

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.