

Appearing in court on a criminal charge



This information will assist you if you have been charged with a criminal offence and you are due to appear in court.

What should I do first?

The first thing to do is to find out how serious your situation is. This means you should get **legal advice** about the nature of your charge and the likely penalty you will receive if you are convicted of it. Being **convicted** means being found guilty or pleading guilty to the charge.

Where possible, you should get legal advice **before** appearing in court.

Where can I get legal advice?

If you are able to pay for a lawyer yourself, you can get advice that way. You should do this well before your court date.

Alternatively, on the morning of your court appearance you can ask to speak to a **duty lawyer** provided by Legal Aid WA. Duty lawyers are available in most Magistrates Courts and Children's Courts. There are no duty lawyers available in the District or Supreme Courts.

You should check with the Magistrates Court or Children's Court before you appear to make sure a duty lawyer will be available. If not, you can appear in court and ask for your case to be **adjourned** (put off) to a day when a duty lawyer will be available. You can also ask for an adjournment if you need more time to find a private lawyer to represent you.

If you are **in custody** in a prison and you want legal advice, you can pay for advice from a private lawyer. Alternatively, if you are appearing in person, you can ask to see the duty lawyer at court on the day of your court appearance. If you are appearing by **video link**, you can ask to speak to a duty lawyer by telephone before your appearance.

How can a duty lawyer help me?

You can only see a duty lawyer on the morning of your appearance in the Magistrates Court or Children's Court. You should arrive well before your appearance and should try to get to court by 8.30am.

Duty lawyers can give you legal advice and can also appear for you in court for a criminal matter on a plea of guilty, for a bail application or to ask for an adjournment. A duty lawyer cannot represent you at a trial after you have pleaded not guilty or at any type of hearing where evidence is to be heard.

There are certain types of applications that a duty lawyer cannot help you with, such as applications for extraordinary driver's licences, for impounding or confiscation orders, for forfeiture of surety, or to set aside a licence suspension for non-payment of a fine or infringement. A duty lawyer cannot help you with an application for a prohibited behaviour order or a restraining order, however, other services within Legal Aid WA may be able to assist you with these applications.

There are some prosecutions that duty lawyers cannot assist you with such as taxation prosecutions, some prosecutions brought by local government authorities and prosecutions for minor traffic offences.

If you need help at court, speak to the duty lawyer and they will let you know whether they can help you or not. If they cannot help you they will try to refer you to another service that may be able to help you.

You will be charged a fee of \$20 to see the duty lawyer in Magistrates Court, or \$5 if you receive social security benefits. The fee may be waived in cases of financial hardship. There is no fee if you

are in custody or appearing in the Children's Court.

For more information about the Duty Lawyer Service, go to the heading at the end of this sheet:
Where can I get more information?

What other help is available?

Legal Aid WA operates an Infoline that provides basic information about the law and referral information. The Infoline can assist you in understanding how serious your charge is and whether you need to get legal advice before you attend court.

The Infoline can indicate whether your case falls within the scope of Legal Aid WA's Duty Lawyer Service or is so serious or complex that you should apply for a grant of legal aid to have your own lawyer appointed. The Infoline can give you information about how to apply for a grant of legal aid or you can obtain this information from the **Legal Aid WA website**.

You can contact the **Legal Aid WA Infoline on 1300 650 579**.

If you are **in custody**, you can contact the Legal Aid WA Infoline through a dedicated number that will be provided to you by the prison.

Alternatively you can ask to see a representative of Legal Aid WA at the prison. The representative will be able to provide you with help that is similar to that provided through the Infoline.

Do I have to attend court?

Whether you have to attend court or not depends on the paperwork you receive which tells you that you have a court date coming up. In most cases the paperwork will say that you have to attend court. **If you are in any doubt, you should attend court.**

The different sorts of paperwork you may receive which show you have a court date coming up are:

- court hearing notice
- summons
- police bail form
- court bail form.

You may also be brought to court in custody if you have not been granted bail from the police or the

court. In this case you will not be given paperwork to remind you of your attendance in court because the police or prison will arrange for you to attend.

If you are not sure what paperwork you have received (because, for example, you have lost it) but you are fairly sure you have a court date coming up, you should contact the court where you believe you are due to attend to **confirm when your charge is listed in court**. You should also check whether you have **any other court dates coming up for any other charges**.

You should make sure you attend court on all the dates when you have charges listed.

If you have your paperwork from the police or the court, the following information will assist you in understanding what it means.

Court hearing notice

A court hearing notice is used to let you know about a court date for a less serious charge or charges. It gives you the **option to attend court** or not. If you choose not to attend court you should respond to the court hearing notice by endorsing it with a plea of guilty or not guilty and by returning it to the court.

If you endorse it with a plea of guilty, the charge **may be dealt with in your absence** and you will receive written notification of the penalty. If you endorse it with a plea of not guilty, the court will list the charge for a trial and you will be notified in writing of the trial date.

If you **do not respond** at all to the court hearing notice, when your court date comes up the court may:

- Deal with the charge in your absence, which may mean finding you guilty and imposing a penalty and you will be advised of the outcome in writing.

or

- Adjourn (put off dealing with) the charge to a new date and either:
 - issue a summons to require you to attend court on that date, or
 - issue a warrant for your arrest to ensure you attend court (once arrested, you will be kept in police custody and brought before a court as soon as possible and it is then

up to the court whether you remain in custody or are released).

A court hearing notice may also be issued when you appear in court and your case is to be adjourned to a new date. This means the court is not requiring you to attend court on the next occasion and is not imposing any bail conditions on you. This option is most likely to be used if you are facing a minor charge.

Summons

A summons is used for more serious charges. A summons **requires you to attend court** on a set date. If you do not attend, the court may:

- adjourn (put off dealing with) the charge to a new date and either:
 - issue another summons to require you to attend court on the new date, or
 - issue a warrant for your arrest to ensure you attend court (once arrested, you will be kept in police custody and brought before a court as soon as possible and it is then up to the court whether you remain in custody or are released).

It is not an option for the court to deal with the charge in your absence if you have been advised of your court date by way of a summons.

Police bail

Police bail means that you have been arrested and charged by police and then released on bail by the police until your court date. A condition of your police bail is that you must attend court on a particular date to answer to the charge.

If you do not attend on that date, without a reasonable excuse, you will be in breach of your bail and may be arrested and kept in police custody until you can be brought before a court.

Court bail

Court bail means that you have appeared before the court and been released on bail by the court to a new court date. A condition of court bail is that you **must attend** court again on the new date.

If you do not attend on that date, without a reasonable excuse, you will be in breach of your

bail and may be arrested and kept in police custody until you can be brought before a court.

No bail – in custody

In some cases, especially where you are facing a serious charge or you have a history of not attending court, police may not release you on bail after charging you. In this case you will be kept in police custody and brought before a court as soon as possible. It is then up to the court whether you remain in custody or are released.

Similarly, a court may decide to keep you in custody until your next court date. In this case you will be remanded in custody, usually in a prison facility, until your next court date. What happens on that date will depend on your bail situation, that is, whether you have grounds to apply again for bail.

If you are in custody and you have questions regarding your bail situation, you should seek legal advice.

What if I cannot attend court when I am required to?

A warrant may be issued for your arrest if you do not attend court when you are required to.

If your paperwork shows that you must attend court, **you must do everything you can to attend**. Even if you think you have a good reason for not being able to attend, the court may not accept this reason and it may issue a warrant for your arrest if you do not attend.

However, if you are required to attend court and you have a genuine reason or **reasonable excuse** for not being able to attend, such as being booked in for an operation or being away for work, you should write to the court registry to ask for your court date to be brought forward to a date when you can attend. This is called an early listing.

How do I apply for an early listing?

To apply for an early listing you need to fill out a **Form 6** which is available from any Magistrates Court Registry or may be downloaded from the Magistrates Court website: www.magistrates.court.wa.gov.au (see under Criminal Matters and scroll down to the heading Downloads).

This form must be lodged at the Magistrates Court Registry that controls the listing of your charge. This will usually be the same court that you are due to appear in, however, in some regional areas, the court you are due to appear in may not have a registry, in which case you must lodge it at the registry that controls the listings at that court.

Certain Magistrates Courts in WA require you to provide an **affidavit** with your application, stating the reason for the early listing. Before lodging your application, you should telephone the Magistrates Court where you will be lodging the application to check whether you must complete an affidavit. You should also check exactly what the court registry requires you to do to early list your charge, just in case they have particular requirements.

Generally you must lodge the Form 6 at least **three clear working days** before the date when you want your charge to be listed. This means there must be three full days that are work days between the day that you lodge the form and the day when your charge will be listed in court.

Generally, you may lodge the form in person or by fax or email.

When you lodge the form, the registry will give you the early listing date. Generally, you must then **tell the prosecution** (the WA police or other prosecuting authority) this date so they know to come to court then. To prove you have told them, you must fill out the bottom of the Form 6, next to the heading **Service details**. The best way to tell them is to give them a copy of the form.

You must then **attend on the early listing date** and be ready to tell the court why you cannot attend on the original date. If the court accepts your reason, your charge will be considered by the court on the early listing date.

The contact details for Magistrates Court Criminal Registries may be found on the Magistrates Court website.

What if I don't apply for an early listing?

If you do not arrange for your charge to be early listed and you do not attend when you are required to, **a warrant may be issued for your arrest**.

If you have a good reason for not being able to attend, you should write to the court to explain this reason and provide proof if possible, for example a letter from your doctor or from your employer.

You should follow up to make sure the court has received the information.

On the day your charge is listed, the court may choose to adjourn your case to another date and issue a summons that requires you to attend on that date, or it may choose to issue a warrant for your arrest. This will usually depend on things such as the seriousness of your charge, your prior criminal history, whether you have failed to attend court before and your reason for not attending.

It may assist you to instruct a lawyer to appear for you to explain why you are not in court and to make sure the court receives the information that proves why you are not there. Even if a lawyer appears to represent you, the court may still choose to issue a warrant for your arrest.

After your court date you should check what happened by contacting the court registry.

To avoid the risk of a warrant being issued for your arrest, if you are required to attend court you should do everything you can to attend.

What if I accidentally miss my court date?

As soon as you become aware that you have missed your court date, you should contact the court to find out what happened when your charge was considered by the court. You will then know whether a new date has been set or whether a warrant has been issued for your arrest.

If you are on bail and you miss your court date, it is more likely a warrant will be issued for your arrest.

What if a warrant has been issued for my arrest?

If there is a warrant out for your arrest, you may be arrested at any time. You will then be held in police custody until you can be brought before the court. This must be done as soon as possible. Depending on when you are arrested, you may have to spend some time in custody before you can be brought before the court.

To avoid this, you should hand yourself in at the court as soon as possible. Once you have done this, you will usually be taken into custody at the court and will be required to wait there while the court arranges to have your charge listed for that

day. If you have a good reason for missing your court date, be ready to give this explanation when you appear in court and if possible, be ready to provide proof of the reason.

If possible, get **legal advice** before you hand yourself into the court. You may be able to speak to a duty lawyer at court just before you hand yourself in.

If you have a lawyer representing you, make sure you tell them when and where you are going to hand yourself into the court so they can arrange to be there to represent you.

Can I represent myself in court?

If you are appearing in the Magistrates Court, you have received information or legal advice about your situation and your situation is not serious or complex, then representing yourself may be appropriate. However, it is always useful **to get legal advice first** about the seriousness of your charge and what action you should take, before you go into court to represent yourself.

If your situation is serious or complex, you are in custody, there are issues with your bail, or you are appearing in the Children's Court, District or Supreme Court, it is always best for you to be represented by a lawyer.

It is up to you to organise to be represented by a lawyer. If you are able to pay for a lawyer yourself, you can get representation that way. Alternatively, you can ask to be represented by a **duty lawyer** provided by Legal Aid WA. Please note there is no duty lawyer available in the District or Supreme Courts.

How do I represent myself?

You should go into court and tell the orderly (security guard) that you have arrived and are representing yourself. You should sit and wait in the back of the court for your name to be called. When called, stand at the table in front of the magistrate. The magistrate will ask what you want to do. At this stage you may choose to plead guilty, plead not guilty or ask for your case to be adjourned to another date. There are explanations below of what each of these means.

If you represent yourself and something comes up in court that you are not sure of or that you did not

expect, you can ask the court to "stand the matter down" until later in the court list so that you can go and speak to the duty lawyer or your own private lawyer. You will still need to appear in court later that day and you should not leave just because you have spoken to a lawyer. Alternatively, you can ask the court to adjourn your case to another date so you have more time to get advice about the issues that have come up in court.

What is pleading guilty?

Pleading guilty means that you accept that you have committed the offence and accept the police statement of material facts. If you think you may have a defence or you do not agree with the statement of material facts, you should seek legal advice.

What is pleading not guilty?

Pleading not guilty means you deny committing the offence or that you have a defence and therefore the court must hear evidence to decide whether you are guilty or not. The hearing of this evidence takes place on a separate date called a trial. A duty lawyer cannot represent you at a trial and therefore your only options are to employ your own lawyer or represent yourself.

For further information see the Legal Aid WA kit called **Representing yourself at a Magistrates Court trial** available on the Legal Aid WA website or by contacting the Legal Aid WA Infoline on **1300 650 579**.

Can I apply for an adjournment?

When you apply to put your court date off to a later date, it is called applying for an adjournment. You must appear in court in order to apply for an adjournment. When you apply for an adjournment, you do not have to enter a plea of guilty or not guilty at the same time. Usually the reason you might need an adjournment is to have more time to get legal advice or to find a lawyer before you enter your plea. You might also need an adjournment so that you can gather information you will need in court, such as references or a letter from your doctor.

Whether you are granted an adjournment is up to the court. If there is a reason you do not want to

deal with your charge on the first date it is listed, you will usually be granted an adjournment. However, if you need further adjournments, you will generally have to provide a good reason. If you have already had a few adjournments and you need another one, you should speak to the duty lawyer before you appear in court. They may then appear for you to make the application for an adjournment.

If an adjournment is granted, it will usually be for two or three weeks, but it can be longer depending on the reason. During this time, you should make sure you do everything you can to be ready for your next appearance in court.

What if I have to appear on an application that requires a hearing?

A duty lawyer cannot represent you when there is an application being made which requires a hearing at which evidence will be heard, such as an application for an extraordinary driver's licence or an application to have your fines suspension removed. Your only options are to organise your own lawyer or represent yourself.

For further information see the following Legal Aid WA Information sheets, available by contacting the Legal Aid WA Infoline on **1300 650 579**:

- **Extraordinary driver's licence**
- **Licence suspension order for non-payment of a fine or infringement.**

What if I need an interpreter when I go to court?

If you know that you will need an interpreter when you attend court, you should contact the court well before your court appearance date to ask them to arrange an interpreter. This interpreter will then be available on the morning of your court appearance and can assist you during any interviews you may have before court, such as with the duty lawyer, as well as in court.

To arrange an interpreter for the **Magistrates Court** you simply need to call the court in which you are appearing and advise them that you need an interpreter. They will need to know your court date and the specific language you speak.

To arrange an interpreter for the **Children's Court**, you need to complete an Interpreter

Request Form. This form is available at the Children's Court or you may download it from the Children's Court website, under Interpreter Services. It must be provided to the court well before your court appearance so that an interpreter can be booked. If you are a family member and you need an interpreter, you may still use this service.

If you have not arranged an interpreter before your court appearance, when you appear in court you should advise the court that you need an interpreter. The court will then adjourn your case to a new date and organise an interpreter to attend on that date.

What do I need to do when I am in court?

Here are some tips to help you when you are appearing in court, whether you are representing yourself or represented by a lawyer.

- **Be on time:** The time you are due in court should be written on your court hearing notice, summons or bail papers. If you are not sure, ring the court and check. **If you are late for court or do not come at all, a warrant may be issued.** If this happens you could be arrested and put in custody.
- **Dress neatly:** Take off any sunglasses or hat before you enter the court. You will not be allowed into court in a singlet or without shoes. You should make sure that you are not wearing any clothing that would be considered inappropriate by the court.
- **No eating or drinking:** Do not take any food or drink into court.
- **No mobile phones or electronic devices:** Turn off all mobile phones and electronic devices before entering the court.
- **Court room behaviour:** When entering and leaving the courtroom you should bow towards the magistrate or judge. You should stand up when the magistrate or judge enters and leaves the courtroom. Also stand up when you are being spoken to or when you wish to speak, otherwise remain seated and quiet. Address the magistrate or judge as "Your Honour".
- **Young children:** Try and make prior arrangements so you don't have to bring your children to court as this will make it easier for you to concentrate on what is happening. If

this is not possible, bring someone with you who can mind your children outside the court whilst your case is dealt with. Very young children can be brought into court if they are quiet. If the child is noisy you may be asked to take them outside. Some courts may be able to assist with organising child minding. You should contact the court well before your court date to see if this is possible.

How do I contact the court?

Most court registries are open between 8.30am and 4.30pm each weekday.

Contact details for all **Magistrates Courts** in WA may be found on the Magistrates Court website www.magistratescourt.wa.gov.au under Court Locations and Contacts.

Contact details for the **Perth Magistrates Court**:

Central Law Courts
501 Hay Street
PERTH WA 6000
Ph: (08) 9425 2222
Fax: (08) 9425 2777
Email: pmclistings@justice.wa.gov.au
pmcregistry@justice.wa.gov.au

Contact details for the **Perth Children's Court**:

160 Pier Street
PERTH WA 6000
Ph: (08) 9218 0100
Fax: (08) 9221 1705
Email: childrenscourt@justice.wa.gov.au
Website: www.childrenscourt.wa.gov.au

Contact details for all other WA courts may be found in the **Court and Tribunal Services section** of the Department of Justice website www.dotag.wa.gov.au under the heading **Which court?**

Where can I get more information?

Information sheets and kits, available from any Legal Aid WA office or from the **Legal Aid WA Infoline** on **1300 650 579**:

- **References for court**
- **Spent conviction order at time of sentence**
- **Traffic offences**
- **Representing yourself at a Magistrates Court trial Kit**

Web pages in the Information about the law section of the Legal Aid WA website www.legalaid.wa.gov.au under the heading **Crime, police and victims of crime**:

- **Appearing in court**
- **Duty Lawyer Service**
- **Bail and surety**
- **Criminal records and spent convictions**

Online resource about **Representing Yourself at a Magistrates Court Criminal Trial**, available from the Legal Aid WA website www.legalaid.wa.gov.au under the heading **Legal Resources – CORE**.

Legal Aid WA Infoline on **1300 650 579** for information and referral.

Department of Justice website www.courts.dotag.wa.gov.au under the heading **Going to court**.

Legal Aid WA Offices

TELEPHONE INFOLINE: 1300 650 579 (General Enquiries)
Infoline open Monday to Friday 9.00 am to 4.00 pm
(Australian Western Standard Time) except public holidays

Translating and Interpreting Service 131 450
National Relay Service (for hearing and speech impaired) 133 677

www.legalaid.wa.gov.au

Perth Office

32 St Georges Terrace, Perth, WA 6000
1300 650 579
(08) 9261 6222

Southwest Regional Office

7th Floor, Bunbury Tower, 61 Victoria Street, Bunbury, WA 6230
(08) 9721 2277

Great Southern Regional Office

Unit 3, 43-47 Duke Street, Albany, WA 6330
(08) 9892 9700

Goldfields Regional Office

Suite 3, 120 Egan Street, Kalgoorlie, WA 6430
(08) 9025 1300

Midwest & Gascoyne Regional Office

Unit 8, The Boardwalk, 273 Foreshore Drive, Geraldton, WA 6530
(08) 9921 0200

Pilbara Regional Office

28 Throssell Road, South Hedland, WA 6722
(08) 9172 3733

West Kimberley Regional Office

Upper Level, Woody's Arcade, 15-17 Dampier Terrace, Broome, WA 6725
(08) 9195 5888

East Kimberley Regional Office

98 Konkerberry Drive, Kununurra, WA 6743
(08) 9166 5800

Indian Ocean Office

Administration Building, 20 Jalan Pantai
Christmas Island, Indian Ocean, WA 6798
(08) 9164 7529

This information contains a summary of the law and is correct at the date of publication. It is not legal advice. You should always seek legal advice about your individual situation. Any services referred to which are not operated by Legal Aid Western Australia are not endorsed or approved by Legal Aid Western Australia.

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