

If you have been a witness or a victim of a criminal offence, you may be requested to give evidence.

Criminal offences are brought before the court by the public prosecutor. The court takes a final decision on what must be done with the suspect. In order to take this decision, the court needs information. The public prosecutor, the suspect and any experts and witnesses provide this information.

This brochures tells you what you can expect as a witness and with whom you may have to deal.

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The police investigation

Evidence Following a report to the police or the discovery of a criminal offence, the police initiate an investigation. The criminal investigators seek evidence. You may be asked to cooperate. All kinds of things may be important to the furnishing of proof. Statements by persons who have or heard something are also valuable. It is important for the police investigation that you provide as many details as possible. You are free to take your time in doing so. You will probably be asked to tell your story a few times. At the end of the meeting, the police will ask you to read your statement carefully. If you have no comments, you may sign the statement. This means that you agree to the text. You can usually obtain a copy of the statement. Do not forget to ask the name of the police officer dealing with the case. This is useful if you wish to contact the police for any further information. The police will explain the further course of proceedings to you. As a victim, you will usually be heard as a witness. The same applies if you report a criminal offence.

The suspect If the suspect is unknown to you, the police may ask you to look at some photographs of possible suspects. They may also ask you to look at some video images or to cooperate with a composite drawing. If the probable suspect is arrested, the police may ask you to come to the police station. You will be asked to see whether you recognize the suspect. A one-way screen is used for this purpose, i.e. a screen with a one-way view. You can see the suspect, but he/she cannot see you.

Police custody A suspect can be detained for questioning for a minimum period of six hours. If it necessary to detain the suspect longer, the (assistant) public prosecutor must give his/her permission. The suspect is then taken into 'police custody' for a maximum period of twice 72 hours. The suspect must be brought before the court, i.e. the examining magistrate, within three days. If a suspect is allowed to go home following the hearing, this does not mean that the case is thereby closed. He or she will immediately receive the summons to appear before a court at the police station or later at home.

Progress It may happen that after you have made the statement, you do not hear anything. This does not mean that nothing is done with your statement. It is possible that the police have failed to complete the investigation. For example, the suspect cannot be traced or there is insufficient proof. In such a case, the police may decide to let the case rest. This does not imply that they do not believe you. In principle, the police assume that your story is true, but they are unable to furnish the legal proof. In such a case, a trial is omitted. If you like to know more about the progress of the investigation, you may contact the police officer that has taken your statement.

Prosecution of the offender

If the police have completed the investigation and believe that there is sufficient evidence, they transfer the file to the public prosecutor. Based on the file, the public prosecutor decides whether someone will be prosecuted or not. A decision to prosecute means that there will be a trial. The court will render the final decision on whether the suspect is guilty and what the punishment will consist of.

Decision not to prosecute Sometimes, the public prosecutor decides not to prosecute: the case is dismissed. The prosecutor may decide this, for example, if there is insufficient evidence. The prosecutor may also have other reasons to decide not to prosecute.

Transaction Apart from the decision (not) to prosecute, the public prosecutor may also propose a transaction. In such a case, the public prosecutor will drop the case provided the offender pays a transaction sum or compensates the damage suffered by the victim. Other conditions are also possible.

Preliminary judicial investigation

The public prosecutor may decide that a further inquiry is necessary before a decision on further steps may be taken. He* then asks the investigating judge to conduct a preliminary judicial investigation. The investigating judge has more powers than the police.

Via the preliminary judicial investigation, more facts must be established. This may concern facts that plead for or against the suspect. Based on this inquiry, the public prosecutor decides whether or not to prosecute the suspect.

In a preliminary judicial investigation, the investigating judge may ask you to answer some questions.

By law, you are obliged to appear. If you are unable to come, you must inform the investigating judge of this in timely fashion. In most exceptional cases, the investigating judge may decide to hear you under oath.

This solely occurs if you are unable to come to the trial and a sworn statement is necessary. Ultimately, it is up to the trial judge whether or not you must come to the trial. In most cases, you will not be required to come to the trial. Sometimes, the judge may deem it necessary that you do appear. This usually happens at the request of the defence.

In the preliminary judicial investigation, you may also tell things that were not included in any previous statement, e.g. because you have only just remembered it. The suspect's attorney is usually present at the interrogation. The latter may ask you questions. The suspect himself is at no time present. In addition, the clerk of the court is present to record what is being said.

Via the clerk of the court, you may ask the investigating judge whether another person may accompany you. This is subject to the investigating judge's permission. You may request this in writing, by word of mouth or by telephone.

The clerk of the court draws up a written report of the interrogation. The report includes a summary of your story. The investigating judge reads it out and asks you whether you agree to the text. If so, he will ask you to sign the statement.

* Where this brochure refers to 'he', one may also read 'she'.

Threatening witnesses There is a special procedure for witnesses against whom threats have been made. This may only be applied in cases where the suspect does not know your identity and where it concerns serious criminal offences. There is a serious threat if your life, health, safety, family life or social-economic existence is reasonably expected to be at risk. The special procedure means that your identity is concealed from the suspect and his counsel. Furthermore, you do not have to appear at the public hearing, you only have to meet with the investigating judge. The investigating judge assesses whether he will comply with your request to make an anonymous statement. During the application of such a procedure and making the statement, a lawyer may assist you. The investigating judge must ensure that your statement is made in such a way that it will conceal your identity.

If you have already told the police during the first interrogation that you would prefer not to make a statement due to threats, the police will consult the public prosecutor about applying for a special procedure as describe above.

At the trial

The public prosecutor wishes to make as strong a case as possible at the trial. He uses the results of the police investigation and any preliminary judicial investigation to do so. The prosecutor may call persons that have something important to say: the witnesses and the experts.

The witnesses know something about the case from his own observation; the expert is called on account of his/her special expertise (e.g. a psychologist).

A victim may also be called as a witness. If you fear that making a statement at the hearing will gravely endanger your health, you may inform the public prosecutor and the court of this. The court will render the final decision on whether or not you must appear at the hearing.

You may be summoned to appear by means of a writ of summons, i.e. a registered letter. Witnesses are obliged to appear. If you are unable to come for private reasons, you must send a letter to the public prosecutor. In this letter, explain why you cannot appear at the hearing.

Such a request is not always granted. The public prosecutor may decide that you have to appear. The court will render a final decision on whether you must be taken to the hearing by the police against your will. If you do not speak (sufficiently good) Dutch, you may ask the public prosecutor for an interpreter.

Witnesses for the prosecution and witnesses for the defence

There are two types of witnesses. Witnesses for the prosecution and witnesses for the defence. Witnesses for the prosecution are witnesses that have been called by the public prosecutor. They usually make an incriminating statement for the suspect. The suspect and his lawyer may in turn call their own witnesses. These are the witnesses for the defence. They are also summoned by means of a writ of summons by the public prosecutor.

If you are not summoned as a witness, you may attend the hearing in the public gallery. In principle, all hearings are public. Everyone may attend the trial, including people from the press. The judge decides whether any minors may be present.

The judge may also decide to hear the case in chambers. That means, without the public and the press. This occurs rarely.

If the suspect is younger than eighteen years, the case is generally heard in chambers. A session in chambers usually occurs at the request of the public prosecutor or the suspect. As a witness, you may also request the judge to hold a session in chambers. If you wish to make such a request to the judge, you are advised to inform the public prosecutor of this beforehand.

If you have to testify, another person at the hearing may accompany you. At the day of the hearing, you report to the doorman of the court building. He tells you where you must go. You usually have to wait for a moment in a waiting room or a hall. The usher of the court collects you. The usher will also show you your seat: the witness box.

At the district court, subdistrict sector or the police court If the case is brought before a subdistrict sector or a police court, you will see one judge in the courtroom. At his left is the public prosecutor and at his right sits the clerk of the court. The suspect and his or her lawyer are seated opposite the judge.

At the district court (full-bench division) At the full-bench division (for more serious criminal offences), the case is heard by three judges. The judge in the middle is the president. The public prosecutor is at the left and the clerk of the court is at his right. The suspect and the lawyer sit opposite the judges.

When the judge(s) enter(s) the courtroom, everyone rises for a moment. The judge or, in the full-bench division, the president addresses the courtroom. The clerk of the court records what is being said. The procedure is laid down by law. The judge asks the name and the address of the suspect and reminds him that he is not obliged to answer any questions. The public prosecutor then reads out the charge. The charge states what the suspect is accused of. Next, the judge will ask the suspect a few questions to find out whether he persists in the statements made at the police station.

The examination of witnesses This is followed by the examination of witnesses. The judge will ask your name, age, profession and place of residence. You must also tell whether you are related to the suspect (If so, you do not have to testify. You may do so. If you do wish to be heard, you are still free as a family member to refuse to answer certain question during such a voluntary examination). You must then swear on oath or affirm according to a solemn formula that you will tell the truth. Whereupon, the examination may begin.

Try not to worry about the formal course of proceedings and just tell your story. Do not be afraid to say that you are not sure about something. It is normal that you do not remember exactly what happened. A witness is expected to cooperate with the course of proceedings. This does not mean that you are obliged to answer all the questions. Some reasons to refuse to answer are the following:

- you are a close relative of the suspect;
- you practise a profession that bounds you to secrecy, e.g. a doctor or civil-law notary;
- the judge tells you that you do not have to answer the question.

You may ask the public prosecutor to ask the judge to have the suspect removed for the duration of your testimony. The judge may refuse to do so. If the judge grants your request, he is obliged to inform the suspect of your

statement afterwards. If there is a suspicion during the hearing that you are not telling the truth, the judge may order an investigation into perjury. Each witness is heard separately. If there are any witnesses heard before you, you must leave the courtroom. The judge will ask you questions about the statement you have made to the police. He will probably wish to know some more details regarding some points. Following the examination by the judge, the public prosecutor will perhaps also ask you some questions. After that, it is the turn of the suspect's counsel. Officially, the suspect has the right to ask you the final questions. This also applies if he has left the courtroom. In practice, suspects hardly ever use this opportunity. If you are a witness at the request of the suspect or his attorney, there is a different sequence. The public prosecutor will be the last person to question you.

Public prosecutor's closing speech and counsel's plea First, the judge will question the suspect. The suspect is not obliged to answer any questions; he may use the right to remain silent. His counsel and the public prosecutor will also have the opportunity to question the suspect. Next, you are heard. And thereafter, you may stay to follow the court proceedings. You may also ask the judge's permission to leave. After you, other witnesses or experts may be heard. Following the examinations, the public prosecutor makes his closing speech. He summarizes the facts, gives his opinion on the evidence and, on the basis of this, requests a certain sentence. If the public prosecutor is finished, the suspect's counsel makes his plea. The suspect is given the chance to have the last word.

The judgment The subdistrict sector and the police court usually give an immediate ruling, the full-bench division must in principle give the judgment within two weeks of the hearing. You may go to court to hear the judgment or ask someone else to go for you; judgments are always pronounced in public. You may also phone the court registrar to inform you of the outcome. Sometimes, judgments are published in the local newspaper. The judge is not obliged to adhere to the public prosecutor's request. The judge may grant an acquittal or impose a lighter or a more severe sentence than demanded by the public prosecutor.

Appeal proceedings at the Court of Appeal

If the public prosecutor disagrees with the judgment, he may lodge an appeal. The suspect also has the right to lodge an appeal. On appeal, other, higher judges will review the same case and give their opinion. As long as the appeal is pending, the judgment may not be enforced.

The decision to lodge an appeal must be taken within fourteen days of the judgment. An appeal usually lasts nine months to a year. If the Court of Appeal wishes to hear you, it will summon you as a witness once again. This does not happen often. After all, you have already testified on what you have seen or heard. It is possible that you were not heard by the District Court but that the Court of Appeal does wish to hear you as a witness. In such a case, the period of time between the statement made by you to the police and the hearing by the Court of Appeal may be fairly long. If you do not remember the exact statement made by you at the time, you may tell this to the judges. The formal course of proceedings at the Court of Appeal is the same as that at the district court.

Following the hearing at the Court of Appeal, the matter may be brought before the Supreme Court of the Netherlands. This does not happen often. The Supreme Court merely assesses the legal aspects of the case and does not hear witnesses. The Supreme Court is the highest court of the Netherlands and resides in The Hague.

Reimbursement of expenses

As a witness, you may receive an attendance fee and a reimbursement for any necessary costs incurred and the travel expenses.

The (writ of) summons includes further information on this.

If you have been summoned to appear as a witness by the suspect and his counsel without the cooperation/summons of the public prosecutor, the costs must be borne by the suspect. The lawyer may tell you more about this.

Other brochures

Separate brochures are available for the following subjects:

- Slachtofferhulp en schadevergoeding (available only in Dutch)
- You are under suspicion
- On trial for a criminal offence
- Convicted of an offence

The final three brochures contain further information on the course of proceedings during a criminal trial.

If you have queries or need further information

For general information or to order booklets, please call the government information line :

Postbus 51 information line

Telephone: 0800 - 8051 (free of charge)

Opening hours: Mon-Fri 9 a.m.-9 p.m.

Internet: www.postbus51.nl

Email: vragen@postbus51.nl

You may also contact:

Ministry of Justice

Internal and External Communications Department

P.O. Box 20301

2500 EH THE HAGUE

Telephone: 070 - 370 6850

Opening hours: Mon-Fri 9 a.m.-5 p.m.

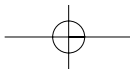
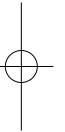
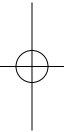
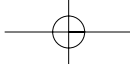
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Being a witness in a criminal trial



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