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## Courts: Pretrial Issues and Hearings

### Preliminary Hearing

- Determination of sufficient evidence to show probable cause that the defendant

### Reasons why people may waive their right to preliminary hearing

1. Defendant wants to speed up the criminal process
2. Defendant wants to plea guilty
3. Defendant wants to avoid publicity- negative publicity that may surface

### Arraignment, Types of Pleas

#### 1. Guilty (90%)

- To accept guilty plea, judge must:
  - o State defendant has waived his/her constitutional right to trial
  - o Believe there is a basis or plea and that the plea is voluntary
  - o Inform defendant of his/her right to counsel during plea process

#### 2. Not guilty

- Entered two ways:
  - o Verbal statement by defendant or attorney
  - o Defendant stands mute, and court/judge enters not guilty plea for defendant

#### 3. No contest

- o Plea guilty without fear of civil suits

### Bail, Jail or Released Without Condition

Factors:

1. Seriousness of charge
2. Offender's criminal record
3. Whether or not the defendant has local address
4. Previous failures to return to court proceedings

Bail: Monetary amount for, or condition of, pretrial release, usually set by a judge at court appearance

- o Purpose: to ensure return of the accused

Does the Constitution guarantee a defendant the right to bail?

No, the 8<sup>th</sup> Amendment to the constitution prohibits *excessive bail*

### Jail (Detain Defendant)

Types:

1. Preventive Detention- practice of holding dangerous defendants before trial and the denial of bail
2. Retrial Detention- practice of holding defendant in secure confinement prior to trial

Release on own Recognizance- nonmonetary condition for pretrial release

#### Outcomes of Criminal Process

1. Plea Bargain (90%)
2. Pre-trial Diversion (5% or more)
3. Trial
  - o What a prosecutor looks for in a trial case

#### Issues to cover:

1. The ideal case
2. Constitutional rights
3. Jury selection
4. Verdict

#### Case Outcomes

##### Factors influencing prosecutor's pursuit of cases (and case outcomes)

1. Seriousness of the offense
2. Criminal history of the defendant
3. Cost of prosecution to the criminal justice system
4. Heavy caseloads
5. Strength of the prosecutor's case
6. Avoid undue harm to the defendant
7. Willingness of defendant to cooperate with law enforcement, prosecutor, and/or diversionary efforts

#### Factors that Influence Pretrial Diversion

1. Offense type
2. Special circumstances
3. Defendant (1<sup>st</sup> time offender)
4. Willingness of defendant to cooperate with diversionary program
5. Impact of diversion on community
6. Victim consideration

#### Plea Bargaining

- The discussion between the defense counsel and prosecutor by which the defendant agrees to please guilty for certain considerations/concessions

#### Factors considered in Plea Bargaining

1. Caseload of the prosecutor
2. Strength or weakness of the case
3. Offense type
4. Type of defense counsel
5. Defendant's prior record
6. Complaint
7. Personal characteristics of defendant (age, race, bail status)

### Plea Bargaining Types

1. Implicit Bargaining (going rate)
2. Bargaining over charges
  - Concurrent (vs. consecutive) charges  
Concurrent- jail time is combined, consecutive jail time isn't combined so stay in jail is longer
  - Dropping charges
  - Altering charges
3. Bargaining over sentence
  - Sentence reduction or recommendation

### What happens when the Plea Agreement is Reached?

When both sides agree on a plea bargain:

- The plea bargain agreement will be clearly stated on the court record before a judge
- Judge will issue the agreed upon sentence
- Both sides are legally required to follow the terms of the plea bargain and the agreed upon disposition of the case

### Plea Bargaining Advantages

1. Avoids time, expense, and work of courts
2. Psychological satisfaction for victim when offender pleads/ admits guilt
3. Avoids publicity associated with a trial (for judge, prosecutor, victim, witness, and defendant)
4. Police "clear" case
5. Police avoid time in court
6. Prosecutor gets a "conviction"
7. Defendant gets "concessions"

### Disadvantages of Plea Bargaining

- Innocent defendant: pleads guilty to a lesser charge in order to avoid the risk that he/she will be found guilty at trial
- Defendant: once the defendant signs a plea agreement and agrees to plead guilty they will have no opportunity for an appeal at a later date
- Attorneys and judges argue that plea deals lead to poor police investigations
- Attorneys who do not take the time to properly prepare their cases
- Attorneys and judges argue that plea bargaining is unconstitutional because it takes away a defendant's constitutional right to a trial by jury