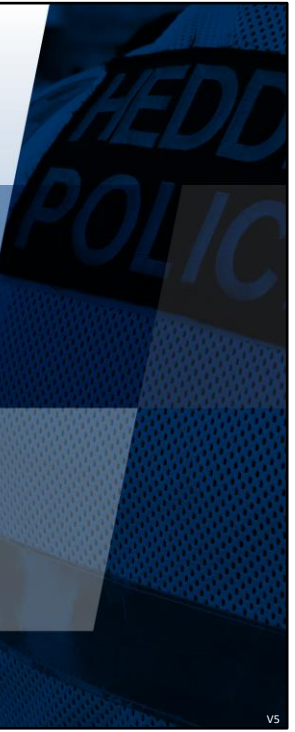
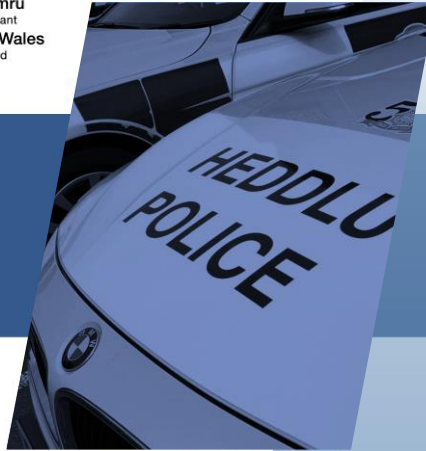




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Charging and Pre-Charge Bail (PCB)

Lesson Aim:

To summarise and explain the procedures in relation to charging and bailing person

By the end of the lesson learners will be able to:

Explain the Policies and legislation relevant to charging

State the importance of understanding the influences on charging

State the decision making process in CPS charging

Explain how a prosecution is undertaken

State the importance of the impact of court on victims, including special measures

Summarise 'Pre-Charge Bail' and the considerations surrounding 'Pre-Charge Bail'

Influences Towards Charging



QTS:

How can our initial actions at a scene affect a charge?

The initial action of police response can lead to a different outcome.

Consideration must be given to Golden Hour Principles:

1. Preserve Scene
2. Take Accounts
3. Type of incident: is it a new crime e.g. Modern Day Slavery, is it a burglary?, is it an assault? Do you need medical assistance?
4. Who are the witnesses
5. Is there additional evidence to support the investigation, and where does it come from? e.g. CCTV, an independent witness

Contamination of Evidence:

1. fingerprints/shoe prints
2. Can we preserve best evidence
3. Have we thought about our own presence at a scene

Type of Incident and Potential Direction of Investigation

1. What does the victim say has happened?
2. Are we as the police being supported by the victim
3. Is there independent evidence to support or negate the crime
4. Has the suspect committed other crimes, will they need to be investigated or currently being investigated?
5. Are you acting in an unbiased independent manner e.g. it is not up to the police to decide on guilt, but to investigate and bring matter to court if necessary for the court to determine guilt
6. Can the crime be detected by less intrusive methods e.g. Report for Postal Requisition Charge; Penalty Notice for Disorder?

Relationship Between the Investigation and Outcome

1. Have we done all we can?
2. Is all the evidence gathered?
3. what considerations do you have to support the victim during the investigation? Have you agreed to call them weekly, or made arrangements for referrals to Victim Support, Neighbourhood Policing Teams, Neighbourhood Watch?
4. Have you informed the victim of the potential outcomes from the start of the investigation

Early Investigation Advice

1. Seek advice from your Sergeant or more experienced officer; better get advice first than make mistakes which could jeopardise the investigation
2. Make sure it is documented in a secure place e.g. NICHE; CM01 (MG3 if still being used in your force area)
3. Is the advice sensitive (Containing personal details)
4. Does the incident need to be passed onto another department e.g. CID; Community Safety

Potential Outcomes are on the next slide

Potential Outcomes Post Interview



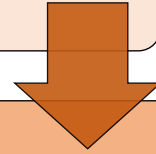
QTS - What are the potential outcomes after a suspect has been interviewed?

Students could answer:

1. Charged for court
2. 18 to 25 referral (if your force has this process)
3. Restorative Justice
4. Caution or conditional caution
5. Warning/Reprimand (Youth)
6. Youth Offending Team referral
7. Bailed/RUI
8. No further Action

Bail

Bail is a temporary release of an accused person that requires that person to surrender themselves to custody at an appointed place & time



Bail can be 'unconditional' or 'conditional' i.e. have certain conditions attached to it



QTS – What is Bail?

Where a person has been arrested and held in custody at a police station in connection with an offence, it is the responsibility of the Custody Officer to decide:

- if there is sufficient evidence at that stage to charge or report for prosecution
- if insufficient evidence to justify a charge at that stage but further enquiries may provide additional evidence
- if insufficient evidence to justify a charge and there is unlikely to be any other evidence obtained

If the latter, that person must be released from custody without charge. Where the decision is to report for prosecution that person should be unconditionally released from custody.

Kay's Law, Pre- Charge Bail (PCB)

Pre-charge bail is a tool used by police to manage suspects who have been arrested on suspicion of an offence but where more time is needed to complete the investigation before a charging decision is made



In February 2020, the Government launched a consultation on pre-charge bail which sought to address concerns raised around the impact of current rules from the Policing & Crime Act 2017 on the police, victims, those under investigation & the broader CJS. The response to this was published in January 2021 & the Act now implements reforms to the pre-charge bail system.



In 2017, the Government legislated through the Policing and Crime Act 2017 ("the 2017 Act") to address concerns that individuals were being kept on pre-charge bail for long periods, sometimes with strict conditions. Changes introduced through the 2017 Act brought in a presumption against the use of pre-charge bail unless necessary and proportionate, and clear statutory timescales for the initial imposition and extension of bail, including the introduction of judicial oversight for the extension of pre-charge bail beyond three months. After those changes were implemented, the use of pre-charge bail fell, mirrored by an increasing number of individuals 'released under investigation' (RUI).

This change raised concerns that bail is not always being used when appropriate, including to prevent individuals from committing an offence whilst on bail or interfering with victims and witnesses. Other concerns focus on the potential for longer investigations in cases where bail is not used and the resultant adverse impact on the courts.

In February 2020, this Government launched a consultation on pre-charge bail which sought to assess concerns raised around the impact of the current rules on the police, victims, those under investigation and the broader criminal justice system. The response to the consultation was published in January 2021 and the Act (Kay's Law) now implements reforms to the pre-charge bail system which will simplify the existing regime and provide assurance and safeguards for victims of crime

Kay's Law - In September 2018, Alan Martin, 53, was released under investigation by police in Sunderland, after his estranged wife Kay Richardson had gone to the police accusing him of rape. Kay had been to the police 12 times since 2011 with accusations of domestic abuse

No conditions were imposed and the police gave Martin the keys back to the home he had shared with Ms Richardson.

Martin let himself into the house and waited for Ms Richardson, 49, before attacking her with a hammer and strangling her.

Police, Crime, Sentencing & Courts Act 2022

The Act encourages the police to use PCB in every case where it is necessary & proportionate by removing the perceived presumption against PCB

PCB decisions will be made with specific reference to safeguarding the victim & any witnesses particularly where they are vulnerable

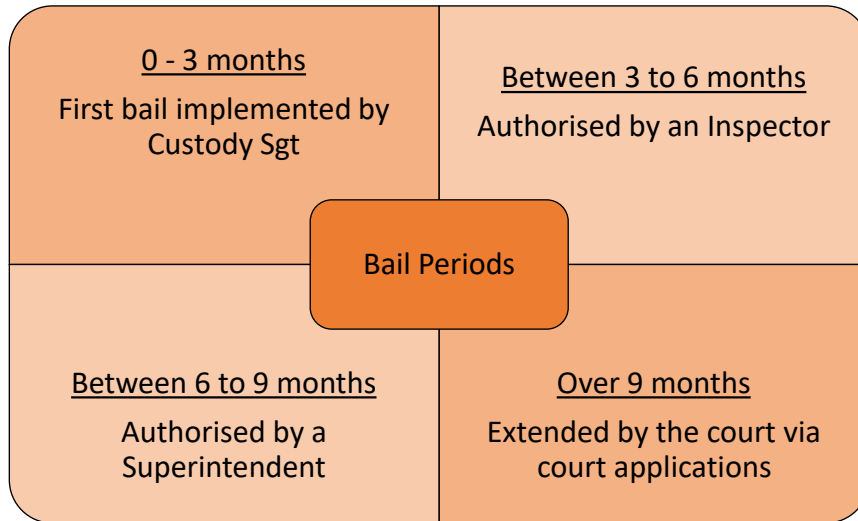
The Act also introduces new PCB time periods for suspects which are more balanced & proportionate

Victims will be better protected through a new requirement to seek the views of victims on PCB conditions relating to their safeguarding

The Act also introduces a 3 hour pause on the detention clock so that arrests from breach of PCB conditions or 'failing to answer' bail do not have a negative effect on the overall custody clock for the original offence

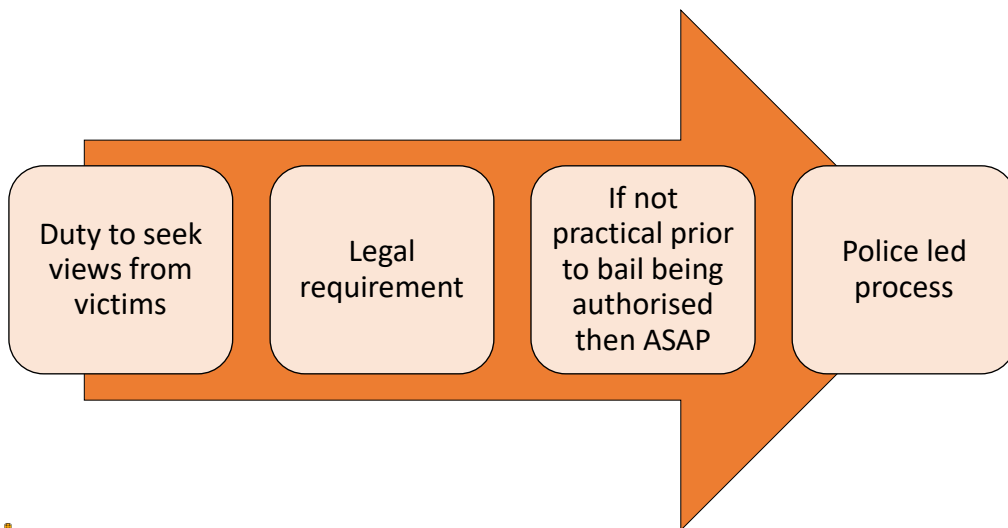


Police, Crime, Sentencing & Courts Act 2022



There is no legislative limit to Magistrate extensions

Victim & Witness Perception



The Act Provides better protection for victims through a new duty to seek the views of victims on pre-charge bail conditions, varying bail conditions and extensions of pre-charge bail

A new duty to inform victims of changes to pre-charge bail conditions and to seek views from them on what conditions concerning their safeguarding look like, ensuring that victims are more involved in the process. This will enable officers to consider any safeguarding concerns to ensure appropriate measures are in place.

Consulting victims at the point of a bail extension will now also be carried out and risk assessed when deciding whether to extend bail after the initial bail period at three month intervals

For SWP - A new SWP built Victim Consultation and Risk assessment will be completed by the OIC when applying for bail which identifies the risk posed to the victim, witnesses, suspects, public and the investigation and for the rationales to be recorded.

Breach of Pre-Charge Bail

The 3 hour pause on the detention clock has been introduced so that arrests for breach of PCB do not have a negative effect on the overall custody clock for the original offence

Expectation is that suspects are arrested for the breach of PCB to manage risks posed by the breach. If there are new substantive offences, it is imperative they are arrested for the new offence firstly

PCB should be considered alongside other protective orders to ensure a web of protection around the victim. Risk Assessment should be revisited throughout the investigative process



If a person is arrested under breach of PCB they shall be taken to the police station they were bailed from

Police, Crime, Sentencing & Courts Act 2022



The Act encourages the police to use PCB in every case where it is necessary & proportionate by removing the presumption against PCB. However Officers & Custody Sgts must take into consideration when deciding whether to release on conditional bail is it proportionate & necessary or can safeguarding measures adequately manage the risk

Released under Investigation (RUI) will continue to exist & where applicable can be used in investigations. This must not be forgotten



Trainer to handout 'Basic Bail application V1.0'

Crown Prosecution Service and Police Charging

Police Decision



CPS decision to prosecute



Other prosecuting organisations. Eg, DVLA, Trading Standards, Environmental Health



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QTS - Who has the authority to make a charging decision?

Student Answers can include:

Custody Sergeant (Police Decision) as the officer independent of the investigation

CPS decision to prosecute

Other Prosecution Organisation (DVLA, Trading Standards, Environmental Health etc.)

Crown Prosecution Service and Police Charging

Group Work 1



QTS - What websites can help us gain understanding in existing and new laws?

Answers to include: .gov; internal intranet search, CPS website

Trainer to give briefing sheets to students and explain what they need to cover:
The students have 30mins to research, then 10 minutes each group with an additional 10 minutes in total for any questions to any of the groups.

Group 1:

To give an overview on:

The Director of Public Prosecutions Guidance (DPPG) on Charging
Prosecution of Offences Act 1985
PACE 1984 – Relevant codes –and post charge bail under section 38(1)

Group 2:

To give an overview on:

The National File Standard
The policing and Crime Act 2017
The Code for Crown Prosecutors

Group 3:**To give an overview on:**

CPS Joint Enterprise charging decisions 2019

Bail Act 1976 - Sureties

Breach of Bail

Joint Enterprise

When an offence is committed by one of several people but it is not possible to prove which one carried out the actus reus (the act)

Eg, if somebody had been fatally stabbed you can be found guilty of that person's murder even if you were not the actual person who stabbed them

It means that you are seen as guilty for someone else's death because you were part of the situation that could have encouraged the incident or were part of it without trying to stop it happening



Examples of how you could be charged for murder under 'joint enterprise' are if:

You were part of a group and someone in that group kills someone with a knife. This is also the same for any other weapon or physical attack.

You were supporting the attacker's actions in some way. This could be verbally by encouraging them or physically if you acted a supportive presence.

You knew that the person who made the attack was going to start violence against the victim, and you did nothing to stop it.

Where two or more persons are involved in an offence, they may be principals (D1) or secondary parties (accessories) (D2). Each offence will have at least one principal, although it is not always possible or necessary to identify them. A principal is one who carries out the substantive offence i.e. performs or causes the actus reus of the offence with the required mens rea (intent). If two or more persons do so, they are joint principals.

A secondary party is one who assists or encourages D1 to commit the substantive

offence, without being a principal offender. However, a secondary party can be prosecuted and punished as if he were a principal offender

Stated Case: R v Jogee

Principles of secondary liability

The Court in *R v Jogee* set out the essential principles applicable to all cases of secondary liability.

Where it is not possible to prove whether a particular defendant is a principal or accessory, it is sufficient to prove that the particular defendant participated in the crime as one or the other. However, note that where two people are jointly indicted for the commission of a crime and the evidence does not point to one rather than the other, and there is no evidence that they were acting in concert, the jury ought to acquit both: *R v Lane and Lane* (1986)

Exceptions are the relevant provisions in the Domestic Violence, Crime and Victims Act 2004, which create offences of causing or allowing the death or serious injury of a child under the age of 16 or of a vulnerable adult.

Actus reus

D2 must encourage or assist the commission of the offence by D1

Men's rea - Intent

D2 must intend to encourage or assist the commission of the crime with knowledge of any existing facts necessary to give D1's conduct/intended conduct its criminal character. This applies also where the offence charged does not require a mens rea.

Eg, there is no requirement to prove a mens rea against D1 that D1 knew that the child was under 13 years old, under S5-8 of the Sexual Offences Act 2003 but D2 must know that the child was under 13 years old.

If D1's offence requires a particular intent, then D2 must intend to assist/encourage D1 to act with that intent. For example, if D2 encourages D1 to take V's bike without permission and return it later, but D1 keeps it, although D1 will be guilty of theft, D2 is only guilty of unauthorised taking, as D2 did not encourage D1 to act with intent to permanently deprive.

DPP for Northern Ireland v Maxwell [1978], in which D2, a member of a terrorist organisation, was liable as an accessory for guiding the car taking a number of men to carry out a violent attack. Although he did not know the precise form of the attack they were to carry out (shooting, bombing etc), he intended to assist them to do so.

This principle will also apply if the assistance / encouragement is given some time before the crime is committed and at the time it is not clear what D1 may or may not decide to do. For example, D2 will be liable where he supplies a weapon or arms to D1, who has no lawful purpose in having it, intending to help D1 by giving him the means to commit a

crime / one of a range of crimes, but having no further interest in what he does, or whether he uses the weapon / arms at all.

Secondary liability includes cases of an agreement between the principal and secondary party, but is not limited to them. It is not necessary to prove any agreement between D1 and D2 to commit an offence. Where, however, it exists, such agreement is by its nature a form of encouragement and in most cases will also involve acts of assistance.

Spontaneous multi-handed violence:

In cases of spontaneous multi-handed violence, if D2 joins a group which he realises is out to cause serious injury, and D1 acts with intent to cause GBH and death results, the jury may infer that D2 intended to encourage/assist the deliberate infliction of GBH and/or intended that that should happen if necessary; and D1 and D2 will be guilty of murder. The giving of intentional support by words or deeds may include supportive presence.

The Code for Crown Prosecutors

The Code for Crown Prosecutors is a public document, issued by the Director of Public Prosecutions, that sets out the general principles Crown Prosecutors should follow when they make decisions on cases.

The Code for Crown Prosecutors

- ◆ The Code for Crown Prosecutors sets out the basic principles to be followed by when making charging and prosecuting decisions.
- ◆ The Code for Crown Prosecutors is issued by the Director of Public Prosecutions under the Prosecution of Offences Act 1985 s.10.



General Principles

- Prosecutors are independent from persons or agencies that are not part of the prosecution decision-making process. CPS Prosecutors must be free to carry out their professional duties without political interference and must not be affected by improper or undue pressure or influence from any source.
- It is not the function of the CPS to decide whether a person is guilty of a criminal offence, but to make assessments about whether it is appropriate to present charges for the criminal court to consider. The CPS assessment of any case is not in any sense a finding of, or implication of, any guilt or criminal conduct. A finding of guilt can only be made by a court.
- Similarly, a decision not to bring criminal charges does not necessarily mean that an individual has not been a victim of crime.
- The decision to prosecute or to recommend an out-of-court disposal is a serious step that affects suspects, victims, witnesses and the public at large and must be undertaken with the utmost care.
- It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible.

- Prosecutors must ensure that the law is properly applied
- Although each case must be considered on its own facts and on its own merits, there are general principles that apply in every case.
- Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.
- Prosecutors must apply the principles of the European Convention on Human Rights, in accordance with the Human Rights Act 1998, at each stage of a case.
- Some offences may be prosecuted by either the CPS or by other prosecutors in England and Wales. When making decisions in these cases, CPS prosecutors may, where they think it appropriate, have regard to any relevant enforcement or prosecution policy or code of the other prosecutor.
- Where the law differs in England and Wales prosecutors must apply the Code and have regard to any relevant policy, guidance or charging standard, which is useful information should a student leave a Welsh force to work in England.

CPS Charging

- | | |
|--|---|
| <ul style="list-style-type: none"> Stated Cases Public Interest Type of crime/Seriousness of the case Evidence to hand Interview Summary Written summary of case Offending history of both suspect & complainant Police decision on first &/or subsequent offences | <ul style="list-style-type: none"> Outstanding evidence to be collected Outstanding investigation that still needs to be carried out Early advice & the need to document it (NICHE) Lesser disposals not available. E.g. recent caution Postal Requisition Youth Charging |
|--|---|



QTS - What will the CPS consider in order to come to a charging decision?

Stated cases
 Public Interest
 Type of crime/ Seriousness of the case/ Amount of related crime eg, shoplifting targeting several shops in one go
 Evidence to hand
 Interview summary – such as denial or ‘No Comment’ in interview
 Written summary of case
 Offending history of both suspect AND complainant
 Outstanding evidence to be collected
 Outstanding investigation that still needs to be carried out
 Early advice and the need to document it (NICHE)
 Postal Requisition
 Youth charging
 Lesser disposals not available E.g recent caution

The Full Code Test

Prosecutors must only start or continue a prosecution when the case has passed both stages of the Full Code Test. The exception is when the Threshold Test may be applied



The Full Code Test has two stages: (i) the evidential stage; followed by (ii) the public interest stage.



The Full Code Test should be applied when all outstanding reasonable lines of inquiry have been pursued, or prior to the investigation being completed, if the prosecutor is satisfied that any further evidence or material is unlikely to affect the application of the Full Code Test, whether in favour of or against a prosecution



QTS –What will the CPS consider in order to come to a charging decision?

The Full code test and Threshold Test are elements used by the charging authority (CPS or Police) in order to charge a suspect

The Threshold Test

First Condition

There must be reasonable grounds to suspect that the person to be charged has committed the offence



There are 5 criterion of the Threshold Test that need to be met prior to charging.

Prosecutors must be satisfied, on an objective assessment of the evidence, that there are reasonable grounds to suspect that the person to be charged has committed the offence. The assessment must consider the impact of any defence or information that the suspect has put forward or on which they might rely.

In determining whether there are reasonable grounds to suspect, prosecutors must consider all of the material or information available, whether in evidential format or otherwise. Prosecutors must be satisfied that the material to be relied on at this stage is capable of being:

- put into an admissible format for presentation in court;
- reliable; and
- credible.

The Threshold Test

Second Condition

Further evidence can be obtained to provide a realistic prospect of conviction



Prosecutors must be satisfied that there are reasonable grounds to believe that the continuing investigation will provide further evidence, within a reasonable period of time, so that when all the evidence is considered together, including material which may point away from as well as towards a particular suspect, it is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.

The likely further evidence must be identifiable and not merely speculative.

In reaching this decision prosecutors must consider:
the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;

- the charges that all the evidence will support;
- the reasons why the evidence is not already available;
- the time required to obtain the further evidence, including whether it could be obtained within any available detention period;
- whether the delay in applying the Full Code Test is reasonable in all the circumstances.

The Threshold Test

Third Condition

The seriousness or the circumstances of the case justifies the making of an immediate charging decision



The seriousness and the circumstances of the case should be assessed in relation to the alleged offending and should be linked to the level of risk created by granting bail.

The Threshold Test

Fourth Condition

There are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 & in all the circumstances of the case it is proper to do so



This determination must be based on a proper risk assessment, which reveals that the suspect is not suitable to be bailed, even with substantial conditions. For example, a dangerous suspect who poses a serious risk of harm to a particular person or the public, or a suspect who poses a serious risk of absconding or interfering with witnesses. Prosecutors should not accept, without careful enquiry, any unjustified or unsupported assertions about risk if release on bail were to take place.

The Threshold Test

Fifth Condition

It is in the public interest to charge the suspect



Prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.

Reviewing the Threshold Test

A decision to charge under the Threshold Test must be kept under review. The prosecutor should be proactive to secure from the police the identified outstanding evidence or other material in accordance with an agreed timetable. The evidence must be regularly assessed to ensure that the charge is still appropriate and that continued objection to bail is justified. The Full Code Test must be applied as soon as the anticipated further evidence or material is received and, in any event, in Crown Court cases, usually before the formal service of the prosecution case.

Victim Care

Potential impact

Stress and worry
Feelings of intimidation
Perceived lack of support for victim
Fear of reprisals
Non-attendance



Trainer to place students into pairs and pose the following 2 questions:-

QTS:

What sort of impact could a potential court hearing have on a victim of crime?

Answers could include:

Stress and worry, feelings of intimidation, lack of support for victim, fear of reprisals, non-attendance

QTS

What could be done to lessen the impact for the victim?

(cross cut to Victims and Witnesses lesson) Victim/witness support can support the victim and witness in court., and that we can offer Special Measures

We still need to support victims of crime, even if they do not wish to proceed with criminal action, bearing in mind, we are generally victim led in relation to proceeding with criminal charges, though there are some exceptions to the rule e.g. Domestic

Violence.

Give Hand-Out to Students/Email to students if under Covid regs

