

## Stages in Criminal Prosecution

### **SIMPLIFIED STEPS IN A CRIMINAL PROSECUTION**

1. Arrest
  - a. Either through witnessed action or through warrant
2. Initial Appearance –Usually done in General Sessions Court
  - a. Inform the accused of the charges
  - b. Inform the accused of the right to counsel
  - c. Inform the accused of the right to remain silent
  - d. Advise of the general circumstance upon which the defendant may obtain bail
  - e. Inform the accused of the right to a preliminary examination
  - f. Inform the accused of the right to trial by jury and to be prosecuted by indictment or presentment
3. Preliminary Hearing
  - a. Probable cause hearing
  - b. Judge must determine
    - i. Whether an offense has been committed
    - ii. Whether there is reasonable ground to believe that the defendant is guilty of the offense, and
    - iii. Whether and how much bail should be set
  - c. If PC is found then the case is bound over to the grand jury
    - i. PC to bind over requires “from the evidence it appears that an offense has been committed and that there is probable cause to believe that the defendant committed it
4. Indictment
  - a. 12 members of the grand jury must concur that an indictment should be returned, and it is to be indorsed “A true bill,” and signed by the foreperson of the grand jury.
5. Trial
  - a. If an indictment is returned A true bill, there must be a trial unless the defendant decides to plead guilty to the offense charged
  - b. The Opening of the Court
    - i. Either the Clerk of the Court or the judge will call the Court to order.
    - ii. When the judge enters, all present should remain standing until the judge is seated.
    - iii. The case will be announced, i.e., "The Court will now hear the case of vs. ."
    - iv. The judge will then ask the attorneys for each side if they are ready.
    - v. A representative of each team will introduce and identify each member of the team and the role each will play.

- c. Opening Statement
  - i. Prosecution
    - 1. The prosecutor in a criminal case summarizes the evidence which will be presented to prove the case.
  - ii. Defendant
    - 1. The defendant's attorney in a criminal or civil case summarizes the evidence for the Court which will be presented to rebut the case the prosecution has made.
- d. Direct Examination by Plaintiff
  - i. The prosecutors conduct the direct examination of its own witnesses. At this time, testimony and other evidence to prove the prosecution's (plaintiff's) case will be represented.
  - ii. The purpose of direct examination is to allow the witness to state the facts in support of the case.
  - iii. Note: The attorneys for both sides, on both direct and cross examination, should remember that their only function is to ask questions; attorneys themselves may not testify or give evidence, and they must avoid phrasing questions in a way that might violate this rule.
- e. Cross-Examination by the Defendant's Attorneys
  - i. After the attorney for the prosecution (plaintiff) has completed questioning each witness, the judge then allows the other party (i.e., defense attorney) to cross-examine the witness.
  - ii. The cross-examiner seeks to clarify or cast doubt upon the testimony of opposing witnesses.
  - iii. Inconsistency in stories, bias, and other damaging facts may be pointed out to the judge through cross-examination.
- f. Direct Examination by the Defendant's Attorneys
  - i. After all the prosecution's (plaintiff's) witnesses have been examined by both sides, the defense will present its witnesses. Direct examination of each defense witness follows the same pattern as the above which describes the process for prosecution's witnesses.
- g. Cross-examination by the prosecution
  - i. Cross-examination of each defense witness follows the same pattern as the step above for cross-examination by the defense.
- h. Closing Arguments (Attorneys)
  - i. Prosecution
    - 1. The closing argument is a review of the evidence presented. It should indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case, and ask for a favorable verdict.
  - i. Defendant
    - i. The closing argument for the defense is essentially the same as for the prosecution. Counsel for the defense reviews the evidence as presented, indicates how the evidence does not satisfy the elements

of the charge or claim, stresses the fact favorable to the defense and asks for a verdict favorable to the defense.

#### THE JUDGE'S ROLE AND DECISION (VERDICT)

The judge is the person who presides over the trial to assure that the parties' rights are protected, and the attorneys follow the rules of evidence and trial procedure. In trials held without a jury, the judge also has the function of determining the facts of the case and rendering a judgment.