

BASIC CRIMINAL PROCEDURE

1. PRESUMPTION OF INNOCENCE

The prosecutor must always prove that you are guilty. You do not have to prove that you are innocent.

2. BURDEN OF PROOF

The prosecutor must prove that you are guilty beyond a reasonable doubt. This means that you cannot be convicted if there is a reasonable possibility that you are innocent.

3. ELEMENTS OF THE CRIME

The Information is a document that lists the crimes that the prosecutor will try to prove. Each one is called a count and may have several parts. For example, an assault is:

- (a) a voluntary application of force on the victim, and
- (b) without the victim's consent.

The prosecutor must prove that all the parts of the crime occurred, that you were the person who did it, and that you intended to do it.

4. DISCLOSURE

The prosecutor must give you all the information that is relevant to the charge(s). If information is missing, then ask the prosecutor.

5. PROCEDURE IN COURT

First the prosecutor will present witnesses and evidence. You may question or cross-examine those witnesses.

Cross-Examination can be used to:

- (a) Confront the witness. If you do not agree with something a witness said, then you must suggest what you think happened and ask if that could be true. For example, if you disagree that you hit the witness first, then say "Is it true that you swung at me first?"
- (b) Show that the witness is biased. For example, is a friend of the victim or has other reasons to not be accurate;
- (c) Show that the witness made other statements that were different than what he or she said in court;

- (d) Show that the witness could not have observed what he or she said. It was too far away, too dark, he or she needed glasses and was not wearing them or was just repeating what others said, etc.

6. **WHEN THE PROSECUTOR'S CASE FINISHES, you may:**

- (a) Ask the Judge to dismiss the case because there is no evidence on a part of the allegation. This is called a No Evidence Motion;
- (b) Decide not to present evidence and ask the Judge to dismiss the allegation because it has not been proven beyond a reasonable doubt. This is called an Insufficient Evidence Motion; or
- (c) Present witnesses. You will question them first and then the prosecutor may cross-examine them.

YOU DO NOT HAVE TO TESTIFY but the Judge will only consider what the witnesses say at the trial. Testifying or giving evidence allows the Judge to consider your point of view. The disadvantage is that the prosecutor can question you and try to undermine your case.

YOUR WITNESSES MUST BE AT COURT to give evidence. The judge will not consider letters or written statements.

SUBPOENA: A subpoena is a court order directing a witness to come to court. Your witnesses should be subpoenaed. The Court Registry will supply you with subpoena forms and help arrange to serve them.

7. **SUBMISSIONS**

After the evidence is finished, you will be given a chance to point out where the evidence is lacking or weak to convince the Judge that the charges should be dismissed. The Judge will only consider the sworn evidence given during the trial.

8. **JUDGMENT**

The Judge will decide whether you are guilty. If you are acquitted or found not guilty, then the case is over and you are free to leave. If you are convicted or found guilty, then the Judge will sentence you.

**Ask the Judge to explain anything that you do not understand.*

CONFESSION

A confession is a statement made by you to a person in authority. A person in authority is someone like a police officer or other person who could affect whether you might be charged.

A confession must be proven to be voluntary before a Judge can consider it. If the police said or did things that made you think that it would be better if you talked or worse if you didn't talk, or otherwise forced you to talk, then the confession will not be allowed in the trial.

VOIR DIRE

A voir dire is a mini-hearing to find out if a confession was made voluntarily. If you think the confession was voluntary, or you want the Judge to consider it, then you can tell the Judge "I agree the confession was voluntary and is admissible."

BURDEN OR PROOF

The prosecutor must prove that there is no reasonable possibility that the police or person in authority made threats or promises that caused you to confess.

You may question the prosecutor's witnesses to weaken their evidence or show that threats or promises were made. You may also present witnesses to show that threats or promises were made. You do not have to testify but if threats or promises were made, then you may want to tell that directly to the Judge.

IF CONFESSION RULED ADMISSIBLE

If the Judge rules that the confession is inadmissible, then none of the evidence heard in the mini-hearing will be considered in the trial.

If the confession is ruled admissible, then the Judge may ask whether you consent to let the mini-hearing evidence be considered in the trial without having the witnesses repeat it. You do not have to agree but it would be safe to agree that "the confession can go in but not the other evidence."

**Ask the Judge to explain anything you do not understand.*