CRIMINAL LAW 101: OVERVIEW OF THE TEXAS CRIMINAL JUSTICE **PROCESS** 

# CRIMINAL LAW 101



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# INTRODUCTION

The Texas criminal justice system has several key objectives: (1) discover the truth; (2) provide for public safety; (3) assist victims of crime; (4) punish the guilty; and (5) promote positive change in offender behavior. While the objectives are seemingly clear, the criminal justice process may not be for the accused, the victims, their respective families, and others involved. To help you understand and navigate through the criminal justice process, the Texas Young Lawyers Association created this pamphlet, *Criminal Law 101*. This pamphlet provides an overview of the criminal justice process following the arrest through appeal and provides general information on the rights of the victims and the accused.

## Rights of the Accused – Custody to Initial Appearance

Once arrested, officers must inform "Amy the accused" that she has right to:

- Remain silent (she does not have to answer any questions); but
  if she speaks, the statements she makes can be used against her
  in a court of law;
- <u>Consult with an attorney</u> or have an appointed attorney if she cannot pay for one; and
- Have an attorney present during questioning.

If "Amy" wants to assert these rights, she must affirmatively say so. If an officer fails to inform the accused of these rights, it does not mean that the charges against "Amy" are automatically dismissed, or that the evidence against her is automatically thrown out.

# A. Initial Appearance before a Judge

Within 48 hours after an arrest, Amy must be taken before a judge. The judge must inform the accused of the charges against her and whether there is an affidavit (sworn statement) supporting the charges. The judge must also advise Amy of her right to:

- <u>Retain counsel</u>, or have counsel appointed if she cannot afford a lawyer (and the procedures requesting an appointment);
- Remain silent, but if she decides to make a statement to the
  police or court, then the statement may be used against her;
- <u>Have an attorney present</u> during any interview with peace officers or attorneys representing the State;
- Terminate the interview at any time;
- Conduct an examining trial (a hearing to establish reasons for her arrest or probable cause)

<sup>1</sup> This pamphlet is not a substitute for the advice of a lawyer, but instead is designed to assist Texans in learning about their legal rights.

<sup>2</sup> Under some circumstances, an accused may be issued a citation to appear before a magistrate instead.

In addition, the judge is required to give her reasonable time and opportunity to consult with her attorney, and set a reasonable bond, if allowed by law.

# B. Time Limits on Filing Charges

If Amy cannot post the bond (see below) and remains in jail, then the prosecutor <u>must</u> file the charges against her by complaint, information or indictment within: 15 days for Class B Misdemeanor, 30 days for Class A Misdemeanor, or 90 days for any Felony. Otherwise, she is entitled to be released without a surety under a personal recognizance (PR) bond (see below).

If Amy is not in jail, then generally, the prosecutor has up to 2 years from the date of the offense to file misdemeanor charges. Otherwise the case is dismissed and can never be prosecuted. In a felony case, depending upon the specific offense, the prosecutor may have up to 5, 7, or 10 years to file charges. For other more serious charges, such as murder, sexual assault, and indecency with a child, the prosecutor does not have any time limitation to file charges.

## C. Arraignment

Once the charges are filed, "Amy" must make an initial appearance or arraignment, the Court will give her a copy of the charging instrument (complaint, information or indictment), and she will have an opportunity to:<sup>3</sup>

- Have the charges read in open court,
- Enter a plea, and
- Request a continuance, if needed.

A majority of cases are continued or reset for announcement settings to allow for further investigation by the defense, the prosecutor, or both. At the arraignment, the prosecutor will usually:

- Allow the defense attorney access to the State's file (including the police offense report),
- · Convey an offer or enter into plea negotiations, and
- Entertain requests for access and copying of evidence, such as scene videos, 911 calls and confessions.

Before and during trial, "Amy" has the following rights and they are continuous:

- 1) The presumption of innocence until proven guilty.
- The prosecutor has the burden to prove "Amy's" guilt beyond a reasonable doubt.
- The right against self-incrimination ("Amy" does not have to testify);
- 4) The right to a speedy trial by an impartial jury;

<sup>3</sup> After charges are filed the accused may be refered to as a defendant.

- 5) The right to confront (cross-examine) the State's witnesses;
- 6) The right to subpoena witnesses to testify for her; and
- 7) The right to appeal.

Generally, a defendant in a criminal prosecution may waive most of these rights, but should only do so after talking to an attorney.

#### Pre-Trial

Several procedures/hearings may occur before the trial. Most of these, such as bond reduction hearings and motions to suppress, are actions that lead up to a trial. They are important to the progress of the case.

<u>Bail/Bond Hearings</u>: At a bail hearing, the judge may place certain conditions on "Amy" to make sure that she will return to court if released from custody. All individuals, except those charged with a capital murder, have a right to be released on bail if they can provide sufficient collateral. Bail is set within the Court's discretion and on a case-by-case basis.

If bail is too high, a defense attorney can request a bail reduction hearing. The defense attorney needs to show "Amy":

- 1) Does not have enough collateral to pay such a high bond,
- 2) Is not a flight risk,
- 3) Has ties to the community, and
- 4) Is not a danger to the public or the alleged victim

There are instances in which a judge can deny bail and if bail is denied, a defendant is entitled to a hearing, within 48 hours of her arrest.

Types of Bonds: To be released from custody, a "bond" must first be posted.

- Cash bond is when a defendant pays the full amount of the bond in cash to the Sheriff. The money will be refunded once the case is over.
- 2) Bail bond is when a defendant uses a bonding company or bail bondsman to borrow the collateral. The bondsman will charge a fee and may require additional conditions on the defendant. The fee will not be refunded once the case is over.
- 3) Personal recognizance bond, or PR Bond is when the Court uses its discretion to release the defendant without requiring a surety or other collateral. PR Bonds are not an option in some serious felony offenses.

<u>Suppression Hearings</u>: A suppression hearing is when "Amy" wants to claim an improper search, seizure, or statement was made so that the evidence or statement may not be used in trial. When the Court grants a hearing on a motion to suppress, the Court can rule based on the motion itself, upon opposing affidavits, or upon oral testimony.

Plea Negotiations: "Amy's" criminal defense attorney will talk to the State's attorney to try to negotiate a plea bargain or a deal on her behalf. The defense attorney must inform her of all reasonable offers made by the State's attorney. A plea bargain may require "Amy" to plead "Guilty" instead of "No Contest" and may require waiver of certain rights, as outlined above. If a plea bargain is made and agreed to by both sides, the Judge is not obligated to accept the deal. It is only a recommendation being made to the Judge. If the Judge rejects the plea agreement, the defendant has the opportunity to withdraw the plea of guilty or no contest. Approximately 98% of all criminal cases are resolved with some form of plea bargain.

<u>Discovery</u>: Discovery is the process by which information about a case is exchanged between the prosecutor and the defendant. "Amy" may file a motion for discovery either before or during trial. Texas does not have automatic discovery. Amy may request to inspect and test evidence, gain access to audio/video/photographic/electronic evidence. The following are examples of evidence that may be considered material and that may be in the control of the State or its agencies: any designated documents, the written/recorded statement of the defendant, books, photographs, or objects or tangible things like guns or drugs.

The defendant is NOT entitled to written statements of witnesses and the work product of the prosecutor or the prosecutor's investigations, such as police offense reports. Both the defense and the State may request the other side to disclose the name and address of each expert witness that may be used at trial. Either side is entitled to take depositions of witnesses, upon application and approval of the Court, if the witnesses may be unavailable for trial due to age, infirmity, or a military deployment. The State, but not the defense, may depose an elderly or disabled person who is the alleged victim of or witness to an offense for the purposes of preserving the person's testimony. If the Court grants the defense's motion for discovery, the defendant's inspection of the items must be in the presence of a representative of the State.

#### The Three Phases of Trial

<u>Trial</u>: In Texas, there are two phases in every trial, the guilt/innocence phase and the punishment phase.

# Types of trials:

<u>Jury Trial</u>: Every defendant has a right to trial by jury in Texas, for both for Guilt/Innocence and Punishment phases.

<u>Trial by Judge</u>: A defendant may waive his right to jury trial, if the State agrees, and have the judge determine guilt/innocence and then assess punishment.

Plea of Guilty with a PSI or pre-sentencing investigation: A defendant may also waive a jury trial at the guilt/innocence phase and plead guilty without any sort of plea bargain and have a judge

or jury assess punishment within the range of punishment. The Court may order a PSI or pre-sentencing investigation to determine the facts of the offense, the defendant's criminal history and the victim's wishes for punishment.

"Amy's" attorney should discuss all the pros and cons of a plea agreement, jury trial, trial by a judge, and pleading guilty without a plea bargain and ordering a PSI.

<u>Jury Selection</u> (voir dire): The goal of jury selection is for both sides to identify unqualified jurors, potentially biased jurors, and unfavorable jurors to eliminate them from the pool of potential jurors. The first six in misdemeanor cases or twelve in felony cases jurors remaining will be selected for the jury.

<u>Guilt/Innocence Phase</u>: This is the part of the trial where the State will attempt to prove that the Defendant is guilty of a particular crime on a certain day. They will present evidence, such as witnesses, lab reports, audio/video, etc.. The defense attorney will have the opportunity to cross-examine the State's witnesses and present a case on the Defendant's behalf, including calling defense witnesses to testify.

<u>Punishment</u> (if necessary): The process is the same as the jury trial process, "Amy's" attorney should discuss the potential punishment range of the offense with her lawyer before making a decision on whether to take the case to trial.

## The Appeal Process

Defendants convicted of a crime generally have a right to appeal the conviction unless they previously give up the right to appeal as part of a plea bargain or agreement with the State.

Motion for New Trial: The appeal process begins with the decision of whether to file a motion for new trial. These motions are only granted in a few limited situations, such as jury misconduct. "Amy" should always consult with her lawyer to determine whether this step is necessary or beneficial, depending on the facts of the case.

Notice of Appeal: The second step in the appeal process is the filing of a notice of appeal. The deadlines for filing the notice of appeal are strictly enforced in criminal cases, and therefore, "Amy" should file the notice of appeal as soon as possible.

<u>Filing the Record</u>: The third step in the appeal process is the preparation and filing of the record on appeal. Unless a determination has been made that a defendant is indigent, they are responsible for making arrangements to pay for preparation of the record. Failure to do so may result in dismissal of the appeal.

<u>Filing the Appellate Brief</u>: The fourth step in the appeal process is the preparation and filing of the briefs on appeal. Briefs are to help the appellate court with the history, facts, and legal issues involved in the case.

After the briefs have been filed, the appellate court begins the process of deciding the case. The time it takes to decide an appeal varies greatly, depending on the complexity of the case. If the court rules against "Amy" on appeal, her options going forward are very limited. She could file for review with the Texas Court of Criminal Appeals, which is the highest criminal court in Texas. However, review is rarely granted by this court.

### Information for Victims of Crime

The criminal justice system historically has been designed to guard the rights of the defendant. Today, positive steps are being taken to protect the rights and dignity of the person who did not ask and did not deserve to be involved with the system in the first place – the victim.

Victims can provide insight into the potential terms of a plea bargain agreement by speaking with the prosecutor handling the case. If "Amy" is placed on probation, conditions can be put in place that will prohibit her from contacting the victim and may require the payment of restitution for any money owed. Ultimately, the terms of any plea bargain offer is left to the decision of the prosecutor.

Victims can be compensated if they have experienced a financial loss associated with being the victim of a crime. The Crime Victim's Compensation Act was passed to assist victims and their families with out-of-pocket expenses related to crime. Medical bills, counseling, burial costs, and loss of earnings are all possible areas of compensation (total claims may not exceed \$50,000). Property loss is not a reimbursable expense and the victim must cooperate with the prosecution of the case in order to receive any sort of compensation.

The criminal justice process takes time. Check with your local prosecutor's office to see if a victim assistance coordinator is available to help you with your rights and walk you through the criminal justice process. The most important thing is that you stay in contact with the prosecutor's office so that you can be kept up-to-date on the progress of the case and have your questions answered.

Here are a few important phone numbers that may assist you:

Crime Victim's Compensation – Attorney	
General's Office	(800) 983-9933
Domestic Violence Hotline 24/7	(800) 799-7233
Texas Crime Stoppers	(800) 252-8477
TDCJ Victim Services Division	(800) 848-4284

## **Important Links**

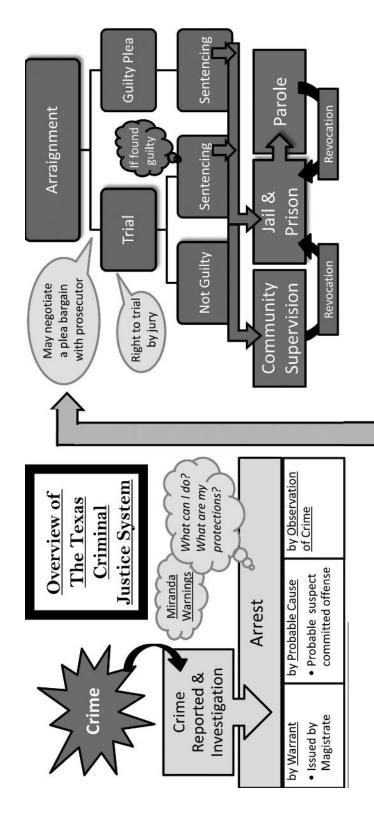
The Texas Criminal Justice Process: A Citizen's Guide <a href="http://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalInformation/OurLegalSystem/TxCriminalJusticeProcess.pdf">http://www.texasbar.com/Content/NavigationMenu/ForThePublic/FreeLegalInformation/OurLegalSystem/TxCriminalJusticeProcess.pdf</a>

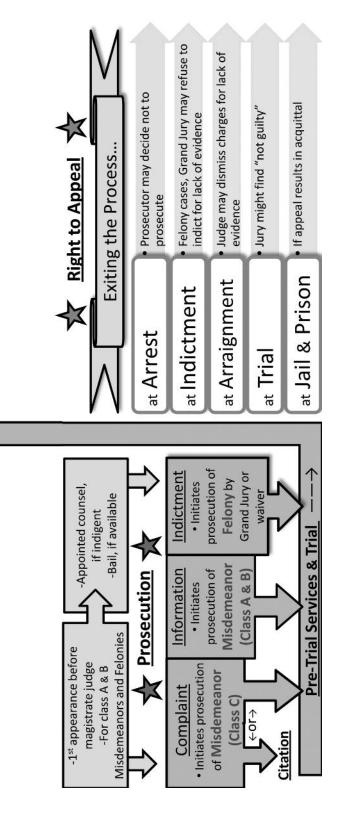
Information for families of offenders http://www.tdcj.state.tx.us/info\_families.html

Information and services for crime victims <a href="http://www.tdcj.state.tx.us/divisions/vs/index.html">http://www.tdcj.state.tx.us/divisions/vs/index.html</a>

Texas Penal Code and Code of Criminal Procedure <a href="http://www.statutes.legis.state.tx.us/">http://www.statutes.legis.state.tx.us/</a>

Texas Rules of Appellate Procedure http://www.supreme.courts.state.tx.us/rules/traphome.asp





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