

UNDERSTANDING THE CRIMINAL JUSTICE SYSTEM

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What is the Criminal Justice System?

The criminal justice system is the system we have in the United States for addressing situations where it is believed that crimes have been committed. Only governmental agencies, known as prosecutors, can bring criminal charges against an individual or organization. The penalties in criminal court can include being sent to jail. This system is different than the CIVIL law system that we use for dealing with conflicts that do not constitute crimes. The penalties in the civil law system do not allow for people to be sent to jail. The civil law penalties usually involve the court imposing monetary fines on someone or organization and/or ordering someone or organization to do or stop doing certain activities. Immigration law is part of the CIVIL law system, however certain immigration law violations can be criminal offenses. Deportation/Removal proceedings are CIVIL proceedings. However, the law allows for certain noncitizens to be detained during these proceedings. Such detention is not considered under the law to be jail or prison time.

Who are the players and what is their role?

- **911** – This is the emergency number that victims or other persons call when there is an emergency, including domestic violence situations. The operators that receive the calls contact the police, and medical personnel when necessary, and dispatch them to the scene of the emergency. The calls that are made to 911 operators are recorded and are often used as evidence in a criminal trial if the emergency involved a crime.
- **POLICE** – Police officers are responsible for responding to and investigating crimes. They respond to situations when called by 911 operators, victims, other people reporting alleged crime or when they have any other reason to believe that a crime has or is being committed. Every time that a police officer responds to a call or situation, s/he must write up a report about what happened. These reports are then turned over to the prosecutor's office and may be used as evidence in any criminal proceeding that results from the situation. Police officers also have the power to arrest someone whom they believe has committed a crime. In many states, there are mandatory arrest laws for situations involving domestic violence. Thus, police officers responding to situations involving domestic violence must arrest the person at the scene whom they believe is the "primary perpetrator".
- **PROSECUTOR** – The prosecutor – also known sometimes as the city attorney or district attorney – reviews the police reports that have been filed and determines whether or not they believe a crime has been committed. If they believe a crime has been committed, then they file charges with the court and serve copies of these charges on the person whom they believe has committed the crime, aka: the defendant. These charging documents can also be called such things as then indictment or the information. Once charges have been filed with the court and served on the defendant, the prosecutor is responsible for "prosecuting" the case.

Prosecutors are lawyers who represent the governmental agency, sometimes this is a city, sometimes the county and sometimes the state (ie. City of Seattle v. Thomas Jefferson, defendant). Only a prosecutor can bring criminal charges against someone.

- **DEFENDANT** – The defendant is the person accused by the prosecutor of committing a crime.
- **PUBLIC DEFENDER/DEFENSE ATTORNEY** – Defendants have the right to be represented by a lawyer in the criminal proceedings. If a defendant cannot afford a lawyer, the court must appoint a lawyer to represent him/her at the expense of the government. When a lawyer is appointed by the court, s/he is called a public defender or court appointed attorney. **IT IS CRITICAL THAT THE DEFENDANT BE REPRESENTED BY A LAWYER. THE DEFENDANT SHOULD NEVER WAIVE HER/HIS RIGHT TO AN ATTORNEY.** The criminal defense attorney is responsible for defending and representing the defendant in the criminal proceedings. The defense attorney negotiates with the prosecutor in a process called “plea bargaining” where the defendant could plead guilty to a less severe criminal offense than the one the prosecutor has charged. If the defendant, defense attorney and the prosecutor cannot reach an agreement, then the case will be set for a trial before a jury.
- **JUDGE** – The judge is responsible for overseeing the criminal proceeding. S/he can release the defendant from jail during the criminal proceedings. The judge is the person who oversees the trial, or accepts the defendant’s guilty plea. S/he is also responsible for imposing a sentence on someone who has been found guilty of a crime. The sentence may include time in jail, monetary fines, time on probation, and certain other conditions – such as drug & alcohol treatment – that the defendant must comply with.
- **JURY** – When a defendant decides to take her/his case to trial (as opposed to pleading guilty), a jury is the group of people that the prosecutor and defense attorney pick to listen to the evidence and decide on whether the defendant is guilty or not.
- **VICTIM ADVOCATE** – Many Prosecutors Offices have victim advocates, especially where these offices have specialized domestic violence units. When the prosecutor files criminal charges against a defendant, the victim advocate is assigned to assist the alleged victim of the crime at issue in the case. The victim advocate’s job varies in many places, but should include helping the victim to understand the criminal proceedings, understand what her/his rights are, and serve as a liason between the victim and the prosecutor.

What happens in criminal proceedings?

- **Prosecutor receives information** – generally from the police – that a crime(s) has been committed;
- **Prosecutor files charges** against the alleged perpetrator;
- **Defendant is arrested** by the police (or a warrant for arrest is issued) **NOTE:** this can happen first;

- **Arraignment** is the first hearing held by the judge to determine the amount of defendant's bond/bail for release and to appoint a public defender if the defendant cannot afford to hire a defense attorney – NOTE: Sometimes courts and prosecutors may encourage the defendant to waive their right to an attorney and plead guilty at this stage. In such a situation, the *best course* is to identify and wait to speak with an attorney who can fully evaluate the defendant's case before deciding whether or not to move the case forward.
- **Plea bargaining** will begin between the defense attorney and the prosecutor to see what, if any, agreements can be reached;
- **Pre-trial hearings** – numerous pre trial hearings may be held by the judge to determine how the parties want to proceed with the case;
- **Plea hearing** – if the defendant decides to plead guilty to a crime, then the judge will hold a hearing to accept the defendant's plea;
- **Trial** – if the defendant does not want to plead guilty, the judge will set a date for trial at which time each side (prosecution & defense) will present evidence to a jury and the jury will decide whether the defendant is guilty or innocent;
- **Sentencing hearing** is then held where the judge imposes penalties on the defendant, often including time in jail.

What are the classifications of crimes?

Crimes are generally classified by the maximum amount of jail time that may be imposed. The states vary in how they classify crimes, so it is important to figure out how your state does it. The following is how most states classify crimes:

- **MISDEMEANORS** – these are criminal offenses that carry a maximum possible sentence of one year in jail (in some states, the maximum amount of time is 2 years); many states and cities and counties have various classifications of misdemeanors such as offenses that carry maximum sentences of 90 days, 180 days and 365 days. Examples: simple assault, petty theft. NOTE: Even though these offenses are less severe in the criminal context, they often can have more severe immigration consequences than felony convictions.
- **FELONIES** – these are criminal offenses that carry a maximum possible sentence of more than one year in jail (or more than two years if that is how misdemeanor offenses are defined); states have various classifications of felonies, depending upon the severity of the crime (ie. first degree murder is a Class A felony in Washington State and carries a maximum possible sentence of death or life in jail; possession of cocaine is a Class C felony and carries a maximum possible sentence of five years in jail). Examples: rape, drug trafficking.

What are the types of criminal courts?

For most states (except New York and several others), the criminal courts are set up as follows:

- **MUNICIPAL COURTS** – These courts have jurisdiction (power) to hear cases for crimes which are a violation of a city code, (ie. the Atlanta Municipal Courts hear cases involving violations of the Atlanta City Code). Generally, municipal codes only involve misdemeanor offenses and these courts only have the power to hear misdemeanor cases.
- **DISTRICT COURTS** – These courts have jurisdiction within counties (or parishes or townships) in areas that are outside of the incorporated cities and hear misdemeanor cases only for offenses that are violations of the state’s criminal code.
- **SUPERIOR COURTS** – These courts have jurisdiction to hear cases for cases involving felony violations of the state criminal code. They can also deal with misdemeanor offenses if the felony case also alleges these lesser crimes.

What are your basic rights if you are accused of a crime?

- **RIGHT TO AN INTERPRETER** –If the defendant does not speak English, or has limited English skills, s/he has the right for the judge to appoint an interpreter fluent in his/her primary language.
- **RIGHT TO AN ATTORNEY** – The defendant has the right to be represented by an attorney; if s/he cannot afford a lawyer, the court will appoint one to represent her/him at no cost to her/him.
- **RIGHT TO UNDERSTAND THE CRIMINAL CHARGES** – The defendant has a right to have the criminal charges explained to her/him by the court and by her/his defense attorney so that s/he can understand what s/he is being accused of doing.
- **RIGHT TO PARTICIPATE IN THE DEFENSE OF THE CHARGES** – The defendant has the right to make the decisions about how s/he will proceed with defending the criminal charges against her/him. The defense attorneys job is to assist the defendant in making good, informed choices and understanding the consequences of these decisions.
- **RIGHT TO A TRIAL BEFORE A JURY** – The defendant has the right to refuse to plead guilty to the crimes as charged (or any plea bargain offered by the prosecutor) and take the case to a trial before a jury. NOTE: If the defendant takes the case to trial and loses, the jail/prison sentence is often much more severe. Thus, many defendants often feel pressured into pleading guilty and do so in more than 90% of criminal cases.
- **RIGHT TO APPEAL THE CONVICTION** – The defendant has the right to appeal the decisions of the judge or the jury to the court of appeals.

How to obtain the documentation (including the police report)?

- **COURT HOUSE/COURT CLERK/COURT FILES** – since the criminal court record in adult proceedings are all public record, the court files should be

accessible. In many places, the court clerk can also make a “docket print out” which provides a chronological summary of the criminal case.

- **POLICE STATION** – The police department maintains files of all the police reports that are made by its officers and in most places these reports are accessible by contacting the police station.
- **CRIMINAL DEFENSE ATTORNEY** – If your client was the criminal defendant in a case, her/his attorney should make a copy of all relevant documents available to the defendant.
- **PROSECUTING ATTORNEY** – If your client was the victim in a criminal prosecution, the prosecutors office, usually through the victim advocate, will be a good source for getting documentation.

What are the basic issues involved in protection orders?

- **CIVIL ORDERS** - A protection/restraining/no contact order is a civil restraint.
- **VIOLATIONS ARE CRIMINAL OFFENSES**
- **HOW TO REPORT VIOLATIONS OF THESE ORDERS**