

The Criminal Process *

Arrest

The criminal process begins with the arrest. For the arrest to be constitutional, the arresting agency must have probable cause to believe that a crime was committed and that the person arrested committed the crime. After the arrest, the prosecuting agency will review the reports and decide whether or not to file charges. It is important to have an attorney at your side during this early stage of the case to advocate against the filing of charges.

Arraignment

The arraignment is the defendant's first appearance in court. The judge will inform the defendant of his constitutional rights and the charges filed. The defendant will then enter a plea of guilty, no contest, or not guilty. No one should ever enter a plea before speaking to a lawyer; doing so may have devastating consequences on the outcome of the case.

Preliminary Hearing

This hearing is only required when felony charges are filed. There is no preliminary hearing in misdemeanor cases. This hearing is like a "mini-trial" where the prosecutor presents witnesses & evidence to try to prove that the defendant committed the crime(s). Having a lawyer at this stage is vital because this is the first opportunity to question the witnesses, to refute the evidence presented, and to weaken the prosecution's theory of the case. The defendant has a right to present witnesses and evidence but doing so is not always in his best interest this early in the case. Thus, defendants should consult with a lawyer before making any decisions. Once all the evidence has been presented, the judge will determine if there is enough evidence for the defendant to be held to answer and stand trial. If the defendant is held to answer he will be

arraigned a second time. If no plea deal is reached and the defendant pleads "not guilty," the case proceeds to trial.

Trial

At the trial, the prosecution has the burden to prove that the defendant is guilty of the crime beyond a reasonable doubt. Based upon the evidence presented, a jury or a judge determines whether the defendant is guilty or not.

Sentencing

If found guilty the judge will schedule a sentencing hearing. It is important to have a qualified attorney advocating for the lowest sentence possible.

**This a very brief explanation to the criminal process mainly in the State of California. The reader must be aware that the criminal process in any jurisdiction is very complex, involving rules of evidence and procedure. This document is for informational purposes only and are not legal advice. Each legal issue depends on its particular facts, and different jurisdictions have different laws and regulations. You should not act or rely on any information from this document without seeking advice from an attorney licensed to practice law in your jurisdiction.*

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