

Who Decides if my Case goes to Trial?

Just because police believe you have committed an offence, it doesn't necessarily mean that you will end up going to a defended hearing ([local court](#)) or jury trial ([district](#) or supreme court).

Police or, in more serious cases, the DPP have discretion as to whether a case should go all the way.

There has never been any police or DPP rule that every offence that is charged must be prosecuted to the full extent of the law.

In fact, when the prosecution continues to prosecute a flimsy case, they can be punished with court costs.

There is even a certain amount of discretion when it comes to whether a person should be charged with an offence in the first place.

Police must form a 'suspicion on reasonable grounds' that an offence has occurred before the press charges.

If a complaint is made, police will need to decide whether it is credible before they commence a prosecution.

There are certain areas of the law where police will tend to charge a person even if the complaint appears to be lacking in some respects. Two such areas are domestic violence and sexual offences.

After an offence has been charged, the decision as to whether the prosecution will continue all the way to a defended hearing or jury trial will be primarily governed by what is in the 'public interest'.

Prosecution policy dictates that criminal proceedings should be withdrawn if:

- They do not have enough evidence that will be admissible in court to establish each element of the offence, or
- There is otherwise no reasonable chance of success in court, or
- There is any other reason why the offence should not be prosecuted.

The last category is the broadest, and the [Prosecution Guidelines](#) has a list of about 20 discretionary factors that must be considered when the decision is made as to whether or not to continue with a prosecution.

Broadly, these categories look at what kind of law was broken, the history and background of the defendant, and the interests of the community as well as the criminal justice system.

If the law is old, obsolete or the alleged offence was trivial or committed a long time ago, these are all good reasons for the prosecution to drop the charges. Any mitigating or aggravating factors will also be considered.

The prosecution can consider the background of the defendant, including age, maturity, intelligence, physical or mental health or disability. They can also include any previous criminal offences committed by that person.

If there are any alternatives to prosecution available, the prosecution should consider how effective they would be.

For minor offences (called 'summary offences'), there is generally a statutory limitation of six months for taking action. After this time, you cannot be prosecuted or punished.

For more serious crimes, such as sexual assault and murder, there is no limitation period at all and offences can be charged years or even decades after they were allegedly

committed.

The prosecution can drop charges at any time, so don't think it is too late just because your case has been going for some time and you've already been to court for short court dates (called 'mentions')

One way to get the charges reduced or dropped is to write to the prosecution and argue that the evidence is not sufficient to prove the charges.

The prosecution can be the police, the DPP (Director of Public Prosecutions), the RMS, your local council or another prosecutor body.

If you can convince the prosecuting body that they won't be able to prove the elements of the offence, or that they don't have reasonable prospects of success due to a valid legal defence you may have, and/or that there are discretionary factors in your favour, then as a matter of policy they are required to withdraw the case.

This way, you can get on with your life without having to face the stress, anxiety and expense of a lengthy hearing or trial.

If the decision is made to prosecute anyway, and they lose in court, they may have to pay your legal costs.

If you are facing a criminal or traffic case, and you don't feel that your lawyer is doing enough to get your case dropped, you may wish to [speak with a lawyer](#) who will.