

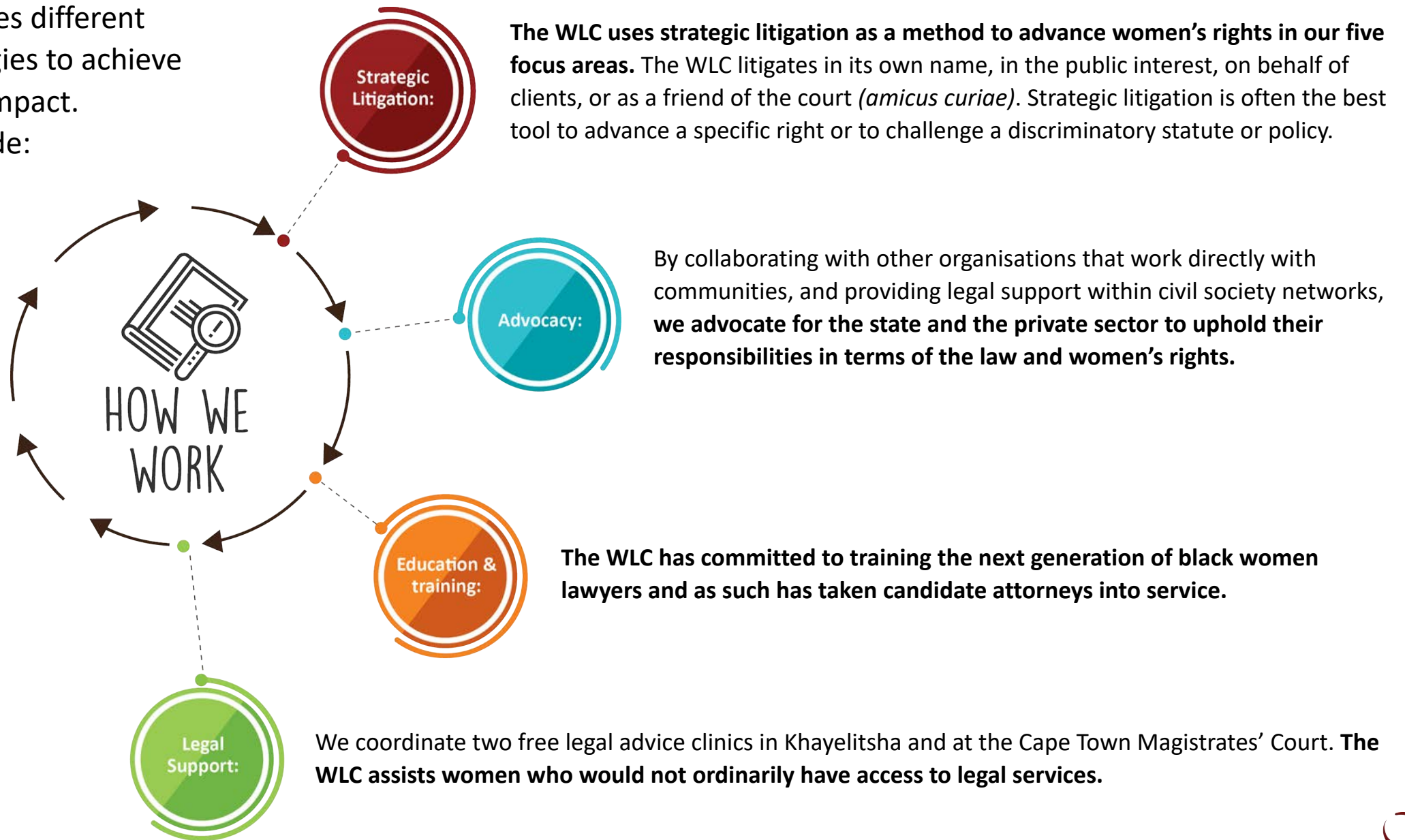
# Portfolio Committee on Justice and Correctional Services: “Gender Based Violence Bills”

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WOMEN'S LEGAL CENTRE

The WLC uses different methodologies to achieve maximum impact. These include:



# WLC LEGAL ADVICE UNIT

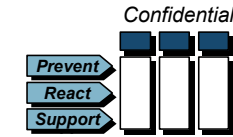
- The LAU operates mainly from our Cape Town office, offering in-person, telephone and email advice
- Legal advice clinics in Khayelitsha and at the Cape Town Magistrates' Court
- We see a wide range of cases, including housing and evictions, divorce, maintenance, and matters involving sexual and reproductive health rights (average total of 1200 cases per year)
- Many of our cases are sexual and domestic violence
- See an average of 250 violence cases in our Cape Town office, in addition to cases at Cape Town court and Khayelitsha office
- Through the LAU we are able to identify cases to strategically litigate which set precedents and have a broader impact for a number of womxn
- The LAU allows us to identify patterns and trends which informs the development of strategic litigation and the development of the law
- Assists in processes such as legislative amendments

# Attrition in the criminal justice system

	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020
<b>Sexual Offences Reported (SAPS)</b>	56 680	53 617	51 895	49 660	50 108	52 420	53 293
<b>Sexual Offences Verdicts</b>	8 174	7 372	7 098	6 669	6 878	6 349	5 451
<b>Sexual Offences Convictions</b>	5 484	5 084	4 978	4 780	5 004	4 724	4 098
<b>NPA Conviction Rate – (% ) Guilty verdict of cases finalised at trial</b>	67.1%	69%	70.1%	71.1%	72.7%	74,4%	75.2%
<b>Conviction Rate – (% ) Guilty verdict of reported cases</b>	9.68%	9.48%	9.59%	9.57%	9.99%	9,01%	7,8%

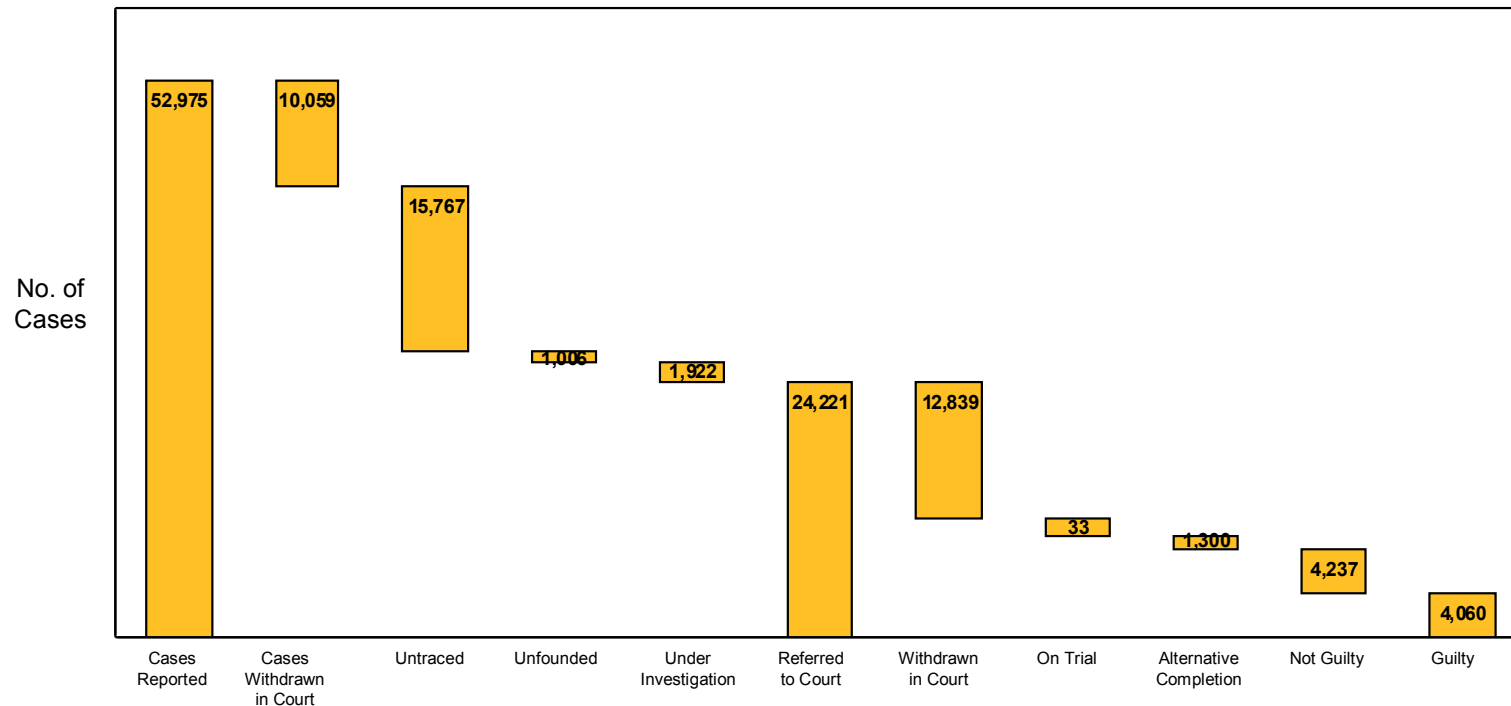
# Attrition in the criminal justice system

**For rapes that are reported, CJS statistics indicate that rape is a low risk activity with several large areas of exit of cases**



*Nationally in 2000, a guilty verdict was achieved in 7.7% of all reported cases of rape of victims of all ages, 16.8% of rape cases referred to court, and 48.9% of rape cases finalised.*

**Rape Case Progress through the Criminal Justice System, 2000 (All Ages)**



Note: The numbers reported above are a “snapshot” of the number of cases recorded at each stage **at the time**. It does not, therefore, provide a means of tracking a case from start to finish. “Under Investigation” and “On Trial” are balancing figures used to cater for the time lag in the flow.

Source: Crime Information Analysis Centre (CIAC), Rape and Attempted Rape Statistics, June 2001; Monitor Analysis

## What's really going on?

- 90% of reported sexual offences cases are 'lost'
- Women encouraged to report, but the CJS rejects them
- Underreporting
- Rape myths – rapes, victims, perpetrators; the CJS reflects society
- NPA Test – “reasonable prospect of a successful prosecution”; prosecution targets
- “Detection” challenge raised by NDPP (but most rapes are by known perpetrators)
- Cases discontinued by SAPS and the NPA – accountability, administrative action, reasons

# Criminal and Related Matters Amendment Bill

## **Insertion of sections 51A, 51B and 51C in Act 32 of 1944 and amendment of section 170A of the Criminal Procedure Act**

- Support the extension of use of intermediaries and use of CCTV in non-criminal matters
- Recognition of vulnerability of witnesses above the biological and / or mental age of 18 years

## **Amendments to sections 59 and 59A of the Criminal Procedure Act**

- Support added requirement to consider the nature of the offence as well as the context in which the offence committed
- For both 'police' and 'prosecutor' bail must consider domestic relationship and breach of protection orders

## **Amendment to section 60(2A)(b)**

- Support the codification of inconsistent practice of placing evidence before the court in bail applications regarding view of the victim on safety
- Contained in SAPS National Instructions and NPA Directives
- Now places duty on the court to consider views of victims

## Amendment of section 170A of Criminal Procedure Act

- Support extension of protective measures to witnesses over the biological or mental age of 18 years
- However, concern is raised as to the requirement to qualify for use of an intermediary, would expose any witness who:
  - **who suffers from a physical, psychological, mental or emotional condition**
  - to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings
- Meaning of ‘condition’? It is unclear whether the ‘condition’ is one that must be proved i.e. established by means of expert evidence, and if it is a ‘condition’ such as a medical condition that exists separate from the state of mind of the witness as a result of having to testify *viva voce* in court.
- Delete requirement “**who suffers from a physical, psychological, mental or emotional condition**”



# Criminal and Related Matters Amendment Bill

## **Amendment of section 299A of Act 51 of 1977**

- Support amendment but concern regarding implementation as very few complainants are in court at the time of sentencing
- Complainants have the right to make representations on placement on parole / correctional supervision
- The duty to inform complainants of this **right** must extend to both police and prosecution; the right exists irrespective of whether the complainant is in court or not (duty currently only rests with the court)

## **Proposed additional amendments**

- National Forum on the Implementation of SORMA, October 2017 (Deputy Minister of Justice)
- Competency assessment of children particularly section 164 of the Criminal Procedure Act
- State to appeal on matters of fact – sections 310 and 311 of the CPA
- Provision of reasons by SAPS and NPA on the discontinuation of cases

## Sexual Intimidation

- Broad support of new offence of ‘sexual intimidation’
- However, do not support the inclusion of the element in the offence of ‘imminent harm’
- A threat to a complainant inspires a ‘reasonable belief’ that the complainant shall be raped, sexually violated etc., together with the other elements of the offence is sufficient
- Recommend deletion of ‘imminent harm’

## Amendments RE the NRSO

- General support
- Concern regarding the inclusion of **‘female under 25 years’** in the list of vulnerable persons
  - Arbitrary age distinction
  - Extend to all women
- Definition of “sexual offence” is too limited
  - Must include all sexual offences, whether in terms of statute or common law
- NRSO public
  - Do not support
  - Must serve a legitimate government purpose
  - NRSO for purposes of employment; making it public does not serve that purpose

# Domestic Violence Bill

## Amendment of section 1

- Generally support amendments to section 1
- A number of concerns:
  - Definition of domestic relationship: ‘shared the same residence...within the preceding year’; recommend removal of time frame
  - Definition of domestic violence: ‘other abusive behaviour....reasonable belief that harm maybe caused’; recommend removal of ‘abusive’
  - Definition of intimidation: ‘threat....induces fear of imminent harm’; recommend removal of imminent harm

# Domestic Violence Bill

## Insertion of sections 2A and 2B

- Obligations on functionaries and ‘other adults’
- Need to align the language used
- Recommend the use of two standards to apply to both functionaries and ‘other adults’:
  - Knowledge
  - Reasonable belief or suspicion
  - Recommended drafting is reflected in submissions

# Domestic Violence Bill

## **Section 2A(1)(b) and section 2B(1)(b)**

- WLC does not support mandatory reporting of domestic violence by functionaries where the complainant is an adult, or the mandatory reporting by an adult person where the complainant is an adult
- Undermines service relationship between client and service provider
- Also undermines women's agency to make decisions as to best manner in which to manage the abuser/domestic violence
- Result in women not seeking assistance from service providers, or friends, family and community structures

## **Section 2A(5) and 2B(4)**

- WLC opposes the criminalization of the failure to report domestic violence where the complainant is an adult
- This may result in criminalizing women who offer support, refuge and safety to women victims of domestic violence
- Also may result in people being reluctant to assist victims for fear of being criminalized

# Domestic Violence Bill

## Substitution of sections 4 and 5 of the Act

- Informing the complainant of the outcome of the application in terms of sections 4 and 5 of the Act/ Bill
  - One of biggest challenges to access to justice to women – lack of information as to outcome of the application
  - WLC submissions to Department
  - Welcome amendment which requires clerk to inform complainant if IPO is issued or not issued
  - Regulations are essential to regulate the manner and time frames in which complainants are informed
  - Recommend that court must consider and decide on applications on **same day** as application made
  - Complainants must be informed and provided with documentation; recommend on same day, with proviso that IPO and warrant has no force or effect until it is brought to the attention of the respondent

# Domestic Violence Bill

## Substitution of section 4 of the Act

- Recommend a definition of 'material interest'
- 4(7) The application and affidavits must be lodged with the clerk of the court who **[shall forthwith]** must [immediately] on the same day submit the application and affidavits to the court.”.

## Substitution of section 5 of the Act

- 5(1) The court must on the same day as the application is lodged **[as soon is reasonably possible]** consider an application submitted to it in terms of section 4(7)....
- 5(3) (a) **[An]** Upon the issuing of an interim protection order **[must]** the clerk of the court must on the same day [immediately] notify the complainant of the outcome of the application, the contents thereof, and the return date via telephone, SMS and / or electronically, and / or hand a copy of the application with the interim protection order to the complainant, and the court must direct that copies of -



# Domestic Violence Bill

## Substitution of section 5 of the Act

- 5 (4) If the court does not issue an interim protection order in terms of subsection (2), the clerk of the court must immediately notify the complainant that the court has not issued an interim protection order as well as providing the complainant with the prescribed notice with the return date calling on the respondent to show cause on the return date why a protection order should not be issued via telephone, SMS and / or electronically, and / or hand a notice copy of the application with the details of the return date to the complainant and the court....

## Insertion of section 5(B)(10)

- Liability rests on complainants for the costs related to furnishing of information and the removing or disabling access to electronic communications
- Inquiry to determine ability of complainant to pay costs
- Presumption that complainant is liable; burden on complainant to prove she does not have the means
- State must be responsible for cost



Equal access  
to resources



Being safe  
from violence



The right to  
land, housing  
and property



Recognition of the  
right to choose one's  
profession and to just  
conditions of work



Being well