

APPENDIX F

[Furnished 20 October 2003; amended 1 June 2007]

[[Guideline 19](#)]

NEW SOUTH WALES INTERAGENCY GUIDELINES FOR CHILD PROTECTION INTERVENTION

[EXCERPTS FROM CHAPTER 5 “*CRIMINAL PROCEEDINGS*”]

5.1 ISSUES TO CONSIDER

It is the responsibility of whoever is bringing the prosecution to decide whether there is sufficient evidence to proceed with charges against offenders, and to make an assessment about the emotional and cognitive competency of a child or young person to give evidence in any criminal proceedings and to determine the likelihood of a successful prosecution. In making that determination, consideration will be given to matters including evaluating prospective witnesses in terms of perceived honesty, credibility and ability to handle the rigours of the court process.

Practitioners and agencies need to be responsive to the dilemmas faced by families going through criminal prosecutions and work with children, young people and families to:

- reduce uncertainty by providing as much information as possible about court processes and procedures, including dates and the purpose of proceedings
- increase support and practical assistance
- acknowledge the reality of their distress.

5.3 COMMUNICATING THROUGHOUT CRIMINAL PROCEEDINGS

During the progress of criminal proceedings, issues will arise that need to be communicated to those working with the child or their family. Where there is an allocated case manager, that person should advise the Office of the Director of Public Prosecutions of their role and how they can be contacted. For those situations where the accused person is in the care of the Minister or the Director-General, the Department of Community Services will provide additional support as needed.

It is the responsibility of the Office of the Director of Public Prosecutions or the police officer in charge of the case, when less serious charges are involved, to keep the case manager informed of changes as they occur. These include:

- dates of court listings, hearings, trial adjournments
- dates for the hearing of evidence from a victim
- bail applications, granting of bail and any conditions
- breaches of bail conditions
- progress of proceedings
- charges withdrawn by the Crown ('no bill' applications)
- findings or determinations of courts
- sentencing decisions

- appeals
- any other matter that arises which is relevant to the safety, welfare or wellbeing of the child or young person.

It is the responsibility of the case manager to ensure this information is conveyed to other relevant agencies involved with the child or young person and their parents or care givers and, if appropriate, adjustments made to the case plan in light of the new information.

5.5 COURT PREPARATION FOR A CHILD OR YOUNG VICTIM

The *Charter of Victims' Rights* requires that a child or young person who gives evidence in criminal proceedings be offered information to assist their understanding of the often demanding court process and procedures. An adult of the child's choosing should also support them through the court process. This person may be any suitable person who is not a witness and who is available to assist the child or young person. The Office of the Director of Public Prosecutions should advise this court support person of the parameters of their role in relation to the victim.

The police should also advise the Office of the Director of Public Prosecutions if the child or young person is Aboriginal. The identification of such children and accommodation of their needs is of particular importance, given the experience of Aboriginal families and communities with the legal system. Additionally, the Office of the Director of Public Prosecutions needs to be advised by the police if a child or young person has any other special needs, such as related to a physical disability or to an intellectual or cognitive learning disability.

It is the responsibility of the Office of the Director of Public Prosecutions to ensure that a child or young person is appropriately prepared to appear as a witness. This should involve the prosecutor meeting with the child or young person and their caregivers well before the commencement of proceedings in order to assess the needs of the child or young person as a witness. If a NSW Health Sexual Assault Service or another counselling service is involved in the case, the prosecutor should liaise with that service and the case manager, if applicable, to discuss the child's or the young person's specific needs with regard to court preparation and support.

The prosecutor should at this meeting:

- assess the child's or the young person's competence to give evidence
- decide whether the child or young person's pre-recorded statement will be presented as evidence
- in chief, if this record has been made
- form an appreciation of the child's developmental level, including language and conceptual skills,
- their capacity to understand concepts of time and locality, and their capacity to concentrate
- form an appreciation of the child or young person's level of anxiety in relation to the proceedings
- establish some trust and rapport with the child or young person

- liaise with the Witness Assistance Service.

Child sexual assault matters are referred early to the Witness Assistance Service to facilitate access to counselling, support and court preparation and support.

This contact, if involving very young children, may need to occur over several meetings. It will enable the prosecutor to decide what special arrangements should be sought from the court to facilitate the child giving evidence. There is now a presumption that children will have a right to:

- the presence of a supportive person while giving evidence
- give evidence in chief in the form of a recording, wholly or partly
- give all their evidence by closed circuit television (CCTV), or when CCTV facilities are not available, by alternative arrangements.

It must be made clear to the child, young person and relevant parents or caregivers that the court determines court arrangements for children's testimony, and no promises can be given about particular arrangements. It should also be clarified to all relevant parties that, given the pressures on court lists, it is unlikely that the one prosecutor will remain with a matter from start to finish.

5.6 COURT DETERMINATIONS

The Office of the Director of Public Prosecutions is responsible for informing the child or young person and the parents, caregivers or guardian and the case manager, if available, of the outcome of criminal proceedings or any bargaining agreements reached with the defence.