

## What Happened to the Man?

The jury finds the man guilty of robbery with wounding. He is now known as the offender, not the accused.

A sentencing hearing is conducted and the prosecutor gives the judge a victim impact statement from the lady, and reports from the police about the offender's prior criminal history and conduct on bail.

The offender's barrister calls witnesses to give evidence of his good character, and to explain his issues with gambling, as well as his feelings of remorse about what had occurred with the old lady. The barrister also submits documents such as doctor's reports and character references from the man's employer and the

community groups he is involved in.

After reading all the documents and listening to the witnesses, the judge makes a decision based on all of the information. They consider the purposes of sentencing, other factors required by law, such as the mitigating and aggravating factors and lastly they make a judgment regarding the seriousness of the crime committed compared with other similar cases.

The man is sentenced to 6 years imprisonment and is taken from the courtroom to a correctional facility.

## Glossary

### Access to Justice

The principle 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 based on the rights they are entitled to by the law, regardless of their status in society.

### Accused

A person who has been arrested and charged with a criminal offence is an accused. An accused should be presumed innocent until found guilty by a court of law.

### 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.

### Show Cause

Reasons that a person can give to show why they should not be put into jail on remand whilst awaiting their trial. Show cause offences are listed in the *Bail Amendment Act (NSW) 2014 s16B*.

### Notes

---

---

---

---

---

---

---

---

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/](http://www.ruleoflaw.org.au/education/)

# The Criminal Trial Process

This guide uses a hypothetical case to take you through a criminal trial process in the NSW District Court from start to finish. The steps indicated **are always part of a full criminal trial process for any trial that receives a verdict**, but there are extra bits to the process that can

happen depending on many different circumstances. Don't stop with this hypothetical: to get a feel for the real stuff you'll have to visit the courts and read case law, see: <http://www.caselaw.nsw.gov.au>

## Step 1: Arrest and Charge

### Arrest

A 25 year old man steals the handbag of an 80 year old woman on the street after seeing her withdraw money from an ATM.

While grabbing the handbag he pushes her over and she falls to the ground and breaks her hip. She is taken to hospital where she undergoes surgery and the doctors advise that she will have many months of rehabilitation before she can walk again. It is likely she will require the assistance of a walking frame for the rest of her life.

The police collect evidence from CCTV cameras and witness statements. The man is arrested by the police and charged with **"Robbery with wounding"**.

The Police do not grant bail as the offence is a 'show cause' offence and because the accused has a previous conviction for robbery when he was 19 years old. The man is held in custody until a bail hearing can occur before a judge.

### The Charge

Robbery with wounding in the Crimes Act 1900 (NSW):

- s95(1) defines the offence of robbery
- (2) (a) - (c) are the circumstances of aggravation and
- s96 provides a harsher penalty if there is wounding or grievous bodily harm

#### Section 95 - Same (robbery) in circumstances of aggravation

(1) Whosoever robs, or assaults with intent to rob, any person, or steals any chattel, money, or valuable security, from the person of another, in circumstances of aggravation, shall be liable to imprisonment for twenty years.

(2) In this section, circumstances of aggravation means circumstances that (immediately before, or at the time of, or immediately after the robbery, assault or larceny) involve any one or more of the following:

- (a) the alleged offender uses corporal violence on any person,
- (b) the alleged offender intentionally or recklessly inflicts actual bodily harm on any person,
- (c) the alleged offender deprives any person of his or her liberty.

#### Section 96 - Same (robbery) with wounding

Whosoever commits any offence under section 95, and thereby wounds or inflicts grievous bodily harm on any person, shall be liable to imprisonment for 25 years.

## Step 2: Bail or Remand?

Bail can be granted by the police or a judge and allows an accused to be free in the community until their court case is decided, provided they are not an **unacceptable risk** - *see the glossary for definitions of the bold words*.

### Conditional Bail

If a bail authority determines there are **bail concerns** but that **bail conditions** can be placed on them to address those bail concerns, the person can be granted conditional bail.

### Denial of Bail

If a person is denied bail they are **held on remand**, in a correctional facility. A criticism of the old Bail Act 1978 (pre-2014) was that too many people were being held on remand, and waiting times for them to go to trial were too long.

### Reform of the Bail Act

In May 2014 a new Bail Act was introduced because the old act, first introduced in 1978, had become overly complex, and outdated.

However, the new act was the subject of controversy when a number of high profile accused received bail under the new Act.

This led the NSW Government to amend the Bail Act 2013. The amendments require an accused to **show cause** when charged with certain serious offences. For a show cause offence, an accused must prove their imprisonment is not justified before the court will consider unacceptable risk. An accused charged with a show cause offence is automatically denied bail if they cannot **show cause**.

Changes were also made to the unacceptable risk test to introduce the new 'bail concerns' test.

### The Presumption of Innocence

Another change in September 2014 was the removal of the presumption of innocence from the purposes section of the Bail Act 2013. It is now found in the preamble to the Act. This reduces the status of the presumption in the Bail Act.

Note: the explanation of the bail laws on this page, and in the diagram on the following page takes into account the most recent changes to the Bail Act. These changes as of November 2014 have not yet been proclaimed and are not in force. The NSW Government has not yet indicated a commencement date.



## Step 2 continued: Bail or Remand

A few days after being arrested, charged and held on remand the accused man appears before a judge in court to see whether they will grant bail. The Department of Public Prosecutions (DPP) appears for the State of NSW and the man is represented by a solicitor.

The solicitor argues that the man can **show cause** (see the glossary for definitions of the bold words) why his detention is not justified as he is in a problem gambler support program run by his local hospital. Also that the accused is employed, engaged in his local community and is the sole carer for his young family. The judge has to decide if the man (via his solicitor) is successful in **showing cause** as to why he should not be **held on remand**.

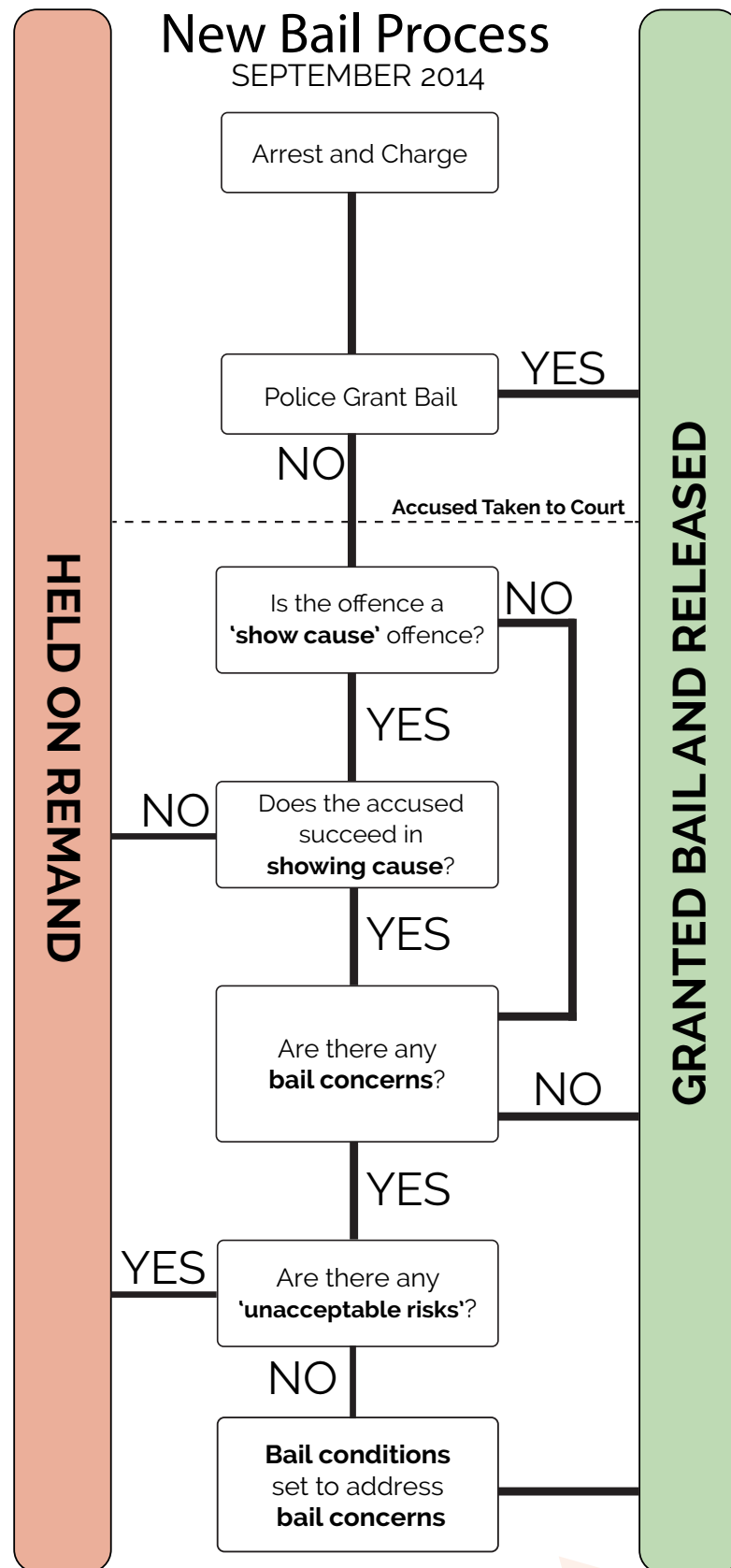
In addition to the information provided by the accused's solicitor the judge considers the following:

- The prosecution's case is strong considering the evidence collected by the police,
- The man was found to have possession of the woman's bag when he was arrested.
- Robbery with wounding is a serious offence.

The judge decides that the accused is successful in **showing cause**, and finds that there are some **bail concerns** but that these can be solved by **bail conditions** including a 'surety' of \$1000 and an order to report to police daily.

The accused's mother is at the court for the bail hearing, she agrees that the accused and his young family will live with her while he is on bail, and agrees to pay the surety of \$1000.

The accused is released on bail, but the judge tells him that any misbehaviour or breach of his bail conditions will see his bail revoked. A trial date is set for two months' time.



HELD ON REMAND

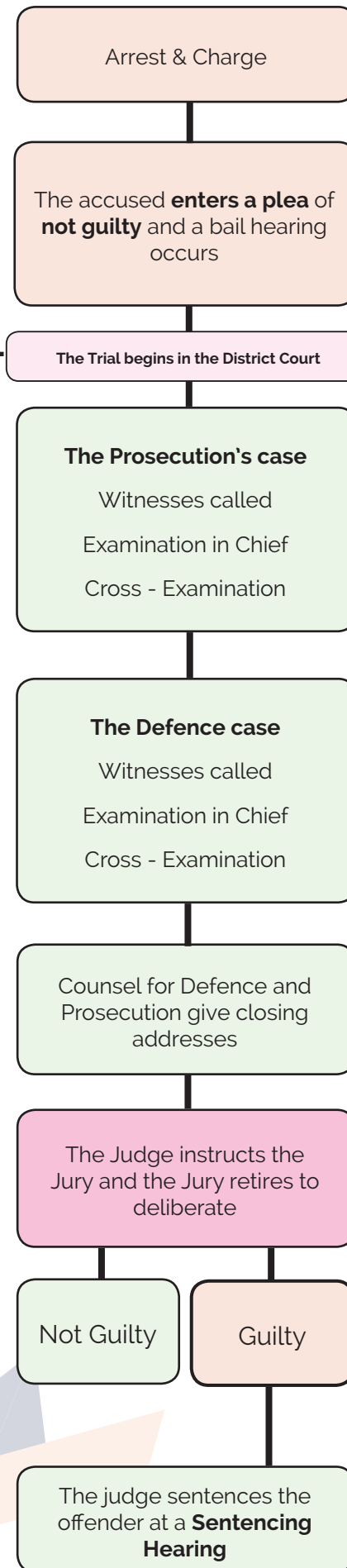
GRANTED BAIL AND RELEASED

## The Defence Case

The accused enters a plea of not guilty and insists there was a verbal altercation between himself and the lady over money that she owed him, and that he had

possession of the bag with her permission. He denies that he assaulted the lady and claims that she fell over because she tripped on an uneven surface.

## Step 3: Trial



## Step 4: Sentencing Hearing

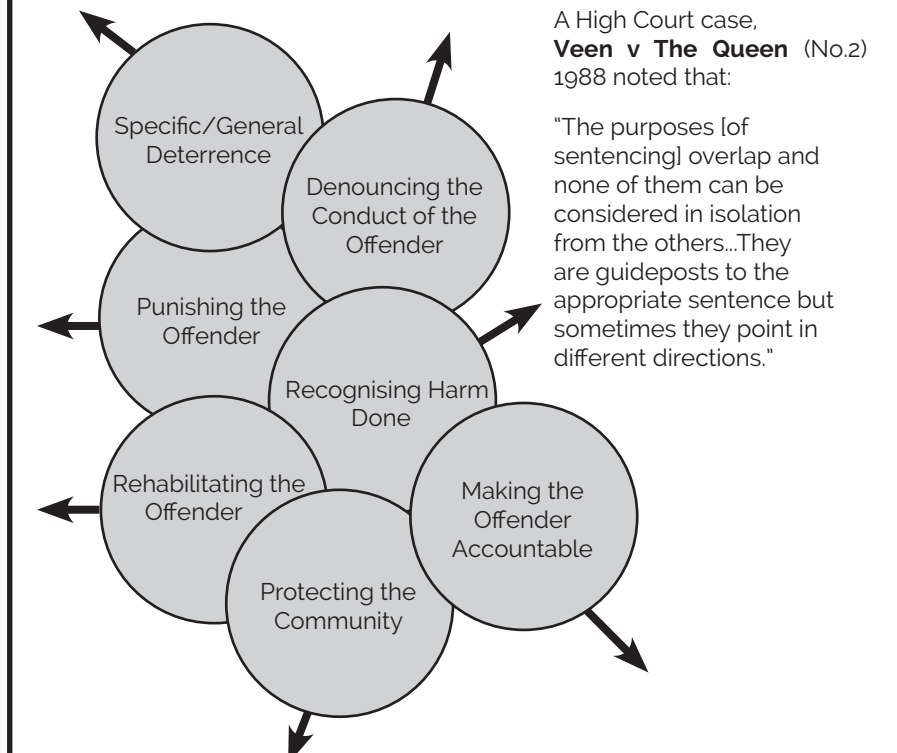
If the accused is found guilty, the judge conducts a sentencing hearing.

A judge has many 'non-custodial' penalties to choose from, such as bonds and community service orders if they are appropriate. However, for more serious crimes the sentence is often imprisonment.

Criminal offences carry a maximum period of imprisonment, leaving the judge to decide, based on the facts of the case, the actual term of imprisonment to be served.

In NSW judges must consider the seven purposes of sentencing - see Section 3A of the Crimes (Sentencing Procedure) Act 1999 (NSW).

### The Seven Purposes of Sentencing



A High Court case, **Veen v The Queen** (No.2) 1988 noted that:

"The purposes [of sentencing] overlap and none of them can be considered in isolation from the others...They are guideposts to the appropriate sentence but sometimes they point in different directions."

There are also five legislative and common law principles that must be applied by the in every case:

- imprisonment as a punishment of last resort** - that no sentence other than imprisonment is considered appropriate (see section 5(1) of the Crimes (Sentencing Procedure) Act 1999 (NSW)
- proportionality** - the penalty must be proportionate to the offence
- totality** - the total sentence imposed for multiple offences must not be disproportionate to the total criminality
- parity** - similar offenders should get similar sentences where there are multiple offenders involved
- the **De Simoni rule** - preventing sentencing for something not included in the charge and conviction.

Finally, the judge must consider mitigating and aggravating factors, below are several examples from s21A Crimes (Sentencing Procedure) Act 1999 (NSW):

**Mitigating Factors:** remorse and acceptance of responsibility, provoked by the victim, unlikely to re-offend, good character, a guilty plea, harm caused was not substantial.

**Aggravating factors:** use of violence, weapons, offence committed in company, gratuitous cruelty, act motivated by hatred of a particular group of people, victim was a public official such as a police officer, teacher, paramedic, etc...

