



Crime Victims Guide

If you or a loved one is the victim of a crime, navigating the criminal justice system can be intimidating. Here are a few tips on what to expect as you follow your case through the process.



Texas Young Lawyers Association

TYLA

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First, let's start out with how a criminal case is initially filed.

Police involvement—There is police involvement in every criminal case. Occasionally, a police officer will observe a crime being committed such as speeding or driving while intoxicated. However, most police are alerted to a possible crime because someone contacts them or a third party such as a hospital or fire department alerts them. Once police arrive on scene, there are certain things that typically occur.

◆ **Witness statements**—Police attempt to determine if a possible crime has occurred by making contact with all witnesses on scene. This includes the victim, the alleged perpetrator, eye witnesses, medical attendants, and any other people with personal knowledge of what happened. As a victim, you have the right to make a statement or refuse to make a statement. You also will be asked to sign a non-consent affidavit. This is a document that states that you did not give permission for someone to violate you: commit a rape, commit an assault. Even if you refuse to sign a non-consent form or cooperate with the police, a criminal case can still be filed.

What should I do?—Get a card from the detective or officer on your case in case you have questions later or discover new information

◆ **Gathering possible evidence**—Detectives or members of the agency's criminal investigation department will attempt to gather any physical evidence present at the scene. This may include photos, clothing, DNA, fingerprints, surveillance videos, etc.

◆ **Filing a case**—Once a case file has been completed the police agency will send the case to the local district or county attorney's office. If the case is a felony, it will be submitted to your local district attorney's office. If the district attorney's office accepts the case on a crime such as sexual assault, the case will be presented to a grand jury. If a grand jury of 12 members believes there is probable cause that a crime has been committed, they will return a true bill and the case will be filed and a warrant will be issued for the defendant. If the case is a misdemeanor, such as Class A assault or trespass, the case will be submitted to either the district attorney's office or the county attor-

ney's office. The intake division in that office will decide whether to file charges.

- ◆ **Participation in trial**—If a case goes to trial, the officers involved in the investigation of the case will be called to testify at the time of trial.
- ◆ **What if I learn new information in reference to my case, have questions, or want to make an additional statement?**—Contact the detective on your case or the appropriate district or county attorney's office handling the case.

What to expect when working with the district or county attorney's office:

District or county attorney's office—Once a case is filed with the district or county attorney's office it will be assigned to a specific court. It will also be assigned to a specific assistant district or county attorney.

Do I need to come to court?—If you would like to be present for any court setting, you may. However, it is not always required. If you receive a letter or subpoena requesting your presence in court, contact the agency that sent the notice to find out what you need to do. If you have been properly served with a subpoena requesting your presence in court you must comply with that subpoena. Failure to appear could result in being held in contempt of court and going to jail.

What you can expect in court

Process: Once a case is filed the defendant will be given a court date to appear before the assigned judge. In most cases, a bond will be set. Once the defendant appears before the judge, the defendant will have the opportunity to hire an attorney or ask that one be appointed. Next, the defense will enter a plea of guilty or not guilty. If the defendant enters a plea of guilty, the judge will sentence the defendant. If the defendant enters a plea of not guilty, the court will place the case on the trial docket. In most cases the attorney representing the state and the defense attorney will visit regarding a possible plea bargain on a case. This is an agreement that is presented to the judge outlining the terms of probation or jail time on a case agreed to by both sides.

Bifurcated Trial: In Texas, a criminal trial takes place in two phases: the guilt/innocence phase and the punishment phase. The guilt/innocence phase is when evidence is presented by the state and the jury makes

a decision on whether the individual is guilty or not guilty. If the defendant is found guilty, the second phase is the punishment phase. Either the judge or the jury will assess any punishment during this phase.

Testifying in a criminal trial: If a case is called to trial, you will likely need to testify in the proceeding.

Frequently asked questions:

I gave a previous statement; why do I have to testify in person?

A previous statement is not admissible as evidence without the witness being there. The defense and prosecutor have the right to confront witnesses in person.

I let the police and/or DA know that I didn't want to proceed with criminal charges. How is this case still going forward?

The DA represents the state of Texas, not you personally as the victim. There are times when the district attorney's office is able to move forward with a case even if the victim or witnesses are not cooperative.

Subpoenas: A subpoena is a court order for you to show up on a specific day at a specific time. You will receive this subpoena either from someone qualified to serve subpoenas (a law enforcement officer or an investigator with your district attorney's office) or, if you are given prior permission, by email or by certified mail. Unless you've talked to someone working on your case and they have specified otherwise, you need to show up on the date listed in the subpoena. If you don't show up to court when you're supposed to, you can be located by police and brought to court. The parties to a trial will often agree to allow you to only show up when immediately necessary rather than be physically present for the whole trial, but always make sure you talk to the district attorney's office or any of the people working on your case to verify when to be there.

The rule: Under the Rule of Witnesses, if you are a fact witness on a case you will be unable to sit in the courtroom while any other witness is testifying. The reason for this is so that neither your nor anyone else's testimony can be influenced by what another witness says on the stand.

Dress code: Most courtrooms have a dress code that prohibits clothing items such as jeans and flip-flops. When deciding what to wear to court, you should use the Three Golden Rules: 1) not too short, 2) not too tight, 3) not too low-cut. For women, a dress that comes to your knees or pants with a nice top would be appropriate. For men, it's not required to wear a full suit, but you should at least wear dress slacks or khaki pants and a shirt with a collar.

How to act in the courtroom: Once in the courtroom, it is important to maintain appropriate behavior and decorum. Not only must your cell phone be off or on silent, but you cannot talk loudly to your neighbor, or become disruptive to the court proceedings in any way. If you find that listening to what is going on in the courtroom is causing you to be too emotionally affected, it is better to step outside and take a break than to sit in the courtroom and cause a scene. This most often happens when the verdict is being read: no judge will permit an outburst of emotion, regardless of what the verdict is. Whether you are happy or sad, wait until you get outside the courtroom to wail or to jump for joy.

Punishment options:

In many cases a victim may want to move forward with a case, but he or she has concerns as to punishment. Is prison the only option? How much time is enough? In some cases, probation may be an option as punishment.

Pre-trial diversion: Many counties in Texas have various types of pre-trial diversion programs. This usually includes the defendant signing a judicial confession admitting guilt. Once admitted in the program, the defendant is required to report as if on probation, pay a fee, attend classes, and complete community service, among other requirements. Once the pre-trial period is complete, the case will be dismissed and no conviction will be listed on the defendant's criminal record.

Deferred adjudication: This is probation, but if the defendant successfully completes the deferred probation period, the case is dismissed and will not result in a conviction. If the defendant violates the terms of deferred probation, the probation can be revoked and the defendant can be sent to prison. This would result in a final conviction on the defendant's criminal record. If a person is sentenced to deferred probation and it is revoked, the judge may sentence

the defendant to any amount of time up to the maximum time in prison for the offense.

Straight probation: Probation allows an individual to live and function outside of prison, but will still result in a permanent criminal conviction. There are various components to probation which may include, but are not limited to: a fine, community service, reporting, classes, drug testing, no contact with the victim, and restitution. The maximum time allowed on straight probation is 10 years for a felony and two years on a misdemeanor case. If the defendant violates probation, he or she can go to prison on a felony or jail on a misdemeanor case.

Serving time in the county jail:

Class A—up to one year in jail and up to a \$4,000 fine

Class B—up to six months in jail and up to a \$2,000 fine

Class C—fine only up to \$500

Serving time in the institutional division of the Texas Department of Criminal Justice (Prison):

1st degree felony—Five to 99 years or life in prison and up to a \$10,000 fine

2nd degree felony—Two to 20 years in prison and up to \$10,000 fine

3rd degree felony—Two to 10 years in prison and up to a \$10,000 fine

State jail felony—up to two years in the state jail prison

Additional resources available for sexual assault victims can be found at notavictim.tyla.org.

Additional resources for victims of domestic abuse and elder abuse can be found at freefromviolence.tyla.org.



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