

If you plead **'guilty'** the Prosecutor will not provide any evidence against you. The Magistrate will convict you and sentence you. **Only plead guilty if you agree that you have committed the offence with which you have been charged.**

If you plead **'not guilty'** the court will proceed with the trial.

Bail

If you are being held in custody, the Magistrate may release you on **bail**. This means that you will be released from custody temporarily before your next court appearance. You will be required to enter into a written bond requiring you to attend court at the time and place mentioned in the bond and continue to attend until otherwise directed. The Magistrate may impose conditions on your bail.

Trial

Prosecution

The **Public Prosecutor** will begin by presenting his or her evidence and arguments to the court. He or she will call witnesses to try to prove that you committed the crime. After he or she questions each witness, you or your lawyer will have a chance to question each witness.

Defence

After the Prosecutor has presented his or her evidence, you can make your arguments to the Court in your defence. Remember, you do not have to give evidence if you choose not to.

If there are any new matters raised in your evidence, the prosecutor will have another chance to ask witnesses to answer the evidence that you have given.

Decision

When all of the evidence and arguments have been presented, the Magistrate will decide whether you are guilty or not.

If you are **acquitted** then you will be released. This means that you were found **not guilty**. If you are found **guilty**, you will be convicted of the charge and sentenced.

Sentencing

The sentence is the punishment that the Magistrate imposes upon a person found guilty of an offence. It could be either:

- a fine;
- a prison sentence;
- both a fine and a prison sentence; or
- a community service order.

Sometimes the Courts will give a **suspended sentence**. This is where you are sentenced to prison but don't actually have to go to prison unless you re-offend within a certain time.

Each criminal offence has a **maximum statutory punishment** that cannot be exceeded in sentencing. This means that you cannot be fined more, or go to prison for longer, than the law says.

Several factors may affect the sentence given by a Magistrate, such as:

- the offender's guilty plea;
- the offender's personal circumstances;
- evidence of the offender's good character;
- a custom apology; and
- the offender's preference for one type of punishment.

Remember, you have the **right to appeal** both your **conviction** and your **sentence** if you feel they are **unfair**. If you do so, the appeal will be heard in the **Supreme Court of Vanuatu**.

Who can I contact for help?

The Public Solicitor's Office
PO Box 794
Ph: 23450

Judicial Services Department
The Vanuatu Courthouse
PMB 9041, Port Vila
Ph: 22420

The information contained in this brochure is only intended as a guide to the law and is not a substitute for obtaining legal advice. If you have any further questions we strongly suggest you seek legal advice.

Note: This information applies to people who live in, or are affected by, the law as it applies in Vanuatu.

The information in this brochure is current as at 30 June 2006.

University of the South Pacific Community Legal Centre
PMB 9072 Port Vila VANUATU Ph: 27026 Fax: 25543
<http://legalcentre.vanuatu.usp.ac.fj/>

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A guide to criminal matters in the Magistrates Court



Have you been:

- **Charged with a criminal offence?**
- **Summoned to the Magistrates Court?**

This brochure can help you.

A USP Community Legal Centre Production

The Magistrates Court can deal with criminal proceedings for offences with a maximum penalty of 2 years in prison. Although the Magistrates Court also hears civil matters, **this brochure only deals with criminal proceedings in the Magistrates Court.**

The Start of Proceedings

In most cases, criminal court proceedings begin when someone claims to have seen you committing a **crime** and the police have laid a charge against you.

A charge is stated by a **prosecutor** (usually the police) in “**information**” that is brought before a **judicial officer** (either a Magistrate or a Judge) who can either issue:

- a **warrant** for the police to arrest and bring you before the court; or
- a **summons** informing you of the charge made against you and telling you to appear in the Magistrates Court at a certain date to answer to the charge.

In some cases, a police officer may arrest an alleged offender without a warrant if the officer witnessed the crime. In this case the police must either:

- lay a charge against the person and either release them or bring them before a judicial officer to keep them in police custody; or
- release them without charge if there is insufficient evidence.

Do I have to go to Court?

Yes. If you don't appear to answer to a summons, the Judge can order the police to arrest you and bring you before the court.

Preparing for Court

What do I need to know?

As much as possible. Find out all you can about that which you have been accused of. Start by reading the Summons carefully.

Information Checklist:

Am I the person named in the summons?

There may be another person with a similar name to yours living in the same area as you, and the police may have

made a mistake.

Do I need a lawyer?

This depends on how serious the matter is. If the matter is a minor traffic offence then you may be able to represent yourself. If the charge is serious, you should get legal advice. If you can't afford a lawyer you should see the **Public Solicitor** who can help you for a small fee.

Where is the Courtroom?

The summons will tell you where you are supposed to appear. If you don't know where it is, ask a friend, or call the Justice Department or the nearest police station for advice.

Going to Court

The first time that you go to court is usually just to check whether you agree or disagree to the charge made against you.

Who will be in Court?

The Magistrate

Treat this person with respect. The Magistrate will run your court case and will either pass sentence on you or acquit you. Remember, the Magistrate is there to see you get a **fair trial**. He or she is NOT your enemy.

The Court Clerk

The Court Clerk handles all of the administrative work in the court room. He or she ensures that all of the relevant files are in order and are ready for the magistrate to use.

The Prosecutor

The Prosecutor acts on behalf of the government, and will be trying to prove the charges against you.

Court Tips

When you go to court for your trial these are some basic “dos and don'ts”. Remember, the Magistrate is human as well, and will react to how you present yourself.

Don't:

- Be late - The trial may already have finished, and you could be in trouble.
- Interrupt the Magistrate - When the Magistrate talks, listen very carefully.

- Question the Magistrate or say that he or she is unfair - Remember, the Magistrate will make sure that you are given a fair chance to defend yourself.
- Wear sunglasses, a hat, or chew gum or food in court - You will be asked not to do these things as they show disrespect towards the Magistrate.
- Be untruthful or try to hide things - It is always best to be honest. It is a crime to tell a lie in court under oath. If you tell a lie and are discovered, you may be punished.
- Tell jokes - Going to court is a serious occasion. The Magistrate does not want to hear what your latest joke is.

Do:

- Dress neatly - This is your first sign of respect for the Magistrate and the Court System. Remember, the Magistrate is acting on behalf of the people of Vanuatu.
- Address the Magistrate as ‘your worship’.
- Stand when you are speaking.
- Give straight forward answers - Magistrates do not like people who give vague answers or try to avoid answering the question.
- Be honest - Honesty is always the best policy.
- Be polite.

Court Procedure

If you have a lawyer, he or she will guide you through the trial. However, if you don't have a lawyer, a general guide is set out below.

Pleadings

When your name is called by the Court Clerk, approach the **dock**. This is a special box where you stand during the trial. You will be asked whether it is your name in the summons, and then you will be asked if you admit or deny the charge made against you - that is, whether you plead **guilty** or **not guilty**.

Everyone has a right to plead ‘**not guilty**’. You also have the right to remain **silent** or not to give evidence after you have made your plea. You will not be punished if you remain silent or do not give evidence. It is the role of the prosecution to **prove you are guilty** and not for you to prove your innocence.