

Criminal Case Procedures

Below is an outline of the steps the Prosecutor's Office takes in bringing a criminal case to trial.

Introduction of Case:

A deputy prosecutor in the sexual assault unit of the Prosecuting Attorney's Office becomes involved when the case is brought to her/his attention by the detective handling the case. The evidence may be discussed by phone; the detective will bring her/his file to the prosecutor for examination.

Prosecuting Attorney Interview:

An interview of the victim by the prosecuting attorney is usually held before the decision to file is made.

The filing deputy will assess the proof offered, including but not limited to: The credibility of the victim, and corroboration of any kind for her statement, e.g., medical report, physical evidence such as torn clothing, other witnesses' statements, confessions and admissions of the suspect.

The deputy determines whether or not there is a chargeable offense: an act which is against the law, where sufficient evidence exists to prosecute the case.

Filing Decision:

If the information provided by the detective is insufficient, the prosecuting attorney may request further investigation.

If there is some insurmountable barrier to prosecution, the prosecutor may decline to file. If so, a written statement of the reason for non-filing will be entered into the detective's case file and into the suspect's record at the prosecutor's office.

If the prosecutor is satisfied that there is sufficient evidence that a crime has been committed by the suspect, and that there is a reasonable probability of success at trial, s/he will file a criminal case.

If the chargeable offense is a misdemeanor it will be filed in District Court where non-felony cases are tried.

If the chargeable offense is a felony, it will ultimately be tried in Superior Court. The case is usually filed directly in Superior Court.

Preliminary Hearing:

In some cases a felony offense may be filed in District Court for a preliminary hearing. The official purpose of a preliminary hearing is to determine whether or not there is sufficient evidence to “bind the case over” to Superior Court.

Bond Hearing/Preliminary Appearance:

Before a criminal case can be filed, a defendant must be identified. Sometimes a defendant is arrested (taken into custody) at the scene of the crime shortly after the actual crime occurs. In other cases, witnesses identify the defendant who remains at large somewhere within the community. Defendants arrested at or near the time of the actual crime will be taken to jail; however, within twenty-four hours, the defendant is entitled to appear before a judge to seek release. Many defendants are released on their personal promise to return to court when called upon to do so and without posting bail. This is called PR or Personal Recognizance. PR means that defendant is not required to post money bail or bail bond. Defendants with serious records, those who have a history of not returning to court as requested may still be required to post money bail in order to obtain release. Decisions regarding the release of defendants on PR or on money bail are determined by a judge.

These decisions – bail hearings – are scheduled each day on the calendar for those persons who have been arrested during the preceding twenty-four hour period. These persons had previously been interviewed by a social worker at the jail and the judge, after appropriate hearing, decides whether or not to release them. In some cases, during the twenty-four hours prior to the bond hearing, defendants can post money bail and be released. The amount of bail set for such pre-bail hearing release will depend upon the crime for which each person has been arrested.

While an incarcerated defendant is attempting to get out of jail by either posting bond or being released on personal recognizance, the police work quickly to investigate the crime, prepare necessary paperwork and get that investigative information to the Prosecuting Attorney so that s/he can make a decision as to whether or not to file a case. In most cases, an arrested defendant will be released prior to the time that a criminal case is filed.

Arrest Warrant:

After formal criminal charges are filed, a warrant is issued for the defendant’s arrest. If a defendant is still in jail, he is formally served with the warrant while in jail. If a defendant was released at a regular bond hearing because a criminal case was not

filed within the required time, he may be rearrested once the criminal case has been filed and a warrant has been issued. In order to keep a defendant incarcerated, however, the state must be able to justify such action. During the entire pendency of a case, a defendant will be released on a bail bond, on actual money bail, on personal recognizance, or, in rare instances, might remain in jail. If a defendant is kept in jail because he cannot post bond, he may petition the court to lower his bail in order to secure his release.

Arrestment:

Let us assume here that a case has been filed and the defendant has been located. The defendant would then be summoned, or brought to a hearing called the arrestment.

An arrestment serves several purposes. First, at the time of the arrestment a defendant is formally advised as to the exact nature of the charges which have been filed against him. He is also advised that he should have an attorney and that if he cannot afford an attorney, an attorney will be provided for him at public expense. At the arrestment the defendant has an opportunity to enter a plea to the charges against him. In most cases a plea of "not guilty" is routinely entered at the arrestment. At this point the case is continued for one or two weeks. A continuance means that the defendant will be required to appear again before the same judicial officer in either one or two weeks. In those cases where a defendant has no attorney, the continuance is for one week at which time the defendant would appear with his attorney.

When the defendant reappears, with counsel, he is given an opportunity after appropriate consultation with his counsel to change his prior plea of not guilty or go to trial. If a defendant, with the advice of his counsel, decides to go to trial a trial date is set. Defendants are entitled to a speedy trial and if a defendant remains in custody, the trial date must be set for no later than 60 days after the time of arrestment. Defendants who have been released from custody on bail or personal recognizance must receive a trial date within ninety days from the date of arrestment. In special circumstances, defendants can ask that the trial date be postponed but in order to do so defendants must specifically waive the right to a speedy trial.

Pretrial Actions:

During the time between arrestment and trial, the Prosecuting Attorney's Office will give the defense attorney copies of the state's case file including witness statements and police reports. This is called discovery and enables defense counsel to determine the strength of the state's case against the defendant.

During this period, it is also routine for the Deputy Prosecuting Attorney handling the prosecution to discuss with the defense attorney the possibilities for plea negotiation. The defense attorney may seek a dismissal of certain counts, a commitment on the part of the Deputy Prosecuting Attorney not to file additional counts, an agreement which will enable her/his client to plead guilty in return for a reduction in the severity of the charges or an agreement to recommend a particular sentence. If the Deputy Prosecuting Attorney, the defense counsel and the defendant can reach agreement, they will appear before a judge. At this time the defendant completes a form indicating that he is knowingly giving up various rights including his right to a trial and his right to cross-examine witnesses by pleading guilty. The form also contains the exact agreements made by the Prosecuting Attorney's Office in return for the defendant's plea of guilty. The Prosecuting Attorney's agreements are not binding on the judge.

By signing the form and by orally affirming the information on that form before the judge, the defendant indicates that he understands his rights and he understands that he is waiving those rights. If his attorney affirms the defendant's actions the plea will normally be accepted by the judge and the defendant will then be convicted of the crime as charged.

In many cases, plea negotiations are not fruitful and the case proceeds to trial. Approximately three weeks before the actual trial, an omnibus hearing is held. At the omnibus hearing, the deputy prosecuting attorney, the defendant and the defense counsel appear before a judge to determine whether or not information held by both attorneys – called discovery – has been freely exchanged. A motion in limine is usually requested by the prosecutor, to declare certain areas of inquiry irrelevant and inadmissible at trial. At the omnibus hearing the court will also determine if additional pretrial hearings will be necessary. Additional pretrial hearings can occur for several reasons:

If for example, a defendant made a statement to the police and if the prosecution determines that it wants to use that statement against the defendant during the trial, the prosecution must prove that the defendant's statement was voluntary and that it was made after the defendant was fully informed of his constitutional right to remain silent. A formal hearing is required to establish these special conditions and this hearing is normally held prior to an actual trial so that the trial can proceed without interruption;

Another example of additional pretrial hearing is a suppression hearing. In this type of hearing a defendant attempts to show that evidence against him – which the prosecution wants to use at trial – was seized in a violation of the defendant's constitutional rights. If the court determines, after a suppression hearing, that the evidence was illegally obtained then that evidence will be suppressed. That means that the evidence will not be admitted at trial.

Upon the conclusion of all pretrial hearings the criminal case is ready for trial.

Subpoena:

After all pretrial matters are disposed of, a trial date is set. All parties to the criminal case including the prosecution and defense attorneys, the defendant and all prosecution and defense witnesses are notified of the specific trial date. The defendant and the defense and prosecution witnesses receive subpoenas instructing them to be in court on a specific date and at a specific time.

Voir Dire:

Most criminal defendants are entitled to a jury trial; that is, a trial by a jury composed of one's peers. (In some cases a criminal defendant may waive his right to a jury trial in which case that matter is heard by a judge). The process of jury selection is called voir dire. This process enables both prosecution and defense to inquire about each prospective juror's attitudes and biases. The purpose behind voir dire is to enable both prosecution and defense to dismiss those jurors who appear either prejudiced for or against the defendant and to eliminate those jurors who they feel would not be able to render a fair verdict. Once this process has been completed, the jury is formally sworn and trial itself can begin.

Opening Statements:

The actual criminal trial begins with the opening statements by the prosecution and the defense. Generally these opening statements are brief and are designed to set the stage for the trial. For example, the prosecutor will usually outline the state's case against the defendant in brief terms. The prosecutor will describe the criminal offense and will inform the jury as to how the prosecution intends to prove the defendant's guilt. The defense attorney who decides to make an opening statement will usually indicate what defenses will be set forth.

The State's Case-in-Chief:

After the opening statements have been made, it is the prosecutor's obligation to present his case against the defendant. It is the state's obligation to prove a defendant's guilt; it is not the defendant's obligation to prove that he is not guilty. The burden of proof is on the state. To meet the burden of proof, the prosecution begins its case-in-chief by calling its witnesses. Witnesses are required to testify under oath. Prosecution witnesses are subjected to direct examination by the prosecutor. Each

witness is called with the purpose in mind of establishing certain facts in the minds of the jury. In each case the defense is given the opportunity to cross examine witnesses. Cross examination gives the defense the opportunity to establish facts contradictory to those brought out against the case under direct cross-examination and to impeach the credibility of the witnesses. At the conclusion of the state's case, the state rests. It is at this point in the trial that the defense has an opportunity to present its case.

Defense Case:

In some cases the defendant, on advice of counsel will decide not to testify. In other cases the defendant and the defendant's witnesses will take the witness stand and be subjected to direct examination by the defense attorney. As is the case with the prosecution witnesses, defense witnesses are also subjected to cross-examination by the prosecutor. After presenting testimony, the defense rests.

Rebuttal:

At the conclusion of the defense's case, the prosecution is entitled to call rebuttal witnesses. These are special witnesses whose testimony will attack statements and facts presented during the defense's case. Rebuttal witnesses – like other witnesses – are subject to cross-examination.

Final Argument:

At the conclusion of the trial, attorneys for the prosecution and defense make their final arguments to the jury. Normally, the prosecutor gives her/his final first and is followed by the defense attorney. The prosecutor also has an opportunity to rebut the defense's final argument: In other words, the prosecutor has the right to close the case and has the final word before the jury begins its deliberations. A unanimous verdict is required by law. If the jury is unable to agree on a verdict, a hung jury is declared by the judge and the case may be retried if the state desires.

It is important to remember that the state – in other words the prosecution – must prove its case beyond a reasonable doubt.

Jury Instructions:

At the conclusion of the trial it is a judge's obligation to instruct the jury. Normally, a judge will inquire of the prosecution and the defense as to what specific instruction they recommend that the judge give to the jury. The judge will weigh either the oral or

written recommendations for jury instructions from the prosecution and defense before making a final decision as to how to instruct the jury.

The jury will be reassembled and the judge will make her/his charge to the jury. The charge will contain the jury instructions. Generally the charge and instructions include the judge's statements about the law and about the jury's duty in this particular case. Commonly, the judge will inform the jury that they may find the defendant guilty of a specific crime or crimes if they find that he committed certain acts. The judge also informs the jury that if they find that the defendant did not commit certain acts they must find him not guilty.

Sentencing:

After a plea of guilty, a judge's verdict of guilty, or a jury verdict of guilty, the offender comes before a judge for sentencing.

The sentencing judge is usually the trial judge. However, if there was a plea of guilty (and therefore, no trial) the sentencing judge is selected from a list of Superior Court judges.

Information presented to the judge on the questions of sentencing comes from three sources: Defense counsel reports, the Office of Probation and Parole, and the Prosecutor's Office.

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