

Worksheet 9.1

The Homicide Trial

Section 1: Before the Trial

- If a defendant pleads not guilty, the case will be set for trial. Make sure the survivor is aware that there may be numerous postponements or continuances after a trial date has been set.
- Before the trial, the prosecutor may want to meet with the survivor to discuss the case. This is very important to the surviving family and their satisfaction with the system.
 - Accompany the prosecutor at all meetings.
 - Help prepare survivors for difficult testimony.
 - Inform them if and when sensitive photographs of the crime scene and the victim will be displayed. This will allow the survivor to be prepared, and leave the courtroom if necessary. If the survivor wants to view the photos in advance, see if you can arrange this.
- Most survivors want to attend the trial even though they know it will be an emotionally draining experience.
 - Because trials can take several days or weeks, survivors may not always be able to take off work to attend.
 - Several states now acknowledge that victims should have the right to attend criminal justice proceedings without penalty, much the same as employees who serve on juries.
 - Tell survivors to take care of themselves, eat healthy foods, exercise, and get a good night's sleep before each day of the trial.
 - Advise survivors to dress comfortably but clean and neat.
 - ♦ Clothing should be comfortable enough to sit in for hours.
 - ♦ Clothing should not be “noisy,” such as large pieces of jewelry or squeaky shoes.
 - ♦ Clothing should be easy to take care of; during the trial survivors usually don't have the time or energy to worry about a wardrobe.
 - ♦ If a survivor is female, remind her that make-up will run if she cries. .

PARTICIPANT WORKSHEETS
Serving Survivors of Homicide Victims

- Advise survivors to take items they may need during the trial, such as cough drops, tissues, any medications, as well as books and perhaps a small notebook for taking notes.
- Tell survivors to avoid carrying anything that might make a noise, such as a paper or plastic bag. Fabric bags are less noisy.
- Emphasize that survivors must remain quiet while court is in session.
- Advise them to leave children under 12 at home. Any disturbances – no matter how minor – may result in dismissal from the courtroom.
- Defense attorneys do not want victims to attend trials – particularly murder trials. The defense attorney’s job is to minimize the sympathy for the victim’s survivors during the trial. The defense wants any sympathy to be focused on the defendant and not on the victim’s family.
 - If the survivor witnesses the homicide, the defense may use a common tactic and ask the judge to invoke the “rule of sequestration.”
 - This rule means that witnesses can’t listen to each other testify, so each witness must be sequestered in some place other than the courtroom.
 - So, even though survivors may not be called to testify, they can be kept out of the courtroom, never to be seen by the judge or jury.
 - Survivors who do testify should be allowed to remain in the courtroom after their testimony. Survivors who are not witnesses also should be allowed to remain in the courtroom. They will generally testify only during sentencing.
- Explain that trial schedules are likely to change frequently, and tell the survivor to remain patient.
- Because many survivors are unfamiliar with trial procedures, give them a simple description of what goes on in the courtroom.

Worksheet 9.1, continued

Section 2: During the Trial

- Explain that the courtroom is entirely the judge’s domain. The judge does not have to be polite or even reasonable. Survivors will be there at the judge’s whim. He or she can dismiss you from the courtroom for the slightest reason – or for no reason at all.
- Tell the surviving family that they will probably be kept as far away from the defendant as possible, and the bailiff will be closely watching for any sign or expression that might be an attempt to influence the jury.
- Advise survivors on the rules of the courtroom, such as discussing cases. In homicide cases, make sure the survivors you are working with are aware of what might happen in the courtroom. Tell survivors:
 - Expect to hear upsetting testimony and gruesome details you have not heard before. You may also hear the defense attorney attempt to prove that your loved one was responsible for his or her own death. His or her character may be called into question. The defense attorney has an ethical responsibility to do all he or she can to represent the client’s legal interests. It is up to the judge or jury to determine the truth.
 - In legal terms, the crime has been committed “against the state” and not against them or their loved one. The defense attorney may refer to “the body,” “the victim,” or “the deceased” without mentioning a name.
 - If you feel you may lose control of your emotions during the trial, leave the courtroom until you regain composure. Your presence or demeanor in the courtroom must not be construed as influencing the judge or jury.
 - Don’t talk or whisper during the trial. If you have questions or concerns during the trial, write them down and give them to the prosecutor or victim advocate.
 - You must remain quiet and expressionless while in the courtroom. If you do anything that the defense could take as “influencing the jury,” you could put the entire case in jeopardy.
- Tell the surviving family not to be surprised when they see the prosecutor and defense attorney being very friendly outside the courtroom. Most attorneys probably know one another. The fact that the prosecution and defense are friendly doesn’t mean that the prosecutor won’t do his or her best on the case.
- In the evening, the family should do something to distract themselves from the trial, such as going to a movie or watching television. Remind them that becoming obsessed with the way the trial is going will have absolutely no impact on the outcome.

Protective Measures

Many jurisdictions give crime victims (and survivors) the right to protection during the criminal justice process. This right may take the form of a generally stated right to protection, or may include specific protective measures. Most jurisdictions have defined criminal offenses of intimidation of victims or witnesses. Many provide that victims must be informed of protective procedures that are available. Protective measures may include:

- Police escorts to and from court.
- Secure waiting areas separate from those of the accused and his/her family, witnesses, and friends during court proceedings.
- Witness protection programs.
- Residence relocation.
- Denial of bail or imposition of specific conditions of bail release – such as no contact orders – for defendants found to present a danger to the community or to protect the safety of victims and/or witnesses.
- Several jurisdictions also have enacted laws to make it easier for victims to participate in the criminal justice process.
 - Some give victims the right to refuse or limit any interviews with defense attorneys.
 - Others provide for special court arrangements for vulnerable victims, such as young children.
 - These arrangements may include closed-circuit testimony from outside the courtroom, arranging the courtroom so the victim does not see the defendant, or closing the courtroom to the general public.

Worksheet 9.1, continued

Section 3: After the Trial

Verdict and Sentencing

- If the defendant is convicted, the case will proceed to sentencing in a later hearing. In some jurisdictions, the judge decides the sentence; in others, the jury does.
- The verdict may be very emotional for survivors. Explain that a legal verdict and the truth are, unfortunately, not always the same thing. Even if a defendant has actually committed the murder, he or she may be found not guilty.
- The standard of proof in criminal cases is “beyond a reasonable doubt,” the highest burden of proof required in any trial proceeding. If any doubt based on reason exists as to any element of the offense as charged, the verdict of the judge or jury must be “not guilty.”
- In capital punishment cases, the defendant may be sentenced to death. As of 2011, 35 states permit capital punishment, but few permit the victim’s family to actually witness the execution.

Victim Impact Statement

- Every state allows some form of victim impact statement at sentencing. Most states also allow victims to speak before other criminal justice authorities, such as the parole board, before major decisions are made.
- A victim impact statement is the survivor’s opportunity to tell the court about the impact of the crime on the family’s life. It is a statement, in the survivor’s own words, that is considered by the judge in deciding any restitution and the sentence for the offender.
- Victim impact statements allow survivors to personalize the crime and express the impact it has had on them and their families. It gives the survivor’s family the chance to provide information for the judge to consider at sentencing, but it also allows survivors to express the pain, anguish, and financial devastation the crime has caused. Just “telling their story” may also aid survivors in their emotional recovery.
- State law might list the elements to be included in the statement, or it may simply permit a “description of the impact of the offense.” In addition, many states allow the victim to state his or her opinion about the appropriate sentence.
- In most states, victim impact statements may be either oral or written. However, several states require that victims also submit their statements by videotape, audiotape, or other electronic means.

PARTICIPANT WORKSHEETS
Serving Survivors of Homicide Victims

- Victims, survivors of homicide victims, and parents of minor victims are usually allowed to give victim impact statements. Family members of a victim who is physically incapacitated may make impact statements in some states, provided the incapacitation is the result of the crime.
- Survivors do not have to fill out a victim impact statement. But remind them that it may be helpful to the judge when he or she decides what sentence the defendant should receive and/or any money the defendant may have to pay for expenses the survivor has incurred because of the crime.
- Victim impact statements become an official court document after it is given to the court, and will become a part of the defendant's permanent file. Once submitted, it can't be withdrawn. The statement will also be read by:
 - The judge
 - The prosecutor
 - The defendant and defense attorney
 - The probation officer
 - Prison and parole officials
- Information in a victim impact statement usually includes:
 - How the crime has harmed the victim/survivor
 - Descriptions of the financial, physical, psychological, or emotional impact
 - Damage to family relationships and the family's hopes for the future
 - Medical treatments or psychological services required by any survivors as a result of the crime
 - Loss of ability to work and lost wages, due to emotional trauma
 - Change in lifestyle – ability to work, play, drive; forced relocation
 - Persisting emotional trauma – anxiety, nightmares, desperation
 - Any property damage or other economic loss due to the crime
 - The need for any restitution
- Avoid presenting any information that has already been covered in the trial.

Worksheet 9.1, continued

Parole Hearings

- In addition to allowing victim impact statements at sentencing, a vast majority of states allow survivors of homicide victims to present a written or oral statement to the parole board for consideration at the parole hearing.
- The point of preparing a statement to a parole board is to allow the survivor to voice an opinion about the prisoner's eligibility for parole. While most survivors want inmates to be locked up for as long as possible, there are instances when a survivor may not object to a prisoner's parole, but wants to ask the board to impose conditions on the parole..
- Since it has probably been some time since the crime occurred, survivors have the right to update their victim impact statement. The statement should include a description of the long-term impact, or the continuing problems survivors and family members have endured since the crime.