

## Outlining PHASE II of the Criminal Justice System - The Courts

### I. COMMENCEMENT

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| <p><u>Criminal</u></p> <p>1. <b>Prosecutor files information*</b><br/>(written statement to court asserting crime(s) have been committed).<br/>NOTE: Done in majority of states;<br/>almost all state misdemeanors</p> <p style="text-align: center;">OR</p> <p><b>Prosecutor seeks indictment</b> (written statement to court confirming evidence presented by prosecutor suggests crime as been committed) <b>from Grand Jury</b><br/>NOTE: <b>5th Amendment requires GJ for FEDERAL FELONIES</b>; minority of states require for felonies as well</p> <p>*PROSECUTORS MAY CHOOSE NOT TO FILE AN INFORMATION OR ADD/SUBTRACT CHARGES EVEN AFTER A DEFENDANT HAS BEEN ARRESTED AND BOOK (THIS IS CALLED <b>PROSECUTORIAL DISCRETION</b>)</p> | <p><u>Civil</u></p> <p><b>Plaintiff files complaint</b><br/>(written statement to court asserting harm to individual has been committed)</p> <p>NOTE: INDIVIDUAL NOT STATE FILES CHARGES BECAUSE CRIME IS NOT CONSIDERED AGAINST SOCIETY</p> |
| <p>2. <b>Court holds arraignment hearing</b><br/>(held soon after information is filed def. states whether guilty/not guilty; judge determines bail - cannot be excessive 8th Amendment). <b>6th AMENDMENT requires that charges be read to defendant.</b></p> <p>* 6TH AMENDMENT RIGHT TO AN ATTORNEY IN CRIMINAL CASES BEGINS HERE</p> <p>* Know <u>Gideon v. Wainwright</u> (1963) SC holds 6th AMENDMENT requires government to provide attorney to indigent (poor) defendant in CRIMINAL CASES.</p>  | <p><b>Court issues summons &amp;</b><br/>(copy of complaint mailed to def. along with court date)<br/><b>defendant files answer</b><br/>accepting or disputing charges)</p> <p>You do not have a right to an attorney in CIVIL CASES!</p>    |

## PRE-TRIAL

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| 3. | <p><b>Discovery</b> (the exchanging of information between the parties (e.g., potential witness lists) and the search for new, corroborating or contradictory evidence &amp; testimony) <b>commences</b></p> <p>*STATE IS REQUIRED TO GIVE DEFENDANT POLICE RECORDS &amp; ANY EXCULPATORY EVIDENCE (facts suggesting innocence of defendant) TO DEFENDANT</p>   | <p><b>Same</b></p> <p>* PARTIES ONLY HAVE TO EXCHANGE DOCUMENTS SPECIFICALLY REQUESTED</p>   |
| 4. | <p><b>Court holds preliminary hearings</b> (judge reviews <b>motions by the parties</b>. They involve questions regarding discovery (sched. depositions &amp; hearings, or ruling evidence is privileged); <b>whether evidence/testimony should be suppressed</b> because police conducted an invalid search or seizure <b>under the 4th Amendment</b>; or whether a case should be dismissed for lack of crime or inability to prove a crime)</p> <p>* Know <u>Mapp v. Ohio</u> (1961). SC holds that evidence illegally obtained by government must be SUPPRESSED (thrown out).</p> <p>* Know <u>Miranda v. Arizona</u> (1966). SC holds testimony (incl. confessions) given by def. to police before Miranda warnings are given may be thrown out.</p> | <p><b>Similar. 4th Amendment Protections do not apply (gov't typically not a party).</b></p>   |
| 5. | <p><b>Parties may enter into plea bargain</b> (agreement where defendant admits guilt and forego's trial in return for reduced sentence)</p> <p>*MOST CASES RESULT IN PLEA</p>  | <p><b>Parties may enter into settlement</b> (agreement to . end case) Agreement does not have to be made public. May not require parties to admit guilt.</p> <p>*MOST CASES SETTLE</p> |

### III. TRIAL

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| 6. <b>Parties participate in jury selection.</b><br>Process of parties questioning jurors is known as <i>voir dire</i> . Jurors can be excluded FOR CAUSE or because party uses a PREEMPTORY CHALLENGE (meaning juror is excluded for any reason). <b>6th Amendment requires jury trial in crim cases.</b> | Similar. 7th Amendment allows for jury trial in civil cases over certain amount. Otherwise case is overheard by judge. |
| Know <u>Batson v. Kentucky (1986)</u> . SC holds Preemptory challenges cannot be used to exclude parties on the basis of race  |  |
| 7. <b>Attorneys give opening statements</b><br>(summary outlining each side's theory of case)  | Same   |
| 8. <b>Prosecution puts on case</b> (offer evidence and conduct direct examination of witnesses to tell their story). <b>6th Amendment allows defendant to confront witnesses via cross examination.</b>  | Plaintiff puts on case   |
| 9. <b>Defense puts on case</b> (offer evidence and conduct direct examination of witnesses to tell their story). <b>5th Amendment RIGHT NOT COMMIT SELF-INCRIMINATION allows defendant not to take the stand</b>   | Same   |
| 10. <b>Attorneys give closing statements</b> (summary of case - often very emotional)  | Same   |
| 11. <b>Jury renders VERDICT</b> (decide whether defendant is guilty on each charge filed)  | Similar. In cases where there is no jury, judge decides  |
| <b>* STANDARD FOR GUILT IN CRIMINAL CASE IS BEYOND REASONABLE DOUBT. GUILTY VERDICT MUST BE UNANIMOUS.</b><br><br>If a jury cannot reach agreement on a verdict, it is said to be HUNG. A MISTRIAL is declared and parties relitigate (have another trial)   | <b>STANDARD FOR GUILT IN CIVIL CASE IS PREPONDERANCE OF EVIDENCE. UNANIMOUS VERDICT NOT NEEDED</b><br><br>Same         |
| 12. Defendant can appeal. <b>5th Amendment DOUB. JEOPARDY clause bars state appeals</b>  | Either Party can appeal  |