

The Criminal Trial Process

Access to Justice

That people who need the legal system, to resolve a dispute or make a decision about whether they have broken the law, can go before a court of law and receive a legal decision regardless of their status in society.

Presumption of Innocence

The prosecution must prove the accused is guilty beyond reasonable doubt. Until the court finds the person guilty, they are seen as innocent. If an accused is found guilty they can then be referred to as an 'offender'.

Right to Legal Representation

The High Court has found that a person charged with a serious criminal offence has the right to legal representation if they are unable to pay for it themselves, and that having no representation would lead to an unfair trial.

Accused

A person who has been arrested and charged with a criminal offence. An accused should receive the presumption of innocence until found guilty.

Stay in Proceedings

Stopping the legal process of a trial.

Solicitor

A lawyer who prepares a brief of evidence and legal arguments to be provided to a barrister who will argue the case in court.

Barrister

A lawyer who specialises in presenting a case in court to the judge and jury. They question witnesses and evidence, and make opening and closing statements.

Convicted

When a judge or jury finds the accused person guilty beyond reasonable doubt.

Acquitted

When a judge or jury finds the accused person not guilty.

Appeal to the Supreme Court

For an appeal case to be heard by the Supreme Court there must be a point of law to be appealed. This can be a legal mistake made during the trial or a sentence that the accused thinks is too harsh.

A quick guide to...

- criminal trial process for a robbery case in the District Court
- how the new bail laws work
- the roles of court personnel

To read judgments which are handed down on cases in the NSW District Court go to: www.caselaw.nsw.gov.au

This guide to the trial process will give you a taste of what is involved in hearing a criminal case in the NSW District Court. Court proceedings can be very complex, and vary from case to case. This guide uses a hypothetical to guide you through the process for a criminal offence which is often heard in the District Court.

Hypothetical

A 25 year old man steals the handbag of an 80 year old woman on the street. While grabbing the handbag he pushes her over and she falls to the ground and breaks her hip. She is taken to hospital. The man is arrested by the police and charged with the offence of:

Robbery with wounding under s.96 of the Crimes Act 1900 (NSW). This means the person charged :

"robs or assaults with intent to rob any person, or steals any chattel, money, or valuable security from the person of another,

AND

thereby wounds or inflicts grievous bodily harm on any person, shall be liable to imprisonment for 25 years."

Notes

People involved in the Trial

(Write down the role of each)

Judge

Jury

Prosecutors

Defence Counsel

Court Officers

Witnesses

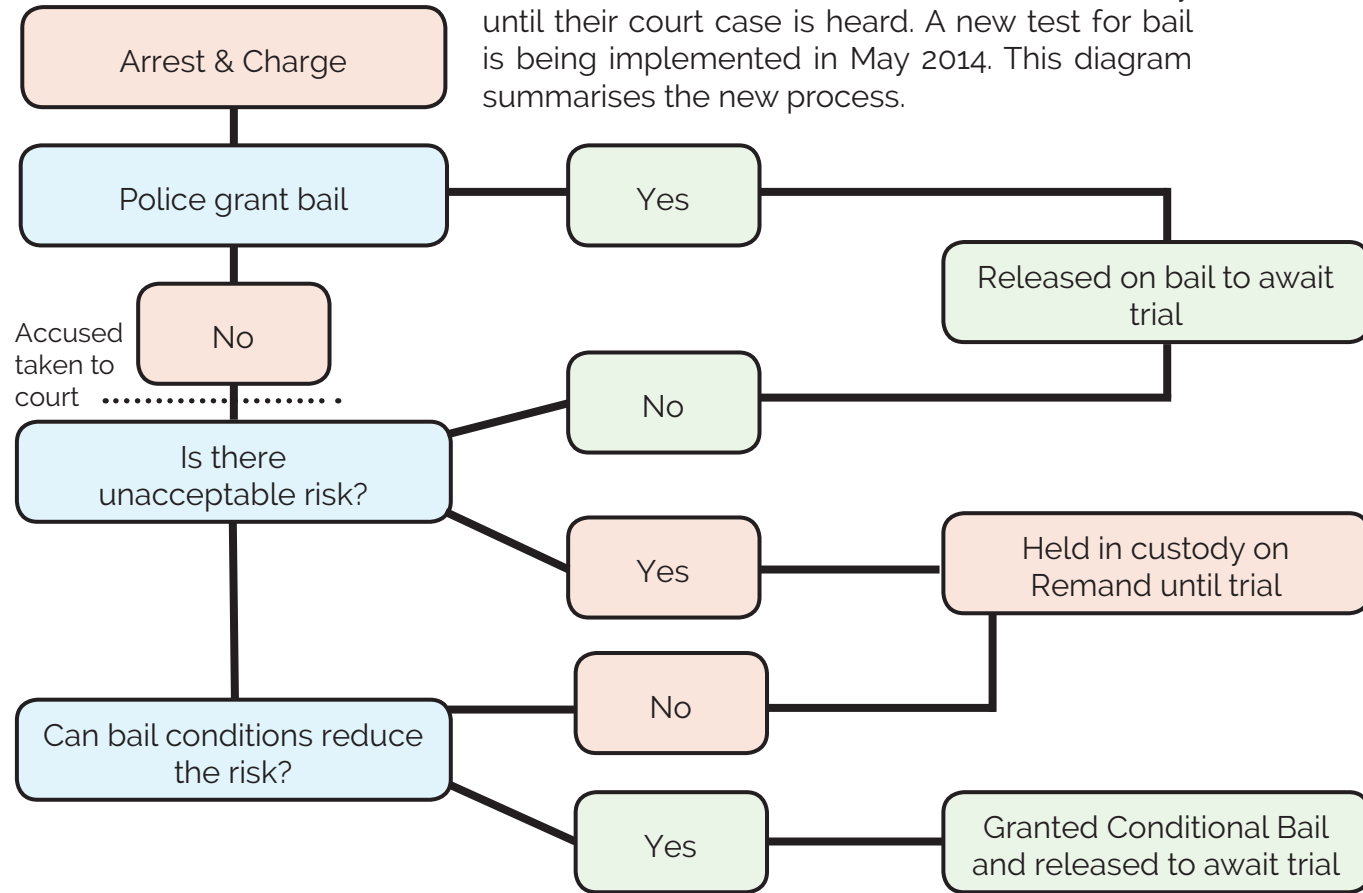
Media/Members of the Public



RoLIA is the Rule of Law Institute of Australia, which is a not-for-profit, non-partisan organisation which promotes discussion of rule of law issues in Australia. This resource aims to show how formal legal processes contribute to the operation of the rule of law in Australia. Find more education resources at our website www.ruleoflaw.org.au/education/

Charge & Bail

Bail is an authority given to an **accused** allowing them to be free to live their lives in the community until their court case is heard. A new test for bail is being implemented in May 2014. This diagram summarises the new process.



Unacceptable Risk Test

An accused person is considered an unacceptable risk; if they may:

- fail to appear in court
- have committed a serious offence
- be a danger to victims or other members of the community
- interfere with evidence or witnesses

Bail Decision

When deciding on bail the court must take into account:

- the person's background and community links
- the strength of the prosecution's case
- nature and seriousness of the offence
- any special needs of the accused eg: youth, health, indigenous status

Possible Bail Conditions

- a person can be required to give the court an amount of money called a security and lose it if they break bail conditions or fail to turn up to court
- they can be limited in what they are allowed to do or where they are allowed to live
- they can be required to report to police a certain number of times a week
- undergo regular testing by police for the consumption of drugs or alcohol

Bail Hypothetical

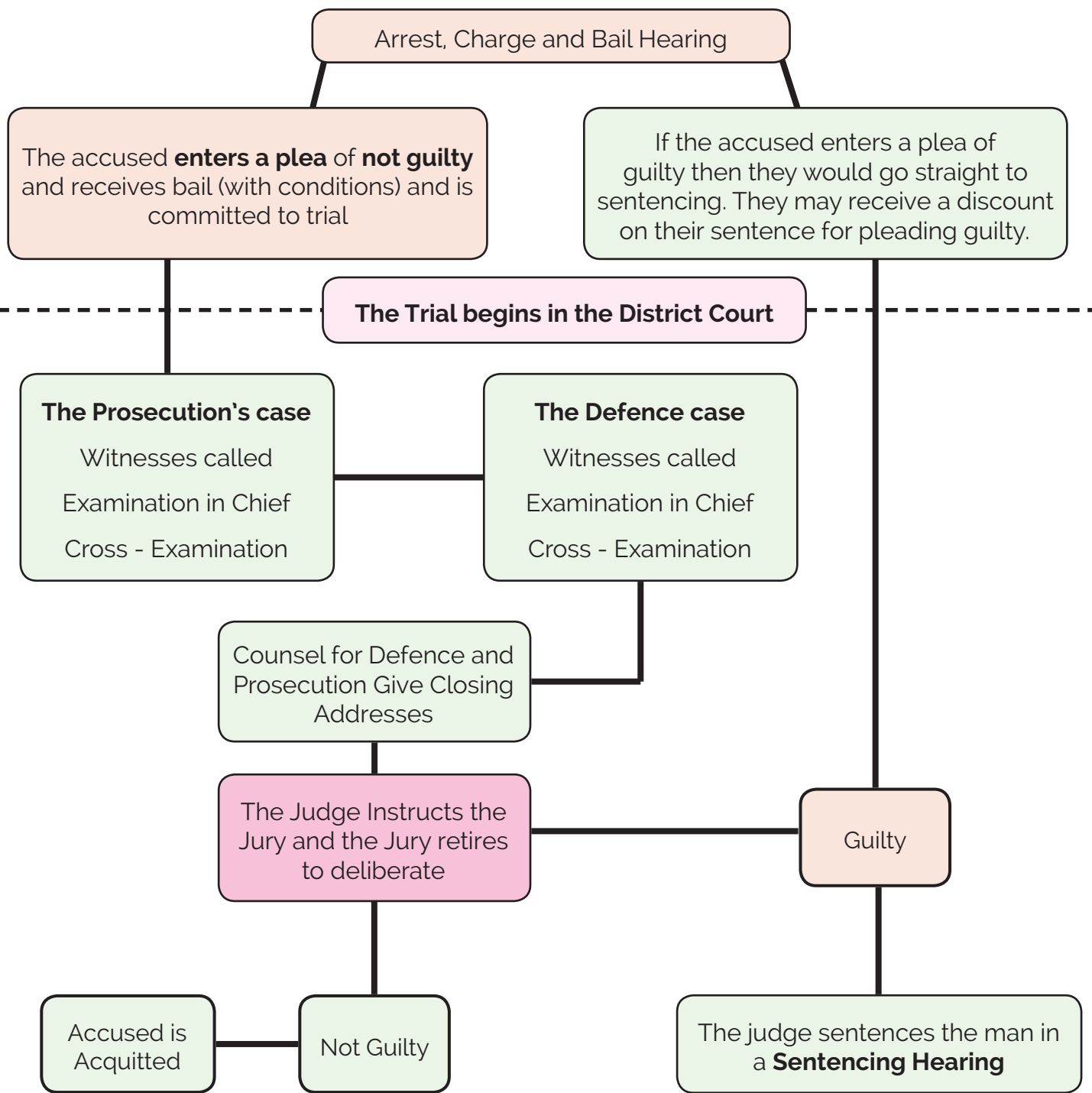
In favour of bail:

The judge may consider the unacceptable risk to be reduced if the offender's mother came to court for the bail hearing, said that he will live with her at her address while on bail and agreed to give a surety of \$1000.

Against bail:

The judge may consider there to be an unacceptable risk if the prosecution's case is strong, because the offender was found to have possession of the woman's bag when he was arrested. Also Robbery with Wounding is a serious offence.

Trial and Sentencing



Sentencing Hearing

1. The Crown Prosecutor will give the Judge some documents, these may include a fact sheet, police report and criminal record.
2. The convicted person's solicitor or barrister may call the convicted person or other witnesses to give evidence about the character of the convicted person or to explain an issue in the case. They will also give the Judge any written documents.
3. The Judge will read these documents and any pre sentence report (if there is one).
4. The Judge will make a decision and impose a sentence.