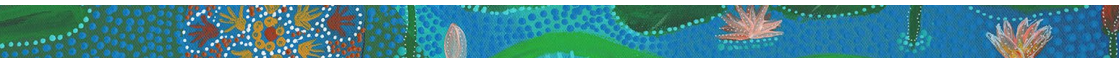




Have you been charged with an offence?

A guide to appearing in the Magistrates Court



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Disclaimer

This guide is intended to provide you with information only. If you have a legal problem, you should get legal advice from a lawyer. Legal Aid Queensland believes the information provided is accurate as at July 2023 and does not accept responsibility for any errors or omissions.

We are committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you would like this publication explained in your language, please phone the Translating and Interpreting Service on 13 14 50 to speak to an interpreter. Ask them to connect you to Legal Aid Queensland on 1800 998 980. If you are deaf or have a hearing or speech impairment you can contact us using the National Relay Service. Visit www.accesshub.gov.au and ask for 1800 998 980 (our legal information line). These are free services.



How can this guide help me?

This guide can help you if you've been charged with an offence and you need to appear before a Magistrates Court in Queensland.

Many offences are dealt with in the Magistrates Court. If you are unsure whether the offence you are charged with can be dealt with in the Magistrates Court, you should get advice from a lawyer.

Duty lawyers are available in most Magistrates Courts. When you first appear before the Magistrates Court you may be able to access a duty lawyer, whose role is to provide free legal advice to people charged with offences who don't have private legal representation. Telephone the courthouse to check if a duty lawyer will be available when you go to court.

Do I need to get legal advice?

Yes, if you have been charged with an offence then you should get legal advice.

A lawyer can:

- explain what your offence means
- give you information and advice
- help you decide if you should plead guilty or not guilty
- explain what your penalty might be
- explain what will happen in court.

How can I get legal advice?

Contact Legal Aid Queensland

Legal Aid Queensland provides free legal advice, and you can call us on 1300 65 11 88 for the cost of a local call. If it is appropriate in your circumstances, a customer service officer will give you legal information and make an appointment for you to talk with one of our Legal Aid lawyers. You can talk with the lawyer over the phone or visit one of our offices and talk with them face-to-face.

If you are charged with an offence, we recommend that you obtain a copy of your QP9 before contacting Legal Aid. The QP9 is a written summary of the police version of why you were charged and what happened. To get a copy of the QP9 you can ask the police prosecutor to show it to you on your first mention date, or ask the duty lawyer to get a copy for you and to read it to you.

If you were unable to collect your QP9 at your first court date, you should apply to the police/prosecutions office for your QP9. You will need to present photo identification and a written request to the police prosecutor. Contact your local police station if you are unsure where to apply.

If your QP9 is not provided to Legal Aid, this may limit the amount of advice we can provide you.

Contact a private lawyer

You may have your own lawyer, but if not, you can find one by:

- looking in the phone book
- calling the Queensland Law Society's private lawyer referral line on (07) 3842 5842
- visiting the Queensland Law Society's website www.qls.com.au

Contact your local community legal centre

Community legal centres provide free legal help. They can usually only provide legal advice. To find out where your closest centre is, call Legal Aid Queensland on 1300 65 11 88.

Talk with a duty lawyer at the Magistrates Court

A duty lawyer works in most Magistrates Courts and can:

- provide free legal advice
- look at what the police have charged you with and explain the charges
- let you know if your charges can be dealt with by the Magistrates Court
- speak for you in court if you do not want to represent yourself
- ask for an adjournment
- apply for bail if necessary
- have a conference with the police prosecutor
- help you with pleas of guilty. If the duty lawyer is of the opinion that your case needs further preparation time, or that the matter is too serious for a duty lawyer, they will help with an application for an adjournment to make an application for legal aid or seek further legal assistance
- help you with pleas of not guilty by entering your plea and setting a date for a hearing.

The duty lawyer can't:

- represent you on minor traffic offences or drink driving charges unless there is a risk of you going to jail
- represent you at a committal hearing or represent you at a hearing.

Ring the courthouse to find out if a duty lawyer will be available when you go to court.

When you arrive at the courthouse, ask at the front counter or look for the duty lawyer's room.

Can I get legal aid?

You have to apply for a grant of legal aid if you want a lawyer to represent you in court. Demand for our services is high, so we use strict criteria when granting aid for legal representation. This way we can make sure we are using our funding to help those who are least able to afford a lawyer.

Application for legal aid forms are available at all Legal Aid offices and on our website. To find out more visit www.legalaid.qld.gov.au or phone 1300 65 11 88.

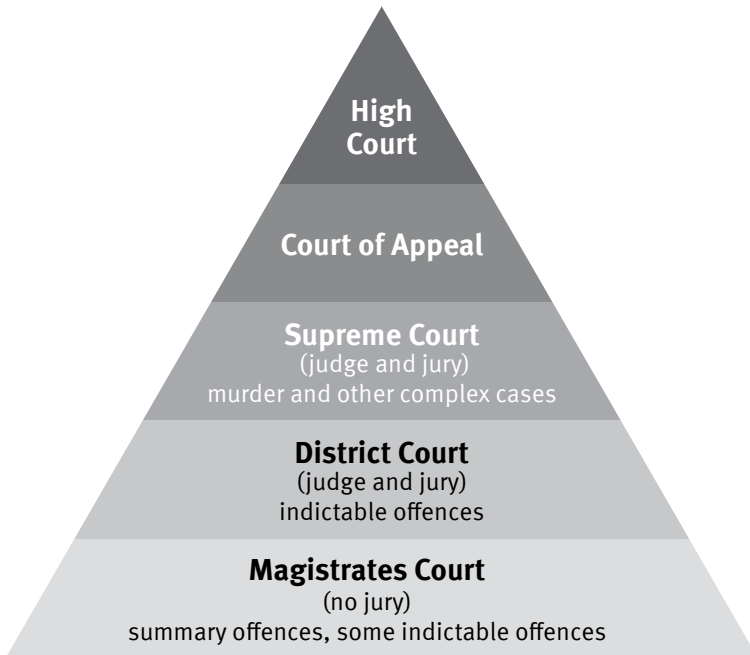


The criminal court system

The police investigate if laws have been broken. They can charge you if they believe you have broken the law. The police will tell you the date on which you must first appear before the court for your charges.

It is then up to the court to hear the evidence and decide if you are guilty and what the penalty should be.

Many cases can now be dealt with by the Magistrates Court. The magistrate decides both guilt and penalty. In the higher courts (District Court, Supreme Court) the jury decides if you are guilty and the judge decides the penalty.



Important principles

1. You are considered innocent until proved guilty beyond a reasonable doubt

This means it is up to the police to give evidence to the court to prove you are guilty. If you plead not guilty, you or your lawyer can defend the charge. If you plead guilty, the court only hears a summary of the evidence and finds the case proved. It then decides the penalty.

2. It is an adversarial system

This means the police and the defence (you and your lawyer if you have one) are opposing sides (adversaries). Each side may give evidence to the court. When deciding if you are guilty or not, the court will think about only the evidence and what is said in court. The court has no power to investigate further.



I've been charged with an offence – what happens now?

This flowchart explains what happens after you have been charged with an offence.

YOU WILL HAVE TO APPEAR IN COURT

THERE ARE FOUR WAYS YOU CAN BE MADE TO GO TO COURT.

1. The police could take you to court – if the police arrest you, they can take you to the watch-house and keep you in their custody until you have to appear in court.

2. You could receive bail and be ordered to go to court – instead of being taken into custody by the police, you might be given bail and allowed to go home. To get bail you will need to sign a document promising you will go to court on a certain date to face the charges against you.

3. You could receive a Notice to appear – instead of being placed in custody by the police, you might be given a *Notice to appear* and be allowed to go home (see sample on page 40).

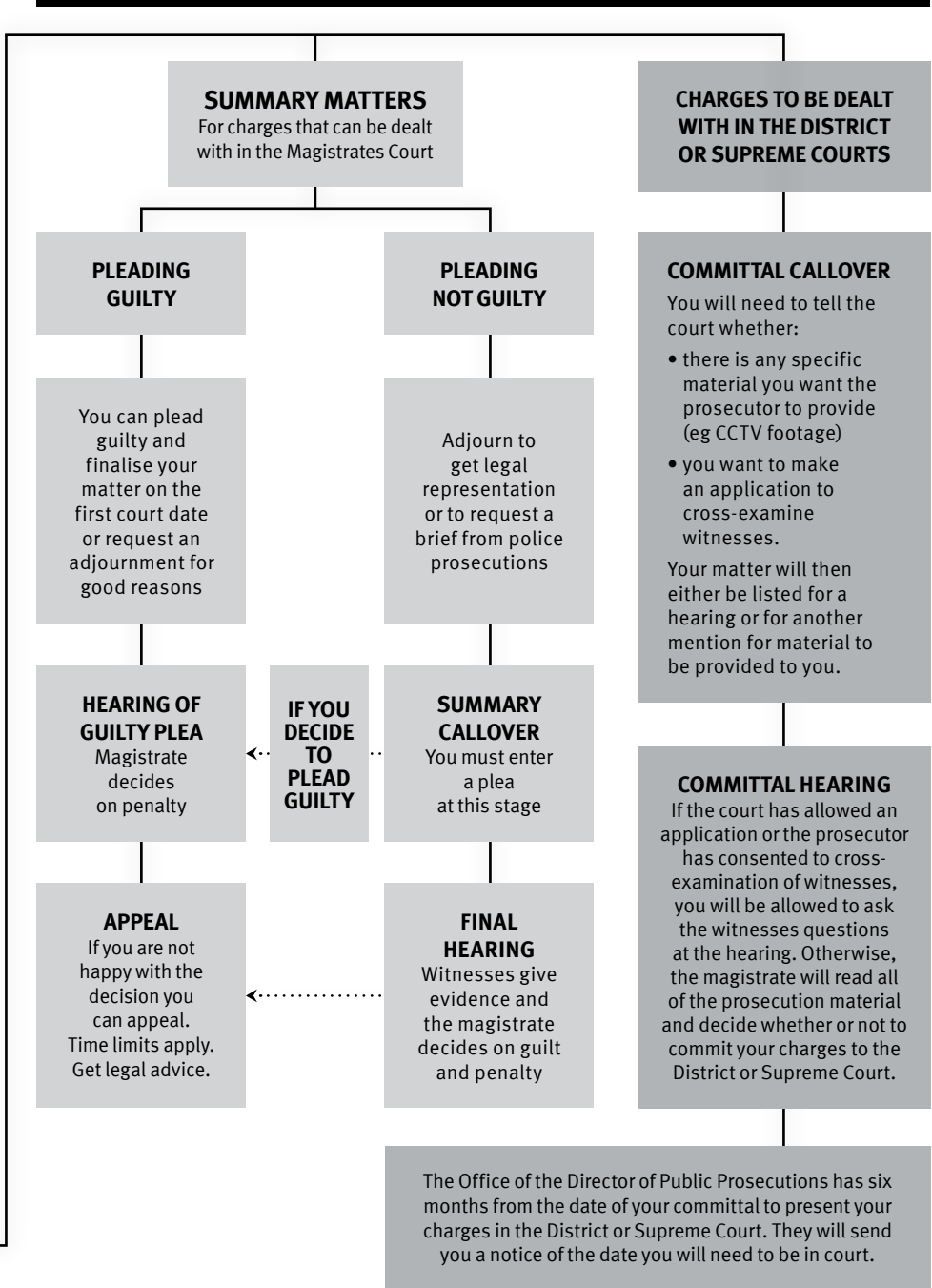
4. You could receive a Summons to appear – You can be charged and given a *Summons to appear* before the court (see sample on page 41).

YOU NEED TO KNOW WHAT THE POLICE ARE ALLEGING AS THE BASIS OF THE CHARGE TO DECIDE HOW YOU WILL PLEAD

DUTY LAWYER – Line up to see the duty lawyer who will get the QP9 from police for you and give you legal advice.

REPRESENT YOURSELF – Get the QP9 form from the police prosecutor and tell them you are going to represent yourself.

DECIDE IF YOU WANT TO PLEAD GUILTY OR NOT GUILTY



How do I know when to go to court?

You must go to court on the date set down in your notice to appear, summons or bail conditions or the date the magistrate told you when you last appeared. The first date you go to court is called the first ‘mention’ date.

What if I don’t go to court when I’m meant to?

If you don’t go to court on the right date you could be charged with a further offence called ‘failing to appear’. The court may issue a warrant for your arrest if you don’t attend court on the correct date.

If you did not attend court on the correct date, you should get legal advice.

For some simple offences (eg minor traffic offences) you may be able to enter a plea of guilty in writing by mail or online. For more information about how to lodge a plea of guilty online, talk to a lawyer or the relevant court. If the police give you a *Plea of guilty* form, and you want to plead guilty, you can send this to the court instead of attending on the date listed (see sample *Plea of guilty* form on page 42).

You should not enter a plea of guilty for any offence in writing without getting legal advice first. If you get legal advice, the lawyer may also help you fill in the form.

Going to court

Before you arrive

- Find out the court's address and check the location on a map.
- Organise to arrive at court early. This will give you time to register your arrival at the court counter and see the duty lawyer if you have to.

You might be there all day depending on the number of matters before the court. You should plan to take the whole day off and organise child care if necessary.

- Dress neatly.
- Bring all of your paperwork, a pen and note paper.
- Organise to take a family member or friend to support you. They can come into the courtroom with you.

When you arrive

- See the staff at the counter and:
 - tell them your name
 - ask for an interpreter if you need one; the court will arrange and pay for an interpreter
 - find out the courtroom your case will be in or check the daily law list, which is displayed on the notice boards or television screens in the foyers and waiting areas
 - find out where the duty lawyer is if you want advice or if you want them to represent you.
- Ask the staff at the counter if there is anyone from the Salvation Army, drug services or other organisation you may be able to talk to. They can:
 - tell you what will happen
 - tell you about places that can help you if you have a drug or alcohol problem
 - go into court with you.

- Wait for your turn. You can sit quietly at the back of the courtroom and watch other cases to get an idea of what happens.

Otherwise, wait outside in the foyer. The court clerk will call your name when the magistrate is going to hear your matter.

If you have told the court clerk and the prosecutor you are waiting to see a duty lawyer, the court will not call you until the duty lawyer tells them you are ready.

- Turn off your mobile phone. Don't eat, drink or chew gum in court.

Who's who in the courtroom?



- 1. Magistrate** — hears the case, decides if you are innocent or guilty and what penalty you should receive.
- 2. Depositions clerk** — assists the magistrate and records proceedings.
- 3. Police prosecutor** — explains your charges to the court and presents the police case against you.

-
4. **Duty lawyer** — helps people who have been charged with a criminal offence but do not have their own lawyer.
 5. **Defendant** — the person who is defending themselves against criminal charges (you).
 6. **Witnesses** — tell the court about something they heard or saw to support your story or the police case against you. Experts, like doctors or engineers, may also be called to give their opinion if needed.

What to do when you are called

- Stand when the depositions clerk says “all rise” when the magistrate enters or leaves the courtroom.
- Bow your head to acknowledge the magistrate when you enter or leave the courtroom.
- Stand when you are being spoken to and address the magistrate as ‘Your Honour’. Call the police prosecutor ‘the prosecutor’.
- Speak clearly and follow the magistrate’s instructions. You can read from your notes.
- If you need an interpreter, ask the court for one on your first court date. The magistrate will adjourn your case to another date and the court will organise and pay for an interpreter.

What will happen on my first mention or appearance date?

What happens in the courtroom will depend on your charges and if you choose to plead guilty or not guilty.

There are three legal options for your first mention date. You should discuss these options with a lawyer.

Option 1. Adjournment

Option 2. Plead guilty

Option 3. Plead not guilty.

Option 1. Adjournment

You should ensure that you have had legal advice as soon as possible as it may not be possible to obtain more than one adjournment of your matter.

You, or the duty lawyer, can ask for your case to be adjourned to another date to allow you to get more legal advice and help.

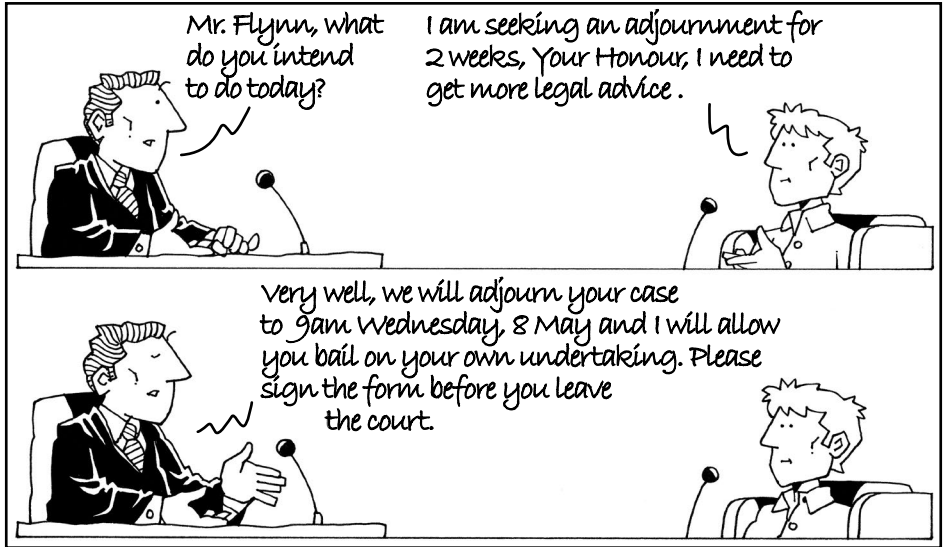
If the court gives you an adjournment you will be given a new date to come to court.

If you have been in police custody, the court will look at what bail conditions are appropriate during the adjournment. Usually you will be given bail on your own undertaking. This means you will have to sign a form before you leave the court promising you will come to court again at the next mention date.

Other bail conditions could include:

- bail with residential or reporting conditions — you will have to live at a certain address and report to a particular police station during the week on certain days
- bail with a surety — you agree to pay a certain amount of money to the court if you do not appear at the next mention date
- no bail — if you are not given bail you will be kept in custody until your next mention date. This may be because you have a record of failing to appear, the court thinks you are at risk of committing further offences or for some other legal reason.

Scenario 1 – How to ask for an adjournment



Your second court appearance

- On your second appearance date you must be ready to tell the magistrate whether you are pleading guilty or not guilty.
- If your matter is to proceed in the Magistrates Court then the magistrate will ask for the result of the case conference, which is a discussion about the charge(s) between the prosecutor and yourself (if you are representing yourself), or between the prosecutor and your lawyer/duty lawyer.
- The prosecutor for example may agree to drop some charges, if you plead guilty to others.
- Even if you are unable to come up with an agreement you must still tell the magistrate that you have held discussions with the prosecutor.
- An election (decision) must be made whether or not your charge(s) can be dealt with by the Magistrates Court or by the District Court. If the prosecutor has the election, they will tell the court where your matter will be heard.
- The magistrate may ask you to decide which court you want to go to if the nature of your charge requires you to decide what court your matter is decided in.

Option 2. Plead guilty

You can choose to tell the court you are guilty of the offences you have been charged with by the police.

Do not plead guilty unless you understand exactly what the police have charged you with. A conviction can have serious consequences and you should get legal advice before pleading guilty.

Many charges can be dealt with in the Magistrates Court if you are pleading guilty.

You should seek legal advice about whether your charge(s) can be dealt with in the Magistrates Court.

For information on how to plead guilty, see pages 18 to 23.

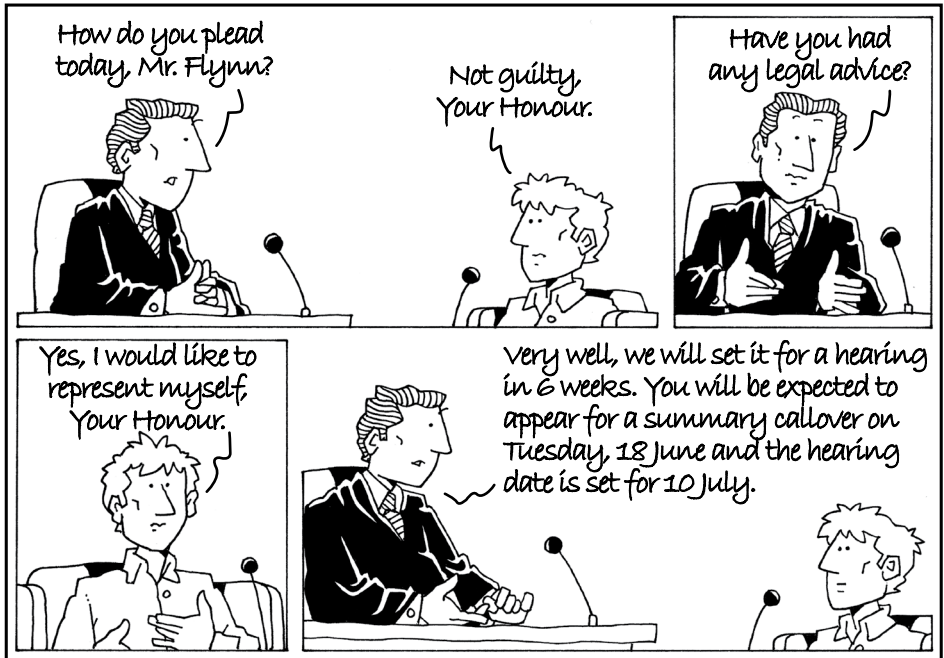
Option 3. Plead not guilty

You can tell the court you did not commit the offences the police have charged you with. You will be given a new date to come to court to hear the police evidence against you and explain your version of events to the magistrate.

For information on how to plead not guilty, see pages 24 to 32.



Scenario 2 – How to plead ‘not guilty’



I have plead not guilty, what happens now?

- If your matter can be heard in the Magistrates Court and proceeds to a trial, the magistrate will then set a date for you to appear at a mention called the **summary callover**. At the summary callover, the matter will then be listed for trial.
- The prosecutor must provide you with a full brief of evidence **within 5 weeks** of the summary callover.
- If your matter can not be heard in the Magistrates Court and instead needs to be heard in the District or Supreme Court (seek legal advice about this) then the magistrate will then set a date for you to appear at a mention called the **committal callover**.
- You must seek legal advice if your matter is listed for committal callover.

Pleading guilty

Should I plead guilty?

Do not plead guilty until you fully understand the police version of events and have received legal advice.

If you plead guilty, the court will hear a summary of the police evidence only.

You, or the duty lawyer acting for you, will be able to tell the magistrate about your personal circumstances.

The magistrate will then decide what penalty you will get.

Diversion program

If you have been charged with drug offences and you are willing to plead guilty, you may be able to complete a diversion program as an alternative to another penalty.



What happens when I plead guilty?

Take these steps to plead guilty after the police have charged you with an offence:

1. find out the police version of events, get legal advice and prepare to plead guilty

2. attend court on your first mention date

- the magistrate reads the charge
- you plead guilty
- the police give their version of events
- you give your version of events
- the magistrate decides your penalty.

How do I prepare to plead guilty?

Before pleading guilty you should:

Find out the police version of events

The police officer writes down their version of your alleged offence in a document called a QP9. It is important you understand exactly what you are being charged with and the police's version of events.

By pleading guilty, you are agreeing to the police's version of events.

To get a copy of the QP9 you can:

- ask the police prosecutor to show it to you on your first mention date, or
- ask the duty lawyer to get a copy for you and to read it to you.

If you disagree with any of the police details about your offence, you must tell the duty lawyer or the police prosecutor.

Get legal advice

You need to get legal advice about how to prepare for court and your likely penalty, even if you will represent yourself on the day.

Prepare what you want to say

Think about what you want to say in court. Write it down and take your notes to court (see the information the court may want to hear on pages 43 and 44). If you prefer, the duty lawyer may be able to speak for you (unless you are appearing on minor traffic offences).

Prepare information to help you in court

For example:

- Get written character references explaining the type of person you are. These could be from your family, friends, teachers, sport captains or coaches or other people who know you well (see the sample character reference on page 45).
- Get a letter from your employer showing you have a job and are a good worker (see the sample letter from your employer on page 46).
- Take financial information the magistrate may need to know, like your weekly wage and financial commitments.

Arrange counselling

If drug or alcohol problems were one of the reasons you offended, it is a good idea to arrange counselling.

Counselling helps you with your drug or alcohol problems and shows the magistrate you are serious about not reoffending.

You should start counselling before you plead guilty or tell the court you are prepared to go to counselling.

If you have started counselling, take a letter from your counsellor or social worker that explains the counselling you are receiving. Or, if they can, ask your counsellor to come to court so the magistrate can ask them questions.

Visit the court to see how it works

It is a good idea to try to visit the court before you have to appear before the magistrate to see what happens and learn how the process works. This will help you to feel more confident when your court date arrives.

How do I plead guilty in court?

1. The magistrate reads the charge

Your name is called. You stand at the bar table in front of the magistrate so you are facing the magistrate (beside the duty lawyer if the duty lawyer is appearing for you).

The magistrate reads the charge and asks if you are pleading guilty or not guilty.

You, or the duty lawyer, tell the magistrate you are pleading guilty.

2. The police read their version of events

The police prosecutor reads the police version of events.

The police will tell the magistrate if you have any previous criminal convictions or a traffic history. You are entitled to see these if you want.

If you have a criminal record or traffic history and there is something you do not agree with, tell the duty lawyer or the magistrate.

3. You give your version of events

The magistrate will ask you if you have anything to say about the police version of events and if you think they are correct.

If there is something you do not agree with that might affect the penalty, you should tell the magistrate or get the duty lawyer to tell the magistrate.

Remember, if you are pleading guilty to the charge and you say something that suggests you don't believe you are guilty, the magistrate will not accept your guilty plea.

Tell the magistrate anything that may explain how or why you came to commit the offence. Remember, the magistrate does not want to hear excuses or things that are clearly untrue.

You need to:

- explain why you committed the offence
- give any information that might explain how or why you committed the offence (mitigating circumstances), for example:
 - you may have been very depressed and taking medication that affected your judgment
 - you may have had a death in your family
 - your parents may have kicked you out of home and you were left homeless
- give the court clerk any supporting information such as your character references, a letter from your employer or doctor or medical reports
- provide the magistrate with any relevant personal details, for example:
 - if you have children you support
 - if you are employed
 - your level of education
 - if you could pay a fine or do community service
 - if you are attending or are prepared to attend any courses such as anger management and drug or alcohol counselling
- say sorry for what you have done if you really mean it — for example, you might say, “I realise I have acted stupidly and I apologise Your Honour”.

4. The magistrate decides your penalty

The magistrate listens to what you or the duty lawyer has to say and decides on the penalty. Your penalty is based on your offence, your prior convictions and your plea. For a list of possible penalties see pages 36 to 38.

You or the duty lawyer can ask for no conviction to be recorded if it is appropriate. The magistrate will usually only decide not to record your conviction if you have no previous criminal history and if a conviction would affect your work or study.



Pleading not guilty

Should I plead not guilty?

The court considers you innocent until proved guilty beyond a reasonable doubt.

This means the police have to give evidence to the court to prove beyond a reasonable doubt you are guilty of the offence.

You need to get legal advice to:

- see if the circumstances of your case support a not guilty plea
- assess the police evidence
- work out if you have a defence.

How do I plead not guilty?

Take these steps to plead not guilty:

1. Get legal advice and prepare to plead not guilty

2. Attend court on your first mention date

- the magistrate reads the charge
- you or your lawyer (if you have one) hold discussions (conference) with police prosecutions
- you plead not guilty
- the magistrate will want to know the result of the conference
- the magistrate sets dates for a summary callover and hearing.

3. Get a copy of the police prosecutor's partial brief of evidence and get legal advice.

- The prosecutor should provide you with a partial brief within 14 days after the second mention of your matter.

4. Attend the committal callover

If your matter needs to be dealt with in the District or Supreme Court you will need to attend a committal callover. If you do not have the partial brief of evidence when you go to the committal callover, the prosecutor may provide you with it at court. If you would like the police to provide you with a specific statement or material (for example CCTV footage), you will need to write to them and ask them for this. If this is the case, you may ask the magistrate at the committal callover to adjourn your matter for three weeks. The prosecutor will provide you with the material within two weeks.

The police will prepare a full brief of evidence that could contain things like witness statements, video footage and medical evidence. You should write to the police prosecutor and ask for a copy of the brief of evidence at least 14 days before the next mention date.

Get legal advice if you have trouble getting a copy of the brief.

5. Attend the summary callover

If your matter is being dealt with in the Magistrates Court you will have to prepare for, and go to a summary callover before the hearing. This is when you tell the court you are ready to go to a hearing.

At the summary callover the magistrate will ask you if you are ready to go to a hearing. They will ask:

- if you still want to plead not guilty. If so, your matter is listed for hearing. If you choose to plead guilty, your matter will be listed for sentence.
- if you have had a case conference.

The magistrate will want to know:

- the result of the conference
- how many witnesses you have
- what type of evidence you will be providing.

If both parties are ready to proceed, the magistrate will confirm the hearing date and may direct that any outstanding material be delivered to you.

6. Prepare for your hearing

- Get legal advice
- Prepare facts and evidence
- Organise your witnesses.

7. Attend court on your hearing date

- The prosecutor calls witnesses to give evidence against you; you may cross-examine them
- You give your version of events and call witnesses; the prosecutor may cross-examine them
- The magistrate decides if you are guilty or not guilty
- If the magistrate finds you guilty, they decide your penalty.

How do I prepare for the hearing (trial)?

Here is a list of things you should do before the hearing.

Get legal advice

You need to get legal advice once you have received a copy of the police brief of evidence.

You need to know what the police must prove in court. Get the lawyer to explain the elements of the offence the police have to prove.

Carefully read the brief of evidence and highlight the parts you agree with and the parts you disagree with or you can show to be wrong.

Decide if you want to give evidence

You need to consider this option carefully and get legal advice.

You do not have to give evidence. You could decide to only cross-examine the police witnesses to try to raise a reasonable doubt in the magistrate's mind.

If you decide not to give evidence, you can question the police and the police witnesses about the evidence they have provided. But you cannot then address the court and give your different version of events unless it is in evidence.

If you want the magistrate to hear your version of events, you will have to go into the witness box or 'take the stand' and give your evidence under oath or affirmation. The police will then be able to cross-examine you.

Prepare facts and evidence

Write down your version of the events and what you want to say to the magistrate (see the information the court may want to hear on pages 43 and 44). It can help to practice in front of family or friends.

The magistrate makes their decision based on the evidence presented during the hearing. This means you or your witness must give your evidence on the day of your hearing.

Evidence you give to the court can be:

- what is said by witnesses in the witness box
- exhibits — for example, any objects, diagrams, photos, video footage, letters or other evidence a witness identifies, that you or the prosecutor ask to be submitted as evidence in the case.

When preparing your evidence, remember:

- If you go back to the scene of the alleged offence to take measurements and photographs, make sure you record the date and time of your visit.
- Label any photographs on the back to explain what they relate to. Remember to ask any witnesses giving evidence if they agree with your description of the photos.
- Witnesses can provide a sworn written statement of their evidence, but this written statement will not be enough for the court hearing. The witness must be available to go to court to be cross-examined.

Make two copies of any documents or exhibits you want to use. You will have to give the original copies to the magistrate and the other copies are for the police prosecutor and yourself. When you hand the exhibits to the magistrate, you say “I seek to tender this document Your Honour”.

Organise your witnesses

Make sure you tell your witnesses when they have to come to court.

If they refuse to come to court you could subpoena them. This involves arranging for a subpoena called a *Summons to witness*. This is a document the court can issue demanding a person come to court and give evidence. It can also ask a person to produce relevant documents.

You will need to get legal advice about how to do this. If you have to subpoena a witness it will cost money.

Remember you can change your plea

- You can still change your plea to guilty up to, and on the day of your hearing.

Be prepared for a guilty verdict

- You may be found guilty even though you are pleading not guilty.
- The magistrate might decide the police have proved the case against you beyond a reasonable doubt.
- This is why you need to think about what you would say to the magistrate about any sentence they give you if you are found guilty.

What happens at the hearing?

1. You plead not guilty

The magistrate will read the charge and ask if you plead guilty or not guilty. You plead not guilty.

The magistrate will then ask the police prosecutor to present their case against you.

Calling witnesses

Before anyone provides evidence to the court, they will be asked to swear an oath on a holy book or affirm (promise) to tell the truth. It is a crime to give false evidence.

All witnesses must wait outside until they are called. A witness can't hear another witness's evidence or the questions you ask other witnesses.

2. The police prosecutor gives their evidence

The police prosecutor will call each of the police witnesses and ask each witness questions.

Take notes about what the police witnesses say so you can remember what questions to ask when cross-examining them.

3. You question the police prosecutor's witnesses

After each police witness finishes, you have the right to cross-examine them by asking questions about the information they have given to the court.

Your aim is to show the police evidence may not be correct. Remember, the police have to prove their case 'beyond reasonable doubt'.

You need to ask questions about things you disagree with, especially if you are going to call witnesses who will give a different version of events. You need to put that version of events to the police witnesses so they can comment on it. You need to show any differences between their story and your story.

4. The police prosecutor may re-examine their witnesses

The police prosecutor can ask their witnesses more questions to clarify anything said in your cross-examination.

If the prosecutor asks a new question that is unrelated to anything raised at the start of the hearing or in cross-examination, you can object. The magistrate will then decide if the prosecutor can ask that question.

5. The police prosecutor closes their case

Once the police prosecutor has finished presenting their case against you, the magistrate will ask if you want to give evidence yourself and if you want to call any witnesses to give evidence.

“No case to answer”

If you think the prosecution have not proved their case, you can tell the magistrate there is “no case to answer”. If the magistrate agrees, the case ends. If the magistrate does not agree, and you choose not to put forward your own case, the trial will proceed as normal.

6. You give your version of events

If you decide to give evidence:

- explain to the magistrate what you saw, heard or did
- stick to the facts — don't give opinions.

When giving evidence, it is important to make sure what you say is relevant and to the point. Present your case in a business-like manner. Even though you might be upset or nervous about the situation, emotional outbursts will not help your case.

7. The police prosecutor questions you

Once you have finished giving evidence, the police prosecutor can cross-examine you.

8. You clarify your version of events

You can then have a chance to clarify after the police prosecutor has finished cross-examining you.

9. You question your witnesses

You call each of your witnesses to come before the court to answer your questions. For example you might say, "I call Jane Cherry".

Sometimes you may not have any witnesses except yourself.

You should ask your witnesses questions about what they saw, did or heard.

For example:

- "Where were you on the..."
- "What did you see when you were..."
- "What did you hear at the..."

The witnesses should answer in their own words. You should not ask leading questions that suggest the answer. For example, "I didn't push Joe, did I?"

10. The police prosecutor questions your witnesses

After you have finished questioning each witness, the police prosecutor will ask them questions about their evidence. This is called cross-examination.

11. You question your witnesses again

When the police prosecutor has finished their cross-examination, you can clarify any matters with your witness by asking them further questions. This is called re-examination.

12. You sum up your case

Once you and the police prosecutor have closed your cases, you each sum up your case to the magistrate. This is called making a final submission.

The aim is to highlight the parts of the evidence you believe support your case and why the magistrate should find you not guilty.

The police prosecutor will highlight the parts of the evidence supporting their case and why the magistrate should find you guilty.



The magistrate's decision

After the magistrate has heard the police prosecutor's evidence and your evidence they will make a decision.

What if I am found not guilty?

If you are found not guilty the case is dismissed and you are free to go.

Can I ask for my court expenses to be paid?

You can ask for your solicitor's costs to be paid along with your witnesses' expenses.

To do this you should:

- ask the magistrate by saying, "Your Honour, I would like to apply for an order that the prosecution pay my expenses for defending this matter"
- have a list of the expenses ready to give to the magistrate.

It is unusual for the magistrate to make the prosecution pay your expenses.

The magistrate will only do this if they believe the police had very little evidence to support the charges they made against you.

What if I am found guilty?

You should prepare for a possible guilty finding before you go to court. Even if you plead not guilty it is possible the magistrate might find you guilty after hearing all the evidence.

If you are found guilty the magistrate will ask the police prosecutor if you have a criminal history or a traffic history.

You can ask to see your criminal history or traffic history.

If there is anything you do not agree with in the traffic history or criminal history, tell your lawyer or the magistrate.

The magistrate will then ask you if there is anything you want to say about your circumstances that could affect the penalty they give you.

If you have written character references or other supporting information like medical reports or a letter from your employer, hand them to the court clerk to give to the magistrate.

Tell the magistrate any relevant details for example:

- if you have children you support
- if you are employed
- your level of education
- if you could pay a fine or do community service
- if you are attending or are prepared to attend any courses such as anger management and drug or alcohol counselling.

How does the magistrate decide my penalty?

The magistrate listens to what you have to say and decides on the penalty they will give to you.

The magistrate will usually decide your penalty straight away.

The penalty is based on:

- the offence
- your prior convictions
- what you have said in court.

There are a number of penalties a magistrate can give you. See the list of possible penalties on pages 36 to 38.

What if I don't agree with the decision?

If you disagree with the magistrate's decision or think your penalty is too harsh, you can appeal to the District Court.

Time limits apply to making an appeal. You have one calendar month from the date of your conviction or your sentence to appeal.

If you have not filed the application for appeal within a calendar month, you can apply for leave to appeal 'out of time'. This is only allowed in certain circumstances and you should talk to a lawyer to see if this applies to you.

You can get the necessary forms from the Magistrates Court or the Queensland Courts website www.courts.qld.gov.au

It is possible a higher court might reject your appeal and even give you a harsher penalty.

You should get legal advice before you decide to appeal the decision.



Some possible penalties

If you are found guilty, the magistrate will give you one of the following penalties:

1. Penalty without conviction

Usually the magistrate will only give a penalty without conviction if it is your first offence or your employment prospects will be affected by a conviction.

A penalty without conviction is when you receive a penalty such as community service or a good behaviour bond or fine, but your conviction is not recorded on your criminal record.

2. Good behaviour bond

The magistrate can order you be placed on a good behaviour bond for a period of time.

A good behaviour bond is a written promise you make to stay out of trouble for a period of time. If you get into trouble during that time, you will have to pay money to the court.

3. Fine

The magistrate can order you to pay a fine by a certain date. The magistrate might say, for example, “\$200 in default 20 days jail. Three months to pay.”

This means you have three months to pay \$200. You can pay the court directly or contact the State Penalties Enforcement Registry (SPER).

If you refuse to pay the fine, the following enforcement actions can apply:

- your driver licence could be suspended
- your employer may have to deduct a certain amount from your wage each month
- your bank may be ordered to transfer money from your account to SPER
- your property, such as your house or car, could be seized and sold
- a warrant could be issued for your arrest and imprisonment.

If you are unable to pay the full amount of the fine when you leave court, the court and SPER will offer you three options:

A Apply for an instalment plan that gives you time to pay your fine by making regular, smaller payments. You can arrange to make your payments by bank direct debit, credit card direct debit, cash or cheque.

B Apply for Centrepay, which allows you to pay your fine in instalments through a direct debit from your Centrelink payment.

C If you can't pay the fine, you may be eligible for a fine option order, which allows you to do community service instead of paying your fine.

4. Restitution

Restitution (sometimes called compensation) is money you have to pay to a victim for damage you caused.

If you don't pay the money on time:

- the victim can sue you for the money
- you may have to go to prison for a set number of days.

You cannot get a fine option order (community service) instead of paying restitution.

5. Community service

Community service is work the court orders you to do under the direction of a community corrections officer. You do not get paid for the work.

Before giving you community service, the magistrate will ask if you are willing to do community service work. The magistrate will also ask the community corrections officer if they are willing to accept you into a community service program.

The community corrections officer may not accept you if you are on a disability pension or on Workcover.

The magistrate will tell you how many hours of community service you need to do.

You will have to report to the community corrections officer named in your community corrections order by a certain date. They will work out when and where you will do the work.

If you do not complete the number of work hours ordered by the magistrate, you can be charged with breach of community service. This means you will have to go back to court and could be resentenced on the original charge.

If you get a job and you can't finish the community service, you must apply to the court to have the order changed.

6. Probation

If you get probation you have to stay out of trouble for a set period of time. You will have to report to a probation officer at a community corrections office usually within 48 hours of sentencing, and from then on at regular times.

You will also have to meet any other conditions on your probation order, like going to counselling and paying restitution.

You can be charged with breach of probation if you do not attend regularly and complete the conditions of probation. This means you will have to go back to court and could be resentenced on the original charge.

Sample documents and forms

- Sample 1 Notice to appear
- Sample 2 Summons to appear
- Sample 3 Written plea of guilty
- Sample 4 Information for the court
- Sample 5 Character reference
- Sample 6 Letter from your employer

Sample 1 - Notice to appear

Offender Original	Prosecutor Duplicate	Court File Triplicate	Station File Quadruplicate
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QUEENSLAND POLICE SERVICE

NOTICE TO APPEAR

Police Powers and Responsibilities Act 2000

QP 0699
07/11
A1

Offender's details

Family name: Bedford Court file no.: 1020304
 Occurrence #: 9876
 Given name(s): Liesel Ross
 Address: 5176 Chatsworth Street
 Suburb/Town: Milton Postcode: 4064
 Date of birth: 12/08/1987 (if supplied)
 Place of birth: Brisbane (if supplied)

YOU ARE REQUIRED TO APPEAR BEFORE A COURT OF SUMMARY JURISDICTION

SITUATED AT Brisbane Magistrates Court, 240 Roma Street, Brisbane
 (Full street address of court)

ON 15/09/2011 **AT** 9 am
 (Date) (Time)

(If the above date is less than 14 days adult offender must agree and sign.)

I agree with the above date being set for my appearance _____
 (Adult offender's signature)

**You are advised to see a solicitor before your court appearance.
 If you do not go to court you may be arrested.**

YOU ARE ACCUSED OF THE FOLLOWING OFFENCE(S):

Wilful damage

A copy of this notice was issued and served personally on the abovenamed at

1115 am/pm 5/08/2011 Jamie's Bar 99 Silver Street, Brisbane
 (Time) (Date) (Place of service)

by Mark Bradley Sergeant 12345
 (Name) (Rank) (Reg. no.)

Toowong M. Bradley
 (Police station/establishment) (Signature)

QP 0700 Identifying Particulars Notice issued? Yes No

Prosecutions Use Only
 PROS:
 /

Sample 2 - Summons to appear

Statute: _____ Section: _____ Title: _____ Fee: _____

Form 3

QUEENSLAND
Justices Act 1886

Filed:
Fee paid:
Receipt no.:
Initials:

COMPLAINT — SWORN, and SUMMONS

THE COMPLAINT of *Mark Bradley*
of *Toowong* in the State of Queensland made this *6th* day of *August, 2011*, before the undersigned, a Justice of the Peace for the said State, who says that on the *5th* day of *August, 2011*, at *Brisbane*.

you wilfully damaged drinking glasses

contrary to the Acts in such case made and provided:

WHEREUPON the said *Mark Bradley* prays that I, the said Justice, will proceed in the premises according to law.

Complainant

Sworn before me, the day and year first above mentioned, at *Brisbane* in the said State

J. Rotbury
Justice of the Peace

Further Particulars

Enter further particulars here

SUMMONS

To *Lionel Ross Bedford* of *Milton*, in the State of Queensland,

Date of Birth: *12/08/1987* Place of Birth: *Brisbane*

Indigenous: Aboriginal TSI Both Neither Refused Unknown

WHEREAS the above complaint has been made before me:

YOU ARE HEREBY COMMANDED to appear at the Magistrates Court situated at:

Place: *240 Roma Street, Brisbane*

Date: *15/09/2011*

Time: *9 am*
before a **Magistrates Court** to answer the said Complaint and to be further dealt with according to law.

Given under my hand at

Place: *Brisbane*

Date: *6/08/2011*

J. Rotbury
Justice of the Peace

PLEASE NOTE

If you appear and plead guilty or plead guilty in writing or fail to appear or enter a plea, the case will normally be dealt with on the return date.

If you wish to plead not guilty, the matter will be mentioned on the return day and a date of hearing will then be fixed. If you plead guilty or are found guilty by the Court, the Court may order, in addition to any fine imposed, that you shall pay to the complainant such costs as seem just and reasonable.

Sample 3 - Written plea of guilty

5/76 Chatsworth Street, Milton Old
07 3132 4567

(Full name, current address and contact phone number)

Magistrates Court

Dear Sir/Madam:

I have received a summons to attend the Magistrates court at Brisbane

on the 15th day of September 2011,

on a charge of Willful damage

committed at Brisbane

on the 5th day of August 2011.

I plead **GUILTY** to the charge laid down in the Summons, and request that it be dealt with in my absence, as I will be unable to attend the Court on the day mentioned.

I desire that the following submission be brought to the attention of the Court with a view to mitigation of penalty:

We went to several drinking places and I didn't have any food, just drinks. I look young for my age and I remember being hassled about being underage. I remember producing my ID and having a bit of an argument with one of the staff in one place. I got annoyed and I threw my wallet and somehow it ended up hitting some glasses and breaking them.

I don't make a habit of damaging property. I guess because I was drunk I lashed out and didn't worry about if throwing my wallet might cause some damage. I feel really bad about it and I would have offered to pay for the damage if I'd been sober.

OR

I plead **NOT GUILTY** to the charge laid down in the Summons, and request that a date of hearing be given in my absence, as I will be unable to attend the Court on the day mentioned.

L Bedford (Signature)

K Sellers (Signature of witness)

(Tick in the box whichever applies)

Sample 4 - Information for the court

Name	<i>Lionel Ross BEDFORD</i>
Date of birth	<i>12 August 1987</i>
List of charges	<i>Wilful damage on 5 August 2011</i>
Place and number of Magistrates Court	<i>Brisbane Roma Street, Court 1</i>
Date of court appearance	<i>15 September 2011</i>
What happened	<p><i>On 5 August 2011, I met some friends in the city after work to have a few drinks. It was a Friday night, I wasn't working the next day and I wasn't driving so I was ready to 'party on'. We went to several drinking places and I didn't have any food, just drinks. I look young for my age and I remember being hassled about being under-age. I remember producing my ID and having a bit of an argument with one of the staff in one place. Then I just threw my wallet and somehow it ended up hitting some glasses and breaking them. The security guys wouldn't let me leave – they called the police, who took me to the police station and gave me a piece of paper saying I had to appear in court in September.</i></p>

Sample 4 - Information for the court cont'd

<p>Family background, education/work</p>	<p>I went to live with my grandparents when I was 14. I now live with my cousin in a two bedroom unit. I left school during Year 11 and have been working in a few different jobs since then. At the moment I work as a sales assistant at a sports store at Toowong. I live at Milton so I catch the train to and from work because it's nice and close. I earn \$550 in my hand each week and more if I do overtime. I pay \$190 a week in rent and my train fares to and from work. I have a prepaid mobile phone that costs about \$30 every two weeks or so. I don't own a car or have any debts yet.</p>
<p>Previous convictions</p>	<p>I've never been to court before.</p>
<p>Why you acted as you did and how you feel about what you did</p>	<p>I don't make a habit of damaging property. I guess because I was drunk I lashed out and didn't worry about if throwing my wallet might cause some damage. I feel really bad about it and I would have offered to pay for the damage if I'd been sober.</p>
<p>Whether you have any character references <i>Comments: Duty lawyer use only</i></p>	<p>I have two references, one from a neighbour and another from my boss at work.</p>

Sample 5 - Character reference

Brisbane Magistrates Court

Your Honour

I have known Lionel Bedford for the last 10 years. Lionel's grandparents live next door to me. Lionel lived with his grandparents until five years ago. He is friends with my children and he regularly visits his grandparents and will come over to talk with me.

During this time I have found Lionel to be an honest and trustworthy person. I have trusted him to look after my cat and collect my mail while I was on holidays.

Lionel had a troubled early family life. He was placed with his grandparents at the age of 14 years by the Department of Families. I do not know the reason for the placement.

Lionel has held a few different jobs since he left school, but seems to have settled into a good retail job over the past couple of years.

Lionel has told me he has been charged with wilful damage. He said this was because he threw his wallet, which hit some glasses and smashed them. He said this only happened because he was under the influence of alcohol and became agitated.

Lionel has told me he is embarrassed about the incident and does not normally behave in that manner. He also said he was willing to pay for the broken glasses to be replaced.

Yours sincerely

B. Hillway

Beatrice Hillway

Sample 6 - Letter from your employer

Brisbane Magistrates Court

Your Honour

Lionel Bedford has been employed at Sam's Sporting Goods at Toowong since 10 August 2009 as a senior sales assistant. His responsibilities have included customer service, cash handling, staff training and supervising other members of our sales team.

Lionel has established an outstanding rapport with store managers and provides excellent customer service. He interacts well and is highly respected by his co-employees. He is organised, reliable and shows good judgment.

Lionel has told me he has been charged with wilful damage. He said this was because he threw his wallet, which hit some glasses and smashed them. He said this only happened because he was under the influence of alcohol and became agitated.

Lionel has told me he is embarrassed about the incident and does not normally behave in that manner. He also said he was willing to pay for the broken glasses to be replaced.

Please let me know if I can provide any more information.

Sincerely

S Middleton

Samuel Middleton
Owner
Sam's Sporting Goods

Legal words and phrases explained

Adjournment — when your case is put off to another day to allow you to get legal advice and further help.

Bail — a written promise you sign after you have been arrested and charged. The bail document will have conditions and requirements you have to follow.

There are different types of bail conditions such as:

- bail on your own undertaking
- bail with residential or reporting conditions
- bail with a surety.

If you are not given bail, you will be kept in custody until your next court mention.

Bar table — the table in the courtroom where the police prosecutor, lawyers and defendants stand when appearing before the magistrate.

Committal hearing — a committal is a procedure in the Magistrates' Court for some indictable offences.

The court hears the police evidence about your offence so the magistrate can decide if there is enough evidence for the matter to go to a higher court.

You can only ask for a committal date to be set if:

- your offence is an indictable offence that must be heard in a higher court
- there is a right of election (this means either you have a choice about which court your case is heard in, or the police have the choice and decide to take it to a higher court).

Conference — a conference is where you (or the duty lawyer or your lawyer) have a discussion with the police prosecutor regarding your charge(s).

A conference may result in:

- no agreement
- agreement to drop or amend certain charges
- agreement regarding the election of the charge (ie to be dealt with in the magistrates or District Court).

Elements of an offence — the police have to prove to the court, beyond a reasonable doubt, you are guilty of each ‘element’ of the offence you have been charged with. Elements can include time, date, location and actual charge.

Fail to appear — if you don’t go to court on the right date, you could be charged with an offence called ‘failing to appear’. The court may issue a warrant for your arrest if you don’t go to court on the correct date.

First appearance/ mention — the first time you have to appear in court. Your first mention date will be set down in your notice to appear, summons or bail conditions.

Full hand up committal — where the police statements are provided to the magistrate and no cross examination occurs and you are then committed to stand trial in the District Court.

Hearing — your day in court when the prosecution tries to prove you are guilty and you try to prove you are not guilty.

Indictable offence — a more serious offence than a summary offence. The Magistrates Court hears some indictable offences, but others are dealt with by the District Court or Supreme Court.

Many indictable offences must now be dealt with in the Magistrates Court.

With some indictable offences you, or the police prosecutor, can choose if it is heard in the Magistrates Court or a higher court.

Mention (or appearance) dates — the different dates you have to go to court.

Mitigating circumstances — facts or information that might explain how or why you came to commit your offence and that may, therefore, help your case.

Notice to appear — a written document that tells you what you have been charged with and when and where you have to go to court. The police can give you a *Notice to appear* when they charge you or they can send it to you in the mail.

Partial brief — this will contain the witness statements of the complaint and list the evidence that the police are relying on.

Full brief — this will contain all the evidence including witness and police statements, video and audio tapes and other evidence that prosecutions are relying on to prove their case.

Police prosecutor — a police officer who presents the case against you to the magistrate.

QP9 — a written summary of the police version of why you were charged and what happened.

Right of election — if you have been charged with an indictable offence, you or the police prosecutor may be able to choose if your case is heard in the Magistrates Court or in a higher court like the District Court or Supreme Court.

Submissions — verbal comments made to a magistrate to support a case.

Summary callover — if you plead not guilty at the summary callover, your matter will be set for a summary hearing.

Summary hearing — a summary hearing is a procedure in the Magistrates Court for summary offences and some indictable offences. The court hears the police evidence and any evidence you wish to call about your offence so the magistrate can decide whether you are guilty or not guilty.

You can only ask for a summary hearing date to be set if your offence is an offence that can be heard in the Magistrates Court, otherwise your matter must go to the District or Supreme Court.

Summary offence — usually a less serious offence always dealt with by a magistrate in the Magistrates Court. Examples include driving offences, creating a public nuisance, trespassing, unlawfully having suspected stolen property, or having a spray can for graffiti.

Summons to appear – a summons is a document requiring you to go to court on a certain date. It will also include what you have been charged with.

A summons works like a *Notice to appear* except that police need a justice of the peace to sign it. The police then serve it on you and lodge it with the court.

Your local Legal Aid Queensland office

Brisbane

44 Herschel Street
BRISBANE Q 4000

Bundaberg

3rd Floor
WIN Tower
Cnr Quay & Barolin Streets
BUNDABERG Q 4670

Caboolture

Ground Floor
Kingsgate
42 King Street
CABOOLTURE Q 4510

Cairns

Level 2
Cairns Square Complex
42-52 Abbott Street
CAIRNS Q 4870

Inala

Level 1
Inala Commonwealth Offices
20 Wirraway Parade
INALA Q 4077

Ipswich

Level 7, 117 Brisbane Street
IPSWICH Q 4305

Mackay

Ground Floor
17 Brisbane Street
MACKAY Q 4740

Maroochydore

Ground Floor
M1 Building
1 Duport Avenue
MAROOCHYDORE Q 4558

Mount Isa

6 Miles Street
MOUNT ISA Q 4825

Rockhampton

Ground Floor
35 Fitzroy Street
ROCKHAMPTON Q 4700

Southport

Level 2
7 Bay Street
SOUTHPORT Q 4215

Toowoomba

1st Floor
154 Hume Street
TOOWOOMBA Q 4350

Townsville

Level 4
Northern Securities Building
22 Walker Street
TOWNSVILLE Q 4810

Woodridge

1st Floor, Woodridge Place
Cnr Ewing Road and
Carmody Street
WOODRIDGE Q 4114



For more information about our services visit legalaid.qld.gov.au
or phone 1300 65 11 88 or 1300 650 143 (Aboriginal and Torres Strait Islander Information Line)

