

# Criminal Procedure

by Sophia Tutorial



## WHAT'S COVERED

In this lesson, you will learn about the criminal prosecution process. Specifically, this lesson will cover:

1. Arrest and Preliminary Hearing
2. Information or Indictment
3. Arraignment and Plea
4. Verdict and Sentencing

## 1. Arrest and Preliminary Hearing

The procedure for criminal prosecutions is complex and will vary from state to state. Criminal procedure is also concerned with protecting all of the accused's constitutional rights by providing specific processes for this purpose.

A criminal case typically begins with an **arrest** if the defendant is caught in the act or fleeing from the scene; if the defendant is not caught, a **warrant** for the defendant's arrest will be issued.

The warrant is issued by a judge or a **magistrate** upon receiving a **criminal complaint** detailing the charge of a specific crime against the accused.

➦ **EXAMPLE** It is not enough for a police officer to go before a judge and say, "I'd like you to arrest Bonnie because I think she's just murdered Clyde." The officer must supply enough information to satisfy the magistrate that there is **probable cause** (reasonable grounds) to believe that the accused committed the crime.

The warrant will be issued to any officer or agency that has power to arrest the accused with warrant in hand. The accused will then be brought before the magistrate for a **preliminary hearing**. The purpose of the hearing is to determine whether there is sufficient reason to hold the accused for trial.

If so, the accused can be sent to jail or be permitted to make **bail**. Bail is a sum of money paid to the court to secure the defendant's attendance at trial. If he fails to appear, he forfeits the money. Constitutionally, bail can be withheld only if there is reason to believe that the accused will flee the jurisdiction.



## TERMS TO KNOW

### Arrest

To deprive a person of liberty by legal authority. In criminal law, an arrest is either done by warrant or by probable cause without a warrant (such as when a person is caught in the act of committing a crime).

### **Warrant**

A written order from an authority that authorizes some action. In criminal, law an arrest warrant authorizes an arrest or a search warrant authorizes a search.

### **Criminal Complaint**

The initial “information” filed in order to indict a person for a crime containing the essential facts and the offense charged.

### **Magistrate**

A public officer possessing judicial or civil power. In the U.S. federal court system, magistrates are chosen by judges (for a term of 8 years) to assist district court judges (who are appointed by the President and confirmed by the Senate for life).

### **Probable Cause**

Also called reasonable cause, the evidence needed to obtain a warrant for an arrest or a search, showing that facts exist to support a belief that such a warrant should be issued. In the case of a warrantless arrest or search, such cause must also exist.

### **Preliminary Hearing**

In criminal law, the hearing before a judge or magistrate to determine if a person charged with a crime should be held for trial.

### **Bail**

Surety (money or something of value) that is posted to allow the release of a person under arrest that guarantees his or her appearance at trial.

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## **2. Information or Indictment**

Once the arrest is made, the case is in the hands of the **prosecutor**. In the 50 states, prosecution is a function of the district attorney’s office. These offices are usually organized on a county-by-county basis.

In the federal system, criminal prosecution is handled by the office of the U.S. attorney, one of whom is appointed for every one of the 94 federal districts that cover the 50 states, the District of Columbia, and the U.S. territories.

Following the preliminary hearing, the prosecutor must either file an **information** (a document stating the crime of which the person being held is accused) or ask the grand jury for an **indictment**.

The grand jury consists of twenty-three people who sit to determine whether there is sufficient evidence to warrant a prosecution. It does not sit to determine guilt or innocence. The indictment is the grand jury’s formal declaration of charges on which the accused will be tried.

If indicted, the accused formally becomes a defendant.



### Prosecutor

An officer of the government who prosecutes or brings a person to trial for a crime. Example: a district attorney.

### Information

The criminal complaint.

### Indictment

A written charge of a crime against an accused person which must be proven at trial in order for a defendant to be convicted.

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## 3. Arraignment and Plea

The defendant will then be arraigned— that is, brought before a judge to answer the accusation in the indictment. The defendant may plead guilty or not guilty.

If he pleads not guilty, the case will be tried before a **jury** (sometimes referred to as a petit jury). The jury cannot convict unless it finds the defendant guilty **beyond a reasonable doubt**.

Alternately, the defendant may plead guilty to the offense or to a lesser charge, often referred to as **lesser included offense**.

🔗 **EXAMPLE** Simple larceny is a lesser included offense of robbery because the defendant may not have used violence, but nevertheless stole from the victim.

Such a plea is usually arranged through **plea bargaining** with the prosecution. In return for the plea, the prosecutor promises to recommend to the judge that the sentence be limited. The judge most often, but not always, goes along with the prosecutor's recommendation.

Plea bargaining benefits the prosecution because it reduces any risk of losing the case and also saves resources by avoiding the time and expense of a trial. It benefits an accused by providing certainty over the uncertainty of going to trial, and often reducing the charges to a lower level than originally brought.

The defendant is also permitted to file a plea of **nolo contendere** (no contest) in prosecutions for certain crimes. In so doing, he neither affirms nor denies his guilt. He may be sentenced as though he had pleaded guilty, although usually a *nolo* plea is the result of a plea bargain.

Why plead *nolo*? In some offenses, such as violations of antitrust laws, the statutes provide that private plaintiffs in a civil action may use a conviction or a guilty plea in a criminal action as proof that the defendant violated the law. This enables a plaintiff to prove liability without putting on witnesses or evidence and reduces the civil trial to a hearing about the damages to the plaintiff.

The *nolo* plea permits the defendant to avoid this, so that any plaintiff will have to prove not only damages but also establish liability.



### TERMS TO KNOW

### Jury

A set number of individuals selected according to rules and sworn and empaneled to declare the truth or

determine the facts. In a grand jury, these individuals are empaneled to determine if the accused should be indicted.

### **Beyond a Reasonable Doubt**

The standard of proof by which a criminal defendant must be found guilty in order to be convicted of a crime or misdemeanor.

### **Lesser Included Offense**

A crime composed of some, but not all, of the elements of a greater crime.

### **Plea Bargaining**

A process under the discretion of a prosecutor whereby the prosecutor and the accused negotiate a mutually satisfactory disposition of a criminal charge subject to court approval and typically involving a plea of guilty to a lesser offense.

### **Nolo Contendere**

A plea in a criminal offense that means, "I do not contest," and has the effect of a guilty plea without an admission of guilt.

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## **4. Verdict and Sentencing**

Following a guilty plea or a **verdict** of guilt, the judge will impose a sentence after **presentencing reports** are written by various court officials (often probation officers and sometimes psychologists).

Permissible sentences are spelled out in statutes, though these frequently give the judge a range within which to work (e.g., twenty years to life). The judge may sentence the defendant to imprisonment, a fine, or both, or may decide to suspend the sentence (i.e., the defendant will not have to serve the sentence as long as he stays out of trouble).

**Sentencing** usually comes before appeal. As in civil cases, the defendant, now convicted, has the right to take at least one appeal to higher courts, where issues of procedure and constitutional rights may be argued.



### **TERMS TO KNOW**

#### **Verdict**

The decision of a jury, which is unanimous in a criminal case.

#### **Presentencing Reports**

Reports ordered by a court to assist in determining the sentence to be handed down to the defendant and including the result of investigations into prior convictions, background, social history, medical and psychological records, etc. to identify any mitigating or aggravating factors.

#### **Sentencing**

After a conviction in criminal court, the determination of punishment to be administered to the defendant.



### **SUMMARY**

In this lesson, you learned that criminal procedure in U.S. courts is designed to provide a fair process

to both criminal defendants and to society. Procedure begins with an **arrest and a preliminary hearing** to determine if the accused should be held for trial. An **information or indictment** follows, after which the accused becomes a defendant. The defendant is then **arraigned and allowed to plea**. If the case goes to trial, it ends with a **verdict and sentencing**.

Best of luck in your learning!

Source: This content has been adapted from Lumen Learning's "Procedure" tutorial.



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