



# WITH YOU

ACCOMPANIMENT OF VICTIMS AND WITNESSES IN THE JUSTICE SYSTEM



Coordinator:





**Project:** WITH YOU - Accompaniment of Victims and Witnesses in the Justice System

**Coordinator:** APAV. Associação Portuguesa de Apoio à Vítima

**Partners:** Procuradoria Geral da República; Direção Geral da Administração da Justiça; Guarda Nacional Republicana; Instituto de Reintegración Social de Euskadi | Euskadiko Birgizarteratze Institutoa; France Victims; Pagalba nusikaltimū aukoms; Udruga za podršku žrtvama i svjedocima.

**Title:** Brochure for Judicial Authorities and LEA

**Author:** APAV. Associação Portuguesa de Apoio à Vítima

**Funded:** Funded by the European Union's Justice Programme (2014-2020)

**Illustration and Layout Design:** Último Take

**Print:** xxx

**1.<sup>st</sup> Edition:** September 2021

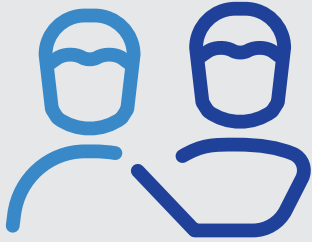
**Print Run:** 100

**ISBN:** 978-989-53235-3-1

**Legal Deposit:** n.º 000000/00

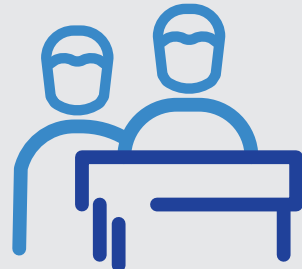
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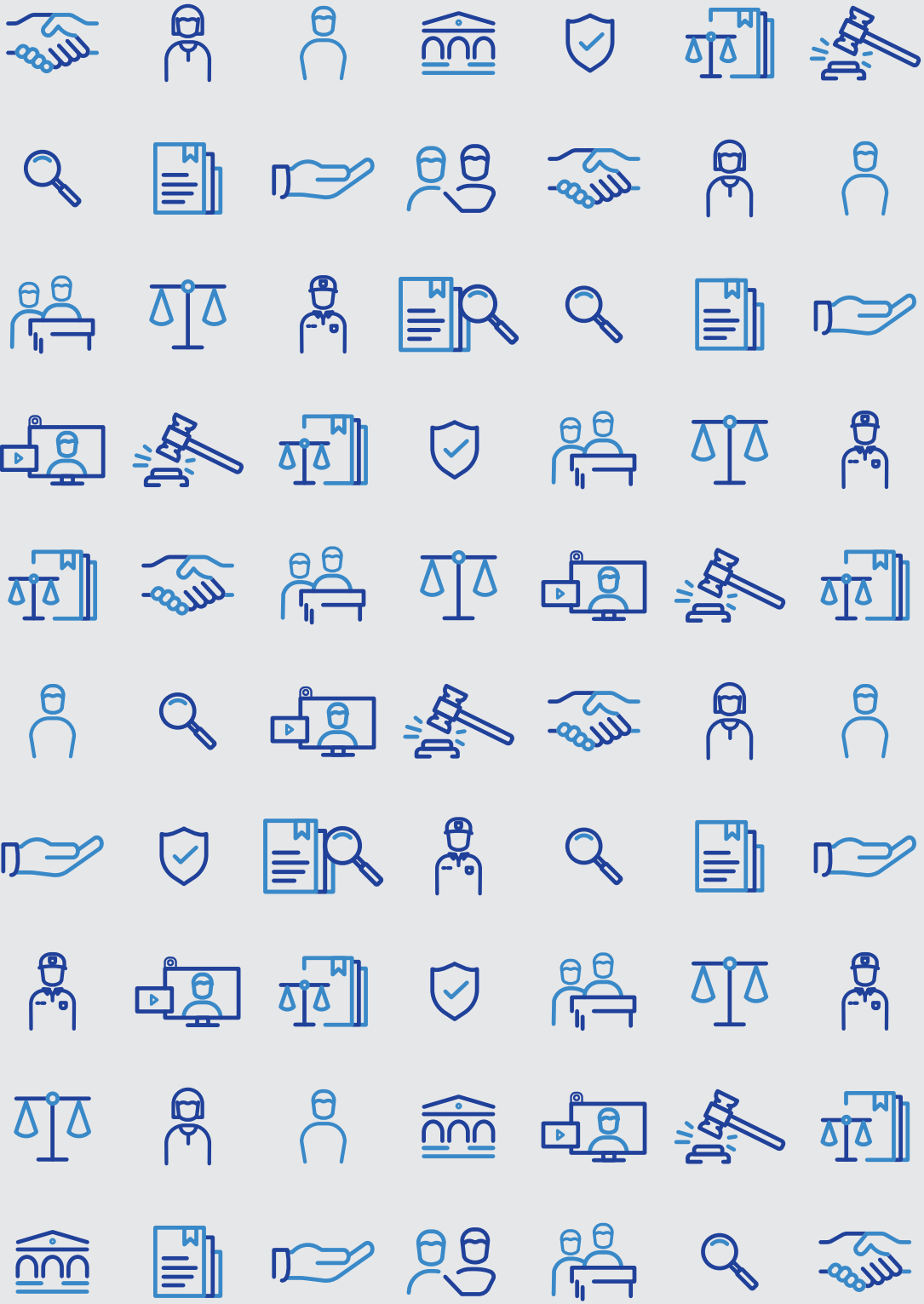
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# 1. WHO'S WHO

## 1.1. Victims

### Who is a victim? Directive's definition:

In its article 2, the Victim's Directive (Directive 2012/29/EU of the European Parliament and of the Council, of 25 October 2012) establishes that a victim is:



- A natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; and
- Family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death. The family members are the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis (regardless of their gender), the relatives in direct line, the siblings and the dependants of the victim.

The qualification as a crime victim subsists regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the relationship between them.



It is important to notice that every person falling within the Directive's definition is a victim notwithstanding his/her 'role' in the national criminal justice system. This means that regardless of whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, he/she should be seen and treated as a victim of crime.

Regarding family members, the Directive allows for Member States to limit the number of family members who may benefit from the rights and to determine which family members should have priority. Nevertheless, any family member who falls within the Directive's definition of victim must be treated as such.

## 1.2. Witnesses

### Who is a witness?

Anyone who has direct knowledge of facts which are important for the case may be called as a witness, that is to say, they saw the crime take place or know something important for discovering the truth. In a way, witnesses may be seen as "indirect" victims, as witnessing a crime or a violent situation can cause emotional distress.

A witness is any person who, regardless of their status under procedural law, has information or knowledge necessary to reveal, perceive or assess the facts of the case.

A witness may also suffer as a result of a crime, since witnessing a violent situation can have a negative impact on emotional well-being.







## 1.3. Victim support workers

### Who is a Victim Support Worker?

A Victim Support Worker (VSW) is someone with the proper qualifications whose job is to identify, accompany and provide support to victims of crime.

The VSW understands how the victim feels and what they are going through after the crime and it is his/her job to help the victim overcome or, at least, mitigate its impact.

To perform these duties, VSW have a number of professional and personal skills. In addition to holding academic qualifications in an area closely related to the needs of crime victims, such as psychology, law, social services, among others, they have received specialised training in victim support. Therefore, they have in-depth knowledge about issues such as the consequences of victimisation, victim's reactions, and available support services, etc.



At a personal level, VSW are able to listen to the victim, understand their fragility at this time and provide emotional support, accept what the victim is willing to tell and also what he/she is not willing to talk about and respect their decisions, even when they don't agree with them because they consider that they are not the best for the victim.

When necessary, a VSW can accompany the victim to court or to the police, or while forensic exams are being conducted.





At these times, it is important for the victim to have someone with them who they can trust and who can provide support.

## 2. THE RIGHT TO BE ACCOMPANIED DURING CRIMINAL PROCEEDINGS

### 2.1. The right's provision in the Victim's Directive

The Victim's Directive provides for the accompaniment in two articles: article 3, para. 3, regarding communication safeguards, and article 20(c), regarding the right to protection of victims during criminal investigations.

Article 3, para. 3 states that unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

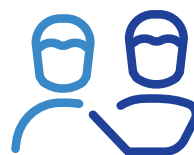
The purpose of this right is to assist the victim and to provide moral support when reporting a crime, with the main goal that every victim can understand and can make themselves understood during criminal proceedings (linguistically or otherwise).





In its turn, article 20(c) establishes that Member States shall ensure that during criminal investigations victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary.

The right to be accompanied by a person of choice applies to all victims and not just to vulnerable or child victims. The victim should be able to bring a trusted person, even if he/she has a legal representative, because they play different roles in the proceedings: the legal representative is there to protect the victim's interests and rights, whereas the person of trust is there for moral support.



The right to accompaniment should be a positive right, which can only be limited by a reasoned decision. Only in exceptional circumstances should the possibility to be accompanied by a person of the victim's choice be limited, and then only in relation to a specific person. If this happens, the victim should be able to choose another person. A typical example for refusal would be that the person chosen has a conflict of interests in the proceedings (e.g. being the offender - for example in cases of domestic violence or child abuse family members may also be the perpetrators) or confidentiality concerns.





## 2.2. The right's provision in national law

### To which judicial acts may the victim or witness be accompanied to?

There are situations where the presence of the VSW is foreseen and is mandatory by law. Unless it is contrary to the interests of the victim or witness or it affects the good course of the proceedings, they may be accompanied by a person of their choice at the time of the first contact with the competent authorities. The victim may require the accompaniment in case, due to the impact of the crime, he/she needs assistance to understand or be understood during the diligence.



Under the **Victims' Statute**, when the victim is particularly vulnerable, it is provided by law that he/she may be accompanied by a specially trained professional when testifying with resource to video or teleconferencing, that is, a VSW, who is previously designated by the Public Prosecution or by the court.

The same Statute states that, during a statement for future recall, the victim must be supported by a specially trained professional, again, a VSW previously nominated by the court.

Under the **Domestic Violence Law**, the victim may request to be accompanied by a VSW when providing statements or testifying with resource to video or teleconferencing, or by any other professional that is there to provide psychological or psychiatric support. When providing a statement for future recall, the victim of domestic violence is entitled to do it in an





informal and confidential environment and to be accompanied by a VSW or whoever is accompanying her/him to provide psychological or psychiatric support, previously authorised by the court.

The **Witness Protection Law** also foresees that, whenever the judicial authority becomes aware of the special vulnerability of the witness, the authority must designate a social worker or other professional specifically trained to accompany the witness (a VSW) and, if deemed necessary, the witness may benefit from psychological support by a trained professional. The judicial authority presiding the diligence may authorise the presence of a social worker or any other person accompanying the victim beside the witness during the course of that judicial act.

The **Criminal Procedural Code** also foresees that, when the victims is a child, the statement for future recall must be done in an informal and confidential setting and the child must be supported by a specially trained professional, who must be previously designated for the diligence.

### 2.3. Other judicial acts not foreseen in law that victims/witnesses should be allowed to be accompanied to

Although the accompaniment is foreseen in some legislation, we believe that when the needs of the victim or witness so dictate, the accompaniment should be requested or allowed in other diligences not expressly provided for. e.g. although the law does not provide for the accompaniment of a victim





or witness during their first interview with the Public Prosecutor or during the trial, the stress, anxiety and lack of knowledge about the criminal procedure can be similar (or even more severe) than that felt when they are called to give a statement for future recall.

The need for the accompaniment may be evaluated either by the VSW, when the victim or witness has already started a support process within the victim support organisation, or by the LEA or judicial authorities. In the first scenario, it is up to VSW to request the accompaniment and justify its need. In the latter, because the VSW does not know the victim/witness yet, the LEA or judicial authority must ask for the VSW's cooperation.



Please see page 15, for a visual map of the diligences in which we believe accompaniment of victims and witnesses may be suitable.





# 3. THE IMPORTANCE OF THE RIGHT TO BE ACCOMPANIED

## 3.1. How does the participation in the judicial process affect the victim or witness?

Being the victim of a crime is a negative event that can happen to anyone in their lifetime. Apart from the physical, psychological, financial and social consequences that a crime may have, it is normal for anyone involved in court proceedings to have many questions and to feel anxious and apprehensive.

Alongside the outcome of the legal process (whether or not the offender is sentenced), the procedure itself has a strong meaning to crime victims. It is believed that the legal involvement of crime victims - if not done properly - may influence their mental health or even increase the trauma experienced in the criminal assault.

The stress caused to the victim by the crime is then amplified when the victim has to give testimony, especially if the perpetrator is present or if there are any spectators.



Victims feel discredited or disbelieved in if they feel judicial authorities have no consideration for their interests and feelings





or if they are treated without respect and politeness. Victim blaming, insensitive remarks, and trivialization of the assault make victims feel like their presence in the judicial procedure is not needed and can lead to secondary victimisation.

Victims of crime should receive appropriate information, support and protection and be offered a real opportunity to participate in criminal proceedings (article 1, para. 1 Victim's Directive).

Even where legislation grants them participation rights, victims either are not aware of their rights or do not have enough advice and support to use them in a manner that serves their interests.

## 3.2. How does the accompaniment help?

Treating victims properly during criminal investigations should be a basic element of good administration of justice. It will improve the quality of evidence victims provide and thus facilitate a good outcome of the criminal proceedings.

Victims' effective access to justice depends in large part on the availability of targeted victim support services. The need to provide victims with a set of services that can enable them to enjoy their rights is underlined by FRA research on the reporting of people's experiences of crime.

Support, legal advice and information are means of empowering victims, building their capacity and helping them in accessing justice.







## Why be accompanied by a VSW?

Research highlights the crucial importance of support services to empower victims and give them emotional support. Victims express strong appreciation of the support they received from support organisations and stressed that this support made all the difference.

Support organisations establish an essential link between the victim and the criminal justice system by providing victims with advice and guidance.



When the Fundamental Rights Agency conducted a study about victim support in 2019, victims were asked about 'support' in general and they often related the question primarily to psychosocial aid and 'moral' support rather than to legal advice and assistance in playing an active role in the proceedings.

For victims, it is vital that they are listened to in an empathic manner, that they are believed and understood, and that they have an expert on their side who can assist and accompany them throughout the proceedings. Victims attribute great importance to the relationship being a matter of trust, commitment and confidentiality.

The FRA research also showed that repeatedly, victims stressed the importance of being accompanied to the police by a person they trusted, not least because of the stressful situation. Victims appreciated support in preparing for the court trial, e.g. allowing them to inspect the courtroom in advance of the trial and learn where the various people would be. They stressed the significance of being accompanied to the court trial.



# 4. THE ROLE OF THE VSW IN THE DILIGENCE

## 4.1. Before the diligence



The victim support worker (VSW), when preparing a victim or witness for a judicial act, always considers crucial aspects such as how they feel about participating in the act and whether or not there are some specific needs that must be addressed (e.g. special vulnerability or removal of the defendant from the room).

During the preparation phase, the VSW will thus differentiate the approach in accordance with the characteristics and specific needs of each victim or witness and will:

- Explain in what consists the judicial act, who will be present and what are the roles of each professional, including that of the victim support worker;
- Mention the exceptions to the duty of testifying, when applicable;
- Assess specific needs (e.g. need for an interpreter; protection needs; amongst others);
- Visit the space where the judicial act will take place beforehand;
- Provide practical guidelines.

In the preparation phase, the differentiation of the approach to the characteristics of the victim or witness is crucial, since

every contact with them must be tailored to their specific needs. The following specificities are considered:

- The victim or witness is a child or youngster;
- The victim or witness has any sort of disability;
- The victim or witness' cultural and/or social background.

When the **victim or witness is a child or youngster**, the victim support worker will always meet the legal representatives beforehand and provide the necessary contextualisation for the interview with the child, the reason for the accompaniment and how the judicial act will take place. This meeting with the legal representatives aims at:

- Gather the legal representative's authorization to the accompaniment;
- Reassure them and give them time and space to speak about the judicial act;
- Gather information about the case (in case it is not possible to know the process in advance);
- Avoid that questions about the judicial act may be posed in front of the child/youngster, which may be a source of anxiety.

**Disabilities** may also influence the manner in which the judicial act occurs. If the victim or witness has a physical disability, her/his mobility may be compromised in the space where the act will take place. Although the victim/witness may have met some LEA or judicial authority before and his/her disability is known, it is important that the VSW is fully aware of any physical conditioning, in order to prepare those who work in the space of the diligence. e.g., there may be a need to book



a special room for the diligence to take place, which will be better accomplished if the need to do so is known in advance.

In case the victim has an intellectual disability, it will influence the way the victim support worker will provide the necessary information or clarification. It is also important that those who lead the diligence know how this disability may influence the victim or witness' capability to testify, which can be done through the information by the VSW. Moreover, if the VSW feels he/she is not qualified to fully understand the consequences of the victim or witness' intellectual disability, he/she will make that known to the process and may even suggest the intervention of a trained professional.

The third characteristic to account for is the **cultural background** of the victim or witness, since it may be necessary to have increased knowledge and sensitivity to contact with them (for example, if it is a victim of female genital mutilation or forced marriage). The victim support worker may also have increased sensibility when the victim has a different cultural background than his/hers. The VSW must also raise the awareness of prosecutor, judges, lawyers, court staff and law enforcement.

The time the VSW has prior to the act to prepare the victim or witness also influences the type of preparation and the quality of the need's assessment. In the case that there's only time for a brief contact, the preparation may be negatively influenced, because there is no time to fully establish a relationship of trust between the VSW and the victim/witness, as well as no time to correctly evaluate their needs.





## 4.2. What can the VSW do while accompanying the victim to the judicial act?

Before the diligence, while accompanying the victim or witness and in case it was not possible to prepare them previously, the VSW may communicate with the entity that required the accompaniment to make a room available where he/she may speak with the victim or witness alone. This conversation will aim at preparing the victim or witness for the act, although in very brief terms, and also serves as an opportunity to address the victim or witness' feelings towards their participation in the diligence.

When accompanying children or youngsters, the VSW may bring some materials that might be used while waiting for the judicial act (e.g. colouring books) in order to turn the victim or witness' focus away from the act and, thus, reduce the anxiety the child/youngster may be feeling. Before the act, even when the VSW had time to prepare the victim, he/she shall speak alone with the victim in order to understand how he/she feels and to pose any questions or doubts that may exist about what is going to happen.



Prior to the diligence, the VSW will make sure that all protective measures are in place to ensure the victim or witness' safety. For this to be fully accomplished, the VSW must be allowed to communicate freely with those who work where the diligence takes place, may they be administrative staff, clerks, law enforcement agents or judicial authorities.





The VSW must also inform the victim or witness that in case he/she feels any physical or psychological discomfort, should not hesitate to mention it. If such revelation is made, then it is up to the VSW, if allowed and in cooperation with the professionals present, to ensure that the discomfort disappears or at least is reduced to an acceptable level.

During the diligence the VSW will be available to intermediate all communications between the victim or witness and all participants present, either if they only show willingness to speak with the VSW, case in which the judicial authority might not allow the intermediation to take place, or if it is a request made directly by the entity in charge of the act. The VSW will also be prepared to communicate with prosecutors, judges, lawyers, court staff, law enforcement personnel, defendant(s), family and friends of the victim and/or of the defendant and any other person accompanying the victim.



At the end of the diligence, the VSW is prepared to answer all questions the victim or witness might have about the manner in which that act took place and explain the next stages of the proceedings. The VSW will reassure the victim or witness by highlighting the courage and strength of taking part in the diligence, give them an opportunity to share how they feel and provide strategies to deal with any vulnerabilities deriving from their participation in the diligence, both with regard to physical safety and emotional impact.

In the case the victim or witness is a child/youngster, it is frequent that after the diligence the legal representatives





question the VSW and the victim/witness if the procedure went well. The VSW may talk to the legal representatives in a general manner, but should not tell them what questions were posed to the child/youngster and how they answered it. In such situations the VSW will build the victim or witness' capacity to answer only the questions he/she is comfortable with.

When the victim or witness was not previously accompanied by the VSW, he/she will question her/him about the possibility of contacting her/him later aiming at, on one hand, to know how they feel and, on the other hand, answer any support needs that the victim might feel. When the victims are underage, the consent shall be sought with the legal representatives.

### **Does his/her presence influence the diligence?**

The presence of the VSW does not, in any way, influence the course nor the outcome of the diligence. On the contrary, the presence of the VSW will reassure the victim or witness and make her/him as comfortable as possible with the procedure, which gives them the opportunity to provide their best testimony.

While being prepared and accompanied, the victim or witness know what is expected from their participation in the diligence, who is who and which are their roles, which types of questions may be asked and that they have someone by their side to provide emotional support in case there is any discomfort or anxiety.

Nevertheless and if the authority leading the diligence finds it relevant, the VSW may take part in the diligence. This participation is, generally, to intermediate the communications between the judicial authority and the victim/witness or with





any other party present at the judicial act. In this sense, the VSW's participation is contingent to the request of the leading authority.

### 4.3. After the diligence

After the diligence, the VSW will, upon consent of the victim or witness and within the schedule agreed, do a follow-up contact in order to understand how they are feeling and if taking part in the judicial act had any impact in their physical or emotional well-being. The VSW will explore if there are any additional support needs and, in case there are, if the victim support organisation may provide it.



There are, nevertheless, cases where the victim or witness does not accept to be contacted after the diligence, cases in which the accompaniment ceases.







# 5. ASKING A VSW TO ACCOMPANY A VICTIM OR WITNESS TO A JUDICIAL ACT

## 5.1. When should a VSW's presence be requested?

The presence of a VSW at a given judicial act or for the whole proceedings may be an initiative coming from both the authority leading the diligence and from the victim support service (in this case, when there is already some support process in motion).

Naturally, if the presence of a VSW is mandatory by law, the LEA or judicial authority must request the VSW's accompaniment of the victim or witness.

However, if after the first contact with the victim or witness or as a consequence of the information gathered during the investigation or subsequent phases it is believed that the victim or witness would benefit from the accompaniment of a trained professional, the VSW's presence should also be requested. This must be done regardless of any legal provisions imposing the accompaniment.



On the other hand, when the victim or witness is already in the midst of a support process, the VSW who provides him/her with support, may find his/her accompaniment to a diligence is necessary, whether the victim/witness asks for it directly or not. In that case, the VSW should get in touch with the competent authority, asking to be authorised to accompany the victim or witness.



## 5.2. What information should be provided to the VSW when asking him/her to accompany a victim or witness?



When requesting a VSW to accompany a victim and or witness to a judicial act and so that he/she may duly prepare the accompaniment, there is a set of essential information that must, at a minimum, be provided to the VSW:

- Full name of the victim/witness (if the victim is a minor, the name of the legal representative);
- Contact (if the victim is a minor, the contact of the legal representative). The purpose of providing the contact is to allow the VSW to get in touch with the victim or witness before the day of the diligence. This allows for a wider time frame to develop a relationship of trust and therefore make

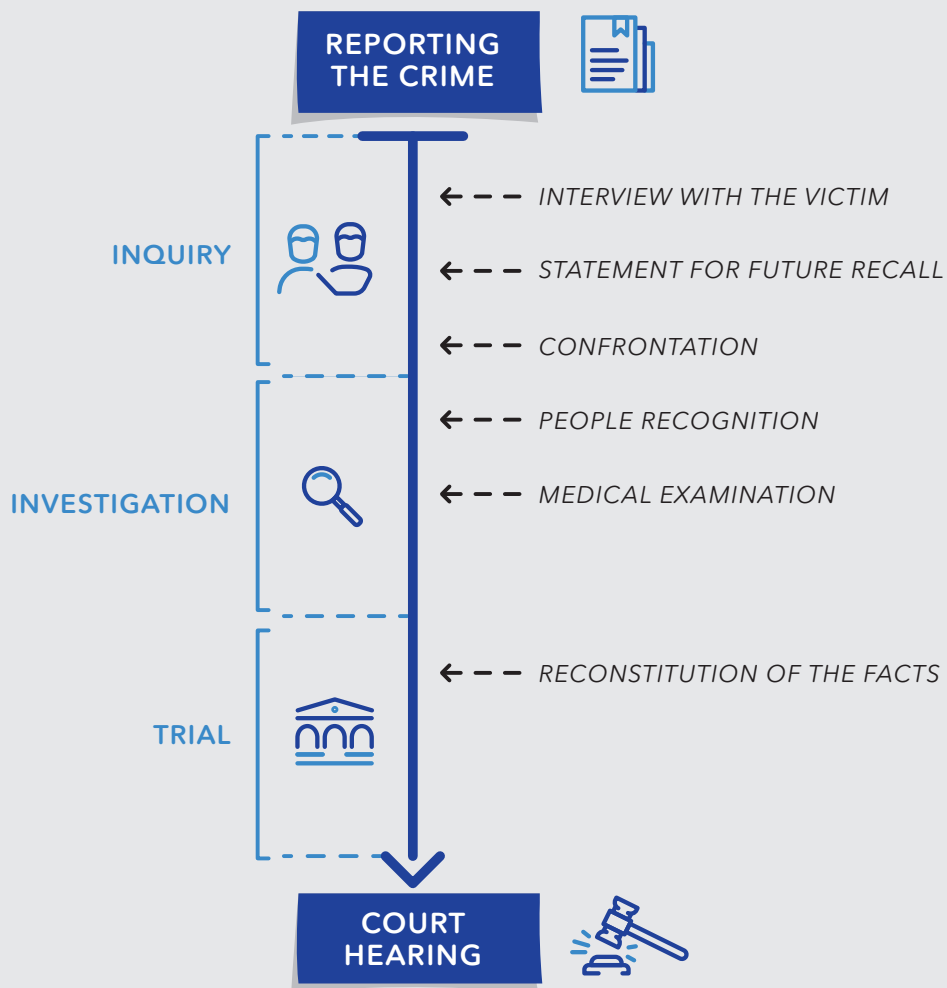


the victim or witness more at ease with the accompaniment by the VSW.

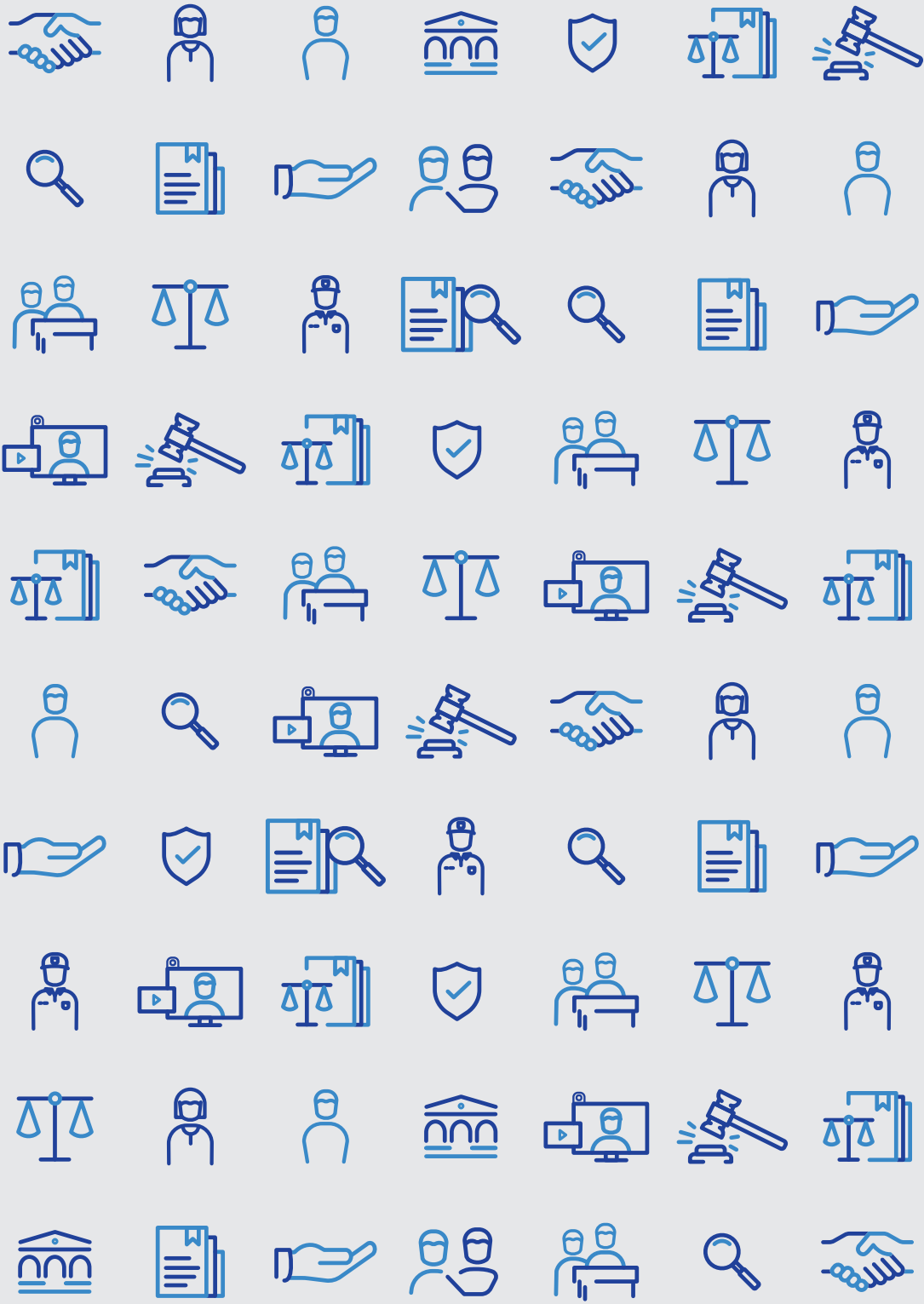
- A brief history of victimisation, which can be done by sending a copy of the filed complaint. This allows the VSW, not only to know which crimes are being investigated, but also not to pose unnecessary questions to the victim or witness, avoiding secondary victimisation. Furthermore, if an organisation has a set of VSW who are more trained in providing support for a certain type of victims, it allows for the request of accompaniment to be directed to a more suitable VSW.
- Information of what is the relationship between the victim/witness and the offender/defendant
- Consent of the victim to be accompanied (if a minor, the consent by his/her legal representative).



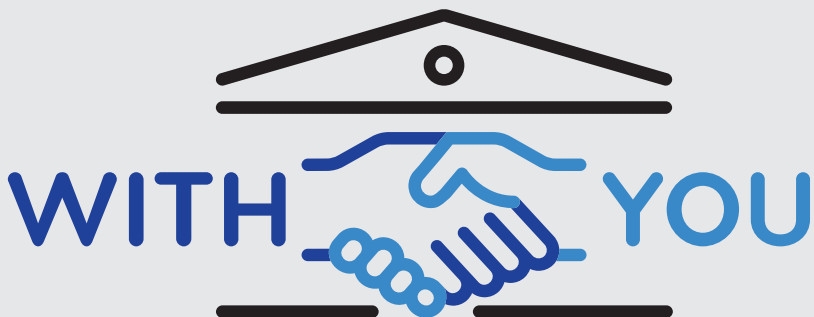
# THE CRIMINAL PROCEEDINGS SCHEME IN WHICH MOMENTS MAY THE VSW BE PRESENT











ACCOMPANIMENT OF VICTIMS AND  
WITNESSES IN THE JUSTICE SYSTEM

Coordinator:  
Portuguese Association  
for Victim Support



Funded by  
the European Union's  
Justice Programme (2014-2020)

Partners:



This publication was funded by the European Union's Justice Programme (2014-2020).  
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