

# Criminal Pre-Trial Procedures

**U**NLIKE CIVIL TRIALS, criminal trials can vary greatly based on the state in which the alleged crime took place as well as the crime itself. There are, however, several basics that exist regardless of the variables. The paralegal working in criminal law must be knowledgeable of the variances, as he or she often is vital to case outcomes.



## Objective:



Summarize the criminal pre-trial process and procedures and the roles of the criminal paralegal at such state.

## Key Terms:



arraignment  
bail  
grand jury  
indictment  
plea bargaining  
preliminary hearing  
public defenders

## Key Components to the Criminal Pre-Trial Stage

Regardless of the crime, criminal trials can vary greatly based on the state in which the alleged crime took place. The type of crime also may be a factor in the trial and how it is handled. Yet certain similarities exist across state lines.

## PROCESSES AND PROCEDURES

Paralegals must have knowledge of processes and procedures in their home states.

## Bringing the Charge

Bringing the charge means criminal charges are brought against a person in one of three ways:

- ◆ An **indictment** is a formal document issued by a grand jury accusing the defendant of a crime. It is voted on by a **grand jury**, which is 12 to 23 people convened in a private session to evaluate accusations against people charged with crime(s) and to determine whether the evidence warrants a bill of indictment. While all states currently have provisions for grand juries, approximately half of the states employ them. Many require their use to varying extents.
- ◆ Criminal charges may be brought by the filing of information by the prosecuting attorney (county, district, or state's attorney) alleging that a crime was committed. Sometimes charges are pressed through the filing of a criminal complaint by another individual, which is essentially a petition to the district attorney asking him or her to initiate charges.
- ◆ Criminal charges may be brought through a citation by a police officer for petty misdemeanors and other minor criminal matters. The charge must tell the time, date, and place that the criminal act allegedly took place, the alleged involvement of the accused, and the details of the crime.

## Once in Custody

Once in custody, the individual is read his or her Miranda rights and is allowed to consult with or have a lawyer appointed. **Public defenders** are full-time attorneys employed by a governmental organization who exclusively represent indigent defendants. In contrast, assigned counsel are private attorneys appointed on an as-needed basis by the courts. Also, private attorneys may be retained and hired for representation.



**FIGURE 1.** Public defenders are full-time attorneys employed by a governmental organization who exclusively represent indigent defendants.

## Pre-Trial Court Appearances and Steps

Pre-trial court appearances and steps in a criminal case can be summarized, as they vary by state and by charges filed. The following information is in general, when a prosecutor files charges without a grand jury:

### Misdemeanors

The first step is an initial appearance before a judge of a lower court or magistrate. Charges are read; penalties are outlined; the defendant is advised of a right to trial (and right to trial by jury) and a right to counsel; a plea is entered; and bail is set (if a plea of not guilty is entered).

## Felonies

Felonies have similar steps to misdemeanors, except a preliminary hearing is added because of the more serious charges. The first step is an initial appearance or an **arraignment** before a judge of a lower court or magistrate. Charges are read; penalties are outlined; and the defendant is advised of a right to a preliminary hearing as well as his or her right to trial (and right to trial by jury in trial court) and the right to counsel.

With a felony, the defendant does not enter a plea. The matter is set for preliminary hearing where it is established if a crime has been committed and if there is probable cause to believe that the defendant committed the offense(s) alleged in complaint. The judge or magistrate sets the bail amount.

## Preliminary Hearing

At the **preliminary hearing** (probable cause hearing) the government must demonstrate to a judge or magistrate that there is sufficient evidence (probable cause) to believe the suspect committed the crime for which he or she has been charged. If the court finds there is no probable cause, the matter is dismissed. Then the defendant is released. If the court finds probable cause, the matter is transferred to trial court.

## Discovery Process

The discovery process begins as soon as counsel is involved and is used to influence bail setting, plea bargaining, and the case itself and its outcomes. Discovery information includes depositions, interrogatories, Requests to Admit, document production requests, and disclosures (e.g., insanity).

## Bail

**Bail** is money or other property deposited with the court as security to guarantee the appearance of the defendant at a specified time. The defendant is released when the required security is posted. Failure of the defendant to appear forfeits the security.



## FURTHER EXPLORATION...

### ONLINE CONNECTION: Diversion Programs

Diversion programs are created by the state legislature and are signed into law. Those who enter a diversionary program typically do not enter a plea when they come to court. Instead, they are diverted to a counseling program. Diversionary programs emphasize counseling, treatment, and behavior modification over punitive measures. Research several articles on diversion programs, and discover more about diversion, who qualifies for diversion, and what crimes qualify for diversion. What statistics can you find to substantiate the value of diversion programs?

## Plea Bargaining

**Plea bargaining** is the negotiations in which an accused pleads guilty to a lesser included offense (or to one of multiple charges) in exchange for the prosecution's agreement to support a dismissal of some charges or a lighter sentence.

## Pretrial Motions

Pretrial motions are prepared next. The defense attorney has the opportunity to exclude some of the evidence against the defendant. Rulings made during this stage of the case can be issues for appealing the case later.

## Voir Dire

The final step before trial begins is the voir dire, which is the preliminary examination of prospective jurors for the purpose of selecting people qualified to sit on the jury (if a jury is involved). The final pre-trial court document-related task is the preparation and drafting of the pre-trial orders. (See a sample at <http://www.formsworkflow.com/d98240.aspx?partnercode=Justia>.) This form outlines the issues, witnesses, evidence, etc. to be presented at trial.

## ROLES OF THE CRIMINAL PARALEGAL AT THE PRE-TRIAL STAGE

During this pre-trial stage, the paralegal working at a criminal defense firm and/or for the public defender's office will play the following roles:

- ◆ Conduct and organize investigations, including preparing discovery requests, responses, and other fact-finding assignments.
- ◆ Draft pleadings—including motions and discovery requests—for attorney review.
- ◆ Summarize and organize facts in preparation for the creation of the trial notebook.
- ◆ Prepare, organize, and assign professional preparation of trial exhibits, graphics, and other presentations.
- ◆ Conduct legal research.
- ◆ Evaluate prospective witnesses and attend voir dire sessions.
- ◆ Complete other related duties as assigned by the supervising attorney.



**FIGURE 2.** The paralegal working on a criminal case is extremely busy and important to the case outcome.

## Summary:



Unlike civil trials, criminal trials can vary greatly based on the crime and the state in which the alleged crime took place. Criminal charges otherwise known as “Bringing the Charge” are brought against a person in one of three ways: indictment, information, and citation. Once in custody, the individual is read his or her Miranda rights. The first step is an initial appearance before a judge of a lower court or magistrate. With a felony, the defendant does not enter a plea. The discovery process begins as soon as counsel is involved and includes depositions, interrogatories, Requests to Admit, document production requests, and disclosures. Pre-trial motions are prepared next. The final step before trial begins is voir dire.

## Checking Your Knowledge:



1. Explain what is meant by a citation.
2. Explain at least three discovery-related tasks a paralegal may face when working in criminal law at the pre-trial stage of a case.
3. When is a preliminary hearing required?
4. What is bail?
5. What is voir dire?

## Expanding Your Knowledge:



Research how a prosecutor is different from a public defender. Write a two-page paper explaining the differences.

## Web Links:



### Steps in the Criminal Justice System

<http://www.warnkenlaw.com/17-steps-criminal-justice-system/>

### Steps in a Trial

[http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/casediagram.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/casediagram.html)

### U.S. Civil Court Process

<http://www.america.gov/st/usg-english/2008/May/20080522223236caifas0.2138025.html>