



What to Expect from the Criminal Justice System

The criminal justice system is made up of many different departments (courts, prosecutors, law enforcement, and advocates) and includes a wide range of activities from the investigation of a possible crime, to a legal determination of guilt or innocence. The process of going through the criminal justice system can seem overwhelming at times because there are so many moving pieces and different people involved. Understanding a few key aspects of the criminal justice system can help you feel more prepared and comfortable.

What does it mean to “press charges”?

Reports of sexual violence are taken very seriously by Missoula law enforcement. When a survivor reports a crime, law enforcement interviews them and investigates the “allegations” to gather the facts of the case. You have the right to have an advocate with you when you make a report to law enforcement and for the entire time your case is active. The investigative stage of a case can take several months. Your advocate will keep you updated about the progress of the case. Once the investigation is complete, law enforcement will refer the case to prosecution. A prosecutor will review the case and decide whether or not charges will be filed against the accused person. After the initial report is made to law enforcement, a survivor can decide whether or not they would like to move forward with the investigation. However, in the criminal justice system, a victim of a crime does not “press charges,” only a prosecutor (aka “the state”) can do that.

Why would a case be declined?

Prosecutors carefully review investigations of reported crimes. Each case is evaluated to assess if it can be proven “beyond a reasonable doubt” in a court of law. Beyond a reasonable doubt is a legal term that sets a very high bar to prove in court. Challenges to proving the case may include a lack of evidence, conflicting witness statements, an inability to identify the perpetrator, or other factors. Although it can be tough to hear that your case was declined, it does not mean that you are not believed or that nothing can be done to help and support you. Victims of crimes may pursue justice beyond the criminal justice system. You may choose to file a civil lawsuit in order to receive monetary compensation for injuries or emotional harm. The burden of proof in a civil suit is lower than in a criminal trial. Finally, if you are concerned for your safety, you may be eligible to apply for a civil order of protection (aka “restraining order”) regardless of if there is a criminal case. Please call the Missoula Crime Victim Advocate Program for more information at 258-3830.

Charges have been filed. What happens now?

When a prosecutor decides to file criminal charges, you will be notified of this by a Crime Victim Advocate and the prosecuting office. Please know that the criminal justice system moves fairly slowly and it may be months from the time that charges are filed until the resolution of your case. A Crime Victim Advocate will help you through the criminal case and answer any questions you have. Your advocate will keep you updated on the status of the case, set up meetings with the prosecutor, accompany you to interviews and court, and support you throughout the criminal justice proceedings. The prosecuting attorney will file a complaint with the court which starts the court process. The following is basic information about what will happen in the case:

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317 Woody St., Missoula, MT 59802 ▪ (406) 258-3830 ▪ www.missoulacounty.us/CVA

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- **Initial Appearance** - The perpetrator, who is called “the defendant” may be arrested or receive a summons to appear in court to answer the complaint. If the defendant does not have an attorney, the court may appoint one or begin the process of assigning a public defender to represent the defendant.
 - **Bail or Bond**- At the initial appearance in court, or at any other point in the process, the Judge will determine if bail will be set or allow the defendant to be released on his or her own recognizance (OR). In Montana a judge must set bail and cannot hold someone without a monetary amount set. To be released on bail, defendants have put up cash or other valuables to the court as security to guarantee that the defendant will appear at other court dates. Bond is when a defendant hires a bondsman who collects a non-refundable fee (10% of the bail amount) from the defendant to pay bail.
 - **Conditions of Release**- The judge will also set conditions of release, which are the rules that the defendant must follow while the case is pending. Each case is different, but those conditions can include remaining in the county, appearing in court, abstaining from alcohol and/or drugs, submitting to testing for alcohol and/or drugs, monitoring by GPS, or being under the supervision of the Pretrial Supervision Program. The defendant will be prohibited from contacting the victim and/or any witnesses, this is called a “no contact order.” You have a right to give input to the judge regarding both bail and conditions of release, but the judge will make the final decision.
- **Court Actions** – After the initial appearance but before the trial there may be several court dates regarding your case. These may include an omnibus hearing, status conferences, and pre-trial conference. Additionally attorneys on both sides of the case may file motions that will be in front of the court. You do not have to attend these hearings and your advocate can keep you informed about the progress of your case.
- **Pre-Trial Meetings** – As the case moves closer to trial, you may be asked to meet with the prosecuting attorney and the defense attorney. You have a right to have an advocate come with you to these meetings. The prosecutor will help you understand what to expect at trial. The defense attorney will be building the case to defend the accused person. These meetings can be stressful, but are an important part of the court process.
- **Plea Agreement** – Many cases are resolved through a “plea bargain”. A plea bargain is an agreement between the prosecutor and perpetrator’s attorney, in which the perpetrator agrees to plead guilty to a crime in return for a reduction in penalty, such as a lighter sentence. This course of action does not involve or require the survivor to testify. However, you will be asked to give the prosecutor information about what you would like to see happen with the case, which they will take into consideration.
- **Trial** - If the case does go to trial it will be tried in criminal court in front of a jury. Both sides will call witnesses and/or experts to testify about the facts of the case. The survivor will generally be asked to testify. Some aspects of state and federal law are designed to protect the interests of survivors who participate in a trial. (One example is a rape shield law, which limits what the defense can ask the victim about prior sexual history.) The defendant does not have to testify and may choose not to. They will be in the court room for the entire trial. Trials may end in the following ways:

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- **“Hung jury” or Mistrial** - If the jury cannot unanimously decide that the defendant is guilty the judge will call a mistrial. The state may choose to re-try the case with a new jury.
- **Guilty** - If the defendant pleads guilty or if found guilty after a trial, he or she will be sentenced by the judge. Sentences may include prison time, probation, and/or paying restitution. You will be asked to give a written Victim Impact Statement which will be taken into consideration. You may also choose to speak to the judge at a sentencing hearing. The defendant may appeal their conviction. If this happens, there will be a new hearing.
- **Not Guilty** - If the defendant is found “not guilty,” he or she will be free to go after the trial. They cannot be re-tried for the same crime.

What should I know about testifying?

Speak in public is hard for many people, but can be an especially intense experience when you are speaking in a courtroom as the victim of a crime. It's important to discuss concerns you might have with the legal professionals who are representing you and supporting your interests. An advocate will be there to support you during the trial or resources to make the process less intimidating. Every trial is different. If you have specific questions about testifying, check in with a victim advocate or the prosecuting attorney. The following tips can help you stay focused and calm throughout your testimony however.

- Allow yourself to take brief pauses. If at any time you're feeling overwhelmed, ask the judge or prosecutor for a short break.
- If you feel yourself getting angry or frustrated, take a moment to pause.
- Keep your eyes focused on the person asking you questions, rather than looking at the perpetrator or their supporters.
- Always tell the truth. If you don't remember something exactly, it's important to say so. If you say something you didn't mean to, or you think something came across in a way you didn't intend, you can clarify your statement. Ask the judge, “May I go back to something I previously said?”
- Answer the questions – and nothing more. Don't volunteer additional information unless you are asked.
- If you don't understand a question, say so. You can always ask the attorneys to repeat or rephrase a question so you can better understand it.
- Stay hydrated; bring a water bottle and take sips of water throughout.

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