

PEOPLE'S LAW SCHOOL
CRIMINAL LAW SECTION

Three ways an accusation/incident leads to a criminal charge

1. Non-arrest complaint (person accused not taken into custody but case is forwarded to the State Attorney's Office)
2. Notice To Appear
3. Someone is arrested

What happens to the allegation?

1. Prosecutor reviews the matter and makes decision to file criminal charges by filing an "Information"
 - Court process begins
2. Prosecutor decides charges are not warranted and files a "No Information"
 - End of process

Court procedure

1. If arrested, brought to "First Appearance" or "Advisory" within 24 hours where Defendant is told what he/she is being charged with and given a bond status (ROR, Low bond, High bond, No Bond)
2. If requested, Defendant might be entitled to a "Bond Hearing"
3. Eventually the Defendant will be noticed to appear at an "Arraignment" where he will be advised of his charge and potentially given the opportunity to resolve the matter. If further review is necessary, it will be determined whether the Defendant is entitled to a Public Defender
4. The case will be set for a "Pretrial" to keep the Court informed about the progress on the case
5. Either the case will resolve itself with a "Change of Plea" or it will be set for a "Trial." The trial will most likely be a "Jury Trial" although some matters are heard solely by the Judge
6. Finally, the Defendant will be "Sentenced" by the Judge to the appropriate sanctions.
7. If the Defendant completes his conditions, this is the end of the court process. Otherwise there is the potential for a "Violation of Probation" where a similar process starts over again.

Prosecutor Involvement

The Prosecutor must review every allegation sent in by Law Enforcement to determine whether formal charges are warranted. This may occur based on police reports and other evidence, or a live investigation which entails taking sworn statements from the witnesses. It depends on the severity of the crime.

Once charges are filed, the Prosecutor must prepare a file to include the police report, witness information, a RAP sheet and other relevant material. This must be copied and provided to Defense Counsel upon their request as part of the "Discovery Process."

The Prosecutor must attend every court hearing and provide relevant information to the Judge. The Prosecutor may propose a particular sentence of leave it to the Judge's discretion.

If the case goes to Trial, the Prosecutor must present its case Beyond a Reasonable Doubt to obtain a conviction. The Prosecutor's duty is to reach the truth as opposed to win at all costs.

Public Defender Involvement

A representative from the Public Defender's office is present at all First Appearances to ensure that the process is fair to everyone, whether or not they become a client. The PD will make sure that the Judge finds sufficient "Probable Cause" before detaining someone and offers mitigating information to the Judge if they feel the bond is too high.

The Public Defender will set and conduct a Bond Hearing for a client even if they are only temporarily assigned. Sometimes a Defendant is afforded a Public Defender and then it is later learned that they have sufficient assets to hire their own attorney (e.g., when they put up a cash bond to be released).

The Public Defender will not have much involvement again until formal charges are filed.

The Public Defender will represent each client individually and engage in the Discovery Process.

The Public Defender must look for legal issues to fight and if they exist, file the appropriate Motions (Motion to Dismiss, Motion to Suppress, etc.)

The Public Defender will either dispose of the case with a Plea or engage in a Trial.

The Public Defender cannot choose his client nor can he fire his client, despite how he is treated, unless the Court deems it necessary.

Private Attorney Involvement

A private attorney may get involved even before charges are filed. This is probably the biggest motivation for someone to hire a private attorney. Once charges are filed, the Court system begins. If a private attorney can begin to speak with the Prosecutor, present mitigation, present contrary witness testimony or some other reason for charges to not come forward, it can make the difference between whether charges are filed, which charges are filed, or work towards a future resolution. A private attorney will usually be involved in all other aspects of the case, much like the Public Defender.

Law Enforcement Involvement

The law enforcement officer's involvement either begins when he is seeing something in progress or upon a citizen's call. The officer must determine whether a crime has been committed and whether it is an "arrestable" offense.

The officer must worry constantly about safety issues in addition to "legal" issues.

The officer must worry about how he obtains statements and evidence.

The officer must be available to testify in court if needed at motions or trials.