



Court procedures and information:

This information is available to all survivors who need to enter the criminal justice system. The information is mainly compiled by the Rape Crisis Centre in Cape Town combined with practical experiences from GRIP.

1. Introduction:

The purpose of Pre-Court-Training (PCT) is to offer information to the rape and sexual assaulted survivor about the trial process so that she/he has a better understanding of what to expect at court and is better prepared for the trial.

The training should inform the survivor of her rights and responsibilities regarding the trial, provide the survivor with the opportunity to raise any concerns that she/he has about the upcoming court case. The training is committed to support children and adults in making informed decisions. Our Friends of the court (advisors) will not tell the survivor what to say in court, but the survivor must understand that she must tell the truth, and it must be according to her own knowledge and understanding of what happened.



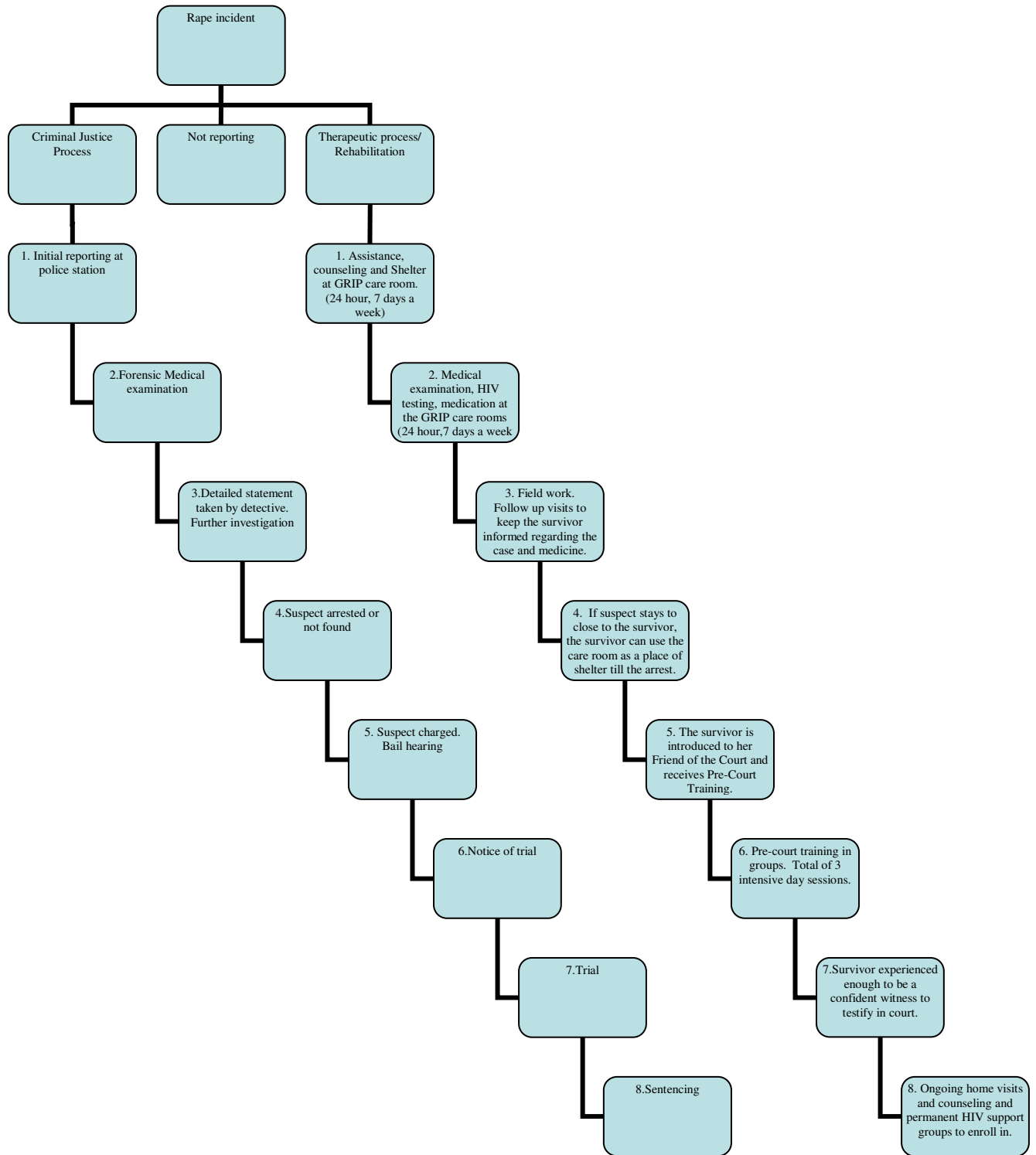
2. The Friends of the Court:

GRIP has 2 Friends of the Court working in Nelspruit Court and once a week in Tonga Court. The Friend of the Court is not the survivor's counselor. The survivor has a counselor called a defuser whose role is to focus on her feelings and needs. The Friend of the Court focuses on information providing in order to meet the needs of the survivor. The Friends of the Court does not have formal legal qualifications, but is working under the supervision of the Legalist at the GRIP head office. The role of the Friend of the Court is as follows:

- To offer emotional support and to call in the defuser when necessary.
- To assist the survivor in obtaining information and documents regarding the case from the police and the court.
- To attend the trial with the survivor to offer support.
- To liaise between the SAPS and Court officials in order to ensure that the rights and dignity of survivors are respected.

- To take part in conducting Pre-Court Training to all survivors that need to testify in court.

3. **The Process before the court trail:**



4. Consultation with the Prosecutor:

It is important to arrange a consultation between the survivor and the prosecutor before the trial in order for the survivor to discuss her statement in detail. The Friend of the Court must make this appointment for the consultation. The Prosecutor can also show the survivor the court room or intermediate room, and she will get an idea of what the room looks like.

5. Sessions presented in Pre-Court Training:

Session 1: Preparation session:

The First session welcomes survivors and explains why people go to court, the concept of rights, the journey to court, and the feelings you are going to experience.

Children are introduced to various role-players and to explain the job of each role player in the court room. Survivors are also made familiar with the special court room and the intermediary room if the possibility exists to use such a room.

Session 2: What happens in Court?

The second session explains to children/adults what is expected of them as a witness in court, to assist children with the types of questions witnesses can be asked, to prepare them for other possible eventualities during the trial, to empower the survivor to tell his/her story and to introduce the survivor to court etiquette.

Session 3: Role Play and Aftercare Session

Survivors are divided into 2 groups, one group is the prosecutor's team and the other is the defense lawyer's team. A leader is nominated in each team; the leaders represent the prosecutor and the defense lawyer. The prosecutor's team is instructed to find proof that will show that the accused broke the law and the defense lawyer's team to find proof that the accused did not break the law. The survivors will then report back and the magistrate must make a decision. The survivors receive debriefing after the role play and are provided with an opportunity to discuss how they are feeling and to deal with any concerns that any survivor may have.

6. Background on the SA criminal justice system

The CJS includes the SAPS, the Health Professionals who perform forensic medical examinations, the Department of Justice and the Department of Correctional Services.

The CJS in RSA is a rigid, disorganized and under-resourced system. It is intimidating and biased in favor of the rights of the accused rather than the rights of victims. The general attitude found in our society of questioning and blaming the survivor for the action of the rapist are reflected in the CFS and in the attitudes and questions of role player in the investigation and trial. Testimony inevitably requires remembering and reliving the rape experience. This is traumatic for survivors. Members of the CJS tend to carry heavy workloads and often don't understand the needs of the complainants in their cases as don't give their cases as much attention as supposed to. Rape survivors receive little information about the processes and procedures of the CFS and poor feedback regarding the status of the case is a general problem.

7. **What difference does GRIP make:**

People who report their experience of sexual assault to the police do so for many different reasons and have different expectations of help they need to receive.

GRIP offers:

7.1 **Justice:**

We meet the expectation of the survivor that the severity of the wrong done by the rapist and the pain and damage that he caused will be formally recognized by the CJS.

7.2 **Protection:**

Many women feel extremely helpless when the CFS is unable to offer the necessary protection. By being able to use the Care Room as a shelter with a permanently counselor for support, our survivors do feel more protected.

7.3 **Being Believed:**

GRIP ensures that the prosecutor and the magistrate will take the survivor seriously and protect her from the accused and his attorney through the trial process.

7.4 **Closure:**

At the end of our program many survivors feel a sense of closure for all the negative emotions that they have been experiencing have disappeared at some extend, as a result of a continues and holistic counseling and services.

7.5 **Efficiency:**

We provide support, assistance, care and companionship in all the ways we know possible, in order to provide a forum of information, emotional strength and rehabilitation. Our services were developed around the specific needs of true survivors, and was changed and improved through many years of experience.

7.6 **Support:**

We provide support to our survivor that enters the system, though home visits, follow up visits, monitoring of their medication as well as including survivors in the HIV support groups.

8. **The role players in the court:**

8.1 **The Magistrate:**

The Magistrate is the judge in the case. She/He will listen to all evidence from both sides, and will then decide in there is enough proof to find the accused guilty, and the punishment if found guilty. S/he will try to remain impartial throughout the case and should not choose sides. The magistrate will not show much expression while listening and should only ask questions when s/he requires clarity.

8.2 **The Prosecutor:**

The state appoints its own lawyer who is called the Public Prosecutor. The prosecutor must prove that the accused committed the offence.

8.3 **The Defense Lawyer**

The accused will hire a lawyer to represent him. If the accused can not afford to pay the cost, a legal aid lawyer will be appointed. The purpose of the defense lawyer is to ensure that their client is not found guilty. If the accused if found guilty the defense lawyer will try to ensure the lowest possible sentence.

8.4 **The Accused:**

The accused will be in the courtroom throughout the trial. The accused is facing the consequences of his actions and potential imprisonment if the court finds him guilty. The implication of this is that the accused will do whatever is necessary to ensure that he is not found guilty. The accused may appear confident and in control and that he is unafraid of the trial process. This may have the effect of making the survivor feel that she will not succeed with the case and can affect her testimony in court.

8.5 The Witnesses:

The survivor is the chief witness in the state’s case.

8.6 The Court Orderly:

The court orderly is a member of SAPS and it is his/her responsibility to provide security to the court.

8.7 The Stenographer:

It is important that everything that is said in court is recorded so that if there are any questions about the fairness of the case at a later stage the court recording can be checked. The person who is responsible for this is called the stenographer. There will be a microphone at the witness Box, this doesn’t make the witness’s voice louder – it ensures that everything that is said in court is recorded.

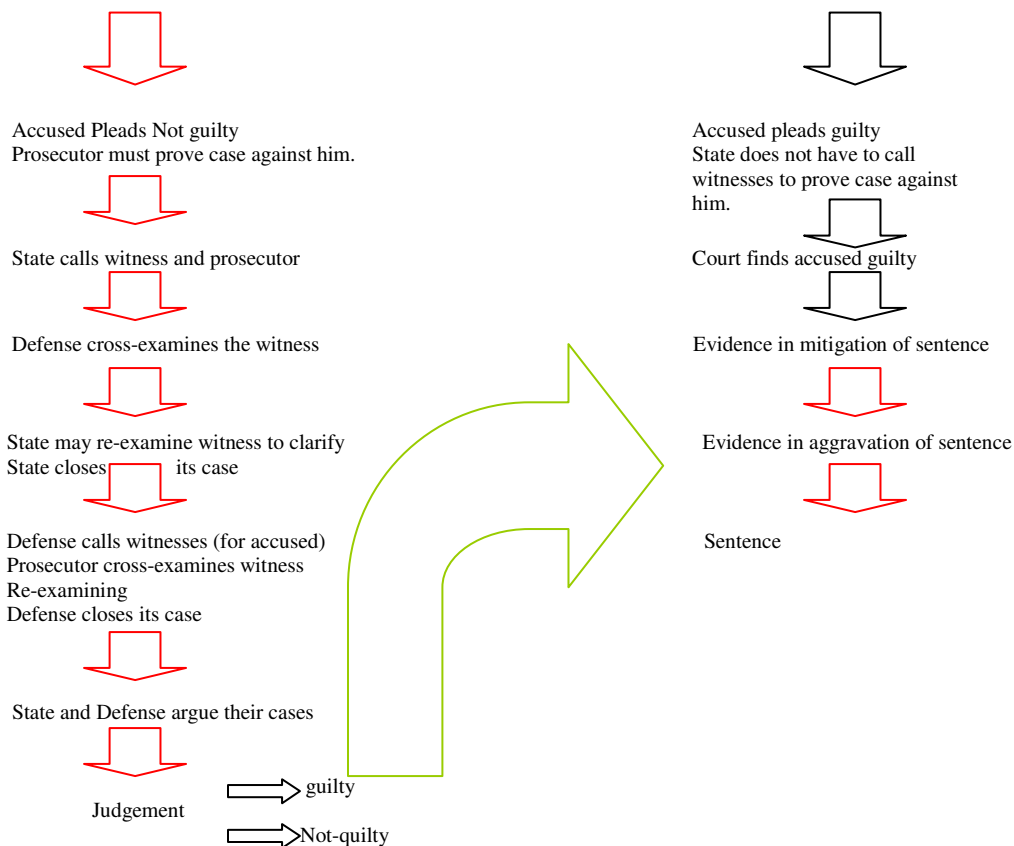
8.8 Members of the Public:

Many magistrates will automatically decide that the survivor’s evidence be heard in ‘closed court’ – without public members. However it is a good idea for the Friend of the Court to remind the prosecutor to ask for this at the consultation. The survivor may ask the Friend of the Court to be present.

GRIP ensures a separate waiting room for survivors and ensures that survivors at court are not confronted outside the court by the accused. No intimidation from the accused can take place. Therefore the survivor will not be unsettling or disquieting. We avoid the contact, by having a comfortable and friendly separate waiting area available for the survivor and her family, to wait in until the trial starts and to receive meals, comfort and information.

9. The Court Trial Process:

Prosecutor puts the charges to the accused- The accused pleads guilty or not-guilty:



10. Giving evidence:

Evidence in Chief- the witness is questioned by the prosecutor

Cross Examination- the witness is questioned by the defense lawyer.

Re-examination – Prosecutor questions the witness on issues that were raised by the cross examination that need to be clarified.

10.1 Evidence in chief:

The following questions can be asked by the prosecutor:

- If the survivor knew the accused before the rape and the nature of their relationship.
- The events that took place leading up to the rape.
- Details about the rape – the exact physical acts. The legal definition of rape is very specific and it is therefore important for the survivor to give these details for the state to prove that what the accused did falls within the legal definition of rape.
- The survivor will be questioned about what she said or did to let the perpetrator know that she did not want to have sexual intercourse with him.
- What happened immediately after the rape, and what her frame of mind was at the time.
- Who the first person was that the survivor told about the rape. She should include how she was feeling and describe the quality of the relationship that she has had with people with whom she came into contact but did not tell. This will help the court to understand her actions and reasons.

10.2. Cross-examination:

The defense lawyer will do everything possible to cause the magistrate to doubt that the survivor is telling the truth. He does not have to prove that the accused is innocent, he only has to cause the magistrate to have reasonable doubt. The purpose of cross-examination is therefore for the defense to show the magistrate that the survivor should not be believed. The defense lawyer may try to make the court believe that the survivor

- Is lying and has good reason to lie.
- Wanted to have sexual intercourse with the accused.
- Led the accused to believe that she wanted to have intercourse with him by the way that she dressed or behaved.

The lawyer may also try to unnerve the survivor by:

- Making her feel unimportant, stupid, using the survivor's own words and twisting them around, and making her feel responsible for the rape.

The result can be that the survivor feels defeated by the questioning and the accusations. This can result in her withdrawing and giving quieter and shorter answers to the court, or it can make her angry, aggressive and careless in how to answer.

In the majority of rape cases the defense will rely on myths and common misconceptions about rape in order to win the cases, and tend to focus on issues such as:

- Alcohol and drug abuse
- Previous relationships
- The way the survivor was dressed
- The behavior of the survivor towards the accused before the attack.

10.3 Re-examination by the Prosecutor:

When the defense is finished with the cross-examination, the prosecutor has an opportunity to ask the survivor questions about anything that was raised by the defense in cross-examination that may have left the court with an inaccurate impression. The prosecutor is not allowed to ask questions about any new issues at this time. Survivors must always tell the truth, and answer all questions asked even if they seem repetitive, silly or annoying. If she does not know the answer to a question, it is okay to say so. The survivor does not have to answer questions about previous sexual relationships with other people unless the magistrate says that it is relevant to the case.

11. **The rest of the state's case:**

Other witnesses for the state include:

The doctor or district surgeon who performed the medical examination.

The first person that the survivor told about the rape.

Any people who witnessed the rape or events leading up to it.

12. **The defense case:**

If the defense feels that the state has not proved its case they can ask that the case be finished at this point without presenting their evidence. The magistrate must then decide whether the case finishes or whether the defense must go ahead to present their side. Witnesses will be called to support the accuser's version of what happened.

13. **The Magistrate's verdict:**

The accused can only be found guilty if the state has proved its case beyond a reasonable doubt.

14. **Finding of not guilty:**

Not guilty means that there was not enough evidence to take the state's case beyond reasonable doubt. The accused will go free.

15. **Finding of guilty:**

If there is enough evidence the accused will be found guilty of rape and it will be necessary to decide on an appropriate punishment. The magistrate will listen to evidence as to why the perpetrator should receive a light punishment (mitigating factors) and evidence as to why he should receive a harsh sentence (aggravating factors).

16. **Victim Impact statement:**

A survivor must prepare a statement that gives details about all of the aspects of her life that have changed as a result of the rape. Issues to be included are:

- Emotional impact
- Changes in eating and sleeping patterns
- Changes in lifestyle and relationships
- Impact on health
- Issues of employment or schooling
- Changes in socializing activities
- Medical expenses and therapy costs
- Her view of the future

17. **Minimum sentencing legislation:**

First time guilty of rape:	10 years
Second time guilty of rape:	15 years.
Third time guilty of rape:	20 years.
Gang rape/ rapist knows HIV+	life sentence

This is the general rule, but the magistrate is allowed to give a lighter sentence.

18. **Additional information:**

18.1 Postponements of the trial date:

The first trial date is usually set anywhere between four to eight months after the case is reported to the police. This delay is caused by the high number of cases waiting to be heard in our courts.

18.2 Withdrawal of charges:

The survivor or the prosecutor may decide that there is not enough evidence and withdraw the case.

18.3 Bail:

Getting bail means that the court can decide that an accused who has been arrested should be allowed to deposit a certain amount of money and then to be released. If the amount does not break any of his bail conditions, his bail money will be returned at the end of the trial, regardless of whether he is found guilty or not guilty.

18.4 Intimidation by the accused:

This can range from threats against the survivor, to offers of money. Malicious rumors and gossip can be spread to discredit the survivor and make people believe that she is lying. The survivor must immediately report any breach of this condition to the investigating officer or prosecutor. The accused will be called to court to explain why he should not be kept in custody.

18.5 Witness Protection:

To enter the programme the survivor must be prepared to move to a new town and must agree not to make any contact with the people who support her. This means that she is cut off from the majority of her family and friends. The survivor might decide that the best way to protect herself is to drop the case against the perpetrator.

18.6 Corruption:

For organized crime and serious criminals to succeed, they often enlist corrupt members of the Criminal Justice System to assist them in destroying cases through contaminating or losing evidence. Corrupt activities generally take place in secret and so are not witnessed by anybody.

18.7 Specialized sexual offence courts:

These courts hear only sexual offence cases. Prosecutors in these courts should have special training in understanding and prosecuting sexual offence cases. These courts must have separate waiting and intermediate rooms.

18.8 Protection of witnesses while giving evidence:

Adult witnesses under certain circumstances can give their evidence in another room using the Closed Circuit Television System. In Nelspruit, these rooms are maintained and operated by the Friends of the Court from GRIP. The Friends of the Court ensure that magistrates use these facilities when needed.

When a child is under 18, the prosecutor may apply that the intermediary system is used. A person (usually a Social Worker) will also act as an intermediary. The intermediary will wear headphones and will convey the questions to the survivor, whose answer will then be viewed and heard by the court via the CCTV system.

Thank you to Rape Crisis in Cape Town for providing valuable information in compiling this document. It is our wish at GRIP to reduce secondary trauma for survivors going through the Criminal Justice System and to prepare children with our Pre-Court-Training Programme, in order to become truth full witnesses who will receive respect and who are allowed to keep their dignity through out the process.

Compiled by Annesta Hofer – CEO of GRIP – 24 October 2007

