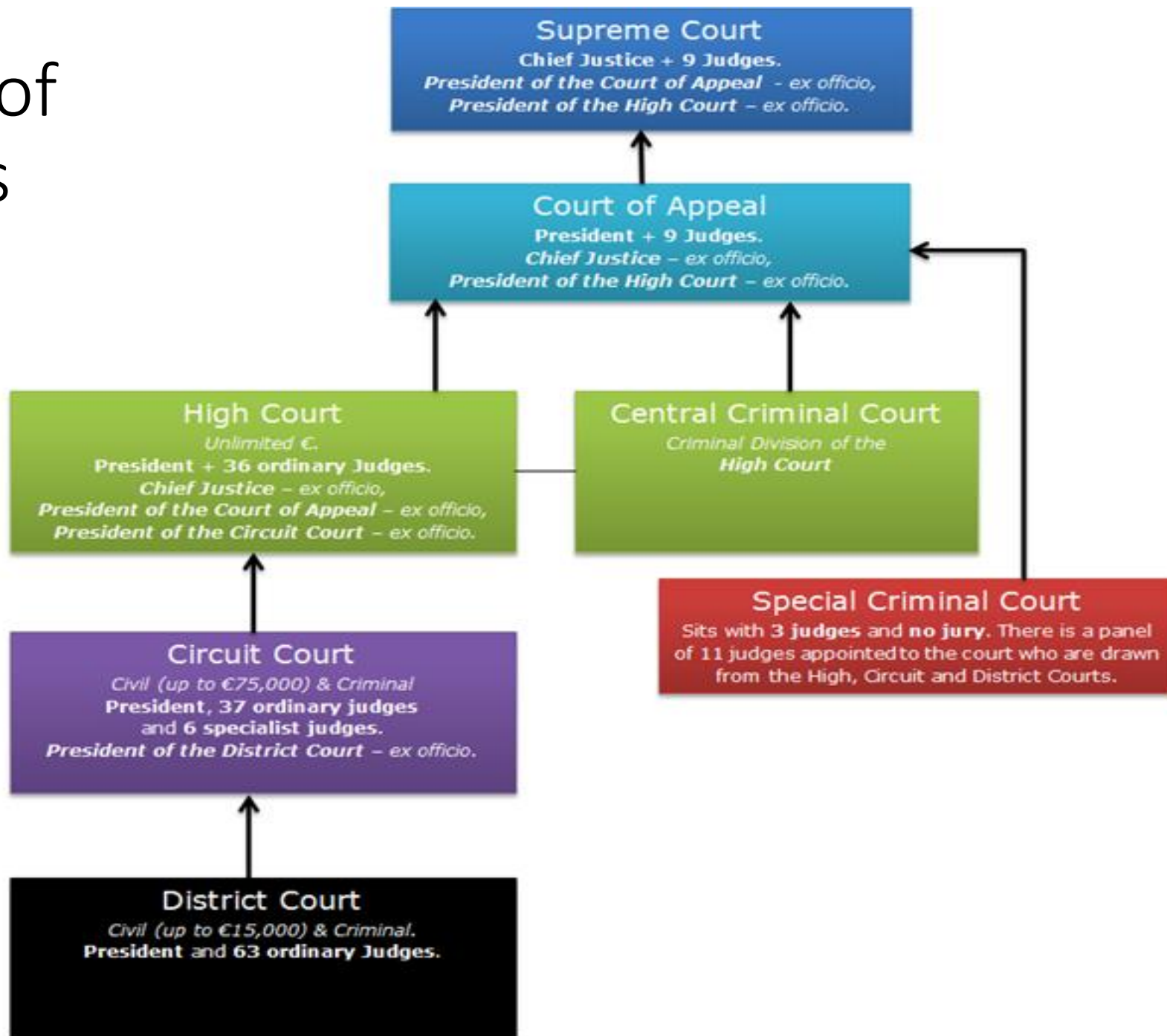


The image features a dark grey background with three overlapping circles in shades of blue. A horizontal white band runs across the middle of the image, containing the text "Defences".

Defences

Structure of the Courts



What is a Crime?

'a public wrong'

- Wrong committed against the common good or public interest – causes harm to society, not just the individual
- **3 features that make something a public wrong:**
 - Offence against the community
 - Punitive sanction & criminal process
 - Protections for the accused; article 38 of the Constitution.

Golden Thread of Criminal Law: Presumption of Innocence

Presumed innocent until proven guilty

Very high standard of proof in criminal trials: 'beyond a reasonable doubt'

Burden of proof lies with the prosecution

Elements of a Crime

- Mens rea
 - Actus reus
-
- If each element is not present, the crime has not been committed.

Omissions

- Failure to act
- Generally, omissions are not a crime.
- Exceptions:
 - Special relationship between victim and accused (family)
 - Creation of risk/voluntary assumption of sole responsibility by accused
 - Statutory or contractual duty of care, e.g. doctor towards patient.

Elements of Murder

Definition: Unlawful killing with intent

Actus Reus: unlawful killing

Mens Rea: 'an intention to kill or cause serious injury'

Criminal Justice Act 1964, s4(2): 'The accused person shall be presumed to have intended the natural and probable consequences of his conduct; but this presumption may be rebutted.'

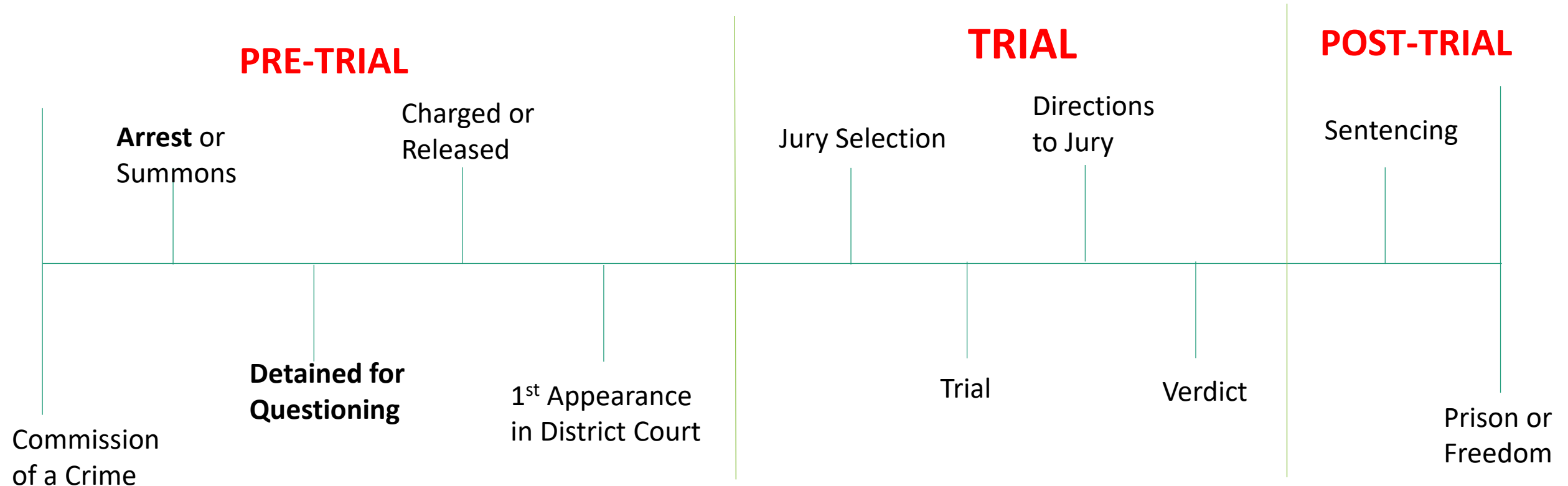
Elements of Manslaughter

Actus reus: unlawful killing

2 types:

- Voluntary manslaughter: A murder that is reduced to manslaughter by way of a defence.
- Involuntary manslaughter: Unlawful killing lacking mens rea for murder.

Timeline of a Crime



Getting Arrested

- You must be told why you are being arrested
- The Garda must caution you:
'you are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence.'
- You have the right to a solicitor as soon as you are detained

Rights of Criminal Defendants:

Presumption of
innocence

Right to silence

Right to legal
representation

Unconstitutionally
obtained evidence

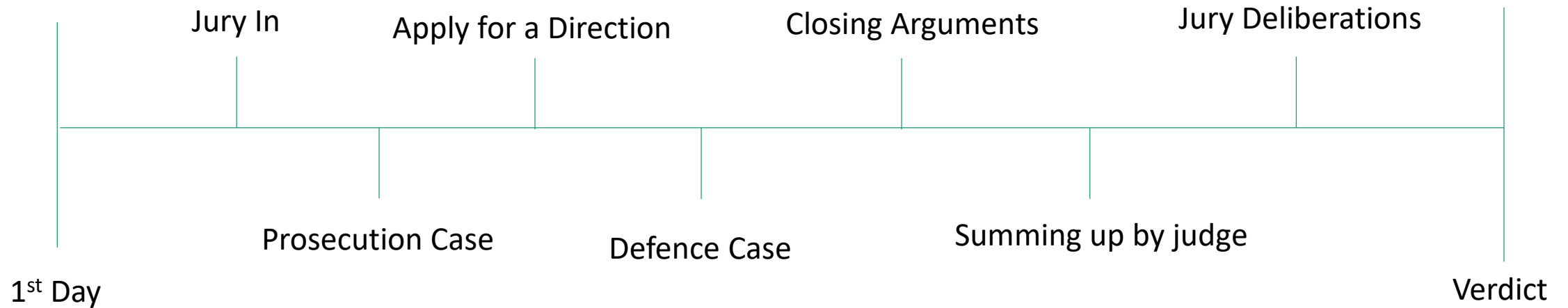
Right to a jury trial

Duty of Gardaí to
seek out and
preserve evidence

Unfair pre-trial
publicity

Right to an early
trial

PROCESS OF A CRIMINAL TRIAL



QUESTIONING A WITNESS

Examination in Chief

- No leading questions
- Establish what happened
- Hear the witness, not the barrister

Cross Examination

- Leading questions
- Undermine the witness and the other side's case
- Hear the barrister, not the witness

How does a judge decide on a sentence?

- 2 step procedure:
 1. Decide sentence based on severity of crime
 2. Reduce sentence based on mitigating factors

Mitigating Factors

- Pleading guilty/ Early admission of guilt
- Showing remorse
- Facts of the offence
- No previous criminal record
- **Personal circumstances
- Age
- Employment status
- Potential for rehabilitation
- Impact of offence on victim
- Any other relevant information

** Possibly most influential

“The Oireachtas shall not enact any law providing for the imposition of the death penalty.”

Last person executed in Ireland in 1954

1954

Capital murder ended in 1990

1990

Made illegal for common crimes in 1964

1964

Constitutional referendum in 2001

2001

Death Penalty

Fifty-six countries have capital punishment

106 countries have completely abolished it for all crimes

Eight have abolished it for ordinary crimes (while maintaining it for special circumstances such as war crimes)

28 are abolitionist in practice (haven't done it in over 10 years)

How Do Defences Work?

Where a defendant raises a defence, the prosecution must disprove it beyond a reasonable doubt.

The defendant doesn't have to prove their defence unless the defence raised is insanity – must be proven on the balance of probabilities.

Partial vs complete defence

Self-Defence

The use of force, if reasonable in the circumstances as the Defendant believes them to be and is used:

To protect oneself/family member/another person from injury, assault or criminal detention

To protect own/another's property from appropriation/destruction/damage

To prevent crime or breach of the peace

Defendant's belief as to the circumstances only needs to be "honestly held" but the presence/absence of reasonable grounds for that belief are taken into account

Only applies to offences involving force – homicide or assault

Sam and his brother Ross were playing a rugby match when Ross got into a fight with another player, Joe. Joe hit Ross so Sam pushed him back, causing Joe to fall and hit his head. Joe died as a result of this injury.

Sam is on trial for manslaughter and is arguing self-defence. Does this meet the requirements for self-defence?

Mike got into a fight with Luke. Luke punched Mike in the head so Mike pulled out a knife and stabbed Luke, killing him. He says he did this because he feared for his life after Luke punched his head.

Should Mike be convicted of murder, convicted of manslaughter, or acquitted?

Insanity

- Accused suffering from mental disorder, such that they ought not be held responsible because they
 - did not know nature and quality of the act, or
 - did not know what they were doing was wrong; or
 - were unable to refrain from committing the act.
- Includes mental illness, mental disability, dementia or any disease of the mind but does not include intoxication
- Partial defence: not guilty by reason of insanity but sentenced to an indefinite period of detention in the Central Mental Hospital



Strange uses
of insanity
defence

Sleepwalking

Diabetes

Epilepsy

Aaron suffered from psychosis and frequently had delusions. During one of his delusions, Aaron believed that Jenny was the devil in human form. He thought God had told him to kill her so he did.

Does Aaron have any defences open to him and are they complete or partial defences?

Sarah was diabetic and forgot to take her insulin. While she was driving, she suffered from hyperglycaemia (high blood sugar) which caused her to lose consciousness. She then hit a pedestrian, causing them serious injuries. She had no control over this.

What defences does Sarah have open to her?