



JUDICIAL REFORM AND  
INSTITUTIONAL STRENGTHENING  
(JURIST) PROJECT

# Model Guidelines for Sexual Offence Cases in the Caribbean Region



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### **Members of the Sexual Offences Advisory Committee:**

**The Rt. Hon. Sir Dennis Byron**, *President, Caribbean Court of Justice (ex-officio)*

**Hon. Mme. Justice Maureen Rajnauth-Lee**, *Judge, Caribbean Court of Justice (Chair)*

**Hon. Mr. Justice Adrian Saunders**, *Judge, Caribbean Court of Justice*

**Hon. Mme. Justice Betsy-Ann Lambert Peterson**, *Judge, Family Court of Trinidad and Tobago*

**Hon. Mme. Justice Jacqueline Cornelius**, *Judge, Barbados Supreme Court*

**Her Honour Paula Blake-Powell**, *Senior Parish Court Judge and Judge of the Family Court of Jamaica*

**Dr. Penny Reedie**, *Project Director, JURIST Project*

**Beverly Reynolds**, *Coordinator, Health and Human Development, CARICOM Secretariat*

**Gabrielle Henderson**, *Programme Specialist, UN Women*

**Heather Stewart**, *Child Protection Specialist, UNICEF Eastern Caribbean and Trinidad and Tobago*

**Tracy Robinson**, *Senior Lecturer, UWI, Jamaica*

**Renee Cummings**, *Criminal Psychologist*

**Candice Wallace**, *Regional Coordinator, JURIST Project*

### **Members of the Editorial team:**

Hon. Mme. Justice Maureen Rajnauth-Lee, *Judge, Caribbean Court of Justice*

Hon. Mr. Justice Adrian Saunders, *Judge, Caribbean Court of Justice*

Hon. Mr. Justice Iain Morley, *Judge, Eastern Caribbean Supreme Court*

Diana Shaw, *Legal Consultant*

Candice Wallace, *Regional Coordinator, JURIST Project*

## ACRONYMS

<b>CARICOM</b>	Caribbean Community
<b>CCJ</b>	Caribbean Court of Justice
<b>CDA</b>	Child Development Agency
<b>CRC</b>	Convention on the Rights of the Child
<b>CRD</b>	Community Rehabilitation Department
<b>CBO</b>	Community Based Organization
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CISOCA</b>	Center for the Investigation of Sexual Offences Against Children and Adults
<b>JURIST</b>	Judicial Reform and Institutional Strengthening
<b>RBPF</b>	Royal Barbados Police Force
<b>NGO</b>	Non-Government Organization
<b>OCR</b>	Office of the Children’s Registrar
<b>OECS</b>	Organization of Eastern Caribbean States
<b>UNICEF</b>	United Nations Children Fund
<b>WDO</b>	Woman Development Officer

## FOREWORD

Although progress has been made in the Caribbean Region in promoting gender equality, there are still many aspects which remain unresolved, chief among these being sexual violence against women, young girls, and boys. The region experiences high levels of sexual and domestic violence, which are often under-reported and ineffectively dealt with by the justice system.

The present approach by the justice system to persons who have been sexually assaulted in many cases, leaves the survivor with a sense of betrayal. Preliminary hearings, where untrained police or court clerks often lead evidence, frequently, if unwittingly, traumatize survivors of sexual assault. Personnel are often insensitive to the trauma that survivors and witnesses experience when they are forced to relive the crime during the investigation and prosecution of a criminal case, particularly while they are testifying in court. Delays in the criminal justice system also mean that survivors may experience this trauma over a span of several years.

In several instances, the processes accompanying adjudication of these cases are not yet consistent with international treaties, best practices and even domestic laws. Furthermore, the absence of specialized procedures to address gender dynamics, gender based violence and family related issues presents a problem which can have cyclical consequences. Greater effort is therefore needed on national and regional levels that will markedly improve the capacity of courts to handle these types of cases efficiently and justly; improve the treatment, support and protection of survivors and witnesses in the criminal process; and ensure that those who have suffered from sexual or domestic abuse are able to give clear and effective evidence in court.

In response, the JURIST Project, under the guidance of the Advisory Committee and with the support of justice sector stakeholders, developed these Model Guidelines as part of a comprehensive approach to improve the management of sexual offence cases and the treatment of witnesses and survivors of sexual offences throughout the region. The Guidelines provide guidance to justice sector stakeholders, namely, judicial officers, attorneys, prosecutors, police and health and social care providers during the life cycle of a case. The Guidelines set the minimum acceptable standards for the provision of quality service and support to the survivors of sexual assault and equitable justice to all those involved.

It is hoped that the Guidelines will be adopted by all countries in the region and that its implementation will result in:

- increased public confidence in the justice system as it relates to the handling of sexual assault cases;
- improved responses to survivors that will enable their full participation in the justice system, increase offender accountability and reduce secondary victimisation;
- ensuring a trained and skilled cadre of cross-sectional professionals including judges, court personnel, police and attorneys to efficiently respond to sexual assault cases, survivors and witnesses; and
- speedy adjudication of cases and reduction of case backlogs over time.

These Guidelines are a remarkable achievement of the region. They are the first of their kind that seek to take a comprehensive, collaborative and systemic approach towards addressing the investigation, prosecution and adjudication of sexual assault cases. However, the development of these Guidelines cannot be seen as the final goal. Success lies with their implementation. These Guidelines should therefore not only be on the desk of every justice sector stakeholder whose duty requires her/him to treat with sexual offence matters, but should be frequently used as a reference in guiding and improving justice delivery in these cases. It also

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<sup>1</sup> United Nations Development Fund for Women (UNIFEM) and the Association of Caribbean Commissioners of Police (ACCP, 2009)

provides a benchmark to which every judiciary should aim to achieve.

It is our responsibility to ensure justice is served in the most efficient and effective ways; that the innocent are quickly exonerated and the guilty made to account and that we make every effort to minimise inflicting further harm to survivors of sexual assault who seek the support and protection of the criminal justice system. Through the effective use of these Guidelines, the collaboration between justice sector stakeholders and the support of each stakeholder, positive impact can be made in improving public trust and confidence and access to justice to those we serve.

The Guidelines would not have been possible without the generous funding from the Government of Canada. We are therefore deeply indebted to the Government of Canada, which has had a long and productive partnership with CARICOM countries in the area of judicial and legal reform. The Guidelines are a great example of the Government of Canada's Feminist International Assistance Policy (FIAP) in action. One of FIAP's goals, is to strengthen legal systems and promote reforms that eliminate all forms of discrimination against women and girls that prevent them from realizing their economic, political and social rights.

It is with great honour that we present the ***Model Guidelines for Sexual Offence Cases in the Caribbean Region***.

**The Rt. Hon. Sir Dennis Byron.**

*President, Caribbean Court of Justice*  
8th August, 2017.

## BACKGROUND

The Judicial Reform and Institutional Strengthening (JURIST) Project is a five-year regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada. The Project is being implemented on behalf of Global Affairs Canada and the Conference of Heads of Judiciary of CARICOM (the Conference), by the Caribbean Court of Justice (CCJ), which was appointed by the Conference as its Regional Executing Agency.

The Project seeks to improve court administration and the administration of justice in the Caribbean region by strengthening the ability of the courts and the judiciary to resolve cases efficiently and fairly. Special attention will be paid to improving the capacity and skills of the judges, court administrators and court personnel to deliver services that address the different needs of their customers. The Project supports local jurisdictions of the region toward the attainment of the project's ultimate outcome, which is "a judicial system that is more responsive to the needs of women, men, youth, and the poor."

A key initiative under the Project is the development of model guidelines for treating sexual offences cases and complainants of sexual assaults (including cases involving children), that is aimed at improving the capacity of courts to deliver gender responsive and customer focused court services.

In May 2015, the Project established an advisory committee consisting of representatives from the CCJ, judiciaries of Trinidad and Tobago, Jamaica and Barbados, UN Women, UNICEF, CARICOM Secretariat and UWI (Jamaica) to monitor the implementation of the initiative. A baseline study was commissioned through UN Women on the legislation, protocols and court systems for sexual offence cases conducted in 5 CARICOM countries. The following major gaps in the justice chain for sexual offences were identified:

- poor investigative and evidence gathering procedures by the police;
- inordinate delays in the completion of cases;
- undervaluing of sexual offence cases in relation to the public interest so that limited resources are instead reserved for other "serious crimes" such as murder;
- lack of data collection to form the basis of monitoring and accountability of the courts' performance and quality in responding to sexual offence cases;
- insufficient interconnectedness between the courts and the other key agencies required to facilitate proper investigation of the crimes and provide care of the victims throughout the process; and
- the survivors' refusal to pursue cases for fear of re-victimisation by the very process of seeking justice.

Thereafter, in November 2016, the Project engaged the services of Diana Shaw, Legal Consultant, who conducted various consultations across the region with key stakeholders with a view to identifying best, good and promising practices and understanding how model guidelines could support a judicial system which was more responsive and effective in the handling of sexual offence cases. The development of these Guidelines are the result of many hours of dedication and hard work of Diana Shaw, the JURIST team and the Advisory Committee.

## METHODOLOGY

1. Completion of a desk review of all national laws on sexual offences and national protocols on sexual assaults. The desk review expanded the ambit of the baseline study, done prior to the consultancy, to assess the most recent changes to the laws and to include the national protocols impacting the investigation of sexual offences and the care provided to complainants.
2. Conducting regional consultations with the representatives of the judiciary, law enforcement, child protection agencies, women and gender affairs departments, health departments and the D.P.P. of CARICOM member states. These regional national consultations were designed to:
  - a. Collect information on pending legislation and to validate the findings of the desk review.
  - b. Facilitate the mapping of the institutional mechanisms responsible for investigations, adjudications and care interventions in sexual assault cases.
  - c. Collect information on examples of best practices for investigations, adjudications and care interventions in sexual assault cases.
3. Conducting regional consultations with NGOs, members of indigenous communities, persons living with a disability and complainants of sexual assaults in three selected CARICOM Member States. These national consultations were designed to capture the experiences and concerns of complainants and vulnerable groups using the institutional mechanisms to compare the actual working of the mechanisms against the protocols and practices in place.
4. Further consultation with prosecutors, defence attorneys, and judges on the draft guidelines which were developed.

The information gathered from the desk review and the consultations forms the background for these model guidelines.



PART ONE:  
Preliminary Matters



## 1.0 TERMINOLOGY AND DEFINITIONS

**Age of Consent:** Typically set at 16 years in the sexual offence laws of the Caribbean; however, in St. Vincent the age of consent is set at 15 years old.

**Age of Criminal Responsibility:** The age at which a person can be prosecuted for a criminal offence in a particular jurisdiction.

**Child:** Person under the age of 18 years.

**Child Offender:** Person under the age of 18 years who is in conflict with the law.

**Coercion:** Coercion is when an individual uses pressure, threats, or intimidation to force another to act a certain way.

**Complainant:** A person who has made a report to the police and/or on whose behalf the report has been made or criminal prosecution has been initiated against a defendant.

**Consent:** Consent is the freely-given voluntary agreement of the complainant to engage in the sexual activity in question. Exceptions to voluntariness can include: (a) the agreement is expressed by the words or conduct of a person other than the complainant; (b) the complainant is deemed incapable of consenting to the activity; (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority. Furthermore, consent can be vitiated where: (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

**Defendant:** A person accused of committing a criminal offence and against whom criminal prosecution has been brought.

**Domestic Violence:** Domestic violence takes place between intimate partners as well as between family members (for example, mothers-in-law and daughters-in-law). Domestic violence may include sexual, physical, and psychological abuse. In any reference to domestic violence, it is important to be clear whether the violence is perpetrated by an intimate partner or another family member.

**Gender:** As defined in the draft *Gender Equality Protocol for Judicial Officers in the Caribbean* prepared by the Caribbean Association of Judicial Officers (CAJO), UN Women and JURIST, 'gender' refers to the roles, behavior, activities and attributes that a given society at a given time considers appropriate for men and women. It also denotes the social attributes and opportunities associated with being male and female, as well as the relationships between and among men and women. These attributes and relationships are socially constructed and are learned through socialization. They are context-specific and time-specific, and changeable.

**Gender-based Violence:** Gender-based violence is an umbrella term for any harm that is perpetrated against a person's will, and that results from power inequities that are based on gender roles. Around the world, gender-based violence almost always has a greater negative impact on women and girls. For this reason, the term "gender-based violence" is often used interchangeably with the term "violence against women." One reason the term "gender-based violence" is often considered preferable to other terms that describe violence against women is that it highlights the relationship between women's often subordinate status in society and their increased vulnerability to violence. However, it is important to remember that men and boys may also be survivors of gender-based violence. The abuse may be physical, sexual, psychological, economic, or cultural. Categories of perpetrators may include family members, community members, and/or

those acting on behalf of cultural, religious, or state institutions.

**Intimate Partner:** Includes current or former spouses (legal and common law), non-marital partners (boyfriend, girlfriend, same-sex partner, dating partner). Intimate partners may or may not be cohabitating and the relationship need not involve sexual activities.

**Perpetrator:** Person, group, or institution that directly inflicts or otherwise supports or enables violence or other abuse inflicted on another against her/his will.

**Re-victimization:** This can also be called 're-traumatization', or 'secondary victimisation', and occurs where a complainant in a sexual offence endures additional trauma by reliving an event by the process of reporting it.

**Sexual Assault:** Sexual assault is non-consensual touching of a sexual nature that violates the sexual integrity of the complainant.

**Sexual Abuse:** Includes sexual contact of any kind that is coerced by force or threat, and the commission of or an attempt to commit any sexual offence.

**Sexual Offences:** Sexual offences against the person encompass conduct ranging from unwanted sexual touching to sexual violence which results in serious physical injury, and can include sexual interference, invitation to sexual touching, sexual exploitation, incest, offences in relation to child prostitution, sexual assault, sexual assault with a weapon, and aggravated sexual assault.

**Special Measures:** Menu of options available to the court as set out in law to facilitate the provision of evidence to the court from a vulnerable witness.

**Survivor:** A person who has experienced gender-based violence or other such abuse. The reason for using this term is that in preference to the word 'victim', the word 'survivor' implies that such persons can take back control of their own lives and be resilient in the face of the trauma and immense obstacles that they may have experienced.

**Trafficking in Persons:** A crime arising from the recruitment, transportation, transfer, harboring or receipt of persons by means of threats, force, coercion, abduction, deception, abuse of power, abuse of position of vulnerability, giving or receipt of payments by a person having control over another for the purpose of exploitation. Where the exploitation is for a sexual purpose, the crime is prosecuted as a sex offence and may be referred to as sex trafficking.

**Vulnerable Witnesses:** Vulnerable witnesses include witnesses whose quality of evidence given in criminal proceedings is likely to be diminished by reason of an impairment they possess connected to their age, a physical or intellectual disability, or to an adverse or traumatic experience that they have suffered, which may include the offence they report.

## 1.1 CONTEXT AND SCOPE OF GUIDELINES

The guidelines are intended to provide guidance to magistrates' courts, high courts and supreme courts in adjudicating sexual offences. The overall aim is to ensure that re-victimization to survivors is minimized as they receive support services to facilitate them being able to give the best quality evidence to the court while ensuring adequate safeguards for the rights of defendants.

In the Caribbean, the context of sexual violence is usually attended by trauma to the survivor as well as complicated family and community dynamics. The awareness of these must inform the court and be reflected in the procedures and systems of the court if the overall aim stated above is to be achieved. In particular, court procedures and systems must reflect an awareness of the following:

1. That survivors of sexual violence have experienced serious violations of their fundamental human rights.
2. That the act of sexual violence alleged to have been carried out on the survivor is likely to affect their sense of dignity and personhood and may engender feelings of shame which will make them reluctant to share with authorities the details about what has happened without support and assistance.
3. That the act of sexual violence alleged to have been carried out is likely to have affected the survivor's sense of safety especially if the alleged perpetrator is someone known to the survivor and that feelings of unsafety may make survivors reluctant to participate in court proceedings if protection mechanisms are not in place.
4. That the survivors of sexual violence may have lost family support networks and connections available to other survivors of crime in court proceedings if the alleged perpetrator was a family member or a person known to the survivor and thus it may be necessary to provide alternative support and rehabilitative services to survivors to support their rehabilitation and recovery where those survivors have been deemed to be vulnerable witnesses.
5. That in having to share intimate details of the sexual violence incident in court, the survivor may relive the trauma associated with the event and the court's procedures should be used to reduce the likelihood of such re-victimization.
6. That judicial proceedings are an essential aspect of initiating recovery and rehabilitation for survivors by giving them the opportunity to speak about what has happened to them and to receive redress and acknowledgement of the wrong they have endured, and thus all efforts should be made to encourage and facilitate their participation in court proceedings.
7. That judicial proceedings are an essential part of restoring a sense of safety in communities where sexual offending has occurred and of encouraging persons who have experienced sexual violence to come forward and report incidents of sexual offences when they perceive that they will receive help and be supported.

The primary scope of the guidelines will be criminal proceedings where an offence under the sexual offences legislation of the jurisdiction is being adjudicated or where the court is conducting a pre-trial inquiry for the adjudication of the offence in another court.

In addition, the courts are also tasked to address sexual offences connected to other offences and the guidelines will be helpful in providing a basic set of considerations for effective adjudication of those matters in ways that protect the rights of survivors.

The primary users of these guidelines will be judicial officers, magistrates, prosecutors and court staff involved in the prosecution and adjudication of sexual offences.

The courts that will be impacted by these guidelines include the magistrates' court, the family/juvenile courts, the high courts and the supreme courts of the Caribbean.

## 1.2 STATEMENT OF PURPOSE AND GUIDING PRINCIPLES

The main purpose of these guidelines is to provide a set of directions for policies and procedures for the courts in the Caribbean in the adjudication of sexual offence cases. However, the guidelines also recognize proper adjudication of sexual offences requires the input and services of other agencies such as the police, prosecutorial and medical sectors. These agencies may have existing policies and procedures for their operations and it is hoped that these guidelines will strengthen existing practices by demonstrating what will need to be done to properly prepare sexual offence cases for court while protecting the rights of the complainant and aiding their recovery without infringing the rights of the defendant. Specific examples of directives for the police and medical services that will be needed to prepare sexual offence cases for the court are provided in the appendices and can be adopted for implementation in those agencies that may lack specific protocols.

The guidelines take a “rights-based” perspective and is underpinned by the general provisions of the sexual offence laws throughout the Caribbean as well as the international instruments that have influenced the content of policies and protocols protecting the rights of women and children. The most important of these international instruments are the CEDAW Convention, the Convention De Belem Do Para, the CRC and the Convention on Transnational Organized Crime. Overviews of these conventions are provided below.

It is hoped that this comprehensive approach will streamline services and prioritize the rights and needs of complainants and defendants in achieving best evidence for adjudication.

### GUIDING PRINCIPLES

The following guiding principles will be the foundation of all court proceedings and services provided by the court:

1. The rights of all complainants and defendants will be protected and all service delivery will respect their rights and dignity.
2. All court services will be provided in a non-judgmental way that facilitates the empowerment of complainants.
3. Specialized training is an essential part of ensuring the best evidence is collected from complainants.
4. Service delivery must not re-victimize the complainant or traumatize witnesses.
5. Vulnerable complainants or witnesses will receive specialized support services.
6. Service delivery will recognize that due to the traumatic and disruptive nature of sexual assaults, support services will be needed for complainants and this may require multi-disciplinary collaboration with other agencies.
7. Confidentiality and privacy of complainants will be respected and protected.

### 1.3 OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORK

The reported cases of sexual offences in the Caribbean show that most survivors are women and children. Sexual offences against women and children are part of a documented general dynamic of violence against women in the Caribbean despite the region's commitments under numerous international conventions. The primary international conventions that have influenced all recent legislative and policy reforms in this area in the Caribbean are:

#### 1. The Convention on the Elimination of All Forms of Violence and Discrimination Against Women (CEDAW)

- Although the original CEDAW document does not explicitly address gender-based violence against women, subsequent actions by the Committee have established that addressing this issue is indeed central to achieving the goals of the Convention. The most significant of these is General Recommendation 19, adopted by the Committee in 1992. This recommendation established that the definition of discrimination against women included in Article 1 of the Convention includes gender-based violence, that is...

"...violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty".

- General Recommendation 19 (1992) also provides that:
  1. "State parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling"
  2. "State [parties should] ...take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia... Protective measures, including; refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence".

#### 2. Convention on the Rights of the Child and its Optional Protocols

- The Convention sets out the rights of children that are to be protected by States or countries. The Convention's Article 19 (1) requires states to:
 

"...take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".
- The Optional Protocol to the CRC in 2000 called on States to take steps to identify and prevent the trafficking of children and to prevent commercial sexual exploitation of children.

### 3. Convention on Transnational Organized Crime and the Palermo Protocol

- The Convention establishes certain offences as international crimes without borders:
  - o Trafficking of persons
  - o Trafficking of weapons
- As crimes without borders, the Convention sets up a mechanism for joint state cooperation to identify perpetrators of these crimes and for shared legal jurisdiction over the prosecution of these crimes. In addition, the Convention sets up a shared international mechanism for identification, rescue, rehabilitation and repatriation of survivors.
- The Palermo Protocol passed under the Convention defines the trafficking in persons and sets up requirements for State governments to prevent, provide assistance to victims and prosecute perpetrators.
- The Protocol defines trafficking of persons as:
 

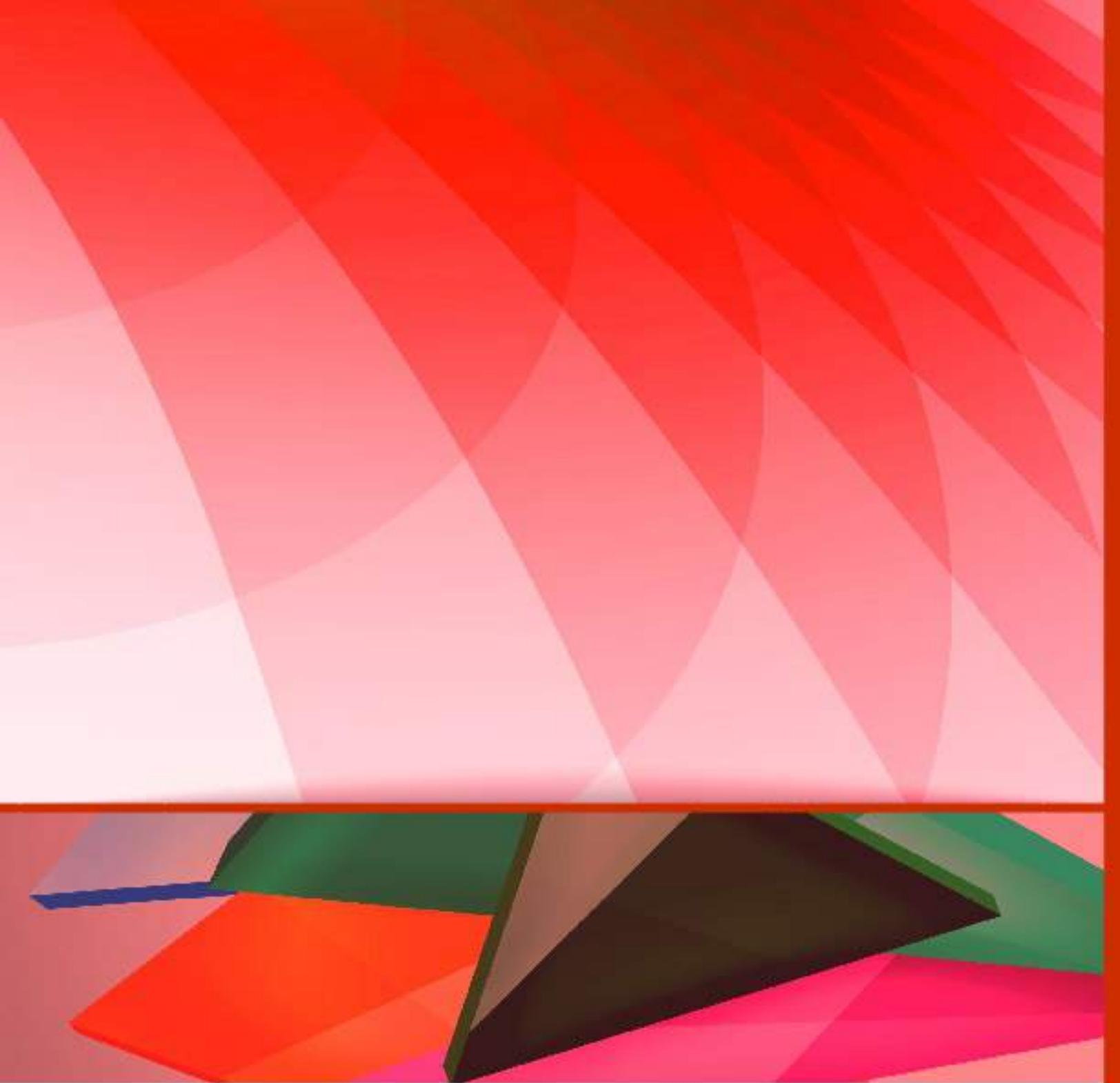
“... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

### 4. Convention of Belem Do Para

- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women was passed by the General Assembly of the Organization of American States in 1994. It is better known as the Convention of Belem Do Para.
- The Convention asserts that violence against women violates fundamental human rights and freedoms, based on the historically unequal power relations between women and men. It defines violence against women as:
 

“any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere, including... ... physical, sexual and psychological violence:

  - a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;
  - b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
  - c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.”



**PART TWO:**  
Guidelines for the  
Pre-trial Court Process



## 2.0 INTRODUCTION

Generally, the court has an investigative role in the pre-trial process to investigate whether charges are properly brought, whether bail should be granted, and whether the rights of the accused are being protected. These guidelines will provide directives for those processes and as well as guidelines for the court to ensure that adequate safeguards are in place for the protection and care of the survivor and vulnerable witnesses in sexual offence cases. Virtually all criminal proceedings begin in the magistrates' court and many are tried there. These guidelines will provide pre-trial directives for summary jurisdiction offences that will be tried in the magistrates' court and also pre-trial directives for indictable offences that will be tried in the high court or supreme court.

### 2.1 SUMMARY JURISDICTION OFFENCES

1. Many sexual offences are triable in the magistrates' court including indecent assaults, sexual activity (not amounting to intercourse) with a child, inciting a child to sexual activity, stalking, sexual activity in the presence of children, procurement offences, sexual assaults and in some jurisdictions grievous sexual assaults.
2. Summary jurisdiction offences are intended to be abbreviated proceedings that will lead to expeditious disposal of matters but there may still be some pre-trial matters to be dealt with as set out below.
3. Though summary offences may be more expeditiously dealt with, the court should still be mindful that the impact of these offences can have long term physical, emotional and financial implications for survivors and should be mindful of the needs of survivors even when matters are being summarily resolved.
4. Usually, the court will seek to give directions and resolve many matters at the First Hearing so that disclosure can proceed thereafter and then a date set for trial.

### 2.2 FIRST HEARING/REMAND HEARING/VENUE HEARING

1. Where the defendant has been charged with rape or other indictable sexual offences, he or she will usually be brought before the magistrates' court the next day or within 48 hours for a remand hearing.
2. The magistrates' court should inquire when the defendant was charged to determine if the timelines required for bringing persons before the court are being adhered to and may ask such questions as may be appropriate to determine the general condition of the defendant.

3. The complainant is not usually present at the first hearing of the matter and may at that time be attending a medical exam or visiting the scene with the investigating officer or participating in interviews.
4. Where the nature of the offence is one for which diversion may be considered under any existing legislation for offences committed by children or under relevant court practice, the court may inquire whether diversion has been considered by the D.P.P. or police before proceeding further to plea.
5. The court may still consider whether it would be appropriate to divert the proceedings from the court even if diversion has previously been considered.
6. Where the court will divert the matter, the court may adjourn the matter and make such orders for the attendance of the complainant and other witnesses as shall be deemed appropriate.
7. Usually at the first hearing or shortly thereafter, the court holds a venue hearing to determine whether the matter will be tried in the magistrates' court or in the high court/supreme court. Venue hearings are only conducted in cases of hybrid offences.
8. This first hearing is also a remand hearing to determine whether bail will be granted or whether the defendant will be remanded until the matter is brought up for trial, or in respect of indictable matters brought up for preliminary inquiry.
9. The court may ask about the safety and general condition of the complainant in deciding whether bail should be granted.
10. Where the defendant is a child offender and the decision is made to remand him or her, the court shall give directions to be remanded in a facility where he or she will be separated from adults, and such other directions shall be given as will be deemed appropriate.

## 2.3 BAIL

1. Generally, the court can only refuse bail if it is satisfied that the defendant would fail to surrender to custody, commit an offence while on bail, or would interfere with witnesses, or otherwise obstruct the course of justice, or of the court is barred from granting bail by statute. Bail can also be refused if the offence was committed while the defendant was already on bail for another offence, or for the defendant's own protection.
2. Where bail is denied, court should be mindful to set case management hearings within a reasonable time and set dates for further hearings soon thereafter so that the defendant is not held too long on remand.
3. In sexual offences, in determining the likelihood of interference with the complainant or other witnesses, the court may have regard to the proximity of the defendant's residence to that of the complainant or other witness, any existing biological or other relationship between them, the extent to which (if at all) the complainant was dependent on them for care-giving responsibilities, any previous incident of domestic violence or harassment involving the defendant; the conduct of the defendant towards the complainant up to this point, and any other relevant matter raised by the prosecution.

4. If bail is granted, the court may impose conditions on the defendant's bail. Conditions that the court can impose include requirements not to make contact with any named person or to keep away from certain areas. In making the conditions, the court will consider information provided by the police about the fears a complainant or witness may have.
5. The court must be mindful that the complainant has a right to be present at the hearing and the court shall, in open court, give its reasons for granting or refusing bail so that the complainant is aware of the court's processes. This will reduce the likelihood that the complainant may feel that bail is being granted because he or she is not believed or mistakenly thinking that bail means that the defendant has been set unconditionally free.
6. If bail is refused, the court should inform the defendant of his or her right to appeal to the high court or the supreme court.

## 2.4 DISCLOSURE

1. At the first hearing, the prosecution shall be required to serve on the defendant the copy of the summons or charge sheet and a fact sheet outlining the nature of the case.
2. At the first hearing, in addition to addressing bail, the court shall also give directions regarding disclosure of the prosecution evidence to the defendant, taking into consideration any required timelines.
3. Where the case file is not completed within the timelines set, the court can order partial disclosure and grant such additional time as the court may determine for full disclosure.
4. Where the defendant is unrepresented, the court shall explain to the defendant how the disclosure is to be effected. Usually for a defendant on bail, disclosure must be personally collected and signed for at the high court or supreme court, while for a defendant in custody, it will usually be delivered to the prison. Care must be taken when disclosing material, especially in a prison, that the material does not become circulated to non-parties, as in sexual offences it is highly personal.
5. The court shall also explain to the defendant that he or she may be given additional notes of evidence of other matters arising after disclosure that the prosecution intends to rely on.
6. The court shall explain to the defendant that if he or she intends to raise an alibi as a defence in court, then, where applicable in the local legislation, disclosure of that alibi including name, contact information and address must be served on the prosecution, and the court must set the time within which such alibi notice must be provided.
7. The court may hear an application ex parte in Chambers by the prosecution to withhold or deny any aspect of disclosure required to be made, and where good and sufficient cause is given the court may grant such application.

8. In addition, where legislation exists in the jurisdiction for anonymity applications to be made in respect of vulnerable complainants or witnesses to withhold aspects of the disclosure that may reveal their identity, the court may hear such applications in accordance with the procedures under such legislation and may restrict disclosure of the identity of prescribed persons.
9. The court may also consider issuing prohibition orders to the media preventing disclosure of the identity of any person or of any aspect of the case where application is made by the prosecution or where the court deems it fit so to do.
10. In the magistrates' court, once disclosure has been fully complied with a trial date will be set.

## 2.5 CASE MANAGEMENT IN THE MAGISTRATES' COURT

1. Though most of the case management process ought to be done at the first hearing where directions are given for disclosure and other matters, there may be additional hearings to give further directions to prepare for trial.
2. Typically, the case may be called up at least three times before the actual date for trial is set.
3. The court must minimize the number of hearings in sexual offence cases by ensuring appropriate directions are given and that timelines are adhered to.
4. In some cases, sexual offences in the magistrates' court will involve child complainants. Special considerations are required and directions must be given by the court to ensure safety and protection for children while ensuring support is provided to them.
5. One of the main issues that must be considered by the magistrates' court as part of the case management hearings is whether there are ongoing analogous applications pertaining to the circumstances of the case in the family court.
6. Sexual offences at the magistrates' court level may also have dynamics of domestic violence or child sexual abuse. In the case of sexual offences arising from domestic violence, the court must consider whether protection orders have been given and whether those orders are sufficient to address safety concerns or whether other orders are now needed. Further, the court shall consider whether family court applications have been granted or whether other family court applications are needed for the safety and support of the survivor prior to trial.
7. In addition, consideration shall be given by the magistrates to the nature and extent of proceedings in the family court that the complainant is involved in and the need to reduce the number of court appearances and hearings that the survivor will be involved in so that re-victimization is minimized. In that regard, the magistrates shall consider at the first hearing or subsequent hearings giving directions for the statements to be taken jointly by the police and the child care services, or to be shared with them, and for their active participation in providing support and protection to the complainant.
8. The court should also set timelines, even if no legislation mandates timelines, to ensure that sexual offence matters are expedited.

## 2.6 SURVIVOR CARE AND PROTECTION

1. All witnesses, including those who may be vulnerable or in need of witness protection, may require support before the trial. However, vulnerable witnesses and witnesses in need of protection will require additional services.
2. The question of whether a witness is vulnerable shall be considered at the first and all subsequent pre-trial hearings and may be raised by the prosecutor, the police, the complainant or the court, where directions are needed from the court. Usually, if there is a victim support unit, the issue of survivor care will usually be dealt with outside of court by the prosecution or the police.
3. In considering whether the complainant or other witness is to be considered a vulnerable witness based on the application of the prosecutor for orders for special measures or orders for a support person to be allowed in court, the court shall have regard to:
  - a. The age of the complainant or witness and whether because of age he or she may need special assistance or facilities to be able to give evidence in court. In regard to the age of a child, the court may also give directions for a voir dire to determine competence.
  - b. The presence of any disability that may impair the complainant or other witness in giving evidence and what facilities will be needed to ensure they are able to give the best evidence possible.
  - c. The presence of any adverse or traumatic experience that may cause emotional or psychological distress to the complainant or witness. In the case of sexual offences, there is high likelihood that the sexual violence incident alleged has caused psychological and emotional trauma and that having to re-tell the intimate details of the event in court may cause severe psychological distress to the complainant that may impair his or her ability to give evidence.
  - d. In addition, the repeated nature of the offence such as stalking or several sexual assaults on a child may have caused disruption in everyday life as well as psychological or emotional trauma.
  - e. Membership to an indigenous community where there is evidence that the complainant has been ostracized or targeted for harm by persons within the community and where such community contains all the family ties and traditional support mechanisms for the complainant.
4. Once a witness has been identified as vulnerable, there is potentially a long period before the trial takes place, so that care support services will be needed, and in some instances, witness protection services may also be needed.
5. Basic care and support services that can be mandated by the court may include provision of a supporter to be with the child or vulnerable complainant or witness during the forensic interview or subsequent interviews.
6. If there is no formal care unit within the police department or the child care services, the supporter may be a friend or relative provided they are not party to the proceedings and they are not involved in pre-trial support or in the role of a formal supporter at trial.
7. The court should explain to the person appointed as a supporter that their role will involve:
  - a. Providing emotional support and to educate and give information.

- b. Understanding the witness's views, wishes, concerns, and any particular vulnerabilities that might affect them during the trial process (including the witness's views on special measures), and convey these to the relevant criminal justice system agency.
8. In addition, the court can expand the supporter's role to include:
    - a. Liaising with family members and friends of the witness.
    - b. Liaising with legal, health, educational, social work and other professionals and acting as an advocate on behalf of the witness.
    - c. Liaising with those offering therapy and counselling prior to a criminal trial.
    - d. Arranging links with experts in any of the witness's specific vulnerabilities or difficulties, e.g. communication problems, learning disabilities, specific cultural or minority ethnic group concerns or religious priorities.
    - e. Accompanying the complainant on court visits.
  9. In terms of assessing the risk to safety and determining what protection services are to be provided, the court may hear from the prosecutor or the complainant or witness on whether they fear reprisals or attacks.
  10. Sexual offences, assaults, domestic violence, stalking (which by its nature involves repeated victimization) and racially motivated crimes are particularly likely to lead to intimidation, especially of the complainant. Witness protection orders and directions should be considered in those circumstances.
  11. Witness protection services that may be mandated by the court include: patrols in the community; a contact card for a witness to call in an emergency; planning any visits of the witness to the police to avoid any encounters with the alleged defendant and their associates; and providing transportation to and from the police station. In exceptional cases, it may include relocation of the witness to another community to stay with family or to be in a safe home for a particular length of time or until the witness has been able to give evidence in court.
  12. While witnesses should be assured that their details will be kept confidential during the investigation, the court may also explain that they should take common sense safety precautions as the suspect may find out their name or address, and they should be advised to contact the police or the prosecutor if they feel unsafe.
  13. During the case management process, the court may also consider applications by the prosecutor for court room visits to familiarize the complainant with the layout of the court and where they and the support person will sit during the trial.
  14. In addition, the court may be asked to hear applications by the prosecutor for the use of special measures as these are important tools for survivor care.
  15. The special measures that may be used may include video live link from a remote location, the use of intermediaries or interpreters, the use of screens, the use of anatomically-correct dolls or directions on the restriction of cross examination by the defendant.
  16. Court-ordered visits of the court room should, where practicable, involve giving vulnerable witnesses information about special measures including the opportunity to practise using the live link facility if that will be used in the trial.

17. In addition, the court management process must involve explaining to the supporter, the limitation on their role. For instance, it should be clarified that while they can provide practical emotional help and support to the witness they cannot express their own views and beliefs concerning the evidence of the witness and cannot discuss details of the case or the evidence that is to be given, or has been given
18. The court cannot of its own accord decide that a complainant or witness should be considered a vulnerable witness without application by the prosecution and the court must be careful not to taint its mind as to vulnerability or the mind of the jury in respect of any witness without proper procedure.

### 3.0 INDICTABLE OFFENCES

1. Indictable offences are triable in the high court/supreme court but are usually initiated in the magistrates' court.
2. The first hearing of the matter will typically be a remand hearing in the magistrates' court shortly after charges have been brought, usually within 48 hours.
3. Guidelines for the remand hearing have been provided above. The primary consideration for the court is the need to protect the safety of the virtual complainant from any interference or tampering by the defendant and to secure the attendance of the defendant at the preliminary inquiry.
4. In indictable proceedings, attention must be given to ensuring that cases move through the criminal process without undue delay since long delays usually result in re-traumatization of complainants whose healing and recovery will be set back by having to revisit traumatic details of the sexual offence. It is important to note that delay can lead to a survivor losing faith in the court process, and therefore refusing to participate, with the result that some offenders are not brought to justice.

#### Best Practice - Timelines for Criminal Proceedings - Belize

In Belize, the recent Criminal Proceedings Rules have set specific timelines for all aspect of criminal proceedings including sexual offences, from the time of arrest to the disposal of the matter in trial. The new timelines have reduced the length of time that a sexual offence matter takes before it is adjudicated, reduced the number of adjournments that are possible as well as reduced the length of time the matter takes before coming up for trial. This has led to reforms in police investigative practices as well as court listing practices that have helped complainants to have certainty about when their matters will be adjudicated. As a result, vulnerable complainants will no longer have to wait up to four years before their matter is concluded in court and can begin the process of recovery much sooner.

*Source: Regional Consultations – JURIST Project, 2016*

### 3.1 PRELIMINARY INQUIRIES

1. In indictable sexual offence cases, a preliminary inquiry is sometimes required to be conducted in the magistrates' court to determine if there is a case to answer where the defendant will not agree to a paper committal.
2. The court should explain to the defendant at the time the disclosure order is made that he or she will have the option to indicate to the prosecution agreement to a paper committal. In this way, the matter can be sent straight to the higher court for arraignment instead of holding a preliminary inquiry.
3. At the hearing of the preliminary inquiry, the court will usually ask at the beginning of the proceedings whether there is an agreement on a paper committal or if any matters disclosed are agreed.
4. Where there is no paper committal, the preliminary inquiry hearing will also help in identifying the issues on which evidence will be heard at the trial, what witnesses will be called, and in encouraging the prosecution and the defence to consider what other matters may need to be addressed to promote a fair trial.
5. The court will give directions for additional disclosure where necessary. Where an anonymity order was requested and granted, those portions ordered to be blacked out or removed should be removed before disclosure is made.
6. The court will also hear any applications brought by the prosecutor for the conduct of the preliminary inquiry.
7. The court may also hear applications by the prosecutor to amend the charge sheet to add additional charges for other offences arising from the same factual situations which may have arisen in the preliminary inquiry.
8. The court's interest in managing the process is to see where agreement can be reached between the prosecution and the defence on the facts so that the matter can be expeditiously resolved.

### 3.2 SUFFICIENCY HEARINGS

1. In some jurisdictions in the Caribbean, preliminary inquiries are not held, and instead the law utilizes the mechanism of the 'sufficiency hearing'.
2. The sufficiency hearing seeks to establish the strength of the case against the defendant and whether the elements of the charge are sufficiently made out to warrant a trial.
3. The defendant, defence counsel, and prosecuting counsel are required to be present at the sufficiency hearing.
4. The court may also require the presence of the complainant.

5. At the sufficiency hearing, the previously written statements of the complainant and the witnesses are submitted in court and are also served on the defence.
6. The court may also hear submission from the defendant or defence counsel, as well as hear submissions from the prosecution.
7. In the sufficiency hearing, the court must determine that a prima facie case against the defendant has been made out that he or she is required to answer before setting the matter for trial in the higher court.
8. Where an offence is a hybrid offence, the court is also empowered to try the matter summarily with the consent of the defendant at the sufficiency hearing.
9. If the court decides that the charge has not been sufficiently made out to warrant a trial on the basis of the evidence, the court will discharge the defendant.
10. Where the court makes a decision to discharge the defendant, the court should consider whether any orders should be made for the safety of the complainant including no-contact orders and whether any family court applications may be warranted or other referral for the provision of support services to the complainant.
11. Where the court decides that the evidence sufficiently makes out a case against the defendant such that a trial is warranted in the higher court, the court will remit the matter for trial in the higher court and make such provision for extending bail already granted or revoking bail and remanding the defendant as may be warranted on the application of the prosecution and the evidence presented.
12. Where the court decides either to discharge the defendant or to remit the matter for trial and to grant bail, this should if possible, and if desirable to the complainant, be explained in the presence of the complainant.

### **Best Practice – Paper Committals - Jamaica**

In 2014, Jamaica passed the Committal Proceedings Act to abolish the system of preliminary inquiries. The act now introduces committal proceedings in the magistrates' court in respect of indictable offences. The committal proceedings may be conducted wholly on the basis of the written statements taken from the complainant, accused and other witnesses. The magistrates' will decide on the basis of the written statements whether the accused will be committed to stand trial or shall be discharged. The accused or his or her attorney-at-law may make a submission for taking oral evidence, or the magistrates' may require oral evidence to be taken in their discretion. Where a statement was made by a child, the magistrate shall require an assessment of the child by a psychiatrist or probation officer as to the child's understanding of the nature of an oath and the duty of telling the truth. Unrepresented persons shall be informed of the process and their rights in committal proceedings. The act also prescribes the manner in which the police shall take statements that will be submitted into court. This new process has significantly reduced the length of time matters take to go through the court process and is considered to be a more efficient and effective process than preliminary inquiries or sufficiency hearings.

*Source: Regional Consultations – JURIST Project, 2016*

### 3.3 ARRAIGNMENT

1. For indictable proceedings, the arraignment is the first hearing of the matter in the higher court and usually takes place at its first sitting for the particular session.
2. The main purposes of the arraignment are to address bail, inform the defendant of the right to legal representation, the range of sentences that are applicable or the options for sentencing, and to take the plea of the defendant in an indictable proceeding.
3. Where a child is brought before the court to be arraigned with a sexual offence, the court shall inquire of the age of the defendant as well as the age of the complainant and shall ask for proof of age.
4. Where the defendant is a child, the relevant child offenders' criminal process shall be utilized.
5. Where appropriate the court shall also set a date for the case management hearing and complete the case management form, by asking the defendant about the particulars of any alibi defence where that has not been previously disclosed, identifying any issues of fact or law to be resolved at the case management hearing, asking about witnesses requiring summons, requesting any indication of special assistance requirements or whether experts will be called, and indicating the directions that will be given for the appearance of such experts as well as the timelines for the trial.
6. A child defendant shall be informed of his or her rights including the right to legal representation and where required by law, legal counsel shall be provided.
7. Where a child offender has been brought to court for sentencing pursuant to a plea-bargaining arrangement, the court may review the plea bargain to ensure the protection of the rights of the child if there was no legal representation at the time of plea.
8. In setting the date when the matter will next be brought up before the court, the court shall have regard to any timelines prescribed as well as to the need to ensure sexual offence cases are not delayed without good reason and that appropriate explanation, support and protection services are afforded to the complainant.
9. In all arraignment hearings, the court shall consider the safety and support needs of the complainant whether bail is to be granted or denied and make such directions or orders as shall be needed.

### 3.4 CASE MANAGEMENT IN THE HIGH COURT

1. The case management hearing is the first part of the trial process and allows the court to give directions for the trial proceedings. In the magistrates' court, case management may be dealt with at the first hearing without the requirement for a specific case management hearing. In the high court, the case management process begins at arraignment and may involve thereafter, a specific case management hearing, or several, after arraignment to give specific directions for how the trial will proceed especially directions in regard to vulnerable witnesses.

2. Where applicable, the parties shall be required to complete and submit the case management forms prior to the date being set for the proceedings.
3. The court shall hear applications at the case management hearing in the high court for directions to be given on the following:
  - a. Attendance of a support person with the complainant at the trial.
  - b. Questioning of the complainant through the use of an intermediary or other communications specialist.
  - c. Arrangements for the complainant or other vulnerable witness to access the court building through a private entrance.
  - d. Restrictions on disclosure.
  - e. Use of video link facilities if appropriate.
  - f. Directions for restriction on certain lines of questioning such as previous sexual history.
  - g. Directions for concurrent family proceedings.
  - h. Other special arrangements such as interpreter, need for breaks, etc. as may be needed to facilitate the trial process.
4. The magistrates' court can make directions on the same issues in summary jurisdiction offence cases where application is made by the prosecution.
5. In addition, both the magistrates' court and the high court shall hear applications by the prosecution for the complainant or other witness to be considered a vulnerable witness.
6. In considering whether the complainant or other witness is to be considered a vulnerable witness, the court shall have regard to:
  - a. The age of the complainant or witness and whether because of age, he or she may need special assistance or facilities to be able to give evidence in court. In regard to the age of a child, the court may also give directions for a voir dire to determine competence.
  - b. The presence of any disability that may impair the complainant or other witness in giving evidence and what facilities will be needed to ensure they are able to give the best evidence possible.
  - c. The presence of any adverse or traumatic experience that may cause emotional or psychological distress to the complainant or witness. In the case of sexual offences, there is a likelihood that the sexual violence incident alleged has caused psychological and emotional trauma and that having to re-tell the intimate details of the event in court may cause psychological distress to the complainant that may impair his or her ability to give evidence.
7. In regards to persons from indigenous communities, the court should be mindful that experiences of trauma will not just be based on the impact of the sexual assault on the complainant but on such issues as: loss of identity where the complainant is blamed or rejected by the community; significant stress from having to come outside the community to interact with police, court officials and other agencies in structures that may oppose male/female interaction established by the indigenous community; and loss of spiritual or social support due to separation from traditional cultural norms during the trial period and the realization that the decision to report the abuse may have altered those norms in the community as well as changed family and community dynamics. These issues will require specialist interventions and

counseling and magistrates and judges should be alert to their manifestation.

8. Where the magistrates' court or high court determines that the complainant or other witness is a vulnerable witness, the court shall consider what special measures will be required to be used to facilitate the complainant or witness giving evidence.
9. Special measures may include:
  - a. Screens - so that the witness does not have to see the defendant in the court room.
  - b. Live link - allowing a witness to give evidence from a facility outside the courtroom.
  - c. Supporter - there may be a designated supporter for the witness in the live link room or in the court room.
  - d. Video-recorded examination-in-chief - allowing a previously recorded interview with the vulnerable witness being admitted in court as the examination-in-chief.
  - e. In camera proceedings - where this is not automatically provided for, both the magistrates' court and the high courts must consider whether to clear the court of members of the public and other witnesses before the evidence of a vulnerable witness is taken.
  - f. Removal of wigs and gowns by judges and advocates.
  - g. Intermediary - allowing an approved intermediary (a communications specialist) to help a vulnerable adult or child witness to communicate with the police, legal representatives and the court.
  - h. Aids to communication - allowing a witness to use communication aids such as a symbol book or alphabet boards.
  - i. Use of anatomically correct dolls - consideration must be given as to what specialist assistance will be needed for dolls to be used.
  - j. Use of interpreters - where the complainant or witness has language barriers, an interpreter must be provided.
10. The court shall also give directions in case management on: what time of day would be best for particular witnesses to give evidence; how much time the witness will need on the stand; how an intermediary will be used and what lines of questioning will not be permitted.
11. Where a sexual assault case is a high-profile case that has had much media attention in a particular area, it may also be important to consider whether there is a need to change the venue for the hearing and what arrangements would be needed to effect a change of venue or whether press prohibition orders will be issued.
12. The court shall also give directions for the protection of any witness deemed particularly vulnerable to threats or intimidation especially where their testimony is likely to be diminished by reason of fear or distress. The factors considered by the court in determining the level of fear or distress include:
  - a. The nature and circumstances of the offence.
  - b. The age and circumstances of the witness.
  - c. The behavior of the defendant or their family and associates.
  - d. Any known threats or intimidation tactics used against the witness.

13. The directions given for protection of the witness may include protection orders, orders prohibiting contact, relocation of the witness, or other measures as requested by the prosecutor.
14. In some instances, it will be necessary for the court to address safety and protection issues in an ex parte application or in an application in chambers where it is felt that the disclosure of the need for protection may lead to the defendant or persons connected to the defendant interfering with or threatening the witness.
15. If a complainant desires to withdraw from the proceedings, a statement should generally be taken for the court to be satisfied that no pressure has been brought.

**Best Practice Model – Case Management in Sexual Offence Cases**  
**– St. Lucia**

The Criminal Division Rules now set timelines for all aspects of the criminal process and mandate case management in all criminal proceedings. The judge is able to give directions for all aspects of the trial and in particular to direct the use of special measures and give directions on the lines of questioning that will not be allowed in respect to vulnerable witnesses or to children. The use of the case management process is reported to have significantly reduced the length of time sexual offences take in the court system and has improved the support mechanisms for vulnerable witnesses in the trial process.

*Source: Regional Consultations – JURIST Project, 2016*

**Best Practice Model – Case Management in Sexual Offence Cases**  
**– St. Vincent and the Grenadines**

In St. Vincent and the Grenadines, the parties must fill out a case management form which requires the parties to indicate what applications will be made and to give appropriate details of directions being sought. In sexual offence cases, the court will appoint legal representation for an unrepresented defendant for the portion of the trial where they will cross examine the complainant to prevent the defendant questioning the complainant himself. Such directions are given at the case management hearing. Case management can also include a “Goodyear indication” where if the person is considering pleading guilty they may in appropriate circumstances receive an indication of what their sentence will be.

*Source: Regional Consultations – JURIST Project,  
Bar Association Representatives, 2017*





**PART THREE:**  
Guidelines for the Trial Process



## 4.0 INTRODUCTION

1. These guidelines for the court trial processes will provide standardized directives for the adjudication of sexual assaults to ensure that the best evidence possible is presented in a way that protects the rights of complainants and defendants as well as ensure that re-traumatization of the complainant is minimized.
2. These guidelines will cover the basic components of the trial process in the magistrates' court and the high court/supreme court and provide a set of trial process guidelines for sexual offences.
3. These guidelines do not replace practice directions and rules of court setting timelines and mandating other procedures in criminal proceedings in the magistrates' courts and higher courts, and should be read alongside any such existing practice directions or rules of court.
4. Magistrates' court proceedings are intended to be expedited hearings and cases are expected to proceed to trial without the formality required in the high court. However, the same protections are afforded for the protection of the rights of complainants and defendants and similar criminal procedure rules apply.
5. The trial process in both the magistrates' court and the higher court require the same adherence to the rules of evidence and the same protection for the rights of the complainant and the rights of the defendant.

### 4.1 GENERAL GUIDELINES FOR EXAMINATION IN CHIEF

1. Legislation usually provides that some or all of the evidence in sexual offence cases be taken in camera unless otherwise directed by the court. Where there is no such provision, the court has a discretion to hear certain proceedings in camera and in exercising this discretion the court will balance the interests of the complainant and other vulnerable witnesses with the concept of open justice.
2. The court will also give directions for the seating of a support person appointed in respect of a vulnerable witness as well as other logistic arrangements to facilitate the appearance of the support person. In cases, where the support person is appointed in respect of the complainant, they will be required to be in court for the duration of the trial. In most cases, they are better used when placed in the line of sight of the complainant so that the complainant can focus on them during the proceedings rather than directly beside the complainant, except in the case of small children where physical nearby presence is necessary to prevent distress. Ideally, there should be a pool of persons already trained as to their duties as support persons attached to a support unit, but where that is not available, support persons may be sourced from NGO organizations.
3. Consideration can be given to whether the examination in chief of a vulnerable witness may be done with the assistance of an intermediary chosen by the court pursuant to proper directions being given.
4. In addition, where evidence in chief will be taken with the assistance of an intermediary, logistic arrangements will need to be organized to facilitate that on the day they are required to appear.

5. In respect of child witnesses, where the court deems it necessary to conduct a voir dire to assess competence, there should be emphasis on whether the child understands the difference between the truth and lies and the consequences of telling a lie.
6. Where the complainant will give evidence via video link from a remote location, he or she may not be able to see everyone in the court as the video link feed is usually restricted to the Bench and the Bar table in the high court. However, magistrates' courts in the Caribbean have smaller court rooms, which might be seen on the link, and the court must consider whether sight of members of the defendant's family may be a distraction to the witness.
7. There are challenges associated with using live link evidence as the equipment may have delays or may not work or for example a child witness may need a booster seat. In the high court, these issues should be worked out in the absence of the jury and the court should do a trial run with the equipment before the trial begins.
8. In addition, the court must consider how physical evidence will be identified or tendered from a remote location, and documents considered, as well as how the witness at the remote location will be sworn.

**Best Practice Model – Use of Support Persons and Intermediaries  
For Vulnerable Witness – St. Vincent and Grenadines**

The Witness (Special Measures) Act 2013 allows for the use of extensive special measures in respect of vulnerable witnesses. These measures include the appointment of a support person to accompany the vulnerable witness to court and to remain with them in the trial. In sexual offence cases, this is practically facilitated by the family court which has criminal jurisdiction in sexual offence cases and sits as a sexual offence court utilizing its specialist staff such as social workers and counsellors. In addition, where the court rules that a vulnerable complainant or witness is not capable of answering questions without the use of an intermediary, the court may appoint an intermediary to facilitate the examination of the vulnerable complainant or witness. The intermediary appointed is a specialist attached to the court. The examination proceeds by questions being directed to the intermediary who repeats them to the vulnerable witness and then repeats the vulnerable witness' response to the court. The intermediary may be used in court or in a live link facility.

*Source: Regional Consultations – JURIST Project, 2016*

9. Where the complainant or other witness will give evidence from behind a screen in the court room, the screen must be set up in advance, and typically the witness should be brought into court from a private entrance.
10. The court ought to make arrangements prior to the start of the proceedings, where directions were given in case management for the use of the screen, to allow the prosecution to bring the witness to court and familiarize them with the process of giving evidence from behind the screen.
11. Where the screen is being used in a jury trial, the jury must be able to see both the accused and the witness giving evidence behind the screen.
12. The court may also allow the submission of a previously video recorded statement as the examination in chief.
13. Where a previously video recorded statement will be submitted for the examination in chief, the court will require a separate hearing to discuss any applications to exclude inadmissible portions from the recording, giving directions as to how the recording will be presented in court and whether a transcript of the recording will be used to assist.
14. Usually, even where a previously video recorded statement is admitted, the court will still be required to give directions that the complainant or witness shall be available for cross examination if required. However, such cross examination will almost always then be done from behind a screen or via live link.
15. Where a complainant will give evidence in person, or is vulnerable, the court shall consider prioritizing the case. In addition, it may direct that the witnesses should be on stand-by on the day of trial in a separate neutral location to minimize any possibility of an encounter with the defendant.

## 4.2 GENERAL GUIDELINES FOR CROSS-EXAMINATION

1. The cross examination will be via live link where the examination in chief was done via live link (with or without playing a pre-recorded video as evidence).
2. The court shall give directions as to the mode of asking questions to facilitate the live link, which can include direction as to intonation and the manner of asking questions.
3. The court shall issue such directions to manage the cross-examination process as shall be required to ensure that the defendant is allowed to lead his or her defence.
4. In respect of any witness in sexual offence cases, the court must consider restricting questions as to previous sexual history, where irrelevant or restricted by law.
5. The court ought, in any sexual offence trial, to prohibit an unrepresented defendant from questioning in person the complainant or any vulnerable witness. This should be considered at the case management hearing, with appropriate directions made, including the appointment of a legal representative for the defendant specifically to cross-examine where restricted.

6. The court may also need to give a direction to the jury, where a legal representative has been appointed to cross-examine for an otherwise unrepresented defendant, that the appointment of such a person is a standard procedure and no adverse inferences should be drawn against the defendant.
7. The court should prevent any questions being asked which are designed to raise irrelevant scandal and simply to cause embarrassment

**Best Practice – Prohibiting the cross examination  
of a Vulnerable Witness by the Accused – UK**

The Youth Justice and Criminal Evidence Act 1999 prohibits the cross-examination of a complainant in a sexual offence case by the accused in person and places restrictions on the types of questions that may be asked by the accused legal representative in cross examination. If the accused cannot afford legal representation to conduct his or her defence, legal representation is provided for him or her. There is a general prohibition on evidence adduced or questions asked on behalf of the accused about any sexual behavior of the complainant without leave of the court. The court may give leave if it is satisfied that the evidence or question relates to specified instances of sexual behavior, relevant to an issue in the case and where refusal of leave may lead to a miscarriage of justice. The effect of this is to prevent re-victimization of the complainant by having to face questions directly from the accused or having to endure embarrassing lines of questions that may not have any probative value.

### 4.3 GENERAL GUIDELINES FOR APPEARANCE OF EXPERT WITNESSES

1. In sexual offence cases, the expert most likely to be called is a medical professional. In some jurisdictions, the personal attendance of the medical examiner is not required and copies of the medical certificate recording the injuries present on the complainant can be submitted in court.
2. At the case management hearing, the court will give directions for the attendance of experts and the submission of expert testimony.
3. While the order of appearance of witnesses will be determined by the prosecution or the defence, the court shall ensure that the order is established during the case management hearing and give due consideration to any vulnerable witness needs.

4. Typically, the expert has had previous experience giving evidence in court and has been prepared by the prosecutor or the defence before the trial on such issues as:
  - a. Looking professional and dressing accordingly.
  - b. Avoiding using difficult words, for example, medical jargon. When such language is unavoidable, the terminology should be explained. As far as possible, use plain language.
  - c. Being mindful not to go outside of their expertise, and therefore indicating when they are not in a position to offer opinion.
  - d. Treating legal practitioners with respect even if not in agreement with their opinions or tactics.
  - e. Distinguishing between what is a factual statement and what is an opinion in their responses.

#### **Best Practice - Attendance of Expert - Guyana**

**Under the Evidence Act, the medical certificate of the forensic medical examiner is admissible, and there is no need for a stamp or a seal, even a photocopy can be admitted. This removes the need for personal appearance of the expert to admit documents.**

*Source: Regional Consultations – JURIST Project, 2016*

## 4.4 ONGOING CARE AND PROTECTION OF VULNERABLE WITNESSES DURING THE TRIAL

1. A complainant or other witness, who has been declared a vulnerable witness, will need continued care and support during the court process, particularly if the witness has been identified as vulnerable or liable to intimidation. Care and support units will continue their work to provide care and support as well as other practical help for witnesses, such as help with transport to get to court and liaison with the courts over any disabilities or other special needs. They also facilitate effective communication with the police, the child protection services, D.P.P. and legal representatives as required.
2. If there is no specific care and support unit, this may be done by the investigating officer or liaison officer or a supporter from an NGO or other agency already recognized or appointed to provide support services.
3. However, the court appointed supporter can provide the witness with information about the court process.

The court, in collaboration with the relevant agencies, should provide an orientation video for orientating witnesses with the proceedings of court and the use of special measures in court.

4. Judges and magistrates are expected to take an active role in the management of cases involving vulnerable and intimidated witnesses, and to ensure that elements of the court process that cause undue distress to such witnesses are minimised.
5. On-going support may also include referring the vulnerable witness to psychotherapy or counseling therapies, from the outset in the magistrates' court. Attention needs to be paid to how such therapy may become relevant during the trial.
6. If the court has approved the use of an intermediary to assist the witness, then that intermediary will be present to assist the witness in communicating their evidence to the court, but not as a supporter.
7. The role of an intermediary is separate from that of the court supporter and they should be available during pre-trial preparation to assist in the preparation of the witness. An intermediary will usually have undertaken an assessment of a vulnerable witness at an early stage in the proceedings, and may be asked to provide a report for the judge, the prosecution and the defence. This report should highlight matters such as limited concentration spans and times when the witness appeared to be experiencing trauma.
8. Where the court has made an order establishing a measure specifically to protect a witness during the pre-trial stages, such a measure should be continued during the trial process.

## 4.5 SUPPORT AND CARE OF COMPLAINANTS POST-TRIAL

1. A complainant or other witness who was declared a vulnerable witness during the trial may need on-going care and support after the termination of the proceedings. The prosecutor ought to arrange on-going care services but where social workers or other support personnel are attached to the court, the court may make a referral to such personnel for care and support services to be provided to the vulnerable witnesses after the termination of the proceedings, where it is deemed appropriate to do so.
2. In addition, where an accused person has been held on remand for an extended period for a sexual offence and then acquitted of the charges, the court may make a referral to assist with reintegration into the community.
3. Whenever the court deems fit, it may authorize continued protection for a vulnerable complainant, witness, or defendant in order to prevent reprisals.
4. Where required, and this applies in particular in the magistrate's court, a verdict or decision shall be explained clearly and carefully so that both the complainant and the defendant can understand the outcome.
5. Special care may be needed to ensure that complainants from indigenous communities or persons with a disability are referred to further therapeutic services and that care services are extended to them beyond the completion of the trial, especially where the court is of the view that the person may have difficulty reintegrating into their community.

6. In particular, the court should consider the fact that the complainant may face ostracizing or isolation by the community as a result of the sexual assault and may not have support mechanisms within their family or community to return to. Care services can facilitate their recovery and reintegration or relocation to another community.

**Best Practice – On-Going Support Services for Complainants in  
Sexual Offence Cases – Antigua and Barbuda**

**In Antigua and Barbuda, new policies and procedures focusing on survivor-centered service provision prior to, during, and post-trial in criminal proceedings coordinated by the Gender Affairs Bureau have been developed. The policies establish a mechanism for coordination between the Gender Affairs Bureau, the police, and NGOs to appoint an advocate as a support person for vulnerable complainants from the time of the police investigation. The advocate coordinates psycho-social service delivery for the complainant and accompanies them through the investigative, pre-trial and trial processes of the criminal justice system and post-trial.**

## 4.6 SUMMING UP AND DIRECTING THE JURY

1. In jury trials, the prosecution and the defence are entitled to make closing speeches to the jury to summarize the main points of the case that they have presented to the court.
2. After the closing speeches, the court is required to give directions to the jury on the treatment of evidence presented to aid in their deliberations as well as on directions on such issues as good and bad character, collusion or contamination and admissibility and treatment of material discovered in the possession of the defendant as may be needed.
3. In sexual offence cases, the judge may direct the jury to be aware of stereotyping the complainant. This can arise especially in relation to delays in making a report, a complainant's reaction to the defendant's behavior, and any previous relationship between the parties. The Bench Book of Jamaica<sup>2</sup> and R v Miller<sup>3</sup> may be considered for guidance.
4. However, the direction should not make it appear that the judge is supporting one view or another.
5. Where the judge intends to warn the jury about stereotyping or unfair assumptions, he or she should indicate that to counsel before their speeches so that they may address that in their final remarks to the jury if needed. Moreover, it is desirable that directions should be discussed with counsel and their precise content agreed in advance.
6. It may also be prudent for the judge to raise with counsel, in the absence of the jury, the specific legal issues which need to be the subject of specific references in the summing-up.

<sup>2</sup> Government of Jamaica, (2017). Supreme Court of Judicature of Jamaica Criminal Bench Book.

<sup>3</sup> [2010] EWCA Crim 1578.

**Best Practice – Summing-up Directions on Stereotyping or Unfair Assumptions – UK**

The Crown Court Benchbook, 2010 provides the following sample directions to the jury on unfair assumptions;

“It would be understandable if one or more of you came to this trial with assumptions as to what constitutes rape, what kind of person may be the victim of rape, what kind of person may be a rapist, or what a person who is being, or has been, raped will do or say. It is important that you should leave behind any such assumptions about the nature of the offence because experience tells the courts that there is no stereotype for a rape, or a rapist, or a victim of rape. The offence can take place in almost any circumstances between all kinds of different people who react in a variety of ways. Please approach the case dispassionately, putting aside any view as to what you might or might not have expected to hear, and make your judgement strictly on the evidence you have heard from the witnesses.”

## **5.0 GUIDELINES FOR SENTENCING**

The sexual offence legislation in each jurisdiction will set out the maximum and sometimes minimum sentences applicable for offences. However, the court in assessing each offence must determine the appropriate sentence for the specific circumstances of the crime.

### **5.1 INTRODUCTION**

1. The purpose of sentencing in sexual offence cases, as in other criminal offences, is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing sanctions that denounce unlawful conduct, deter offenders, assist in rehabilitation, promote a sense of responsibility and provide reparations to the complainant.

2. To achieve this, the court strives to ensure that the sentence is proportionate to the gravity of the offence while accounting for any mitigating factors.
3. The court may look at the factors below as examples for determining sentences to determine the starting point where the legislation does not give mandatory sentences. After establishing the starting point, aggravating and mitigating factors may be considered to determine what the final sentence will be.

## 5.2 DETERMINING THE SENTENCE

1. The steps typically followed by the court in determining the appropriate sentence for each circumstance include:
  - a. Determining the category of the offence and the high and low ranges in that category.
  - b. Determining what is the starting point for sentencing for the particular offence.
  - c. Determining if there are any aggravating circumstances and the dangerousness of the offence before the court.
  - d. Identifying if there are any mitigating circumstances and which should be taken into account.
  - e. Determining what would be the reduction in sentence where the defendant pleaded guilty.
  - f. Determining the dangerousness of the offender.
  - g. Determining totality of the sentence to be served, where there are multiple convictions in the same trial to determine which sentences will run concurrently and which will run consecutively to ensure that the total sentence to be served is just.
  - h. Determining what ancillary orders may be needed especially in cases involving children and persons with a disability.
  - i. Preparing reasons for the decision being made.
  - j. Determining whether there will be any reduction for time spent on bail or on remand.
2. The facts and circumstances of each case will guide the length and type of each sentence. The court may consider what the facts and circumstances reveal about:
  - a. The degree of planning and deliberation.
  - b. The continuation of the offence or multiple offences.
  - c. The randomness of the act on the complainant and the nature of violence used to subdue or overpower the complainant or degree of force involved.
  - d. The state of consciousness or unconsciousness of the complainant when the offence occurred.
  - e. The age of the complainant.

- f. Any physical or mental disability of the complainant.
  - g. Offenders acting in concert.
  - h. Use of pornography with child survivors.
  - i. STDs resulting from the assault.
3. The presence of these factors will help the court to decide what will be the starting point for the determination of the sentence.
  4. While the court may also consider previous sentences passed for the offence, when dealing with sexual offences the court must in addition consider the prevalence of the offence in the particular community at the time, so that a previous decision which may have been based on a different degree of prevalence may not be persuasive. Nonetheless, in the Caribbean, general sentencing guidelines have been framed by judicial precedent and directions in previous cases, especially in *Winston Joseph et al v R*<sup>4</sup> which remains the official guideline for the Eastern Caribbean countries.
  5. Aggravating factors may include:
    - predatory sexual behavior;
    - forcible confinement;
    - age of the survivor and knowledge of true age;
    - degree of vulnerability of the survivor (inarticulate, easily manipulated, disabled);
    - whether the complainant was targeted as a member of religious community or minority group;
    - whether defendant knew he had an STD and intended to transmit it;
    - relationship of trust or offender was in position of authority;
    - degree of invasion of sexual integrity;
    - degree of violence or force used and/or repeated acts of violence;
    - whether a weapon was involved;
    - manner of interference (attempted acts, kissing, touching outside of clothes, touching inside of clothes, digital penetration, oral sex, full intercourse);
    - whether there was risk of STDs;
    - impact on the survivor, family and offender;
    - public abhorrence to the offence;
    - attitude of the offender;
    - biological or psychological factors;
    - likelihood of rehabilitation; and
    - likelihood of reoffence.

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<sup>4</sup> *Joseph v Queen*, Criminal Appeal No. 4 of 2000, 7 of 2000, 8 of 2000, Judgement (ECSC CA, Oct. 31, 2001).  
[http://www.worldcourts.com/ecsc/eng/decisions/2001.10.31\\_Joseph\\_v\\_Queen.pdf](http://www.worldcourts.com/ecsc/eng/decisions/2001.10.31_Joseph_v_Queen.pdf)

6. Mitigating factors may include:
  - age of offender;
  - guilty plea (early or late, the saving of court resources);
  - prior record (related or unrelated);
  - expression of remorse; and
  - cooperation with authorities
  - background or heritage and the kinds of sentences that may be appropriate for persons from indigenous communities or persons with a disability or other background information that may be relevant.
7. Specific sexual offences may have mandatory sentences depending on the age of the complainant and the age of the defendant.
8. In some jurisdictions, where the complainant and the defendant are both children or close in age, lower sentences will be made, including in some cases non-custodial sentences.
9. A victim impact statement must be sought. The court should take the opportunity to determine the impact of the sexual offence on the complainant, especially where no remorse has been expressed or where the offence forms part of a pattern of offences by the same offender.

### 5.3 VICTIM IMPACT STATEMENT

1. The victim impact statement is organized by the prosecution and facilitated by the court. The purpose of the victim impact statement is to give information to the court as to how the offence has affected the complainant and help the court understand the complainant's views about the offending as well as make the offender aware of how their offending has impacted the complainant.
2. A victim impact statement may be given in writing or in person. If in person, the court shall give directions such as whether the statement will be given in open court or from a remote location via live link. Where the complainant gave evidence via live link, the victim impact statement should also be given via live link.
3. The court shall also give directions for the presence of a support person with the complainant for the victim impact statement where needed.
4. Where the complainant is a young child, the court may give directions for the victim impact statement to be given through or with the assistance of an intermediary but should consider whether the attendant hardship and trauma that may be caused to the child will outweigh the usefulness of the victim impact statement.
5. The victim impact statement should contain details of any physical injury or emotional harm or financial or other loss to the complainant as a result of the offence as well as any other impact on relationships, work,

changes in attitude or behavior, mental health and impact on lifestyle. The victim impact statement can also highlight on-going medical needs, STDs or any other result of the offence. The court must not allow the victim impact statement to contain false statements or be used to threaten the prisoner or anyone else.

6. The victim impact statement may also contain pictures or other visual representation. In addition, the court can give direction to allow the victim impact statement to be submitted as a video recording or audio recording if appropriate.
7. Practice directions may be issued to create a standard form for the victim impact statement.

## 5.4 OTHER ORDERS THAT MAY BE MADE AT SENTENCING

1. The court may also consider whether ancillary orders need to be made such as:
  - a. Orders barring contact between the offender's family and the complainant.
  - b. Compensation or restitution payments to the complainant.
  - c. Confiscation of property such as a financial benefit derived from the offence, such as publishing private images or disseminating child pornography.
  - d. Deprivation or destruction of property such as equipment used in the commission of the crime, for example a phone or computer or car
  - e. Directions relating to the listing of the offender's name on a sexual offender's register.
2. In respect of an adult complainant in a relationship involving domestic violence, the court should also consider the need for other family matters such other orders that may be needed to assist in recovery or to extend protection and care and support to the complainant.

## 5.5 SEXUAL OFFENDERS REGISTER

1. In some jurisdictions, there are provisions for a sexual offenders' register in the sexual offences legislation. The legislation may designate that convicted persons in all or specific offences will be registered. It is recommended that a sexual offence register should contain primarily convictions of serious sexual offences and make a further provision for application to be made by the D.P.P. in special circumstances for non-serious sexual offences where the public interest would require that due to prevalence of the crime or for serial offenders.

2. The main purpose of a sexual offenders' register is to help police services prevent and investigate sex crimes by giving police agencies access to a data bank containing confidential personal information about convicted sex offenders, particularly their residences, to track and inhibit sex offences.
3. The court may make the order at the time of sentencing for the defendant to register or the prosecutor may apply after sentencing for orders for registration.
4. When the order is made for registration of the offender, the court shall also give directions for the date by which the defendant should register to his or her nearest police station.
5. The court shall also consider, in giving directions for registration, the duration of the registration, and whether the defendant will also be required to register for other crimes that surrounded the commission of the sexual offence such as breaking and entering or trespassing where these were done with the intent to commit the sexual offence for which the defendant has been convicted.
6. Where the legislation makes a distinction between adult sex offenders and child sex offenders, the legislation will often exempt children from registration. If the legislation does not specifically include children, the court should determine whether the hardship that will be caused to the child will outweigh the interest of justice that will be served by the child being registered.
7. The court shall also give directions that the offender should notify the police of all changes of address, and sometimes to reconfirm their current address each year, and the court shall explain that non-compliance attracts a criminal sanction.

### Best Practice – Sexual Offences Registry - Canada

The Protecting Victims from Sex Offenders Act SC 2010 now allows for automatic inclusion of convicted offenders in the Registry, mandatory DNA sampling of sex offenders, registration of sex offenders convicted abroad, notifications to other police. The registry is not accessible by the public and is restricted to police officers allowing all police services to search the registry and can use the information to notify other police when sex offenders are traveling to their area. Offenders convicted of more than one sexual offence remain on the register for life. Offenders are required to notify police of any change in address, work, vehicle they own or use. The registry also includes information about the offender's method of operating to assist other police officers investigating crime.

*Source: Public Safety Canada website, 2017. Retrieved from <http://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/protctn-gnst-hgh-rsk-ffndrs/ntnl-sx-ffndr-rgstr-en.aspx>*

## 6.0 GUIDELINES FOR DATA COLLECTION AND MANAGEMENT

1. Data collection and data management are important aspects of assessing the effectiveness of the magistrates' and high courts (or supreme court) in addressing sexual assault cases.
2. Monitoring and evaluation should involve the following components:
  - a. Development of indicators for the assessment of service delivery and the incorporation of the indicators into the computerized database system of the court.
  - b. Continuous data collection on the delivery of service by incorporating all aspects of service delivery into the computerized database system with appropriate safeguards for the protection of confidentiality.
  - c. Periodic review and analysis of data collected by means of internal review systems and reports generated from the computerized database system.
  - d. Conducting annual reviews and preparation of annual reports that provide assessments on the attainment of the indicators established.
3. Some suggested indicators that may be used for the assessment of services are:
  - a. Total number of cases filed in court.
  - b. Number of cases disposed of by the court.
  - c. Number of disposed cases that are sexual offences.
  - d. Type and number of each sexual offence dealt with by the court over the monitoring period.
  - e. The range of sentences issued.
  - f. The ages of the complainant and the ages of the defendants.
  - g. Number of complainants who were persons with a disability.
  - h. Number and type of special measures used by the courts in the various categories of sexual offence cases.
  - i. Number and type of care/support services offered to complainants in the various types of sexual offence cases.
  - j. Number of child offenders appearing in sexual offences before the court.
  - k. Number and type of sexual offences for which child offenders appeared before the court.
  - l. The range of sentences issued in respect of child offenders.
  - m. Number and type of cases in which special measures were used.
  - n. Number and type of support services provided to complainants.

4. To ensure continuous data collection, both magistrates' courts and high courts should be required to maintain an appropriate computerized database of returns on all sexual assault cases that disaggregates data according to the indicators above and to include these indicators in the returns from the court to form part of the court's statistical report.
5. In addition to the returns, to ensure systemic periodic reviews of the statistics, the procedures and practices for the courts should require a bi-annual review of the returns submitted by each court with a view to identifying patterns, with a view to promoting consistency of sentencing across the courts.
6. In addition, the patterns in offending and any spikes in certain offences that may be highlighted by the bi-annual review should be shared with the D.P.P.
7. One of the most important issues to be monitored in the court statistics by each head of court is the clearance rates of the courts to determine effectiveness as well as to structure interventions to clear backlogs.
8. Annual statistics provided to the heads of judiciary for each jurisdiction should provide desegregated data based on the recommended indicators above.
9. Annual reports of the courts should be re-structured to provide information on clearance rates, desegregate data on the types of sexual offences before the courts, the ages of the defendant and the complainants and the sentences issued as well as care and support services offered to the complainant and the use of special measures.
10. Each court shall have a data collection unit or at a minimum a staff member exclusively assigned to be the monitoring and evaluation officer with responsibility for supervising data collection, populating the database and preparing reports as required.





**PART FOUR:**  
Guidelines for Offenders  
Rehabilitation and Management



## 7.0 INTRODUCTION

The court may consider the opportunities and potential for rehabilitation whenever possible. Some sexual offenders have a very high rate of recidivism and not all cases are appropriate for rehabilitation. The interests of justice must be weighed against the likelihood of reoffending and whether rehabilitative intervention may reduce that likelihood.

### 7.1 ADULT OFFENDERS

1. The court's options for rehabilitation of an adult sex offender are often limited. To determine whether a defendant is a suitable candidate for rehabilitation, the court may seek a comprehensive psychosexual evaluation of the defendant.
2. The court may request the psychosexual evaluation to be done as part of the pre-sentencing procedures. Usually, the court will appoint a specialist to undertake the evaluation and prepare a report for the court.
3. Once the court obtains an evaluation report suggesting that a defendant may be a candidate for intervention and rehabilitation, the court then must consider the appropriate placement or service delivery mechanism.
4. Rehabilitation is unlikely to be successful where the defendant has shown no remorse or where the defendant showed a pattern of repeat offences or exhibited targeting and planning behavior.
5. Most of the options for rehabilitation of adult sex offenders, would ideally be part of prison treatment programs that can provide supervision and psychiatric services as well as behavior modification training.
6. Where appropriate and where programs are available, the court can mandate as part of the sentencing option, participation in prison rehabilitation programs and require reporting on progress to be made to the court.
7. Adult offenders who successfully complete treatment may benefit from it in parole applications or applying for sentences to be reduced or for transfer to a lower risk facility or lower risk area of the particular prison.
8. Adult offenders will often not have access to family-based or community-based programs, though these are to be encouraged, and for most sexual offences, as an alternative to custody, the court may not be able to give an alternative sentence outside of a fine.
9. Even after completing a prison treatment program and after release from prison after completing his or her sentence, an adult sex offender may still require aftercare programs and the court should require participation in aftercare as a condition for early release where sentences are being reviewed for reduction or early release.
10. In appropriate cases, the court may sentence an adult sex offender to probation and attach participation in a sex offender treatment program in the community as a condition to the probation.

11. The court shall also consider referrals for recovery programs for persons acquitted of sexual offences who were held on remand for extended periods and any services available to aid in reintegration.

## 7.2 CHILD OFFENDERS

1. Legislation establishing a special mechanism for child offenders exists throughout the Caribbean creating a separate criminal justice regime for child offenders. Most of these laws are based on international commitments contained in Conventions impacting child offenders such as the Beijing Rules, the Tokyo Rules and the Riyadh Guidelines. The general aims thereof, are to prevent re-offending and to provide opportunities for rehabilitation while ensuring there is accountability of child offenders for what has been done.
2. In addition, throughout the Caribbean, laws have been passed to protect the rights of children and mandating that decisions made concerning them are done “in the best interests of the child” while taking account of his/her age, development and social intelligence.
3. However, in most jurisdictions, sexual offences are excluded from the special mechanism for orders that include rehabilitation and treatment of child offenders under existing child offender legislation.
4. Nonetheless, the sexual offences legislation of most jurisdictions provides for a lower sentence where the alleged defendant is close in age to the complainant or was a child at the time the offence was committed.
5. Where the legislation provides for lower sentences for offenders under the age of 18 years, the following factors should be considered in determining the appropriate sentence for the child offender:
  - a. Any diminished capacity by reason of age or other factor in the offender or the complainant.
  - b. Any mitigating circumstance such as remorse expressed by the offender.
  - c. Any recommendation from child protection services or the department responsible for child offenders as to the appropriate sentence.
  - d. The impact of the offence on the complainant’s life and prospects.
  - e. Any continuing trauma or medical condition that the complainant will have to live with such as an STD.
  - f. Available rehabilitative programs for the complainant.
  - g. Available alternative sentencing regime for the offence and the structure for implementing and supervising the alternative sentence measure.
  - h. Whether a custodial sentence would be more appropriate due to the prevalence, seriousness or gravity of the offence.
  - i. Available rehabilitative programs for child sex offenders.
  - j. Available measures for addressing breaches of any alternative sentence or a rehabilitative condition attached to a sentence imposed by the court.

6. Typically, non-custodial measures that are provided for in legislation in respect of child offenders include:
  - a. A discharge where permitted by legislation, when discharging a child under a diversion scheme, the court may consider whether there is a need to attach conditions to provide for sensitivity training or other rehabilitative measure, or whether some aspect of restorative justice as detailed below should be employed, or whether child protection proceedings should be instituted. Conditional discharge orders will usually be binding over a specific period during which the child offender is prohibited from committing further offences. The court should consider whether the binding over period will be for all offences or restricted to sexual offences.
  - b. A probation order - while prohibiting the offender from committing another offence during the stated time of the probation, such orders require the child offender to sign in on a regular basis with the police as an accountability measure, and should include participation in a counseling program, school attendance and such other conditions as may be necessary shall be attached.
  - c. A community service order - these are work orders for the child offender to carry out specific job tasks at a specific facility for a specified period of time. Community service orders require supervision since any failure by the child offender to do the work assigned constitutes a breach of the order and the court may then impose a custodial sentence.
  - d. A fine - this is payment of a specified sum to the court. Fines are not always regarded as an effective measure for child offenders as they are unlikely to have the means to pay the fines which could result in them being imprisoned. In most cases, the fines are paid by the parent so there is little direct rehabilitative value for the child.
  - e. A combination order - the court will usually be able to combine various orders if the court deems it necessary based on the circumstances of the case and the needs of justice.
  - f. Suspension of a custodial sentence - the court can issue a custodial sentence and make an order to suspend the service of the sentence unless there is a commission of another offence.
  - g. A custodial sentence - in some cases, it will not be appropriate to impose a non-custodial sentence. However, even where the court issues a custodial sentence, the maximum sentence should generally not be issued. The court should consider where the custodial sentence will be served to ensure the safety of the child offender and to maximise any opportunities for rehabilitation while ensuring the safety of other children.
7. The court will need to consider what orders may need to be made to ensure records of a child are expunged. In some jurisdictions, records are automatically expunged by administrative action of the court or police. In other jurisdictions, the person seeking the record to be expunged will need to make an application to the court for an order for records to be expunged.

### 7.3 RESTORATIVE JUSTICE

1. Restorative justice options are aimed at ensuring that the child offender is held accountable for his or her actions in committing a sexual offence while facilitating rehabilitation and the restoring of relationships where suitable.
2. It is believed that attaching accountability to the measure of rehabilitation can contribute to the child's positive development as well as to their openness to influence by service programs which may then reduce recidivism since children are still evolving in their developmental capacities.
3. Accountability usually requires "accepting responsibility" for the wrong done. This may require admitting to the behavior. It is also important that this information remain confidential.
4. Restorative justice measures implemented by the court are usually conditions attached to a non-custodial or alternative sentence especially where the court decides to discharge or conditionally discharge the child offender.
5. The restorative justice measures may include:
  - a. An apology letter - where the offender writes a letter of apology to the complainant. The offender may be required to read this to the complainant and his or her support person in court.
  - b. A survivor-offender conference - where the survivor is able to confront the offender about what happened and share the negative impacts of the offender's actions and receive an apology from the offender. This will require supervision and support from the child protection services to ensure the trauma needs of the complainant are met during such conferences.
  - c. Accountability worksheet - this may include specific steps and a series of actions to be taken by the child offender which then must be evaluated and reported to the court. This will require supervision by the department or agency with responsibility for child offenders.
  - d. Community service - this will include some non-compensatory acts of service that the offender will be required to provide to the community. The community service will require supervision to ensure the safety of the offender and compliance with the terms of the service required to be done by the court. The completion of community service will also be required to be reported to the court.
6. In addition, persons from indigenous communities may have their own form of restorative justice. The court may consider if community measures for restorative justice would be more effective in providing rehabilitation while meeting the needs of justice overall.
7. When making orders for restorative justice, the court may also need to consider attaching conditions to provide rehabilitation, for example:
  - a. Detox services for any substance abuse problems of the child offender.
  - b. Counseling and other mental health therapies.
  - c. Anger management programs.
  - d. Mentoring programs.

- e. Life-skills training including respect for sexual and reproductive rights of others and learning about their own rights.
  - f. Parenting empowerment programs that may be needed for the parents of the child offender.
8. Typically, these conditions are combined to ensure that the child offender involved in restorative justice is accountable and receives skills in the following three areas (based on cognitive behavior therapy<sup>5</sup>):
- a. Skills-training (behavioral component) - social skills training, being a curriculum of prosocial, interpersonal skills, showing what to do instead of aggression, and dealing with anger-provoking events.
  - b. Anger management training (affective component) - teaching children what not to do if provoked and self-control competencies.
  - c. Moral responsibility training (cognitive component) - promoting values that respect the rights of others, raising a level of sense of fairness and justice, therefore helping children use interpersonal and anger management skills taught.
9. The court should also ensure that the requisite therapeutic and rehabilitative services are being provided to the complainant and where the complainant is a child should consider any child protection orders that may need to be made in respect of the child including supervision or care orders where necessary.
10. To prevent and minimize recidivism, the court may order offenders to be subject to an assessment of the danger posed by the offenders and the possible risks of future further sexual offences, in particular against children. The arrangements for such assessment, such as who should do the assessment and directions for what to include in a pre-sentence report can also be made by the court.

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<sup>5</sup>Becker, J.V. & Hunter, J.A. (1997). Understanding and treating child and adolescent sexual offenders. In T.H. Ollendick and R.J. Prinz (Eds.), *Advances in Clinical Child Psychology* 19. New York: Plenum Press





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# Judicial Reform and Institutional Strengthening (JURIST) Project

C/O Caribbean Court of Justice

134 Henry Street, Port-of-Spain.

Trinidad and Tobago

Tel: (868) 623-2225 ext 2225

Email: [jurist@juristproject.org](mailto:jurist@juristproject.org)

Website: [www.juristproject.org](http://www.juristproject.org)

[www.facebook.com/juristproject](http://www.facebook.com/juristproject)