

## The Criminal Law Process

If you have been charged, or are under investigation for a criminal offence, one of the most daunting aspects is not knowing how the "system works". The following pages are designed to explain in simple terms the criminal process.

In Queensland, people are generally charged with criminal offences in one of three ways:

- (a) arrest,
- (b) summons, or
- (c) notice to appear.

If arrested, a person is taken by police to the nearest watchhouse, where they are formally charged. Usually they are photographed and fingerprinted, and a DNA swab is taken. If a person is charged by way of summons or notice to appear, the police simply provide them with a document outlining the charge. This document directs a person to appear in court at a future date. Regardless of the method of charging, the person charged will normally be required to appear in the Magistrates Court a couple of weeks later.

When someone is charged by way of arrest, bail is normally granted by the Watchhouse keeper. Bail is usually allowed unless the case is a very serious one, or the person has a bad bail history. A deposit of money is not normally required. If the Watchhouse keeper does not grant bail, the person charged must stay in custody until appearing in court for the first time (usually that same day or the next day). At that first court appearance, the Magistrate can then grant bail.

When a person is charged by way of summons or notice to appear, the question of bail is normally determined by the Magistrate at the first court appearance. Again, a deposit of money is not normally required. A Magistrate or Watchhouse keeper can however impose certain conditions of bail, including the payment (or promise) of money, regular reporting to a police station, living at a certain address, or having no contact with a particular person.

### **I have been charged with an offence: now what?**

How your matter progresses through the court system will depend on the type of offence with which you have been charged. If the offence charged is of a particularly serious nature (such as a serious assault, fraud, drugs or murder etc), it is likely to be determined in the District or Supreme Court. Less serious matters, such as drink driving, shoplifting, minor assaults, etc, can usually be dealt with in the Magistrates Court. It will sometimes be a decision for the prosecution, or the Magistrate, as to the court in which your matter is heard. For certain charges, you as the defendant can elect which court will hear the matter.

### **Do I have to appear?**

While it is a formal part of your bail obligations to appear each time your matter is "mentioned" in the Magistrates Court, quite often a person does not have to appear if legally represented. We will advise you of when you must appear. Please ask us if you are in any doubt. A person who fails to appear without reasonable excuse can be arrested on a warrant for non-appearance. Serious consequences, including imprisonment and large fines, can be imposed for breaches of bail. There is usually no requirement to appear

at interim mentions once your matter reaches the District or Supreme Court, provided we appear on your behalf.

### **What will this cost me?**

The issue of costs will be discussed with you early on in our dealings with you. Legal costs will vary depending on how quickly a matter is disposed of and what preparation and investigation is required to finalise a matter. At the commencement of each matter we send out a retainer letter and/or formal costs agreement which provides details of our estimated costs, and our fee policy. We are always happy to talk about fees at any time and urge you to raise this issue with us as and when you feel necessary.

### **What's going to happen to me?**

Your prospects of success, and/or your chances of receiving a certain type of punishment, will be the most important considerations for you throughout your case. We will endeavour to provide you with accurate and considered advice as to your chances. In these circumstances, we will use our experience to provide you with realistic and objective advice. We believe that it is only through proper, professional expert advice that you can make the appropriate decisions concerning your future.

### **Other Questions?**

- Will I go to jail?
- Can I appeal?
- Will a conviction affect my job?
- Can I be reimbursed if I win?

At Gilshenan and Luton we realise that facing a criminal charge, large or small, is one of the most stressful, and often frightening, times in a person's life. The court system is complex and sometimes very confusing. We will do all we can throughout your matter to explain things as clearly and concisely as possible, and you should feel comfortable in raising with us at any time any questions you may have.

Gilshenan & Luton is renowned for its expertise and experience in criminal law and related matters. The firm's principal, Glen Cranny, and Senior Associate, Craig Pratt are both accredited by the Queensland Law Society as specialists in the field of criminal law. Glen and/or Craig supervise each of the firm's files. If you have any queries or concerns at any time, you are welcome to contact them as follows:

**Glen Cranny, Principal, on 07 3361 0240 or email [gcranny@gnl.com.au](mailto:gcranny@gnl.com.au)**  
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*Please note: this publication is designed to provide a simple overview and should not be relied upon instead of legal advice. This publication is correct at time of printing.*

