



Criminal Procedure: The Basics

The legislature and the courts have developed rules of criminal procedure designed to ensure that the person who is convicted of a criminal violation is the person who committed the crime. Because the consequences for a criminal conviction can include imprisonment, fines, or both, criminal procedure protects many of the defendant's rights, such as the right to confront witnesses and to contest the charges made against him or her. The U.S. and Wisconsin constitutions mandate these protections, many of which can be traced back to European practices in medieval times.

CRIMINAL CHARGES

Criminal charges usually originate in one of two ways: (1) a law enforcement officer makes an arrest on probable cause; or (2) a district attorney files a criminal complaint before the person charged (the defendant) is in custody.

Law enforcement officers may make an arrest after learning of or witnessing a crime. Following an arrest, the criminal case is referred to the district attorney's office in the county where the offense was committed. The district attorney, also known as the prosecutor, represents the state of Wisconsin in criminal cases and decides whether to charge a person with a crime.

If the district attorney decides to pursue criminal charges, he or she will file a criminal complaint in circuit court to formally initiate criminal charges. The complaint must show probable cause that the

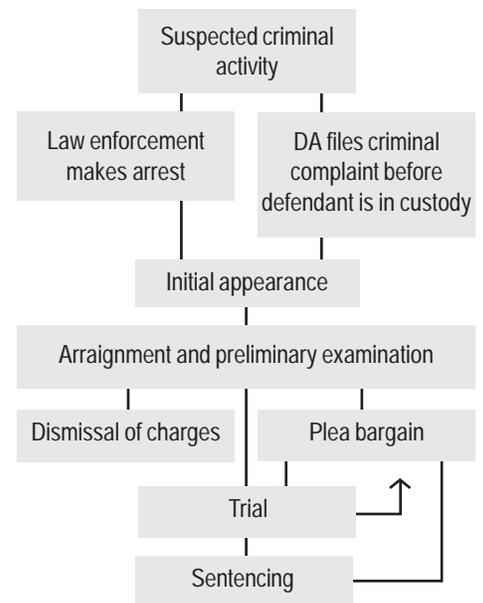
defendant committed the crime that is charged, and must specify the legal elements of the crime charged, including the possible penalty for each crime. The complaint must also detail the factual basis for the charges; in many cases, the complaint will contain the law enforcement officer's written report.

The district attorney may file a criminal complaint before the defendant is in custody if the district attorney learns of a crime from another person, such as a business owner who received a worthless check from a customer. In these cases, the district attorney may issue a summons to direct a person to appear in court on a particular date and time to face criminal charges. When the judge determines it is necessary, or when the defendant does not respond to the summons, the judge may issue a warrant for the defendant's arrest if the district attorney has shown probable cause that the defendant committed the crime.

INITIAL APPEARANCE

In Wisconsin, an initial appearance is the first hearing a defendant has in his or her criminal case. At the initial appearance, the defendant receives a copy of the criminal complaint. The defendant is also told of his or her right to an attorney, and that one will be provided for free if he or she cannot afford one.

The court will also set reasonable bail to ensure that the defendant will continue to appear in court. In many cases, the defendant is asked only to sign a signature bond. A defendant who signs a signature bond does not need to post any cash or property to be released, but may be liable for a



certain amount of money if he or she fails to appear in court. In other cases, the defendant may be required to post cash or other property to ensure future court appearances. In certain serious cases, the defendant may be held without bail.

The court may impose conditions of release to protect the public or to prevent the intimidation of witnesses. For example, as a condition of being released, the court may prohibit the defendant in an intoxicated driving case from consuming alcohol, or may prohibit a defendant accused of violence from having contact with a victim.

If a defendant violates the conditions of release or fails to appear at future court dates, he or she may be required to forfeit money or property posted, and may face a criminal charge called “bail jumping.”

ARRAIGNMENT AND PRELIMINARY EXAMINATION

For a case involving a misdemeanor, after the judge has set bail or other conditions of release, the defendant will enter a plea at a hearing known as an arraignment. A defendant may enter a plea of guilty, not guilty, or no contest. Commonly, as part of a plea agreement, a defendant who pleads not guilty later changes his or her plea to guilty or no contest.

For a case involving a felony, the defendant has a right to an additional hearing called a preliminary examination prior to the arraignment. At the preliminary examination, the district attorney must demonstrate to the court, by calling witnesses and introducing other evidence, that there is probable cause the defendant committed the felony. Because the defense may not challenge the credibility of witnesses at this hearing, defendants often waive the right to this hearing.

RESOLUTIONS TO A CRIMINAL CASE

After arraignment, both the prosecution and the defense may seek additional evidence or information, arrange for additional investigation, and interview witnesses. Both sides may file motions pertaining to the case, such as a motion to prevent the use of certain evidence against the defendant, or to prevent the defendant from raising a particular defense against the charges. The prosecution and the defense can discuss a plea agreement, and the case will move toward one of the following resolutions:

Dismissal; amendment of charges. Either the prosecution or the defense

may move to dismiss charges. If the state lacks enough admissible evidence to convict the defendant, the defense may move for a dismissal of charges. The prosecution may also move to dismiss a case after further investigation reveals weaknesses or other problems with the case, or may decide that criminal charges should be dismissed in favor of lesser charges.

Plea bargains and other arrangements. The prosecution and the defense often resolve a criminal case with a plea bargain. The district attorney may agree to dismiss certain charges, amend charges to lesser offenses, or make a sentencing recommendation. In exchange, the defendant agrees to plead guilty or no contest to one or more charges. A plea agreement may specify that one or more dismissed charges be “read in” at sentencing. A judge considers the read-in charges at sentencing, even though the defendant does not plead to those charges and cannot be prosecuted for them in the future. Judges are not bound by plea agreements but usually accept them. Before accepting a guilty or no-contest plea, the court must ensure that the defendant understands the rights he or she is waiving and the consequences of the guilty plea.

Wisconsin law provides several alternatives that allow certain defendants to avoid criminal records. For example, Wisconsin law allows certain convictions to be expunged (erased) for a person who is under the age of 25 at the time he or she committed the offense. In other situations—for example, in a domestic abuse case—a deferred prosecution agreement allows the defendant to have charges dismissed if he or she complies with terms agreed to with the district attorney. Wisconsin law, however, specifically prohibits deferred prosecution agreements for intoxicated driving cases.

TRIAL

When the prosecution and the defense cannot agree on a resolution, the case proceeds to a trial. At trial, the district attorney has the burden to prove beyond a reasonable doubt that the defendant is guilty of the charges alleged. A criminal defendant has the constitutional right to a speedy and public trial before an impartial jury, although the defendant may opt to have the case tried directly to the judge. A criminal defendant may not be compelled to testify against himself or herself. Juries in criminal trials consist of 12 members, and verdicts must be unanimous to convict a defendant. Even in a case that goes to trial, the defendant may reach a plea agreement before the judge or jury has reached a verdict.

SENTENCING AND DOUBLE JEOPARDY

After the defendant pleads guilty or is found guilty of criminal charges at trial, he or she appears for a final hearing to be sentenced. At this hearing, the judge informs the defendant what punishment he or she will receive. Before pronouncing the sentence, the judge may consider relevant testimony, documents offered by the prosecution and the defense, and a pre-sentence investigation report that details the defendant’s personal and criminal history.

If a defendant is found not guilty at trial (acquitted), he or she cannot be re-tried for the same offense under the constitutional protection against double jeopardy. This protection also prevents a defendant from receiving more than one conviction or sentence for the same conduct.

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Study Questions

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| 1 | What occurs at an arraignment? | |
| 2 | Can a defendant enter a plea bargain after the trial starts? | |
| 3 | Under what circumstances may a person be charged with a crime? | |
| 4 | How does criminal procedure protect a person who has been charged with a crime? | |
| 5 | In what ways does the prosecution of criminal defendants burden the state? | |
| 6 | Is the expense of the criminal process worthwhile to protect the rights of criminal defendants, many of whom are guilty? | |

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Study Questions in the Cognitive Domain

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| 1 | What occurs at an arraignment? | The defendant pleads either “guilty,” “not guilty,” or “no contest.” | Cognition |
| 2 | Can a defendant enter a plea bargain after the trial starts? | Yes, the defendant and the prosecutor can present a plea bargain to the judge any time before the judge or jury has reached a verdict. | Comprehension |
| 3 | Under what circumstances may a person be charged with a crime? | A person may be charged after a law enforcement officer learns of or witnesses the crime; a district attorney files in circuit court a criminal complaint showing probable cause that the person committed the crime; or the person charged fails to appear in court and is charged with bail jumping. | Application |
| 4 | How does criminal procedure protect a person who has been charged with a crime? | Criminal procedure is designed to ensure that the person charged with the crime actually committed the crime; knows what the charge is; has reasonable bail, counsel, an opportunity to confront witnesses, an impartial jury, and a speedy and public trial; and is not compelled to testify against himself or herself. And double jeopardy is prohibited. | Analysis |
| 5 | In what ways does the prosecution of criminal defendants burden the state? | The full cost of a criminal prosecution may fall upon the state unless the defendant hires legal counsel. The state hires, trains, and equips the police, and hires prosecutors, judges, and public defenders. The state builds, staffs, and operates prisons and probation offices. The burden of proving guilt is on the state. | Synthesis |
| 6 | Is the expense of the criminal process worthwhile to protect the rights of criminal defendants, many of whom are guilty? | Arguments can be made on both sides of the question, but, generally, the U.S. system, as envisioned by the framers of the Constitution, places great weight on the freedom of individuals and tends to limit the powers of government over citizens. | Evaluation |