

Criminal Procedure (Frequently Asked Questions)

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What's the difference between a felony and a misdemeanor?

Arkansas breaks their crimes into two major groups: felonies and misdemeanors. Whether a crime falls into one category or the other depends on the potential punishment. If a law provides for imprisonment for longer than a year, it is usually considered a felony. If the potential punishment is for a year or less, then the crime is considered a misdemeanor.

What is the "presumption of innocence"?

All people accused of a crime are legally presumed to be innocent until they are convicted, either in a trial or as a result of pleading guilty. This presumption means not only that the prosecutor must convince the jury of the defendant's guilt, but also that the defendant need not say or do anything in his own defense. If the prosecutor can't convince the jury that the defendant is guilty, the defendant goes free.

The presumption of innocence, coupled with the fact that the prosecutor must prove the defendant's guilt beyond a reasonable doubt, makes it difficult for the government to put innocent people behind bars.

How can I tell from reading a criminal statute whether I'm guilty of the crime it defines?

All criminal statutes define crimes in terms of required acts and a required state of mind, usually described as the actor's "intent." These requirements are known as the "elements" of the offense.

A prosecutor must convince a judge or jury that all of the elements of the crime are there: that the defendant did the acts and had the intent described in the statute. For example, commercial burglary is commonly defined as entering a building belonging to another person, with the intent to commit petty or grand theft (that is, to steal) or any felony.

To convict a person of this offense, the prosecutor would have to prove three elements:

- The defendant entered the structure.
- The structure belonged to another person.
- At the time the defendant entered the structure, he intended to commit petty or grand theft or any felony.

Break the crime down into its required elements to see if each applies in your situation.

What standard is used in criminal trials to prove a defendant is guilty?

The prosecutor must convince the judge or jury hearing the case that the defendant is guilty "beyond a reasonable doubt." This standard is very hard to meet. (By contrast, in noncriminal cases, such as an accident or breach of contract, a plaintiff has to prove her case only by a preponderance of the evidence.)

As a practical matter, the high burden of proof in criminal cases means that judges and jurors are supposed to resolve all doubts about the meaning of the evidence in favor of the defendant. With such a high standard imposed on the prosecutor, a defendant's most common defense is often to argue that there is reasonable doubt - that is, that the prosecutor hasn't done a sufficient job of proving that the defendant is guilty.

If I'm accused of a crime, am I guaranteed a trial by a jury?

The U.S. Constitution gives a person accused of a crime the right to be tried by a jury. However, this right does not extend to petty offenses -- defined as offenses that do not carry a sentence of more than six months.

This right to a trial by jury has commonly been interpreted to mean a 12-person jury that must arrive at a unanimous decision to convict or acquit. However, a jury can constitutionally consist of as few as six persons. (Williams v. Florida, U.S. Sup. Ct, 1970.) The size of juries tends to vary depending on the seriousness of the charge. For example, California requires 12-person juries for both felony and misdemeanor trials, except that the state and defendant may agree to less than 12-person juries in misdemeanors. Florida law provides for six-person juries in noncapital cases and 12-person juries in capital cases. In most states, a lack of unanimity is called a "hung jury" and the defendant will go free unless the prosecutor decides to retry the case. In Oregon and Louisiana, however, 12-member juries may convict or acquit on a vote of ten to two.

I am confused about why a defendant would choose to not testify. If I were innocent, why wouldn't I want to take the stand and tell my story?

The 5th Amendment to the U.S. Constitution gives every criminal defendant the right not to testify, and jurors will be told that they cannot assume anything negative if the defendant decides to keep quiet. Of course, some jurors do make assumptions -- and they cast their votes accordingly.

But there are some excellent reasons why a defendant might remain silent in court:

- If the defendant has previously been convicted of a crime, the prosecutor may be able to bring this fact out -- but only if the defendant testifies. Evidence of a previous crime may cause some jurors to think that the defendant is guilty of the current crime, too.

- If the defendant testifies, the prosecutor may be able to bring out other information that tarnishes the defendant's reputation and discredits his testimony.
- Some defendants have a poor demeanor when speaking in public. A judge or jury may not believe a defendant who, though telling the truth, is a nervous witness and makes a bad impression.
- The defendant may have a perfectly good story that would nevertheless sound fishy to the average jury in that particular locale.

What happens if a defendant is judged "incompetent to stand trial"?

The question may arise as to whether a defendant is mentally capable of facing a trial. Defendants cannot be prosecuted if they suffer from a mental disorder that prevents them from understanding the proceedings and assisting in the preparation of their defense.

Based on a defendant's unusual behavior, a judge, prosecutor, or defense attorney may ask that trial be delayed until the defendant has been examined and her ability to understand the proceedings has been determined in a court hearing. If a judge finds that a defendant doesn't understand what's going on and can't meet the above requirements, then, typically an attempt to reestablish Defendant's competency will be made. Defendant may be placed in a mental institution in an attempt to reestablish competency. If competency is reestablished, then the trial can proceed.

Can a person be punished for attempting to commit a crime?

Yes. Many jurisdictions including Texas have either a general attempt crime or individual statutes that make attempted murder or attempted robbery or attempted crime. The purpose of these statutes is to punish an individual who has shown himself or herself to be dangerously inclined to commit a crime without waiting until the criminal act is actually completed. In order to convict a person for an attempted crime, the prosecuting agency must prove beyond a reasonable doubt that the person had the intent to do an act or bring about certain consequences that would amount to a crime, and that he or she took some step beyond mere preparation towards that goal.

What is a "grand jury"?

A grand jury is a group of people called together by the prosecutor to gather information about suspected criminal activity by listening to testimony from witnesses and examining documents and other evidence. The prosecutor acts as legal advisor to the grand jury and directs the flow of witnesses and evidence. At the end of the proceeding, the grand jury decides whether there is enough evidence to put the defendant on trial for the crime and indict the person with a criminal offense charge.

What is a "prosecutor"?

Prosecution refers to the government's role in the criminal justice system. When criminal activity is suspected, it is up to the government to investigate, arrest, charge and bring the alleged offender to trial. Prosecutors are the county or state district attorneys or lawyers who work for the government and who are responsible for presenting the government's case against a defendant. Prosecutors may be called county attorneys, city attorneys, or district attorneys.

How does the prosecutor decide which cases to pursue?

A: it thrown out of court, such as violations of the defendant's constitutional Miranda rights or destruction of evidence crucial to the defense. The prosecutor next decides if there is enough evidence, with regard to both the quantity and the quality thereof, to make conviction probable. Finally, the prosecutor decides if prosecuting the case fits in with the county or district office's policy objectives, or whether a more informal disposition such as pre-trial diversion may be in order. In some cases, highly publicized cases have a factor in the direction of prosecution.

What is the difference between parole and probation?

Parole and probation are employed in the punishment phase of the criminal justice process. Parole comes into play after a person has been imprisoned and is released subject to supervision by an officer of the court or parole officer. Probation, by contrast, refers to a criminal sentence separate and distinct from incarceration. Probation is the most frequent sentence imposed for less serious or first offenses and typically involves releasing the convicted offender into the community subject to a list of terms and conditions, which are imposed on a probationary period from 6 months to a year or more.

What is "restitution"?

Restitution involves ordering the defendant to pay the victim a sum of money designed to compensate the victim for the monetary costs of the crime, such as medical bills, property damage, and lost wages. By federal law, under the Mandatory Victims' Restitution Act of 1996, restitution is required when a violent crime has been committed and for certain other, limited, offenses. Many state and federal laws also require a criminal offender to make restitution to the victim, and the court will order restitution under those laws when the offender is sentenced.

What is "white collar crime"?

White collar crime is a term originally used to describe criminal activity by members of the business industry in connection with their respective professions. Today, the most common definition of white collar crime no longer focuses on the social status of the offender but rather on the type of conduct involved: illegal acts using deceit and concealment to obtain money, property, or services, or to secure a business or professional advantage. White collar crimes are typically less or non-violent than other crimes, but their effects can be just as devastating, such as in the recent Enron case, the Madoff "Ponzi" scheme crime, and other Wall Street, banking, insurance and financial crimes.

Are children charged with committing crimes prosecuted in the same manner as adults?

No. Children are subject to a separate judicial system called the juvenile court system. Generally, the focus of the juvenile court system is more on rehabilitation of the child than on punishment, in order to give the child under the legal age a chance to be a law abiding citizen and to be a productive member of society in general. In some cases, however, older juveniles who commit more serious crimes will be charged as adults and tried in the regular criminal courts. In such cases, their sentence, too, will be more in accord with adult punishment, whereas in juvenile court any incarceration is usually in a more rehabilitative setting and generally ends when the juvenile attains the age of majority.

Do I need a lawyer to represent me even if I am innocent?

Yes. We do not recommend anyone defending themselves in court. Every criminal defendant needs a criminal defense attorney. Innocent defendants are perhaps in even greater need of zealous representation throughout the criminal process to ensure that their rights are protected and that the truth prevails. Even innocent people end up in jail, so the best way to prevent that miscarriage of justice is to employ the services of a seasoned veteran of criminal defense law. On many occasions, the prosecution's evidence are circumstantial, and without proper legal defense or the help of a criminal defense attorney, the defendant poses a chance of conviction and the possibility of conviction even though the defendant may be innocent. DNA evidence has frequently been a source of good defense as well as acquitting someone of an offense charged against them.

If I simply intend to plead guilty, why do I need a lawyer?

Even if you are guilty of the crime with which you are charged, it is imperative that you seek the advice of experienced counsel so that you can minimize your sentence and maximize your opportunities to move ahead toward a brighter future. Criminal defense attorneys are needed to equalize the balance of power between the defendant and the prosecution and to ensure that the constitutional rights that are guaranteed to all criminal defendants, whether guilty or not, are preserved.

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