



Criminal Justice Process

CRIMINAL JUSTICE INSTITUTIONS

Before discussing the various stages or procedures that a criminal case must follow, it is useful to be familiar with the basic agencies or offices that comprise the criminal justice system:

Law Enforcement performs the basic functions of investigating crimes and arresting criminals. These offices are mostly local police or sheriff agencies. The police office on the national level is the Federal Bureau of Investigation (FBI) with regional offices in major cities. Any citizen can report a crime that they witness to either the local police, or if it is a federal crime, to the FBI.

Prosecutor (State's Attorney)'s Office has the responsibility for prosecuting criminal cases in court. The State's Attorney for our jurisdiction covers the Ninth Judicial Circuit (Orange & Osceola Counties).

Public Defender's Office provides legal assistance for defendants unable to hire private counsel to defend themselves.

County Courts have jurisdiction over criminal traffic cases and misdemeanor criminal cases. The Ninth Circuit County Criminal Division has eleven (11) County Judges in Orange County and three (3) County Judges in Osceola County.

Circuit Criminal Courts have jurisdiction in all criminal felonies and appeals from the County Courts. The Ninth Circuit Criminal Division has ten (10) Circuit Judges in Orange County and two (2) Circuit Judges in Osceola County.

- ▶ **Felony** - Criminal offense that is punishable by imprisonment in a state penitentiary or death.
- ▶ **Misdemeanor** - Any criminal offense that is punishable by a term of imprisonment in a county correctional facility for less than one (1) year.

Clerk of the Court is a local constitutional officer elected by the voters in their respective county for a term of four years. The Clerk keeps a progress docket on all proceedings going before the court. The clerk is the recorder of all documents authorized or required by law to be recorded in the county where the clerk presides.

Grand Jury is a group of about 23 citizens who are selected by law sitting as a jury sworn to investigate criminal activity. They hear evidence by the prosecutor against parties accused of wrongdoing in order to determine whether there is sufficient evidence to bring such parties to trial. The grand jury proceedings are secret. The grand jury issues an indictment for felonies and an information for misdemeanors.

Jury is a group of citizens, usually either 6 or 12 in number, who are selected by law and sworn to objectively determine the facts of a case by hearing testimony and deciding whether the accused is innocent or guilty. A unanimous verdict is necessary to find a defendant guilty.

Probation Offices perform two primary functions. They conduct pre-sentence investigations to assist the trial courts in arriving at the appropriate sentence and they supervise the convicted offenders who are released to the community for a probationary period.



STEPS IN THE CRIMINAL PROCESS

There are numerous steps in the criminal process. While variations in detail exist, these steps can be found in any jurisdiction in the country. The diagrams to follow provide the steps in more detail.

PRE-TRIAL PROCEEDINGS

The Decision to Charge

The first step in the criminal justice process is determining whether or not there is sufficient evidence against a person to justify bringing them before a court and formally charging them with a crime. This decision is made in three basic ways:

1. When police officers actually observe persons committing offenses, the process begins with an arrest on the scene. A complaint is filed at police headquarters and the person is brought before a court as soon as possible. In many localities, the accused is given an opportunity shortly after his arrest to go free by posting bail or bond instead of staying in custody until his first court appearance.
2. When the police do not actually see the crime being committed, and arrest can be made only if the office has reasonable or probable cause to believe that a crime has been committed, and that the person arrested committed the crime. Such information may come from complaints from citizens, eyewitnesses, informants, or other sources.
3. Other cases may be brought to the attention of the prosecutor by a victim filing a criminal complaint. Citizens who feel that a crime has been perpetrated against them and the police were not involved or did not make an arrest if involved, may file a formal complaint with the Clerk's office to later be reviewed by a prosecutor and signed as a warrant by a judge.

The Prosecutor's Role

After an arrest, the case will be turned over to the prosecutor, known as the State's Attorney. As chief law enforcement officer of his community, the prosecutor's job is to take the evidence gathered by the police, determine what, if any, specific charges to file against the accused, and after collecting the relevant evidence, prosecute the case at trial in order to secure the conviction of the accused.

It is always important to bear in mind that even if a person is arrested by the police or a complaint is filed by a citizen, the prosecutor has the power to decide whether to press a case or to drop it. He determines the specific charge against a defendant and whether the charge is dropped, reduced, or plea bargained to a lesser charge.

Although the judge is part of the judicial branch, it must be emphasized that the prosecutor is an official within the executive branch of government, and is therefore independent of judicial control. Prosecutorial independence is strengthened further by the political facts of the prosecutor's life – he is elected by, and thus accountable to, the people. He must listen to citizens' complaints and be sensitive to their concerns. Citizens may make their views known to him, but be sure your approach is courteous and professional.



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Arraignment

The next step in processing either a felony or misdemeanor is the defendant's appearance before the trial court of general jurisdiction for formal arraignment, a proceeding at which the accused is formally advised of the charges against him, his constitutional rights, and his formal plea is heard. If the defendant pleads "guilty," he is sentenced by the court, either then or at a future time. Many courts delay actual sentencing in a case long enough to permit the preparation of an advisory pre-sentence report by the probation office. If the defendant pleads "not guilty," his case is set for trial.

Bail Awaiting Trial

In most states, bail is available for the accused criminal defendant. The purpose of allowing bail is twofold: (1) to allow the defendant to remain free until trial; and (2) to provide assurance that the accused will remain in the jurisdiction to stand trial. The monetary amount at which bail is set must be based upon consideration of individual factors such as the defendant's past criminal record and the gravity of the charges. If the accused is viewed as a threat to society, bail will be denied and he will be incarcerated until trial.

Pre-Trial Hearing

A preliminary hearing, often called a pre-trial or probable cause hearing, takes place shortly after the arrest. The prosecutor is required to present sufficient evidence to persuade the court that there is probable cause to believe that the defendant committed the crime and hence should be held for trial. In a preliminary hearing, the defendant or his attorney may cross-examine prosecution witnesses

and, if he wishes, present evidence on his own behalf. Normally, however, only prosecution witnesses are heard and the burden imposed upon the prosecution at this stage is not great.

To show probable cause, the evidence must be such that a reasonable person would believe that the specific crime was committed and that it is probable the person being accused committed it.

Unless and until the defendant pleads guilty, various preliminary hearings will be held before the trial. Victim testimony is sometimes required at these hearings. Whenever a victim or other witness is required to appear in court, he or she will be informed in advance, usually by a subpoena, a written order to appear which states the time and place of appearance.

Plea Bargaining

Most criminal cases are settled before trial ever takes place. Through an arrangement called plea bargaining, the prosecutor may agree to reduce the charge, to dismiss other charges that are pending, or to make some other concession in exchange for a guilty plea. The practice of plea bargaining has been criticized by victims and others opposed to leniency for criminals because it results in the imposition of a less serious sentence on the offender than if he were tried and convicted on the more serious charge. Yet plea bargaining can be effective in some cases depending on the circumstances of the case. Many times, victims would prefer an effective plea bargain rather than having to endure a strenuous, stressful trial that could result in a dismissal.



TRIAL PROCEEDINGS

After all the pre-trial motions have been heard and resolved and after the defense has obtained information from the prosecutor as to the nature of the evidence to be used against the defendant (known as Discovery), a trial date is selected. The trial is an examination of the evidence to determine whether the accused is guilty or not.

Jury Selection

A trial by jury is constitutionally required but may be waived by the defendant who may decide to be tried before the judge only. During a process known as voir dire, the judge, prosecutor and defense attorney ask numerous questions of the jury panel to ascertain which potential jurors are suitable for a particular case. Questions may be posed about their background, employment, previous criminal justice experiences, possible relationship to any of the parties involved, biases they may hold, and whether they are willing and able to serve. After all questions are asked, the jury panel is asked to leave the courtroom and the attorneys attempt to select a jury. Potential jurors may be stricken because they are not suitable for a particular case (for example, a survivor of domestic violence might have difficulty in remaining unbiased). Once a jury is selected, the jurors are instructed not to discuss the case with anyone, not even amongst themselves, until the prosecution and defense counsel have completely presented their cases.

Trials are to be public which ensures that fewer arbitrary rulings will occur when the trial process is exposed to public review. The defendant must be present but need not testify. The burden is on the prosecutor to prove that the accused is guilty beyond a reasonable doubt. The judge may dismiss the charge following the completion of the prosecutor's case if the judge believes that insufficient evidence was presented to permit the trial to continue. In some cases, the judge will reserve his ruling on the motion to dismiss and wait until the whole case is tried and the jury returns its

verdict. If the jury finds the defendant guilty, a judge may still set aside the verdict and release the accused if he believes the evidence was insufficient. This is rarely done.

Testimony

During the trial various witnesses, including the victim, testify by answering questions asked by the prosecutor, defense attorney and even the judge, as they relate to the criminal acts which were committed.

Typically, court proceedings are poorly arranged for victims and other witnesses. They are regularly asked to come to court early in the day even though their testimony may not be required until late in the day, or even the next day. Serving as a witness can be time consuming and expensive, although it should not be. Victims and witnesses incur transportation costs, child care expenses, loss of wages, etc.

Some court systems provide better service for victims and other witnesses. Witness Alert Systems have been instituted in some areas to telephone witnesses when it is time for them to give their testimony. Some jurisdictions provide reception areas where victims and other witnesses can wait in a reasonably comfortable place, without fear of meeting the accused or members of his family. Volunteers have been trained in some areas to help victims by answering their questions about courts and to act as their guides. Some of these programs are staffed by personnel from the police and prosecutor's offices, others are sponsored by a variety of citizens groups.



Court Watch
Justice doesn't just happen

The Verdict

In order to convict a defendant, the verdict must be unanimous. If all jurors find the defendant "not guilty," the accused is immediately released. If the jury is unable to make up its mind either way, then the jury is "hung" and has reached no verdict. In that case, the prosecutor may try the case again before a different jury, or decide that the case is not worth pursuing, and set the accused free.

Sentencing

If the accused pleads guilty or is found guilty, a sentencing hearing is then scheduled. Sentencing in most states is the responsibility of the trial judge. For felony cases, a probation or pre-sentence investigation (PSI) is usually conducted and a report summarizing the results is then presented to

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the judge. Victims should be permitted to address the court to describe the impact the defendant's actions have caused. The defense also has the opportunity to present witnesses on their behalf. The judge has sentencing guidelines which he is required by law to follow. If a judge departs from these guidelines, reasons must be given on the record for such departure.

Appeals

Defendants may appeal their sentence to the next higher court. Misdemeanor appeals in County Court are heard by Circuit judges. Felony appeals from Circuit Court are heard by an Appellate Panel of judges. Further information may be found at www.ninja9.org.



Criminal Justice Process

TYPICAL PROGRESSION OF CRIMINAL LITIGATION

