

EXECUTIVE SUMMARY

Ensuring every criminal case receives a fair outcome

This article provides insight into Singapore's criminal justice process, from the initial charging of an accused, to the eventual sentencing.

Every case is unique, and the decision to charge an accused is dependent on the circumstances surrounding each case. Not all criminal cases result in prosecution. In certain cases, a stern warning or a conditional stern warning may be issued instead. The timing of when a suspect is charged will depend on factors such as the severity of the crime and the urgency of the case. The sentence given out by the judge upon conviction will take into account various factors, including when the accused decides to take a guilty plea.

Mitigating Factors: Early guilty plea and show of remorse

It may seem apparent that one would definitely be charged for committing a crime, whether it is a serious offence such as murder or a less serious offence such as theft, as reported in news articles like “Man charged for conspiring to murder love rival by engaging hitman online”, “Elderly female charged with cheating” and “Man charged for stealing undies”. However, in actual fact, not all cases will result in prosecution. The Attorney-General’s Chambers (AGC) has the prosecutorial discretion to decide whether a person is charged and the charge on which he is prosecuted. Once a case is brought to Court, the criminal justice process will take its course. At this stage, the key question for the accused is whether or not to plead guilty. Whether the accused chooses to plead guilty or to claim trial may affect his eventual sentence should he/she be convicted. The stage at which the accused pleads guilty may also have an impact.

In this issue of “Know the Law”, we invite AGC’s Deputy Senior State Counsel, Mr Wong Woon Kwong (Director, Crime Division), and Mr Winston Man (Deputy Director, Crime Division), to explain the key points of Singapore’s criminal justice system.

Prosecution Procedures

1) To charge or not to charge?

Not all criminals will be charged. After careful consideration, AGC may eventually decide not to charge offenders for cases which happened under particular circumstances.

Mr. Wong explained that the AGC will first consider the circumstances of individual cases and evaluate whether it is in public interest to pursue prosecution.

Mr. Man gave an example and said, “For cases involving minor crimes, such as theft of a small amount, if they involve first-time or young offenders, we tend to give them a second chance.”

He said that if a first-time offender who had stolen a few dollars had to undergo the entire criminal justice process and be left with a criminal record, it would not be in the public interest.

“It is not our duty, nor is it our wish, to punish offenders at any cost. Our role is to ensure that the offender and the complainant get a fair outcome.”

2) Forms of punishment other than prosecution

Although the police may have sufficient evidence, this will not necessarily result in prosecution. AGC may direct the police to issue a stern warning or a conditional stern warning to the offender instead.

A stern warning informs the offender that he/she has committed an offence and to remind him/her to be mindful of their behaviour going forward. Should he/she re-offend or commit other criminal offences, he/she may be charged in Court. Such stern warnings will also be taken into consideration by the AGC when deciding the course of action to be taken against the offender in future.

A conditional stern warning comes with more stringent requirements. Some of the conditions which the offender must comply with include not reoffending within a stipulated timeframe or

receiving regular psychiatric treatment. If the offender fails to comply, he/she may be charged for both the new crime that he/she commits, as well those previously committed.

Mr. Wong said that the decision on the kind of warning to issue is mainly dependent on the personal circumstances of the offender rather than the gravity of the crime. For instance, if the offender has a mental illness, he/she may be given a conditional warning in order to compel him/her to receive regular treatment.

3) When to charge?

Some suspects are charged in Court the next day after the arrest, while some others take several months. When a suspect is charged depends on factors such as the severity of the crime and the urgency of the case.

When a law enforcement agency detains a suspect, the suspect must be charged within 48 hours or be released on bail. In certain cases, the Prosecution will make a specific application for the suspect to be remanded for investigation by the law enforcement agency. These cases typically involve extremely serious crimes, such as murder and trafficking large amount of drugs.

Mr. Man explained that the law does not permit the law enforcement agency to arrest a suspect and detain him/her for more than 48 hours without a Court order.

Mr. Wong added that this is a “check and balance” mechanism to ensure that the Court is informed of the case so that the Judge can decide if it is necessary to have the accused detained.

As for other less urgent cases, the law enforcement agency may choose to have the suspect released on bail first, before bringing him back to court for charging upon completion of investigations.

4) Amendment of charges

The crime for which an accused is charged for is not necessarily the same as the crime for which he/she is ultimately convicted of.

For cases in which the accused must be charged within 48 hours, the police may first initiate a “holding charge” before consulting the AGC. The AGC will decide whether to maintain the original charge or to amend the charge.

Mr. Wong described the holding charge as akin to a “preliminary charge” and that “is generally based on the information held by the prosecution at that point of time, which is often incomplete due to ongoing investigations”.

For example, the police may first charge an accused with murder, but upon evaluation of all the evidence and information, such as the state of mind of the accused at the time of the crime, the AGC may then amend the murder charge to a less severe one of culpable homicide not amounting to murder.

Conversely, an accused initially charged with a lesser crime may also have the crime “upgraded”. For example, an accused who was initially charged with voluntarily causing hurt may have

the charge amended to one of causing grievous hurt after the prosecution finds out from the medical report that the victim's injury is more serious than originally thought.

To plead guilty or claim trial

1) Early guilty plea vs late guilty plea

An accused who pleads guilty at the early stage is generally considered to be more remorseful. The Judge may therefore give the accused a "sentencing discount".

For many cases, the timing of the guilty plea can directly or indirectly affect the eventual sentence. Mr. Wong said that if a person has actually committed a crime, it is beneficial for him/her to plead guilty in the early stage because the prosecution may take this into account when considering its position.

This means that if the accused decides to plead guilty, the prosecution may discretionarily reduce the charge or proceed on a lesser number of charges, leaving the rest to be taken into consideration during the sentencing. The Prosecution may also ask for a lighter punishment during sentencing.

In addition, he pointed out, "Generally, the earlier the guilty plea, the more remorseful the accused. As compared to those who plead guilty at the last minute or even during the trial, the Judge will generally think that those who choose to plead guilty in the early stage are more remorseful and, in turn, sentence them to a lower penalty".

In sex-related crimes, the guilty plea of the accused can spare the victim the pressure and trauma from having to appear in Court to testify. This can be seen as a strong mitigating factor.

However, an early guilty plea does not guarantee a lighter sentence in all cases. If an accused was caught red-handed when committing a crime, his/her guilty plea may not carry the same weight as those described earlier. Mr. Wong elaborated that the Court may well take the view that the accused is pleading guilty not because he/she is genuinely remorseful, but because he/she does not have a strong defence.

The only exception when the Court does not allow an accused to plead guilty, even if he/she is willing to do so, is when he/she is facing the death penalty. In such cases, the accused must be convicted through trial, where the prosecution will then prove his/her guilt.

2) Disputes during a guilty plea

What happens when there are disputes arising from an accused's guilty plea? If the dispute involves elements of the crime, the Judge may reject the accused's guilty plea.

Generally speaking, there are two categories of disputes: 1) A dispute involving elements of the crime; and 2) A dispute that does not involve elements of the crime, but may affect the sentence.

For example, an accused charged with voluntarily causing hurt may plead guilty but claim that his act was only an accident. As a key element of voluntarily causing hurt involves the accused having the intention to cause hurt or the knowledge that his actions will result in hurt, the Judge will not

accept the guilty plea of the accused. If the accused maintains his/her position, the case will proceed to a trial.

As for the second category, an example would be an accused being charged for punching and kicking a victim - while he/she admits to punching the victim, he/she may deny kicking the victim.

Mr. Wong said that the accused may still plead guilty under conditions as described in the second category of disputes. However, if the prosecution feels that kicking a person is an aggravating factor which will directly affect the sentence, then it is necessary to clarify the discrepancies through a "Newton Hearing".

"A Newton Hearing is like a mini-trial where the prosecution and defence call on witnesses and present evidence to prove their respective positions for subsequent ruling by the Judge."

Mr. Man further pointed out, "The dispute must have a substantial impact on the penalty. If there are only minor differences, it is not necessary to have a Newton Hearing. The Judge can decide after listening to the submissions of both parties".

