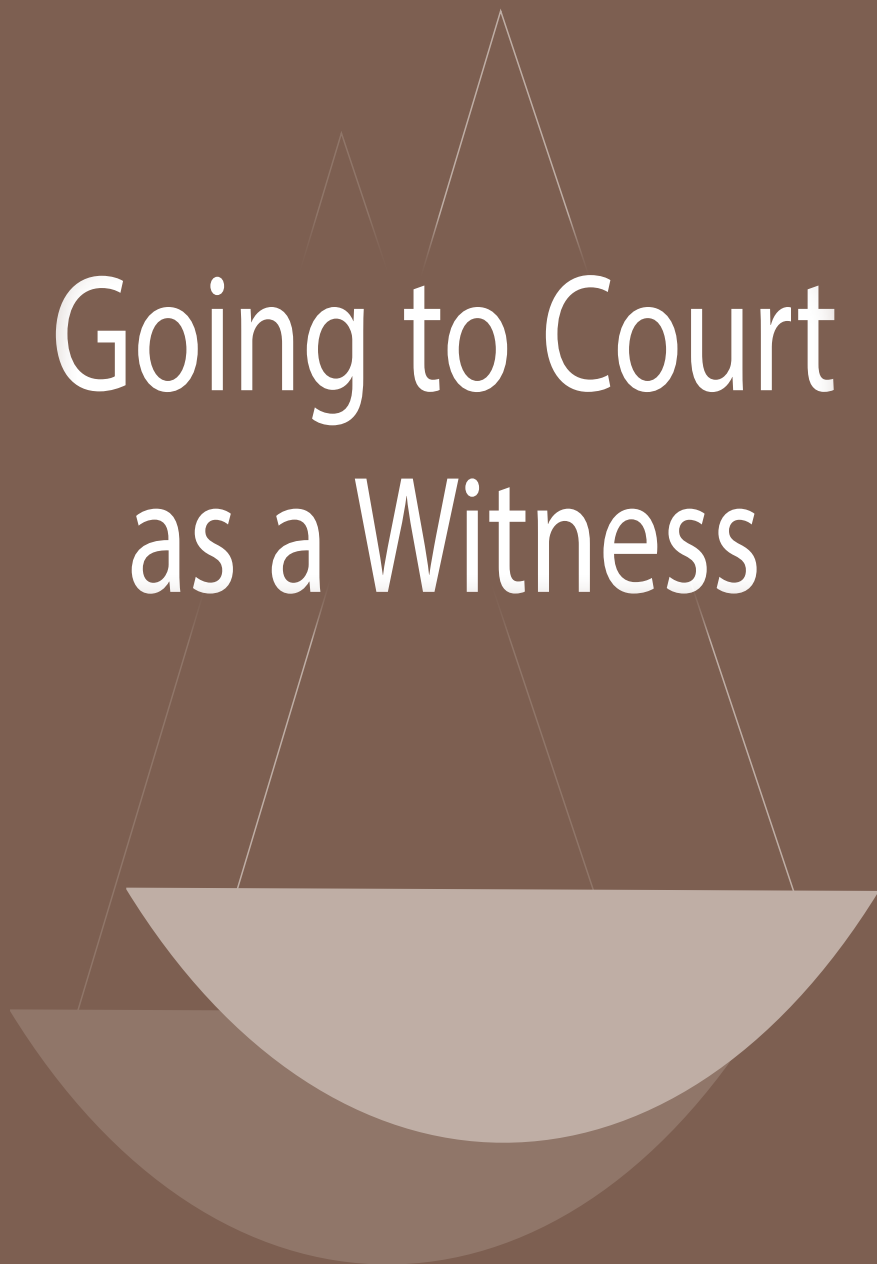


Oifig an
Office of the



Stiúrthóra Ionchúiseamh Poiblí
Director of Public Prosecutions

Going to Court as a Witness



Plain English



Approved by NALA

Introduction

Going to court can be stressful for many victims and witnesses. If you need to give evidence in a criminal trial, we hope that this booklet will help you to understand what happens in court.

The booklet tries to answer the questions that people ask us most often. It does not deal with every possible situation and it does not give you legal advice. If you need legal advice, you should talk to a solicitor.

We also have a booklet 'The Role of the DPP' that explains in plain language what the Office of the Director of Public Prosecutions (DPP) does. For a more detailed description of the work of our Office, please see our 'Guidelines for Prosecutors'.

You may ask for copies of these publications from our Office (see contact details on page 27) or you can read them on our website, **www.dppireland.ie**. The website also has a Victims and Witnesses section, which you may find helpful.

Please note

Printed copies of this booklet are available from our Office in both Irish and English. See contact details on page 27.

You can visit our website, **www.dppireland.ie** to download the booklet in any of the following languages:

- Irish
- English
- Arabic
- Chinese (Mandarin)
- French
- Latvian
- Lithuanian
- Polish
- Portuguese (Brazil)
- Romanian
- Russian
- Spanish

You may also ask for Braille or audio versions of this booklet from our Office.

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Key facts

1. What does the Director of Public Prosecutions (DPP) do?

The DPP decides whether or not to charge people for committing crimes – that is, to ‘prosecute’ them. The DPP also decides what the charges should be. Once the prosecution begins, the Office of the DPP is responsible for the prosecution case.

2. What does the Chief Prosecution Solicitor do?

The Chief Prosecution Solicitor acts as solicitor to the DPP and is head of the Solicitors Division of the DPP’s Office. The staff of the Solicitors Division represent the DPP in courts in Dublin. Local state solicitors represent the DPP in courts outside Dublin.

3. What happens after somebody reports a crime?

When a person reports a crime to An Garda Síochána (the Gardaí), a number of stages follow:

- The Gardaí take a witness statement from the victim or the person who has reported the crime. A witness statement is a written record of the complaint.
- The Gardaí investigate the crime.
- Depending on what they find, the Gardaí may arrest a person they suspect of committing the crime (the suspect).

- The Gardaí or the DPP will decide whether or not to prosecute. In serious crimes, the Gardaí send a file to the DPP and the DPP makes the decision. In less serious crimes, the Gardaí make the decision, although they still prosecute in the name of the DPP, who has the right to tell the Gardaí how to deal with the case.
- Then the Gardaí charge the person who they suspect committed the crime.
- The Gardaí bring the suspect to a District Court judge. From this point on, the suspect is known as 'the accused'.
- The judge decides whether the accused person should be kept in prison (custody) until the trial or should be released on bail.
- A court date is set.
- The case begins in court.

4. Are there different types of criminal offence?

There are two types of criminal offence – summary offences and indictable offences.

Summary offences:

- are less serious crimes;
- are heard by a judge without a jury in the District Court;

- cannot carry a prison sentence of more than 12 months for one offence (but for more than one offence a judge can impose a maximum prison sentence of two years in some cases).

Indictable offences:

- are more serious crimes;
- are heard by a judge and jury in the Circuit Court or the Central Criminal Court;
- are sometimes dealt with in the Special Criminal Court by three judges without a jury;
- carry more serious penalties, including life imprisonment for some crimes.

5. Which courts deal with crime?

There are four types of court – the District Court, the Circuit Court, the Central Criminal Court and the Special Criminal Court.

District Court

This is the first court to which Gardaí take the accused. In the District Court, a judge:

- hears details of the charges brought against the accused;
- says whether a case is ready to go to trial; and

- hears trials for less serious cases (summary offences) without a jury.

The accused may plead 'guilty' or 'not guilty'. If the accused pleads 'not guilty' in the District Court, the prosecution will call witnesses to give evidence to try to prove that the accused is guilty.

Circuit Court and Central Criminal Court

These courts hold trials for offences that are more serious than those heard in the District Court. In these courts, a jury sits alongside the judge. The jury must decide if the accused is guilty or innocent.

Special Criminal Court

This court is similar to the Circuit and Central Criminal Courts, except that:

- there is no jury; and
- three judges hear each case.

Being a witness

6. Who can be a witness in a criminal case?

The prosecution or defence – that is, those defending the accused – can call anyone who has information about a crime to be a witness at a trial, including the victim.

7. If I am a witness, how will I be called to give evidence?

You will get an order from the court for you to give evidence at a particular time and place – this is called a ‘witness summons’. The Gardaí will give you this summons.

8. What happens after the Gardaí charge the accused?

In the more serious cases, once the Gardaí have charged the accused, the prosecution team will put together the evidence against the accused. The document that contains this evidence is called the ‘book of evidence’ and is an important part of the case.

The book of evidence:

- contains statements from witnesses, including the victim;
- includes other documents and a list of any physical evidence that will appear in court, such as photographs or weapons.

When the prosecution has gathered all the evidence they need for the trial, the Gardaí will give a copy of the book of evidence to the accused. Once this happens, a date is set for the trial.

9. If I am a witness or a victim, can I see the book of evidence?

No. You can see a copy of your own statement, but you cannot see the whole book of evidence.

10. Is the verdict decided on the book of evidence?

No. The court and the jury decide the case based on the evidence they hear at the trial and not on what is in the book of evidence.

11. What is a deposition?

A deposition is a statement by a witness made under oath (a legally binding promise by the witness to tell the truth). Either the prosecution or the defence team can ask the judge to allow them to take evidence under oath before the trial. If the judge agrees, a solicitor or barrister will ask you questions under oath in a courtroom. The other side may also ask you questions.

They will write your answers down. When you have finished giving evidence, the court clerk will read the deposition to you. If you agree that it is correct, you sign it.

The court case

12. What happens when the case begins in court?

If the case is being heard by a jury, a barrister working for the DPP will present the prosecution case. A prosecution solicitor working for the DPP will also be there. The prosecution team represents the people of Ireland, not any one individual. So, even though you may be the victim of a crime, the DPP will not be representing you as an individual.

The barrister will begin by explaining to the jury what the case is about. He or she will then call the witnesses one at a time. When the barrister calls you as a witness, the law says that you must tell the truth.

The following sections describe the main aspects of a court case:

Members of the jury

You should not know anyone on the jury. If you do, you should tell the prosecution solicitor or barrister. The judge will not allow anyone who knows the victim or the accused, or who has any other connections with the case, to sit on the jury.

Giving evidence

The prosecution barrister will ask you questions to get your evidence. When the prosecution has finished asking you questions, the defence may question you. This is called cross-examination.

Beginning the defence

When the prosecution has finished questioning all of their witnesses, the defence team will start to make their case.

They have a choice of what to do.

- They can call witnesses to support the defence. If they do this, the prosecution can cross-examine the defence witnesses.
- They can call the accused to give evidence. If they do this, the prosecution can cross-examine the accused.
- They can simply argue that the prosecution has not proved its case. This is because by law the prosecution has to prove that the accused is guilty, but the accused does not need to prove innocence. The jury is not allowed to assume that an accused who does not give evidence is guilty.

Considering the verdict

When the prosecution and the defence have finished with their witnesses:

- they take turns to argue their case to the jury;
- the judge sums up the evidence, explains the law to the jury and tells them what to consider to reach their final decision or 'verdict'; and

- the jury then go to the jury room to consider a verdict.

If the accused is found not guilty, he or she is free to go. If the jury cannot agree a verdict, the DPP has to decide whether a new trial should take place. If the jury finds the accused guilty, the judge has to decide what the sentence should be.

Sentencing the accused

The judge might not decide on the sentence straight away. Usually, the judge will set a later date for sentencing. This is to allow probation officers, social workers, doctors, psychiatrists or the Gardaí – depending on the particular case – time to prepare a report.

These reports help the judge to decide on the sentence. The reports might include a Victim Impact Statement. The statement describes the effect that the crime has had on the victim. An information leaflet on 'Making a Victim Impact Statement' is available on our website, www.dppireland.ie.

13. Are there any reasons why a trial might not go ahead?

Sometimes, a trial cannot go ahead on the date fixed for various reasons, for example if:

- an important witness is not available because of illness;

- the defence legal team is not ready to go ahead;
- the court list is full and there is no judge or court ready to deal with the case; or
- the defence team has started a 'judicial review' to stop the trial going ahead.

14. What is a judicial review?

There are different types of judicial reviews. A common type is where the accused asks the High Court to prevent the trial court or the DPP from going ahead with the trial. For example, an accused might ask the High Court to stop a trial because:

- the investigation or prosecution of the crime has taken too long; or
- there has been such a delay in the case that the accused cannot get a fair trial.

If the courts agree to stop the trial, the accused goes free. Even if the judicial review does not succeed, it may hold up the trial for a long time.

Help for witnesses and victims

15. What help can I get if I need to give evidence as a victim of a crime?

The prosecution solicitor will work with Gardaí to make sure that you always know what is happening in the case.

There are also a number of organisations that can offer you help through a court support service. This means that, if you wish, a volunteer will come with you to the trial and stay with you throughout. The Crime Victims Helpline, which provides a telephone support service for victims of crime, can give you contact details for court support and other victim support services. You can contact the Crime Victims Helpline at Freephone 116 006 or text 085 133 7711.

16. What help can I get with the cost of coming to court to give evidence?

The Gardaí are responsible for paying witnesses' expenses. This is the cost to you of coming to court to give evidence. These expenses may include the cost of travelling, meals and, in some cases, accommodation.

The Garda Superintendent in the area where the case is being taken will pay your expenses. The Garda dealing with your case can handle this for you. He or she may ask you for receipts for your expenses.

In some cases, you may be able to get an advance on expenses before the case so that you can travel to court.

17. If I am giving evidence as a victim, will I meet the prosecution team before the trial?

Generally, you will be able to meet the prosecution team at a pre-trial meeting. The pre-trial meeting takes place with the investigating Garda, the

prosecution solicitor and any barrister dealing with the case. In serious cases, such as sexual offences, the prosecution solicitor will offer to set this up for you in advance of the trial.

If you would like a meeting and it has not yet been offered to you, you should tell the Garda looking after your case. The Garda will contact the DPP's Office or local state solicitor to set up the meeting.

18. What happens at the pre-trial meeting?

Pre-trial meetings allow the barrister and solicitor to explain to you what happens in court. However, strict rules prevent them from talking to you about what evidence you will give. This is so that nobody can claim that someone told you what to say in court.

19. If I am a victim of a crime, can I see a written record of the trial?

The written record of the trial is called a transcript. The prosecution and defence teams may get the transcript after the trial is over and if there is an appeal. Only a judge can say whether you can see the transcript.

20. What happens if I do not want to be in the courtroom with the accused when I give my evidence?

If you are a victim of crime, the Garda or the prosecution team can apply to the court to ask if you

can give your evidence by videolink. They will do this if they think that it would be better for you to give your evidence this way. If the judge decides you can do this, it means that you can give your evidence without seeing the accused person.

Videolink has some benefits:

- You give your evidence in front of a camera in another part of the court building away from the courtroom.
- The legal team can ask you questions as if you were actually sitting in front of them.
- The court will see you giving your evidence on a television screen. However, you will only see the person who is asking you questions, not the accused person.

21. If I am a victim of crime, will I have access to interpretation or translation services if I need them?

Yes, as a victim you have a right to translation and interpretation services, both before and during the court case. If you need these services, you should tell the Gardaí so that the services can be put in place. Sometimes a victim may not ask for these services but if the Gardaí, the prosecution team or the court think that you need them, they will get them for you. This will help you to understand what is happening

and help the prosecution team and the court to understand you.

22. If I am a victim of a crime, can I get a lawyer to represent me in court?

No, a lawyer cannot represent you unless you are the victim of a serious sexual offence and the defence team wants to cross-examine you about your sexual history. They can do this only if the judge allows them to. A lawyer can represent you in court when the defence team is asking the judge for permission.

If you are a victim of a serious sexual offence, the Legal Aid Board will provide a lawyer for you free of charge. The prosecution solicitor dealing with your case will set this up for you. Your lawyer will meet you before the defence team applies to cross-examine you. Your lawyer will also be in court when the judge tells the defence whether they can cross-examine you or not.

If the judge gives permission to cross-examine you, your lawyer cannot represent you during the cross-examination itself. However, the judge should make sure that the defence team stays within the limits set by the court when they cross-examine you.

23. Will my name be made public when I give my evidence?

Generally, you cannot keep your identity hidden when giving evidence. This is because the Constitution of

Ireland says that all cases should take place in public unless the law makes an exception. It can do this for certain types of cases, for example:

- rape and some sexual offence cases;
- cases where the accused is under 18 years of age.

In these cases, trials take place without the public being present. This means that generally only the people directly involved will be in the courtroom when you give your evidence. Journalists may also be in the courtroom. However, journalists cannot report the names of the accused person or the victim or write anything that could help people find out their names. A journalist who breaks these rules is guilty of a criminal offence.

24. Will the name of the accused person be made public?

This is a complex issue and it is not possible to give a full account of the law here.

In some cases, it is not possible to make names public at all. For example, in rape cases, accused people have the right to keep their name private unless they are found guilty. This means that nothing can be said to identify the accused before the verdict. It is not possible to reveal the identity of an accused person who is found not guilty.

If the accused is found guilty, some victims may want the name of the accused to be made public. Often, however, if the guilty person is named, the identity of the victim will become known. Despite this, some victims decide that they want the guilty person to be named. If you want this to happen, you should tell the prosecution solicitor.

If you are a victim, you should think carefully about what the naming of the guilty party will mean for you, before you decide what to do. It may be a good idea to get your own legal advice about this.

25. If I am a victim of a crime, how does the judge learn about the effect the crime has had on me?

It is important for a judge to know what effect a crime has had on a victim when deciding on a sentence. You can make a Victim Impact Statement once the accused is found guilty or pleads guilty. This statement describes how the crime has affected you and is still affecting you. An information leaflet on 'Making a Victim Impact Statement' is available on our website, www.dppireland.ie.

26. If I am a victim of a crime, do I have the right to get compensation?

By law, you may have a right to money for any personal injury or lost earnings that you suffered because of the offence. However, there are some limits:

- It is up to the judge whether to order the person who is found guilty to pay you.
- The judge must first check if the person can afford to pay you. For example, the judge may see no point in ordering an unemployed person to pay.
- The amount of money you get cannot be more than the amount you could have got from a civil claim in the same court.

The Criminal Injuries Compensation Tribunal may pay compensation for personal injury that is a direct result of a violent crime (see contact details on page 29).

Appealing a case

27. Can the accused appeal the conviction or sentence?

Yes, the accused person can appeal the conviction and/or sentence.

If the trial took place in a District Court, the accused can:

- appeal the conviction or the sentence to the Circuit Court; and
- have a full re-hearing of the case, which means that you would have to go to court again as a witness.

If the trial took place in the Circuit Court, the Central Criminal Court or the Special Criminal Court, the accused can appeal the sentence and/or the conviction to the Court of Appeal (Criminal). In this court:

- three appeal court judges sit together to hear the appeal; and
- the judges read the transcript of the original trial instead of hearing the evidence all over again.

If the accused has gone to prison, he or she must usually stay in prison while waiting for the case to go to the Court of Appeal (Criminal).

28. Can the DPP appeal the sentence?

Yes, the DPP can appeal the sentence – but only if the trial took place in the Circuit, Central Criminal or Special Criminal Court. The DPP cannot appeal a sentence of the District Court.

The DPP can ask the Court of Appeal (Criminal) to review a sentence that she thinks is 'unduly lenient'. The DPP must ask for a sentence review within 28 days of the judge giving the sentence. In some cases, the DPP can apply for more time to ask for a review but not more than 56 days from the sentence date.

29. Who can ask the DPP to appeal an unduly lenient sentence?

You can ask the DPP to appeal a sentence if you are:

- a victim of a crime;

- a family member of a victim of a crime;
- a doctor, lawyer or social worker acting for a client.

30. How do appeal court judges review a sentence?

Appeal court judges will read the written record of a trial to understand the trial judge's reasons for giving a particular sentence. They will consider a sentence to be 'unduly lenient' only if they believe that the trial judge was wrong in law to give such a light sentence.

An appeal will only be possible in a small number of cases.

Complaints

31. Can I make a complaint to the Office of the DPP?

Yes. If you have a complaint about how we work, you can write to us at our Office. Our contact details are on page 27.

How to contact the DPP's Office

Office of the Director of Public Prosecutions

Infirmary Road

Dublin 7

D07 FHN8.

Tel: (01) 858 8500

Fax: (01) 642 7406

Website: www.dppireland.ie

Victims Liaison Unit

Office of the Director of Public Prosecutions

Infirmary Road

Dublin 7

D07 FHN8.

Tel: (01) 858 8444 (business hours)

Fax: (01) 642 7406

Website: www.dppireland.ie

Chief Prosecution Solicitor

Office of the Director of Public Prosecutions

Infirmary Road

Dublin 7

D07 FHN8.

Tel: (01) 858 8500

Fax: (01) 642 7406

Website: www.dppireland.ie

Local state solicitors

You can get contact details for each of the local state solicitors around the country from our Office on (01) 858 8500 or on our website, www.dppireland.ie.

Other useful contacts

Crime Victims Helpline

Freephone: 116 006

Text: 085 133 7711

Email: info@crimevictimshelpline.ie

Website: www.crimevictimshelpline.ie

Victim support services

You can contact the Crime Victims Helpline (see above) for details of court support and other victim support services.

Courts Service

Information Office

Phoenix House

15-24 Phoenix Street North

Smithfield

Dublin 7

Tel: (01) 888 6000

Fax: (01) 873 5250

Website: www.courts.ie

Department of Justice and Equality

94 St Stephen's Green

Dublin 2

Tel: (01) 602 8202

Fax: (01) 661 5461

Website: www.justice.ie

Victims of Crime Office

Commission for the Support of Victims of Crime

Department of Justice and Equality

Second Floor

7-11 Montague Court

Montague Street

Dublin 2

Tel: (01) 476 8686

Fax: (01) 476 8619

Websites: www.victimsofcrimeoffice.ie

www.csvc.ie

Criminal Injuries Compensation Tribunal

Second Floor

7-11 Montague Court

Montague Street

Dublin 2

Tel: (01) 476 8670

Fax: (01) 476 8616

Website: www.justice.ie

Legal Aid Board

Quay Street

Cahirciveen

Co Kerry

Tel: (066) 947 1000

Fax: (066) 947 1035

Website: www.legalaidboard.ie

More information

You can visit our website, www.dppireland.ie, for more information including information booklets and leaflets on:

- The Role of the DPP
- How we make prosecution decisions
- How to request reasons and reviews
- Making a Victim Impact Statement
- Releasing my counselling records
- Victims Charter
- Complaints Policy

