

Criminal Justice

Exam 3 Study Guide

COURTS

The Role of the Prosecutor (functions and duties)

- Legal
 - Cooperates with police to investigate violations of the law, determines the charges, interviews witnesses, talks with victims, reviews apps for warrants and subpoenas, represents state/gov in pretrial hearings and procedures and appeal process (if there is one), enters plea agreements, tries criminal cases, recommends sentences
- Bureaucratic
 - Maintains standards of conduct among staff in office, manages operations, supervises activities of ADAs, allocates resources and assigns cases
- Political
 - Develops programs (legislation for law and criminal justice reform), public spokesperson for the government on law issues in general, popular election/elected official

Reasons for Dismissal of Cases or Not to Charge

- 1) Insufficient evidence
- 2) Witness problems
- 3) Guilty plea to another charge/case
- 4) Due process problems
- 5) Referral for prosecution elsewhere
- 6) Deserving defendant
- 7) Victim participation

Prosecutorial Discretion

- The prosecutor determines the charges and therefore has the right to refuse to prosecute a case. They initiate action for criminal prosecution and may stop the charging process at any time or request the court to dismiss the charges.

Defense Counsel (duties and types)

- Defense Counsel- the legal counsel for the defendant in a criminal case who represents the defendant from arrest to final appeal
- Duties: investigates the crime, reviews police reports, insures constitutional safeguards, interviews client/defendant, police, witness, and victim, discusses matter with prosecutor to gain insight into the strength of the state's case, represents client at all procedures (arrest, bail, plea to appeal), enters plea on behalf of client, prepares case for trial and represents client during that trial, files and argues any motions with the court, provides

assistance to defendant in sentencing stage, determines appropriate avenues for appeal (if any)

- Types:
 - Privately Retained Counsel
 - Assigned Counsel- jurisdiction assigns indigent criminal cases to private attorney on a systematic or ad hoc basis
 - It's the oldest and most widely used method in the history of American jurisprudence, operates in about 52% of US counties, it's the type of system used in most smaller jurisdictions, attorneys are customarily chosen from a judge's list and desire to be chosen
 - Public Defender- representation is provided by a public, nonprofit organization with full or part-time staff of attorneys and support personnel, including: investigators, paralegals, social workers, etc.
 - Preferred because it operates in 37% of US counties, it's found in urban counties (due to the high number of indigent defendants, it is the more efficient system – cost, assignment and processing), and it represents the largest number of indigent defendants
 - Also preferred because it's compensation is minimal, criminal cases are handled sporadically in other systems, and funds are limited to provide legal services in other systems (to conduct investigations, obtain expert witnesses, etc.)
 - Contract System- jurisdiction enters into a contract with an attorney, a group of attorneys, or entire firm to provide presentation in some or all indigent defendant cases
 - It's growing in prevalence (operates in about 11% of US counties across 6 states)

Types of Plea-Bargaining

- Implicit bargaining (going rate)
- Bargaining over charges- concurrent (vs. consecutive) charges, dropping charges, and altering charges
- Bargaining over sentence- sentence reduction or recommendation

Factors that Influence Plea Bargaining (advantages/disadvantages of pleas)

- Factors: caseload of the prosecutor, strength or weaknesses of the case, offense type, type of defense counsel, defendant's prior record, complainant, personal characteristics of defendant (age, race, bail status)
- Advantages:
 - Avoids time, expense, and work of courts
 - Psychological satisfaction for victim when offender pleas/admits guilt
 - Avoids publicity associated with a trial (for judge, prosecutor, victim, witness, and defendant)
 - Police "clear" case

- o Police avoid time in court
- o Defendant gets "concessions"
- Disadvantages
 - o Innocent defendant: pleas guilty to a lesser charge in order to avoid the risk that he/she will be found guilty at trial
 - o 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
 - o Attorneys and judges argue that plea deals
 - Lead to poor police investigations
 - Attorneys who do not take the time to properly prepare their cases
 - o Attorneys and judges argue that plea bargaining is unconstitutional because it takes away a defendant's constitutional right to a trial by jury

PRETRIAL ISSUES

Felony versus Misdemeanor Procedures (M= compliant, F= indictment/grand jury OR information)

- Misdemeanor cases:
 - o Compliant- sworn, written document to a court by the police and/or prosecutor alleging the individual committed the crime
 - Criminal charge, date, place, and circumstance
- Felony cases:
 - o Indictment- formal written criminal accusation given by a grand jury stating the allegations (crime) for which the defendant is required to stand trial
 - Grand Jury- a group of citizens chosen to hear the testimony in secret

Preliminary Hearing (reasons why prelim hearing may be waived)

- Determination of sufficient evidence to show probable cause that the defendant committed the crime (replaces the grand jury)
- Reasons why defendants sometimes waive their rights to preliminary hearings:
 - o 1) Defendant decides to plea guilty
 - o 2) Defendant wants to speed up the criminal process
 - o 3) Defendant wants to avoid publicity

Arraignment: types of pleas

- Types of Pleas
 - o Guilty (90%)- to accept guilty plea judge must state defendant has waived his/her constitutional right to trial, believe there is a basis or plea and that the plea is voluntary, and inform the defendant of his/her right to counsel during plea process