

# **The Criminal Justice Process**

## **Families of Homicide Victims**

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&  
Knowing your Rights as a Victim

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# **Crime Victims Bill of Rights**

## **Definition of Victim**

1) "Close relative of a deceased victim" means a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(2) "Guardian of victim" means a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and the victim exists because of the age of the victim or the physical or mental incompetency of the victim.

(3) "Victim" means a person who is the victim of the offense of sexual assault, kidnapping, aggravated robbery, trafficking of persons, or injury to a child, elderly individual, or disabled individual or who has suffered personal injury or death as a result of the criminal conduct of another.



# Texas Crime Victim Bill of Rights

If you are the victim of sexual assault, kidnapping or aggravated robbery, or if you have suffered bodily injury as the result of another's crime, or if you are the close relative or guardian of a deceased victim, you have the right:

## YOU HAVE THE RIGHT:

1. To be **protected** from harm or threats;
2. To be informed about the **defendant's right to bail** and to have your safety considered in the setting of bail;
3. To be informed about **court proceedings**, if you so request;
4. To be informed about stages in the criminal justice system in general, including criminal investigations, trials, plea bargaining, appeals and parole;
5. To provide information to the probation department concerning the **impact of the crime** for inclusion in the presentence investigation report to the judge, and to complete a **Victim Impact Statement**;
6. To receive information regarding **compensation to crime victims** under the Crime Victims' Compensation Act, payment for a **medical examination** for a victim of sexual assault, and referral to available social service agencies that may offer **additional assistance**;
7. To be notified, if you so request, of any **parole proceedings** regarding the defendant, and the right to participate in those proceedings;
8. To have a **waiting area** in the courthouse separate from the defendant and his or her family and witnesses, or if a separate area is not possible, to have safeguards to insure minimal contact.
9. To prompt **return of property** held by law enforcement or the attorney for the state after the property is no longer needed as evidence;
10. To have the attorney for the state **notify your employer** if you must be absent from work in order to be in court or to otherwise cooperate in the case;
11. To counseling and testing for **AIDS and HIV-related infections**, if the crime was sexual in nature;
12. To be **present** at all public proceedings subject to the approval of the judge;
13. To **privacy** — as far as is reasonably practical, the address of the victim may not be part of the court file except as necessary to identify the place of the crime. The phone number of the victim may not be a part of the court file;

14. To request **victim-offender mediation** coordinated by the Texas Department of Criminal Justice;
15. To be informed of the **uses of the Victim Impact Statement** to complete the statement, and to have the statement considered by the prosecutor, the court, and the prison system: and
16. If you are a victim of sexual assault, to have a properly trained **advocate present during a forensic medical examination** if and advocate is available and if the advocate's presence would not impede treatment of the victim's medical condition.

# **SPECIFIC CRIMES**

## **SPECIFIC CRIMES**

The Penal Code and the Controlled Substance Act contain more than a hundred crimes. Many of these crimes have substantial subsections which carry different punishments. Counting these subsections, the criminal law defines several hundred crimes.

The following ten crimes most likely involve victims. They are listed in the order they appear in the penal code.

### **Homicide**

Homicide is the unlawful taking of another individual's life. The law defines individual as a person who was born and is alive. Assaults on pregnant women that result in the death of a fetus can be prosecuted only as a crime against the woman.

#### **Murder:**

Murder occurs when a person:

- intends to cause or knowingly causes the death
- does not intend the death but does intend serious bodily injury and commits an act clearly dangerous to human life
- does not intend the death but does intend some other felony and commits an act clearly dangerous to human life

Murder is a first degree felony, However, at the punishment phase, the defendant may offer proof the committed the murder under the immediate influence of sudden passion arising for an adequate cause. If the jury finds this to be true, the crime becomes a second degree felony.

**Capital Murder:** Capital murder is an intentional murder under one of eight special circumstances.

- murder of an on-duty peace officer or fireman
- murder while committing kidnapping, burglary, robbery, aggravated sexual assault, arson, obstruction or retaliation
- murder for hire
- murder while escaping from a prison or jail
- murder by a prison or jail inmate either of an employee or as part of gang
- murder while incarcerated for murder or capital murder or while serving life ninety-nine years for aggravated kidnapping, aggravated sexual assault or aggravated robbery
- murder of more than one person during the same transaction or scheme
- Murder of a child under six

Capital murder is punishable by either life or death. At the punishment phase of a capital murder trial, the jury answers two questions.

- Is the defendant a continuing threat to society?

- Does mitigating evidence justify a sentence of life rather than the death penalty?

Mitigating evidence includes the circumstances of the offense and the defendant's character and background. If the jury answers yes to the first question and no to the second, the judge sentences the defendant to death. If the jury answers otherwise, the judge sentences the defendant to life.

### **Manslaughter:**

A person recklessly—rather than intentionally or knowingly—causes the death of an individual. Recklessly means a major departure from acceptable conduct such as driving a car a hundred miles per hour in a school zone.

### **Criminal negligent homicide:**

A person negligently causes the death of an individual. A negligent defendant was not but should have been aware of a major departure from acceptable conduct. For example, the defendant failed to place an infant in a car seat before a collision that resulted in the infant's death. Criminal negligent homicide is a state jail felony.

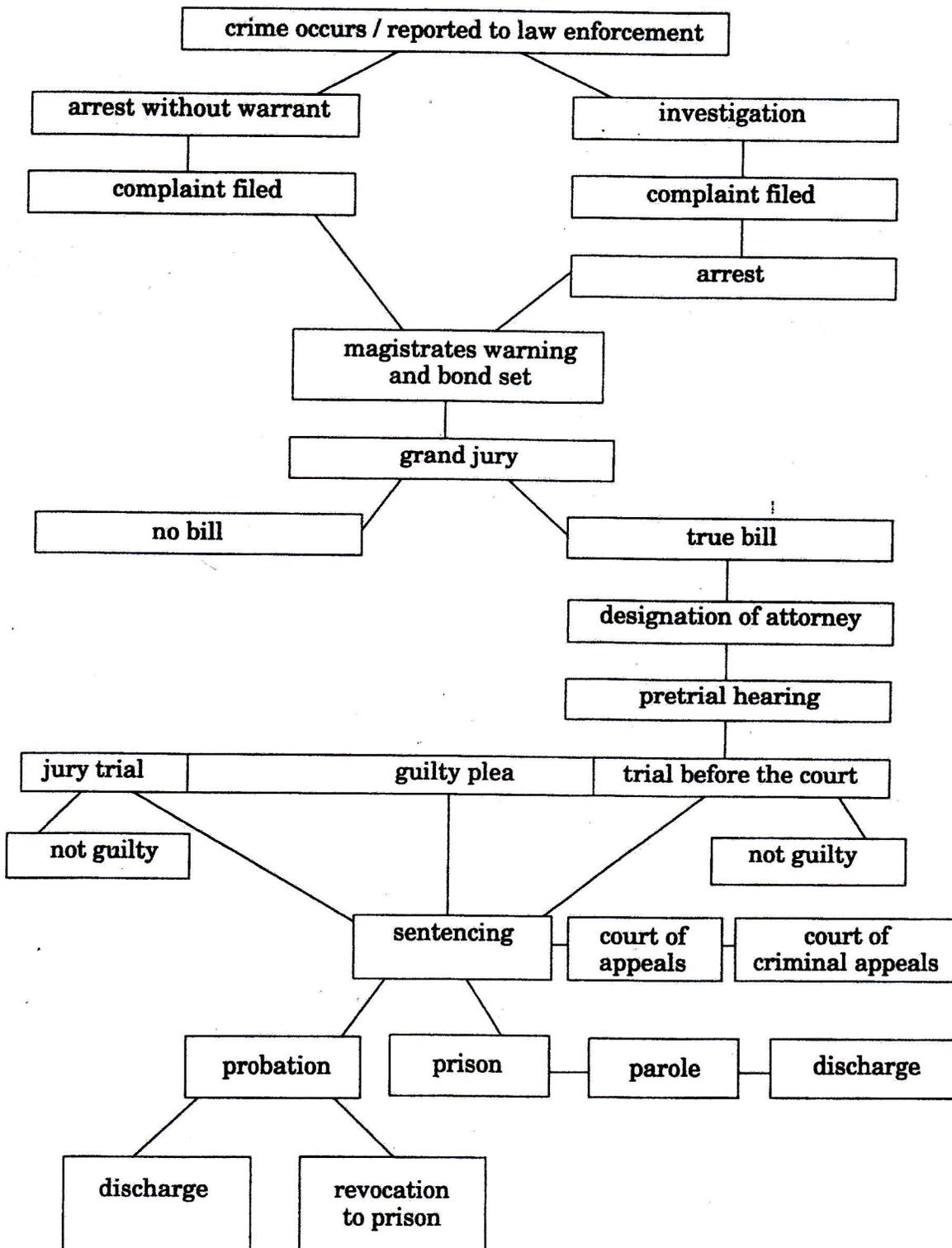
## **Intoxication Manslaughter**

A person commits when driving, flying, or boating, while under the influence. Causes death to another person, manslaughter is a second degree felony.

Intoxication manslaughter is a renamed version of involuntary manslaughter. The only difference between the old and new (1994) law is that the punishment increased from a third degree to a second degree Felony

# **Felony Criminal Process**

# FELONY CRIMINAL PROCESS



# **GRAND JURY**

## GRAND JURY

A grand jury consists of twelve citizens of a county. They determine whether the prosecutors have sufficient evidence to justify a prosecution.

### *Grand Jury Decisions*

YES	The grand jury issues a “true-bill” in the form of an “indictment” An indictment is a piece of paper, signed by the grand jury foreman and filed in court, that charges a defendant with a specific crime.
NO	The grand jury issues a “no-bill,” which dismisses the case.

Grand jurors are usually selected by a commissioner system. The district judge selects three, four, or five grand jury commissioners. These commissioners select between fifteen and twenty citizens of the county to serve. The district judge then notifies them to appear. The first twelve who are qualified to serve make up the grand jury. An alternative method, which is not widely used, selects the grand jurors at random from the qualified citizens of the county.

Grand jurors must:

- be citizens of the state and county
- be qualified voters
- be of some mind and good moral character
- be able to read and write

- not have been convicted of any felony
- not be under indictment or other legal accusation for the theft or any felony

Grand jurors generally meet for terms of two to six months. Depending on the size of the county, they may meet only once or twice or they may meet several times a week.

The grand jury meets in secret. The local felony prosecutor, acting as their lawyer, presents evidence from witnesses such as law enforcement officers, victims and eyewitnesses. The prosecutor may also read witnesses' statements or a crime lab reports. Defendants may appear before the grand jury. Any defense lawyers must wait outside the grand jury room. While the grand jurors discuss a case and vote on it, the prosecutor may not be present either.

The district judge appoints a foreman of the grand jury. The foreman presides over the grand jury's work. Nine members of the grand jury must be present to conduct business. A true bill requires at least nine affirmative votes regardless of the number of grand jurors present.

At the end of each session, the grand jury notifies the judge or clerk of its actions. The prosecutor prepares written indictment, which the foreman signs. The clerk then has the indictments delivered to the defendants. Those defendants who are no-billed are notified and, if necessary, released from jail.

# **Pre-Trial Matters**

## **PRE-TRIAL MATTERS**

After a grand jury returns an indictment, the defendant gets a copy. In a few cases, the defendant has not been arrested and a judge issues a warrant for the defendant's arrest. After he is arrested, he gets a copy of the indictment.

Then the defendant gets notice to appear in court. The exact procedure and names given to this step vary widely from court to court. Generally, this stage is called a docket call or announcement docket. Sometimes this procedure is handled by telephone. At this time, the defendant must tell the court who his lawyer is. If he is indigent and has not already had a lawyer appointed, a judge will appoint one at this stage.

### **Defense Lawyers**

Any of the more than 60,000 lawyers licensed to practice law in Texas may represent a criminal defendant. As a practical matter, criminal law is a specialty which only a portion of all lawyers handle. Larger counties have a group of lawyers who either handle criminal cases only or make criminal cases a major portion of their practice. In smaller counties, lawyers with more general practice may include criminal law.

Defendants hire defense lawyers, usually for a pre-negotiated flat fee ranging anywhere from a few hundred dollars to a hundred thousand dollars or more. The fee will depend on the seriousness of the crime, the reputation of the lawyer and the resources of the defendant.

Indigent defendants are entitled to court-appointed defense lawyers who are paid by the local county as directed by the judge who appoints them. Court appointed fees vary widely but are generally less than the lawyer would normally charge.

Court-appointed lawyers are not second-rate lawyers. While many young, inexperienced lawyers get their first courtroom experience this way,

judges usually match the lawyer's level of experience to the complexity and severity of the case. Court-appointed lawyers come from the same pool of criminal lawyers whom the defendant could have hired.

### **Pre-Trial Motions**

Before the trial begins, the defense attorney will file pre-trial motions. The number and kind of motions are limited primarily by the defense lawyer's imagination. It is not unusual for the defense to file a "stack" of such motions that may exceed fifty pages.

### **Motions to Discover Evidence**

Normally, the defense lawyer will file a motion seeking to see all of the state's evidence. As a practical matter, most prosecutors will reach an agreement with the defense lawyer as to what items will be shown or shared. Many prosecutors have an "open file" policy; the defense can review all reports and witness statements prior to trial.

The defense will also file a Brady motion. This motion received its name from a United States Supreme Court case called *Brady v Maryland*. The Supreme Court held that prosecutors must turn over to the defense any evidence which indicates that a defendant might not be guilty.

Prosecutors share evidence with defense lawyers or have open-file policies for two reasons. First, the prosecutors hope that when defense lawyers see the strength of the state's case, they will urge their clients to plead guilty. Second, such sharing prevents a convicted defendant from claiming years later that the prosecutor withheld Brady material.

The defense does not have to share its evidence with the state. Nor can the state force the defense to share.

### **Motions to Suppress**

A motion to suppress gives a legal reason why the judge should not allow the prosecutor to use certain evidence at trial. The most common reason is the evidence was found as a result of an illegal search and seizure. Such a motion usually requires that law enforcement officers testify and

explain the facts that justified their search for the evidence. Such motions are also used to challenge search warrants and arrest warrants.

Motions to suppress are frequently critical to the case. If the defense is successful, all or part of the prosecutor's evidence may not be allowed at trial. In some cases such as a drug prosecution, suppression of the drugs will result in a dismissal of the case. In other cases, if only part of the evidence is excluded, the prosecutor's case may be greatly weakened. For example, if a murder weapon is found using an improperly written search warrant, the prosecutor may have to proceed without this important piece of evidence.

Other suppressions motions try to prevent the prosecutor from using a confession at trial. The judge listens to evidence about how the defendant confessed. These hearings are called *Jackson v Denno* hearings after the United States Supreme Court case which required them. As with other motions to suppress, this pre-trial hearing may be most important part of the trial.

### **Motions Concerning Trial Procedures**

Several different types of motions address the trial and how it will be conducted. A defendant must file a sworn application asking for probation (community supervision). He also files his choice: does he want the judge or the jury to set his punishment.

The most publicized motion concerning trial procedures is the change of venue motion. This motion gives the defendant a chance to prove that he cannot receive a fair trial in the county where the crime was committed. The most common reason for this motion is the amount of publicity the case has received.

# **GUILTY PLEAS**

**GUILTY PLEAS**

Approximately 97% of criminal convictions in Texas are the results of guilty pleas. Most of these guilty pleas involve a written plea agreement that specifies what the defendant will plead guilty to and what punishment the prosecutor will recommend.

## **Guilty Plea Procedure**

Before accepting a guilty plea, judges must tell the defendant what he is charged with and the range of punishment for the offense. They must also warn him that if he is not a citizen of the United States, a guilty plea could have negative immigration consequences. Throughout the guilty plea process, the judges must determine that the defendant is mentally competent and is making his guilty plea freely and voluntarily.

During this process, the judges will also ask whether a plea-bargaining agreement exists. If so, judges must tell the defendant whether or not they will accept the agreement. If not, the defendant is entitled to withdraw his guilty plea.

In a felony case, the evidence must support the guilty plea. This is usually done by a written confession that sets out the facts which the prosecutors would prove at a trial.

Before finally accepting guilty pleas, judges will ask the prosecutors for a victim impact statement.

Before actually sentencing a defendant, trial judges frequently want a pre-sentence report. This report, written by the probation department, describes the offense and the defendant's history and assesses his rehabilitation needs. It also contains information about the impact of the crime on the victim.

Guilty plea procedures vary widely between courts. In many courts, the required warning, plea bargain agreement and stipulation of evidence are written and signed by the lawyers and the defendant before the judge comes to the courtroom. Very little may actually be said in court at the time of the

guilty plea. In other courts, the judge may spend time going over each step of the process with the defendant.

## **Plea Bargaining**

Plea bargaining can take on of several forms.

### **Sentence Bargaining**

The defendant pleads guilty to a charge in exchange for a specific sentence, for example, ten years in prison.

### **Charge Bargaining**

The defendant pleads guilty to a lesser offense or to fewer offenses than are actually charged. For example, he pleads guilty to two or three burglaries.

### **Parole Eligibility Bargaining**

The defendant pleads guilty only to charges that carry shorter parole eligibility rules. Or he does not plead guilty to a deadly weapon finding, which makes him eligible for parole much sooner.

### **Agreements Not to File Additional Charges**

A criminal may have committed multiple crimes. The prosecutor who wants to focus only on the most serious crimes or a representative sample of crimes may agree not to file other charges.

These plea bargains are not mutually exclusive and are frequently mixed. In a typical plea bargain, the defendant enters a plea of guilty to one of the charges in the indictment and the prosecutor recommends a certain sentence.

For victims, a plea bargain has several advantages.

## *Advantages of Plea Bargains*

It takes the trial jury and a possible not-guilty verdict out of the case. The outcome is certain. The criminal is convicted. He is sentenced.

The victim avoids the time and emotional drain of jury trial. A guilty plea takes a few minutes compared to a week or more for a trial.

A guilty plea eliminates the appeal process, which may result in an appeals court ordering a new trial several years after the original trial.

Victims often cite secrecy and leniency as disadvantages of a plea bargain.

Secrecy is not the problem it was a few years ago. Victims of serious crimes are usually informed of plea agreements. Judges frequently want to know the victims' thoughts about the plea agreement. The agreement itself must be in written and is a public record.

Leniency is a concern that varies from case to case. Undoubtedly, overly lenient plea agreements do exist. However, most plea agreements are based upon an assessment of the actual sentence a judge or jury would impose on a particular defendant. Many plea agreements call for very substantial prison sentences.

# **Jury Selection**

## **JURY SELECTION**

The very few cases not resolved by guilty pleas are set for trial. Both the state and the defendant have the right for a jury to decide guilt. Only the defendant decides whether a judge or jury sets punishment. A defendant who pleads guilty may have a jury only to set punishment.

A jury trial begins when citizens are summoned by mail to come to the courthouse, usually on a Monday morning. The list of citizens is taken from those who have been issued drivers licenses or are registered voters.

Jurors must:

- be qualified (but not necessarily registered) to vote
- not have been convicted of theft or any felony
- not currently be legally accused of theft or any felony
- be literate and sane
- not have any physical disability that would interface with jury duty
- not have prior involvement with the case, such as being a witness or grand juror that heard the case

Otherwise qualified jurors may also claim exemptions from jury service. These exemptions are optional and the potential jurors may wish to serve without claiming the exemption. The main exemptions are age (over sixty-five) and having children under ten whom the juror provides care for.

Felony juries have twelve members; misdemeanor juries have six. Judges may allow selection of up to four alternate jurors in a felony case and

two in a misdemeanor. Alternate jurors hear evidence and take the place of regular jurors who become disabled during trial. After juries begin deliberation—guilt phase of the trial—judges dismiss unused alternate jurors. As a practical matter, alternate jurors are used only on capital murder cases or other exceptionally long cases.

After judges establish the jurors' basic qualifications, they allow both prosecutors and defense attorneys to talk to the potential jurors and ask them questions. This process of jury selection is called voir dire. The term voir dire has a French derivation and basically means "to speak the truth."

During questioning, attorneys may ask judges to disqualify any juror for cause. That means the juror could not be fair for any number of reasons or is unable to follow part of the law which is applicable to the case. The attorneys ask questions to determine whether the potential jurors can follow the law, what they know about the case on trial, and whether their backgrounds and attitudes might disqualify them.

After both sides have talked to the potential jurors, they must make their peremptory challenges. Peremptory challenges can be made without giving a reason for the challenges. Other than for race or sex, the attorneys may strike equal numbers of any potential jurors, ten for a non-death penalty felony and three for most misdemeanors.

The peremptory challenges are made on a list that each side must turn in separately to the clerk. The clerk then determines the first twelve (or six) potential jurors who were not removed for cause or struck with a peremptory challenge. These potential jurors are then called to sit in the jury box and they become the jury in the case.

# **Legal Concepts At Trial**

## LEGAL CONCEPTS AT TRIAL

All defendants are entitled to the presumption of innocence. The defendant does not have to prove that he is innocent. The prosecutors must prove that he is innocent. The prosecutor must prove that he is guilty.

The burden of proof is on the state. The prosecutor must come forward with evidence that proves a defendant is guilty.

Most lawsuits are tried using a standard called a preponderance of evidence. This standard requires that one side of the lawsuit must more likely be correct. Higher standard, clear and convincing evidence is used in some lawsuits. The highest standard, proof beyond a reasonable doubt, is reserved only for criminal cases. It applies to all criminal cases from the least serious traffic offense to the most heinous violent act.

Texas law defines reasonable doubt as doubt based on reason and common sense. The judge's charge to the jury explains that "it is the kind of doubt that would make a reasonable person hesitate to act in the most important of his own affairs. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that you would be will to rely and act upon it without hesitation in the most important of your own affairs."

Proof beyond a reasonable doubt applies only to the elements of the offense such as the identity of the defendant and the exact facts that make up the crime. Other facts—such as the exact time of day, the type of the clothes worn and why the crime was committed—do not have to be proved.

A defendant has an absolute right not to testify in a criminal case. Whether or not to testify is a personal choice that a defendant must make after consulting with his attorney. If a defendant chooses to testify, he like any other witness is subject to cross-examination.

In deciding whether or not to testify, a defendant must think about how his prior criminal history will sound to a jury. Generally, a jury does not learn about prior convictions until the punishment phase of the trial.

However, if a defendant does testify during the guilt phase, the prosecutor can question him, within certain limits, about prior felony convictions and about misdemeanors, such as theft, that involve moral turpitude. The answers to these questions may, in the jurors' minds, reflect negatively on the defendant's character.

Another legal concept concerns the separate guilt phase and punishment phase. This is called a bifurcated trial which simply means a two-part trial. Two phases help ensure that the defendant receives a trial solely on the issue of his guilt on one particular crime. Until the punishment phase of the trial, all of the evidence about prior criminal history or other bad acts or crimes he has committed cannot be admitted as evidence against him.

# DEFENSES

## **DEFENSES**

Defenses are legal means to avoid punishment even though the defendant committed the crime. They are legal way of saying, “ Yes, I did the crime but....

### **Insanity**

Victims sometimes see insanity as a huge legal loophole by which criminals escape the consequences of their crimes. Texas has a very narrow insanity defense that is difficult to establish. In fact, it is almost never successful.

To be legally insane, the defendant must suffer a severe mental disease that resulted in his not knowing that his conduct was wrong. Repeatedly criminal or antisocial conduct is not evidence of insanity.

The defendant has the burden of proving insanity. He must prove it by a preponderance of the evidence. He must also file a written notice of his intent to use this defense at least ten days before trial.

### **Self-Defense**

Complex laws govern self-defense. It is available to protect ones' self against unlawful use of force.

Self-defense must be reasonable and immediately necessary. It can include deadly force in situations where retreat would be unreasonable to prevent the other person from using deadly force or from committing aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Self-defense can also be use to protect property. Force, but not deadly force. Deadly force may be used to reasonably prevent arson, burglary, robbery, and aggravated robbery, theft during the night or criminal mischief during the night.

Other specific self-defense provisions define when law enforcement offices can use force:

- is responding to verbal provocation
- is resisting most searches and arrests
- consented to the exact force used
- provoked the force
- armed himself and sought an explanation or discussion with someone he had a difference with

# **Trial Procedure**

## What to expect when going to trial

### Jury Selection (Voir dire)

**Is there going to be alternate juror(s) to hear evidence that may have to take place of regular juror who may become ill or have a family emergency?**

### **What is actual charge and what is the State seeking in punishment**

The defendant does not have to prove that he is innocent. The prosecutor must prove he is guilty. The burden of proof is on the state.

### **Does the defendant decide if he wants the judge or a jury to set punishment?**

### Stages of Trial

Prosecutor will make opening statement.

Such statement summarizes what facts the state expects to prove and how it will prove them. The defense attorney also has a chance to make an opening statement although they may reserve this opportunity until later in the case.

### **Will you be able to hear prosecutors opening statement if you are testifying?**

After opening statement prosecutor begins to call witnesses.

Each witness called is first questioned by the prosecutor, direct examination. Then the defense may question you, cross examination.

Explain to prosecutor your fears, she will guide you.

### **If you do not understand what is being asked, state that you do not understand the question, be honest.**

The question can continue back and forth with witnesses until both prosecutor and defense are finished.

Prosecutor will also have the witness identify the exhibits and answer questions about them. Each exhibit will be marked by court reporter.

Before showing an exhibit to the jurors, the attorney who wants to show it must question the witness about it. This questioning must establish facts that indicate the exhibit is accurate or genuine. These questions are called the predicate for the exhibit.

When the attorney feels they have established the predicate, they will show the exhibit to the other attorney and ask the judge to admit the exhibit into evidence. Most objections to exhibits are that the legal predicate has not been established or that the evidence was illegally obtained. After hearing both lawyers, the judge will either admit or not admit the exhibit into evidence.

After the state has called all its witnesses, the state rests. The defense then has an opportunity to make an opening statement if they have not already done so. The defense is not required to put on any evidence, but they may do so at this time. If they choose to put on evidence, they will call witnesses and offer exhibits in the same manner as prosecution was putting on. At the conclusion, the defense also rests.

If the defense puts on evidence, the state has an opportunity to again call witnesses for rebuttal. The defense has an opportunity to again call any additional witnesses to rebut testimony. This process very seldom goes beyond a few additional witnesses. After each side is done with rebuttal, it closes its case.

The state and defense make their final arguments, in this order: prosecution, defense, prosecution has the last rebuttal before goes to jury.

When both sides close, the judge reads the jury's instructions aloud. Jury's decision must be unanimous.

### **Guilty:**

**If judge is setting punishment**, the judge will dismiss the jury. He can then hear evidence and set the punishment immediately or delay sentencing until a later time.

**If jury is setting punishment**, the judge will immediately begin the punishment phase of the trial. The punishment phrase of the trial is almost identical to the guilt phrase of the trial. After opening statements, the attorney's call witnesses and offer evidence in the same manner as at the guilty phrase.

**During the guilt phrase of the trial, the prosecution is not allowed to offer evidence of prior convictions or other crimes committed by defendant.** The defense offers evidence designed to mitigate or lessen punishment. The witnesses usually include the defendant's mother, other friends, and relatives

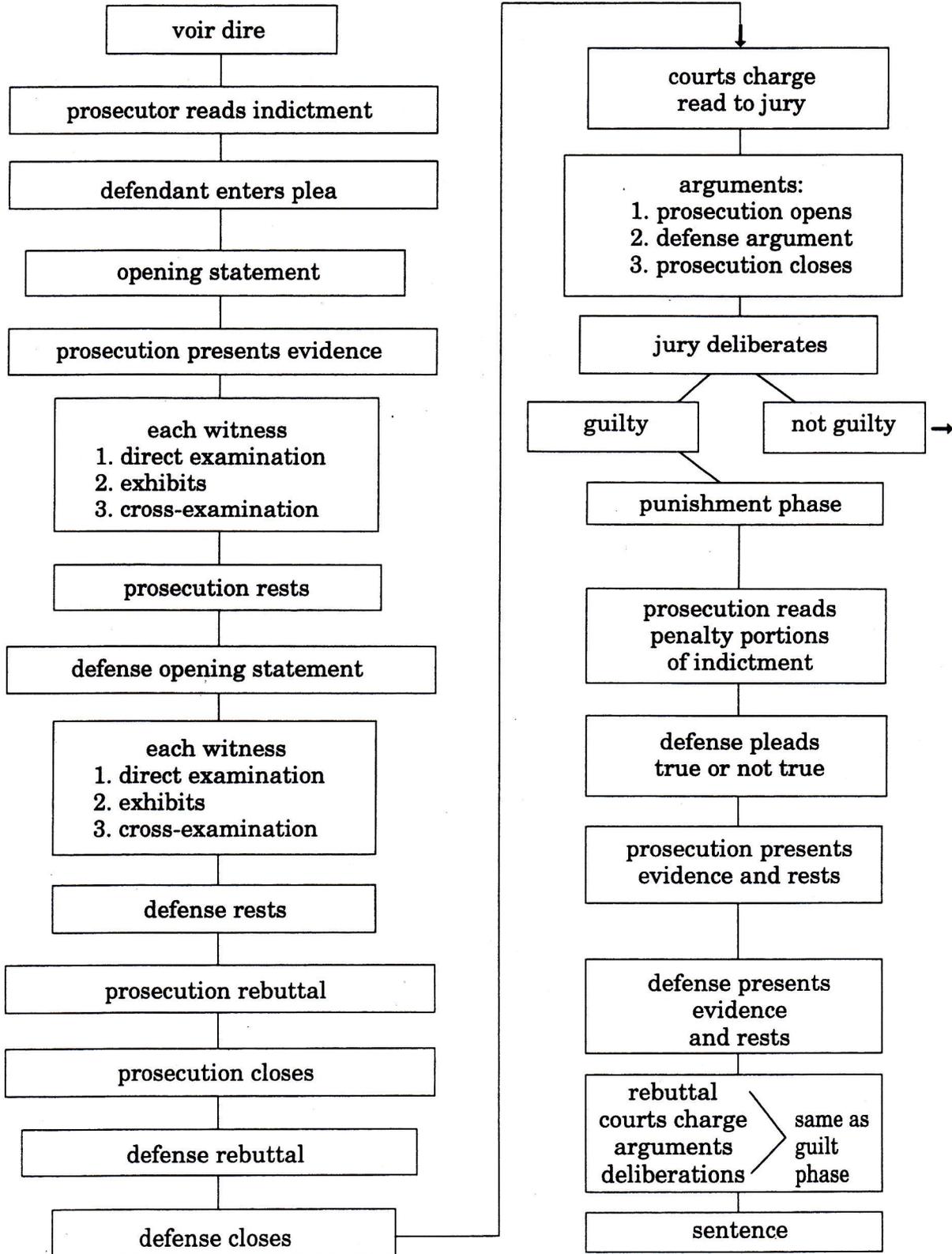
After both sides rest and close, the judge again prepares a written jury charge. The judge reads the charge to the jury, the lawyers make final arguments, and the jury deliberates until they reach verdict on punishment.

### **Right of Allocution:**

After punishment, victim has right of allocution. This is where you tell the defendant what they have done to your family. A choice, you do not have to do. Most victims read their allocution.

# **Stages of Criminal Trial**

## STAGES OF A CRIMINAL TRIAL



# **RULES OF EVIDENCE**

## **RULES OF EVIDENCE**

The Texas Rules of Criminal Evidence are a set of written rules that instruct trial judges what evidence is properly heard by the fact finder—either the judge or jury. These rules are based on the Federal Rules of Evidence, which the federal courts and many states follow. The rules are approved by the Texas Court of Criminal Appeals.

The Texas Rules of Criminal Evidence are divided into eleven articles. Each article covers several different rules.

All evidence is relevant. This means the evidence must have a tendency to prove that some fact important to the lawsuit is more probably true or less probably true because of the evidence.

Relevant evidence may not be admissible if it might unfairly prejudice a jury. The judge must balance relevance and unfair prejudice in deciding whether to allow certain evidence to be heard.

For example, in a burglary case, it might be relevant that the defendant was familiar with the neighborhood because he worked across the street from the burglarized home. The fact that the place he worked at was a pornographic book store would be prejudicial. Before admitting the evidence, the judge would have to balance the answers to two questions: How relevant is the defendant's familiarity with the area? How much prejudice will be caused by knowledge of unsavory employment? Defense lawyers often make objections based upon relevance or unfair prejudice.

Another common objection concerns hearsay. Witnesses can't testify only about what they saw or heard. They cannot testify about what Mr. Smith, for example, told them that he saw or heard. That's hearsay. However, statements made during a crime by a defendant or co-defendant or to a victim or witness are not hearsay.

Hearsay can be admitted into evidence under certain special circumstances. Texas law allows twenty-four such exceptions. One, an excited utterance, is a statement about a startling event made when the speaker was still under the influence of the event. Tape recorded phone calls

to 9-1-1 by crime victims are frequently allowed into evidence as excited utterances.

The Rules of Evidence also provide for certain privileges. That is, some people have the right or duty not to testify about certain subjects.

### *Privileges*

The attorney-client privileges require attorneys not to tell what their clients have told them.

The husband-wife privilege allows spouses not to testify against each other. The privilege does not apply when the victim of the crime is a minor child or a member of either spouse's household.

Another privilege protects information given to clergy in their professional capacity.

Note: Texas has no physician-patient privileges.

Other articles in the Rules of Evidence contain opinion testimony, evidence about prior convictions, expert witnesses, government and business records, photographs and writings. These rules apply to all criminal cases. However, they do not apply to grand jury proceeding, search and arrest warrants and certain bail proceedings.

# **APPEAL**

## **APPEAL**

Convicted defendant has a right to have another court review their trial to determine whether it was fair and followed proper procedure. This review is called an appeal.

An appeal of conviction for a minor crime where the original trial was in justice court or municipal court is called a trial de novo, or new trial. This trial requires that the case be tried over from the beginning in the county court.

An appeal from most misdemeanors and all felonies is based upon a review of the record. A panel of three judges on one of the fourteen courts of appeals reviews it. These judges can affirm, leave the conviction alone. Or they can reverse, order a new trial before the original court. One of the judges writes an opinion explaining the reasons.

If either side is dissatisfied with the court of appeals decision, the lawyers for that side can file a Petition for Discretionary Review with the Texas Court of Criminal Appeals. The Court of Criminal Appeals usually refuses to hear the case. However, in a small percentage of cases, it does review the case and sometimes does change only appeal left is to the United States Supreme Court, which almost never hears a regular criminal case.

In reviewing a conviction on appeal, the court is limited to looking at the record from the trial. The record consists of the papers filed in court, the exhibits at trial and a verbatim transcript of every word spoken during the trial.

An appeal begins when the defendant gives notice of appeal, written notice that the defendant wants his case reviewed. The record is then prepared. This process takes several months. After the record is complete,

the defense has thirty days to file a written list of complaints about the trial together with the legal arguments about why these complaints are valid. This document is called a brief. The prosecutor then has twenty-five days to file a written answer to the defense argument. This also called a brief. The time limits for either side can be extended by the appeals court. Normally, this process takes four to six months.

After the brief is filed, the court of appeal will review the case. If the attorneys request, the court will schedule the case for a formal oral presentation by both sides. This hearing, known as oral argument is limited to forty to sixty minutes. The judges can question both sides during the oral arguments. After that, the court will spend weeks or months making a decision and writing the opinion.

# Parole Protests

## **PAROLE PROTESTS**

Crime victims have the right to give information to the parole board before an inmate is considered for parole. It is one of the places in the system where a victim can have a real impact. Such protests can keep inmates locked up long past their initial parole eligibility.

Not every parole protest will be successful. However, carefully planned protest based upon objective facts have worked. A basic parole protest should consist of well-written letters from the victim or family members, the investigating officer and the prosecuting attorney.

These letters do not have to be long; one page is normally more than sufficient. All such letters should include the inmate's name and prison number. While they can contain some emotion, they should concentrate on the facts.

These letters should contain the following:

- the writer's connection to the case
- the facts: how dangerous is the inmate? How serious was the offense?
- a strong closing sentence that the inmate should be denied parole

The victim's letter should concentrate on the facts relating to the victim. Explain the impact the crime has had and still has on the victim's life. Detail the many lives other than the victim's that the crime affects. The victim's letter should help the parole board understand exactly how the victim views the parole.

The investigating officer's letter should detail the facts of the offense. While the parole board should have the offense report, a well-written paragraph summarizing the crime has more effect. Too much of the impact of the crime is lost in a multi-page offense report.

The prosecutor's letter can provide perspective and background on the inmate. The prosecutor has access to criminal histories and remembers details, impacts, reactions and attitudes that official documents do not reveal. The prosecutor may include:

- total number of prior convictions
- past efforts at rehabilitation
- number of prior supervisions—probation and parole
- number of prior probation and parole revocations
- total years offender was involved in criminal activity
- use of weapon
- cruelty or particular indifference shown during the crime
- lack of remorse
- offender's misbehavior at trial
- any threats made by the offender
- any charges dismissed in connection with this conviction

- any other factor relevant to parole

The prosecutor may also want to review the file for photographs. Crime scene photographs may be shocking, but they represent the reality which the inmate created. These photographs show that this is not a nice, neat antiseptic crime committed on paper. The parole board needs to be reminded of this reality before they consider a parole.

A basic parole protest may include a fourth letter. This letter should be from any victim's advocacy group involved in this type of crime. A letter from the local chapter of MADD or People Against Violent Crime can add still another perspective.

### **Expanded parole protests**

While a basic parole protest can give the parole board valuable information and will frequently be successful, at time it is necessary to expand beyond this basic protest. This is particularly necessary when the inmate has been denied parole several times in the past and there are indications that he may now be approved.

In addition to the four basic letters listed above, get letters from:

- the sentencing judge
- the county sheriff
- the elected district attorney
- the head of the investigating agency
- the state representative

- the state senator
- the mayor or county judge
- relative or friend of the victim

Don't overwhelm the parole board with sheer numbers. Instead, give them more information. The mayor may still remember how the community was shocked by the crime; the police chief may remember how the veteran investigator was shaken by this crime, etc.

Petitions are another way to protest a parole. This method should be used very seldom. However, some communities are still shocked by a crime and need to have a way to express their fear and anger about the prospective parole.

Requests to personally appear before the parole panel are sometimes granted. A victim can show the parole board members that he is a human being, not just a name in a file. Remember, at least one member of the parole board has seen the inmate. Sometimes the board needs to see a victim, too. You have every right to request such a personal appearance. Such appearances can be requested through the victim service division.

Finally, you may want to consider involving the media in your protest. They frequently cover local efforts by a victim to stop a parole. While parole board members may have extremely thick skin, they are human. Media attention can only help increase the chances for a successful protest.



