion on his or her own. Defense attorneys and prosecutors routinely make motions to continue the case to a later date if they need additional time to prepare. For the most part, you do not need to be present at hearings on motions unless you will be called as a witness, but you can still attend the proceedings.

In certain cases, a defense attorney may make a motion to obtain confidential information about a victim. Such motions are most often made for victims of sexual assault and domestic violence. If the defense attorney in the case involving you makes a motion to obtain your psychiatric records or other confidential information, the **Victim Bill of Rights** requires that the prosecutor discuss the matter with you before any hearing on such a motion. The judge is required to follow specific procedures to determine whether and how such records can be used at trial. Nevertheless, the prospect of having one's private records exposed in a court setting by the defendant can be extremely upsetting to victims. If you have specific concerns about your records, you should discuss them frankly with the prosecutor handling the case.

### Dismissals and Guilty Pleas

Sometimes the results of the pre-trial conference and hearing convince a prosecutor to dismiss a case or reduce the charges, or convince a defendant to plead guilty. A prosecutor may consider these steps for several reasons. If the judge has excluded critical evidence or witnesses have become unavailable or are uncooperative, the evidence may be insufficient to prosecute. In other situations, new evidence may emerge after the case begins which weakens the prosecution. Sometimes the defense attorney will make a motion to dismiss the case on various legal grounds, such as the denial of a speedy trial or an allegation that the evidence is insufficient to find the defendant guilty. Depending on the circumstances of the case, the prosecutor can ask the judge to dismiss the case in one of two ways: "with prejudice" or "without prejudice." Cases that are "dismissed with prejudice" cannot be brought back into the court system at a later date. Cases that are "dismissed without prejudice" allow a prosecutor to bring the charges against the defendant again at a later date. Before your case is dismissed, however, the **Victim Bill of Rights** requires that the prosecutor confer with you about why the case is being dismissed.

In other circumstances, the evidence of the defendant's guilt may be so strong that the

defendant pleads guilty to the crime as charged. The defendant may also plead guilty to one or more of the charges or to the less serious charges. Plea negotiations, sometimes called plea bargaining, refer to the attempt by the defense and the prosecutor to agree upon the outcome of a case without having a trial. If an agreement is reached, both parties return to court to request approval of the proposed plea agreement. The judge is free to accept or reject the terms of the agreement. However, if the judge does not accept the agreed upon terms and wishes to impose a heavier sentence, the defendant has the right to withdraw the guilty plea and proceed to trial. In District Court, the defendant alone may also offer to plead guilty and propose the terms of the case outcome. If the judge does not accept the defendant's proposed terms, the defendant may withdraw the guilty plea and proceed to trial.

The defendant can choose to change his or her plea to guilty at any time. If the defendant pleads guilty, the defendant waives his or her right to a trial. Most criminal cases -- approximately 85% -- are resolved through guilty pleas. There are many reasons why the parties engage in plea negotiations rather than going to trial. The defense benefits because the defendant may be convicted for a less serious offense and is spared the additional legal expenses of a trial. In some cases, a plea agreement also allows for sentencing that is tailored to the particular crime and defendant. The prosecution benefits from plea negotiations since it can guarantee the conviction of the defendant. Because criminal cases always involve a level of uncertainty, even a case that appears to be very strong may not result in a conviction if there is a trial. In some cases, there is a possibility that certain key evidence may not be admitted if the judge decides that it was improperly obtained or for other reasons. Another benefit of plea agreements is that they can help in convicting other persons because prosecutors can sometimes require the cooperation of the defendant as a condition of the plea agreement.

Plea agreements also spare a victim from having to experience the emotional stress of testifying and minimize the time and inconvenience the criminal justice system may impose on a victim. They also give the prosecutor greater latitude in terms of what may be negotiated for a victim. For instance, the prosecutor may be able to arrange for the voluntary return of property that was stolen from the victim or require the defendant to participate in a counseling program or agree to make restitution payments to the victim as part of the plea agreement. The prosecutor may not be able to assure the victim of the same results if the case were to go to trial.

Despite these benefits, the concept of plea agreements is still upsetting to some victims because it may result in a conviction for a less serious offense and they may believe that reducing the charges minimizes what the defendant did to them. However, plea negotiations are recognized by courts and others in the system as a proper, effective way of resolving cases. Under the **Victim Bill of Rights**, the prosecutor is required to confer with you about the proposed plea agreement. This discussion can provide an opportunity for you to request that certain conditions,

such as restitution or a “no contact” order, be imposed on a defendant as part of the plea agreement. The **Victim Bill of Rights** also mandates that the prosecutor inform the judge about your views on the sentence recommendation in the proposed plea agreement.

In deciding to accept and propose a plea agreement to the judge, prosecutors normally consider many factors, including the following:

- the strength of the evidence against the defendant;
- the effect the criminal offense has had on the victim;
- the effect a trial may have on a victim;
- the criminal history of the defendant;
- the seriousness of the offense.

The prosecutor may also consider whether the proposed plea will impose a punishment on the defendant that is sufficient for the seriousness of the crime committed even though the defendant may not plead guilty to all charges.

#### Postponements and Continuances

One of the most frustrating and discouraging aspects of the court process for victims is the frequency of case postponements. Despite a clause in the **Victim Bill of Rights** which provides for a victim’s right to a speedy trial, the court process almost always takes longer than the victim would like. Unfortunately, court hearings and trials sometimes cannot take place as planned. Scheduling conflicts among the judge, prosecutor and defense attorney are inevitable, and the unavailability of key witnesses on certain days may require court proceedings to be postponed to a later date. In addition, scientific testing of evidence may be necessary, or there may be a need for additional investigation. These are legitimate reasons for a judge to grant a continuance in the case. It does not mean that the case is being ignored.

However, sometimes the victim’s involvement in the court process may be prolonged for reasons based more on the legal strategy of a case than unforeseen circumstances. If either the prosecution or defense wants additional time before the trial begins, either side may ask the judge for a continuance. Prosecutors often ask for continuances if their schedules are too full to allow sufficient preparation for trial. Although the defendant has a constitutional right to a speedy trial, defense attorneys also request continuances in order to prepare for trial. Repeated continuances and prolonged delays in a case may result in a witness becoming unavailable or a victim’s memory of specific details about the crime becomes less precise. In addition, defendants who are released on bail can put off the possibility of conviction and imprisonment for a longer period of time if a trial is delayed through repeated continuances.

If a court proceeding has been postponed, and the postponement is known in advance, your victim witness advocate will inform you of the change in schedule. Even if you have been notified beforehand that the case has been postponed, it can still be emotionally draining to prepare yourself to testify or hear other testimony only to watch the proceeding be postponed. For judges, prosecutors and defense attorneys, continuances are a routine occurrence in their everyday professional life, but for a victim they may be expensive, time-consuming and frustrating. It may mean taking unnecessary time off from work and paying twice for child care arrangements. For victims who are testifying, it may mean reliving the crime again and again. Victim witness advocates will try to minimize the hardships that result from continuances, but to avoid an unnecessary trip to court, it is a good idea to call the victim witness advocate the day before the court event to confirm the date and time. You may be able to be placed on telephone standby and avoid waiting in court unnecessarily.

### Trial Proceedings

A trial is a court proceeding where evidence is heard and decisions are made about whether a defendant is guilty or not guilty. In general, trials for misdemeanor crimes and less serious felony charges occur in District Court. Most serious felony crimes, which carry potential state prison sentences of five years or more, are usually tried in Superior Court. Trials for crimes committed by juveniles are held in a juvenile court session unless the defendant is transferred to the adult system. The length of a criminal trial varies depending on the seriousness of the crime and the complexity of the case. Before a trial begins, the **Victim Bill of Rights** requires that the prosecutor confer with the victim about the proceedings. Typically, the prosecutor or victim witness advocate will review the facts of the case with you and help to inform you about what will happen during the trial.

If a case will go to trial, the defendant has the right to choose either a trial before a judge or a jury. If the defendant chooses a trial by jury, jurors must be chosen from a pool of ordinary citizens who have been summoned for jury duty through a random selection process. All prospective jurors are required to complete questionnaires which will help prosecutors and defense attorneys in making decisions about which jurors to challenge. Both sides have the right to challenge the inclusion of a prospective juror if they feel that person has some bias which could unfairly influence the jury. In addition, the prosecution and the defense are each allowed to make a certain number of "peremptory" challenges of prospective jurors, which means that they can exclude a prospective juror without being required to state a reason why they do not want that juror, as long as the challenge is not based on race. District Court trials are heard by a six-member jury and Superior Court trials are heard by a twelve-member jury.

Once the jury has been picked and the trial begins, the prosecution and, usually, the defense make opening statements to the jury to explain what they expect the trial to prove before

actually presenting evidence. The prosecution is required to present its evidence first. The defense can make an opening statement after the prosecution has made its opening statement or after the prosecution's presentation of evidence is completed. During the trial various witnesses will be called to testify by answering questions posed to them by the prosecutor and the defense attorney. Witnesses are individuals who have some knowledge about matters that are relevant to the case. Someone who saw or heard the crime take place, including the victim, may be called as a witness. The prosecution and the defense may also call expert witnesses to provide testimony. An expert witness is someone, such as a coroner or psychologist, who can provide more technical information about something relevant to the case. Evidence may also be in the form of a physical item that may be relevant to the case, such as a weapon recovered at the crime scene.

After the prosecution and the defense have had the opportunity to present their evidence to the court, each side will summarize its view of the case during closing arguments. Neither side is allowed to present new evidence at this stage. After the closing arguments have been made, the judge will provide instructions to the jury on the law and what elements need to be established in order to convict the defendant of the particular crime. The jury will then deliberate in private on whether the evidence was sufficient to prove the defendant guilty of the crime charged based on the evidence presented and the judge's instructions on the law.

Hearing the testimony of other witnesses can be very upsetting to a victim or surviving family member. Depending on the nature of the crime and the level of violence involved, there may be very graphic details about how the crime caused injury. Sometimes testimony involves a public discussion of subject matters about the victim that are normally intensely private. Autopsy reports and photographs may be introduced as evidence and can be painful to hear and see. You can ask your victim witness advocate to inform you when such information will be presented so that you can leave the courtroom if you want. If you feel that you may lose control of your emotions while you are listening to such testimony during the court proceedings, you may leave the courtroom until you have regained your composure. Although such reactions are fully understandable, a defendant may argue they have influenced the jury and provide grounds for a defendant's appeal.

If you wish, you can bring friends or family members with you to court to provide emotional support during trial. Since courts are open to the public, family members can attend the proceedings unless the judge orders otherwise. However, except for cases involving juveniles charged with murder, all juvenile court proceedings are closed to the public, but the judge has the discretion to allow family members to attend the juvenile proceedings. Beyond such court-ordered limitations, a victim or a family member may be excluded from the court proceedings when the victim or a family member is scheduled as a witness to testify, *and* the judge determines that

hearing the testimony of other witnesses could influence that person's testimony. The judge may then order that the victim or family member wait outside and not be allowed to participate in or observe the court proceedings until that person has given his or her testimony, or order that witnesses not discuss the testimony with each other. This is called "sequestration" of witnesses. No one is allowed to talk or whisper during the court proceedings. If you have questions or concerns about something relative to the trial, you should write them down and give them to your victim witness advocate.

### Testifying at Trial

At trial, the victim may be called to testify as a witness for the prosecution. As a witness, it is the victim's duty to tell the truth about what happened. Because the evidence heard by the judge and the jury must follow certain legal procedures, witnesses tell what they know about the crime through a question and answer format, rather than in a conversational style. You will be asked to answer specific questions posed by the prosecutor (this is called direct examination). After the prosecutor has finished questioning you, the defense attorney has the right to ask further questions (this is called cross-examination). The prosecutor then has another opportunity to ask questions to clarify the victim's responses (this is called redirect examination).

You may feel ambivalent and nervous about testifying in court. Although you want to see justice done and do not want the charges dropped, you may have reservations about giving testimony at trial. You may be afraid that you will make a mistake in your testimony or that you will appear foolish on the witness stand. You may also fear being cross-examined by the defense attorney. These feelings are normal reactions -- testifying can cause anxiety because it is not something most people have done before and you may feel the success of the case depends on the strength of your testimony.

If you are required to testify, you will receive a notice from the court called a subpoena directing you to appear at the court on a certain time and date. Anyone who receives a subpoena must obey it. If you fail to appear in court, you may be held in contempt of court, be subject to a fine, or have a warrant issued for your arrest.

Prior to testifying, the prosecutor will meet with you to review your court testimony and the facts of the case. The prosecutor or victim witness advocate will prepare you for standard courtroom procedures. As you prepare for your testimony, it may be helpful to keep these suggestions in mind:

- Listen carefully to the questions posed to you.
- If you do not understand a question, ask for clarification.
- Think before you speak.

- Answer all questions directly and briefly.
- Respond to questions truthfully.
- Do not volunteer additional information or personal opinions.
- Stay calm, be courteous, and do not lose your temper.
- If you do not remember or know something, say so.
- Be familiar with the statement you made to the police.
- Be attentive during court proceedings.
- Do not discuss your testimony with other witnesses.
- Dress neatly and conservatively.
- Do not refer to the testimony of other witnesses on the stand.
- If you are upset and need to collect yourself, ask for time.
- If an attorney objects, stop speaking until the judge makes a ruling.

In the course of their legal responsibility to provide a zealous defense for their clients, defense attorneys may do or say things which you find extremely upsetting. Undergoing cross-examination by the defense attorney can be a difficult experience for any witness, but particularly for a victim. Although there are rules limiting the conduct of a cross-examination, the defense attorney is permitted to question the victim on all matters covered during the victim's direct testimony, as well as on issues relevant to the victim's credibility as a witness.

Sometimes the defense attorney, in an attempt to create reasonable doubt, may ask questions that upset you or suggest things about you that are untrue, exaggerated or taken out of context. It may feel overwhelming not to be able to defend yourself, and you may feel that you are the one who is on trial rather than the defendant. As difficult as it may be, try to remember that the defense attorney's job is to challenge the prosecution's evidence and to defend the legal rights of the accused -- not to defend what the accused may have done. Much of what the defense attorney asks you may be based on information provided by the defendant. If you are concerned about the types of questions that you might be asked, you should discuss these concerns with the prosecutor or your victim witness advocate.

### Findings and Verdicts

When all testimony has been heard at trial and the prosecutor and defense attorney have presented their closing arguments, the judge or jury will deliberate on the case and return a finding or verdict. This is a decision about whether the defendant has been proven guilty of the crime. In Massachusetts, a jury's determination that the defendant is guilty must be unanimous and beyond a reasonable doubt. The announcement of the jury's verdict can be a very tense experience for victims.

When a criminal case goes to trial, there is always the risk that the defendant will be acquitted. Some defendants will be found not guilty. Hearing that a defendant has been acquitted in a trial can be devastating to victims and survivors. For a variety of reasons and despite everyone's best efforts, the evidence in the case may not be compelling enough for a judge or jury to convict the defendant. You may be very certain of the defendant's guilt and think that the verdict is wrong, but a judge or jury must decide a case based only on the evidence they get to hear -- that is, evidence that is legally admissible -- and the law requires the prosecution to prove the defendant guilty beyond a reasonable doubt. Defendants cannot be retried on the same charge once they have been found not guilty by a judge or jury.

It is important to remember that a "not guilty" verdict does not necessarily mean that a defendant is innocent of the crime or that you are not believed. It only means that the evidence presented was insufficient to prove that the defendant was guilty of the crime beyond a reasonable doubt. The judicial process is, by definition, neutral and dispassionate. Because the criminal proceedings are based on law, the emotions and personal circumstances of the case are deliberately removed. As such, it is very different from the justice to which you may feel entitled and expect. In a trial, whether or not the guilt of the accused has been proven is the only matter of question. The victim's plight is not the immediate consideration.

Sometimes jurors will not be able to agree on a verdict and they may become deadlocked in their deliberations. If they cannot reach a unanimous verdict, the jury is "hung" and the judge will declare a mistrial. The defendant may then be tried again before a new jury. Although hung juries occur infrequently, the prospect of having to go through another trial can also be extremely upsetting to a victim.

If a defendant is found not guilty by reason of insanity, that defendant is legally acquitted of the crime, despite having committed the acts charged. This result means that a judge or jury was not convinced beyond a reasonable doubt that the defendant understood that his or her acts were against the law, or had the ability to conform his or her conduct to the law, because of a mental defect or mental illness. The defendant is not subject to the regular sentencing procedures and victims are not permitted to present a Victim Impact Statement to the judge. In cases in which the defendant has been deemed not criminally responsible, the judge will order the defendant to undergo observation or be committed to a state mental hospital. If an insanity defense is unsuccessful, as most are, the defendant is convicted and treated like other incarcerated offenders.

#### *Sentencing and the Victim Impact Statement*

Once a defendant is found guilty, the judge can sentence the defendant immediately or set a future date for sentencing. The judge may ask for a pre-sentence investigation by the probation department. The pre-sentence investigation will explore the defendant's background and life



circumstances which may have relevance to the crime or the sentence to be imposed. The results of that investigation are submitted to the judge, along with an assessment of whether a defendant would be a good candidate for probation. The prosecutor will also submit a sentencing recommendation to the judge. The **Victim Bill of Rights** gives you the right to confer with the probation officer completing the pre-sentence report about the impact that the crime had on you as a victim, and the right to confer with the prosecutor about the Commonwealth's sentence recommendation. The prosecutor is required to tell the judge what you think of that sentence recommendation.

The job of imposing a sentence belongs exclusively to a judge. The judge will consider both favorable and unfavorable facts about the defendant before determining the appropriate sentence to impose. The judge may consider the seriousness and circumstances of the crime for which the defendant has been convicted and the defendant's past criminal behavior. At the sentencing hearing, the defendant and his attorney have the right to present to the judge any facts which might lessen the punishment. First and second degree murder are punishable by mandatory sentences and do not provide for a judge's discretion in sentencing the defendant, except for cases in which the judge must decide whether to impose consecutive sentences on a defendant. Other crimes have mandatory minimum sentences which may restrict a judge's consideration of evidence favorable to the defendant, but still allow the judge a range. In most crimes, the judge has a wide range of sentencing options, including:

- placing a defendant on probation;
- sending the defendant to jail or prison for a specified time;
- imposing a fine or restitution;
- requiring the defendant to participate in rehabilitation programs;
- creating a sentence involving a combination of these sanctions.

Whether or not the crime which affected you carries a mandatory sentence, the **Victim Bill of Rights** entitles all victims of felony crimes and crimes which cause physical injury to present a Victim Impact Statement to the judge at sentencing. The Victim Impact Statement is a written and/or oral statement describing the physical, emotional, psychological and financial injuries you have suffered as a result of the crime committed by the defendant. You also have the right to express your views to the judge on what you feel is an appropriate sentence, including any request for restitution or no contact orders. The suggestions of victims and their family members can often be incorporated by the judge into the special conditions of the sentence.

Within sixty days after a sentence has been imposed or the finality of a conviction is established on appeal, a defendant has the right to make a motion to "revise and revoke" the sentence. This means that the defendant is seeking to have some aspect of the sentence, such as

the length of time to be served, reviewed by the trial court. In most instances, motions to revise and revoke are made for the purpose of reducing the original sentence. If a motion is filed, a hearing may be held and the prosecution and the defense argue their positions on the issue before a judge. If the judge believes the sentence is excessive or otherwise unjust, he or she has the authority to amend the original sentence. Each county has its own policy regarding notifying victims of motions to revise and revoke. If you have concerns about this happening, you should ask your victim witness advocate about your county's policy.

### Appeals

All defendants have the right to appeal their convictions to an appellate court. First degree murder convictions are automatically appealed to the Supreme Judicial Court (the highest court in the state), but most other cases are directed to the Appeals Court. If a juvenile defendant is found delinquent in Juvenile Court, the juvenile is entitled to appeal for a new trial (known as a "de novo trial") in Juvenile Court. There are no witnesses presented before the Appeals Court. Consequently, the victim does not have a role in the appeals process, but may attend the court proceeding in which oral arguments are presented.

In deciding an appeal, the appellate court may review the official transcript of the trial to determine whether it was conducted in accordance with applicable procedural rules and principles of law. In response to the defendant's appeal, the District Attorney's Office will file a legal brief opposing the defendant's arguments and present its own oral arguments to the appellate court. The judges of the appellate court normally ask the attorneys a series of questions and make a decision a few months later based on a majority vote of the judges. If a legal mistake was made that substantially affected the rights of the defendant, the conviction may be overturned and the case may be retried.

Although appeals are common, it is rare that the outcomes of cases are overturned. Since defendants frequently file appeals that are highly unlikely to succeed, victims are not normally provided notification of a defendant's appeal unless they specifically request notice from the District Attorney's Office or the District Attorney's policy is to notify victims. Notice of repeated appeals may be particularly upsetting to victims after a long trial, and the news may cause a setback for victims at a time when they finally have an opportunity to heal from the crime without the interference of court proceedings. If an appellate court decides to overturn a conviction and grant a new trial, you are entitled to all rights and services during the second trial that are described in the **Victim Bill of Rights**.

If a serious case such as homicide is overturned, it is possible that news of the reversal will be published or broadcast by the media before you receive notice. In some circumstances, the news media receive notice of a reversal from the Appeals Court before or at the same time that

notice is given to the District Attorney's Office. If the case involving you is appealed, it is important that you maintain current address and telephone information with your victim witness advocate.

If you would like a copy of a transcript of a trial held in Superior Court, it is made available to the public for a fee once an appeal date has been determined. You can order the entire transcript or just a portion of it, such as the section covering your testimony. The transcripts fees are on a per-page basis and can cost several hundred dollars or more for the full trial transcript. These costs cannot be reimbursed through victim compensation or restitution. If you would like to order a transcript, you should ask your victim witness advocate or the clerk's office to assist you. Tapes of trials held in district court are also available for purchase through the clerk's office and can be requested at the conclusion of each court proceeding.

### **Victim Assistance and Services During Court Proceedings**

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Victim witness advocates serve as personal contacts throughout the court process and provide victims and witnesses with updated case information. In addition to providing needed emotional support and encouragement, victim witness advocates can ease many of the difficulties and hardships a crime victim may experience throughout the criminal justice process. Without their assistance in the Commonwealth's courts, victims would often be left to negotiate the criminal justice system by themselves. With the authority provided by the **Victim Bill of Rights**, advocates and prosecutors work in partnership to implement these rights and make the criminal justice system more accessible and responsive to victims. The following segment describes the services available to victims through victim witness advocates during the court process.

#### **Crisis Intervention**

Victim witness advocates provide crisis intervention to victims and their families to help deal with their immediate needs following the crime. Some victims may need medical attention or mental health counseling; others may need emergency shelter or financial assistance. Advocates are trained to deal with the unique emotional consequences of crime for many victim populations, including child abuse, rape and sexual assault, homicide and family violence. Advocates are familiar with local and regional networks of service providers, and are able to refer victims to other public and private agencies for more specialized assistance.

#### **Court Appearance Notification**

Victim witness advocates are required to notify all victims and witnesses when they need

to appear in court. Victims are also kept informed of case developments and possible delays in proceedings. To minimize the amount of time victims spend in court, advocates can attempt to arrange appearance dates that are convenient for victims and, in some cases, arrange for victims to be on stand-by for their court appearance. If you are coming from a distance or if you have to take time off from work, it is a good idea to call your victim witness advocate the day before you are scheduled to be in court to double check that the proceeding will occur as scheduled.

There are several kinds of court hearings in a case in which you might be subpoenaed to testify. These include a show cause hearing, a probable cause hearing, a grand jury appearance, a motion hearing, an appearance in court for trial and sentencing. It is difficult to schedule court hearings at a time convenient for all the parties involved, but when the court sets a time and place for a hearing in the case in which you are involved, you must be there promptly. If you know in advance that you will be unable to make a scheduled court appearance, you should inform the prosecutor's office immediately so that he or she can attempt to reschedule the date of your appearance. The court proceeding will still take place as scheduled, but in order to reschedule your appearance in court, the judge may require an explanation and some verification for the reason you were unable to attend.

#### Financial Information

Victim witness advocates are responsible for providing you with information to help recover your financial losses caused by the crime. They are trained to assess the special needs of victims and to determine whether victims may be eligible for restitution and victim compensation. They can assist victims in documenting losses for restitution and in applying for victim compensation. Brochures on compensation and restitution are usually sent to victims with their initial case status letter or distributed during an initial meeting with the advocate.

You are also entitled to receive a nominal witness fee of \$6 plus a small mileage allowance for each day that you are subpoenaed to attend court to testify, including time spent waiting to testify. The purpose of the witness fee is to cover basic transportation costs to court; it is not intended as reimbursement for wages lost due to witness service. The mileage allowance is low and may correspond to a state mileage schedule rather than the actual miles traveled. Your victim witness advocate can assist you in obtaining your witness fee and mileage allowance.

#### Transportation Services

If you are unable to provide your own transportation to court, your victim witness advocate may be able to assist you. If you live in an urban setting, programs will pay you a witness fee to reimburse the cost of public transportation. If you live where public transportation is not readily accessible, advocates may help to make arrangements with area taxi companies, the local police or some other service. If you live out of state but were victimized while in Massachusetts,

the District Attorney's Office may be able to arrange and pay for accommodations for you if you will be required to testify and such accommodations are necessary.

### Case Process Notification Services

One of the primary tasks of victim witness advocates is to keep victims informed of developments in the case and to explain the various stages of the criminal justice process to victims. The **Victim Bill of Rights** mandates that victims be informed of significant developments in the case, including the final disposition of a criminal case. Prosecutors and victim witness advocates contact victims before and after a disposition to discuss the jail or prison status of an offender, the likelihood of appeal and, if relevant, the terms of probation and restitution.

### Employer/Creditor Intercession Services

If an employer or creditor threatens you with the loss of your job or other financial hardship as a result of your attendance at a criminal proceeding, your victim witness advocate can intercede with them on your behalf. The advocate can attempt to curtail any loss of pay or other benefits by speaking directly to the employer or by providing a letter explaining the importance of your participation in the trial. If you have received a subpoena to testify at trial, the advocate can inform an employer that the Victim Bill of Rights prohibits any employer from firing, threatening to fire, or penalizing you in any way as a result of your required attendance at trial.

Victim witness advocates can also assist you in your dealings with creditors. The advocate can seek consideration from a creditor if you are temporarily unable to continue payments as a result of the crime committed against you. If you have lost wages and incurred other unexpected expenses as a result of the crime and your participation in the criminal justice system, you may be eligible for benefits through the state victim compensation program. The advocate can relay this information to creditors in order to prevent harassment or punitive actions by creditors.

### Expedited Property Return

Under the **Victim Bill of Rights**, any property that was stolen from you during the crime or was taken by law enforcement authorities as evidence must be returned to you within ten days of its taking if it is not needed for the criminal case or as soon as possible once it is no longer needed. Victims are asked to complete property release forms, and it is the responsibility of the courts, the district attorney or other law enforcement authorities to promptly return the property once it is no longer needed at trial. Two exceptions to this requirement include property which is contraband or property whose ownership is disputed. In some cases, prosecutors may determine that it will be sufficient to present photographs and videotapes of property have been presented at trial in place of the actual physical evidence. This practice can minimize the delays in returning property to its owner and may be helpful if the case is going to be appealed.

a particular subject. Victim witness advocates are often placed in the difficult position of wanting to publicize an issue that impacts victims' rights but also wanting to protect the privacy of victims. If you are willing to discuss your case and experience with the system, the advocate can refer the journalist to you to help with the story and to educate the public. Of course, you are also always free to initiate your own contact with the media.

### *Services for Special Victim Populations*

In addition to the services mandated by the **Victim Bill of Rights**, specialized victim service units may exist in each District Attorney's Office. These units provide services to victims of child abuse, domestic violence, sexual assault and surviving family members of homicide victims. Victim witness advocates are also trained to work with other specific populations such as elderly victims, victims with disabilities, refugee victims, and non-English speaking victims.

If you do not speak English, you can request that a translator be present to help you understand your rights and the court proceedings. Many of the Victim Witness Assistance Programs of the District Attorneys' Offices have bi-lingual advocates on staff for this purpose. In addition, courts covering areas with large populations of non-English speaking citizens may have translators available.