

§ 4.3

Legal Terminology: Criminal Process

Narrative and Definitions

Narrative:

Although the civil case was decided in favor of the defendant, the **state** chose to bring **criminal** charges for reckless driving and reckless endangerment. The **prosecution** had a **warrant** issued for the defendant's arrest.

criminal law

A violation of criminal law is viewed as harming the community. Therefore, the state acts against the violator. Penalties for violating criminal law include fines, community service, and imprisonment. One can be sued civilly and charged criminally for the same event.

prosecution

The bringing of criminal charges against a defendant; also, the party presenting the Government's case at a criminal trial.

state or government

In a criminal case, these terms mean the prosecution.

warrant

An order from a judicial officer or the court authorizing an arrest or a search or seizure of property.

Narrative:

At the **initial appearance**, the defendant was advised that one of the charges was a **misdemeanor** and one was a **felony**. He was provided with **assigned counsel**, and although the State had asked for **bail**, he was released on his own **personal recognizance** and thus no **bond** was required.

initial appearance

The first court appearance by a defendant to a criminal charge, during which the court informs him or her of the charges, decides whether bail is appropriate, and sets the date for the next court proceeding.

misdemeanor

A crime punishable by a sentence of incarceration of less than one year.

felony

A crime punishable by a sentence of a year or more in prison.

bail

Money or property deposited with the court to procure the release of a defendant and to ensure the appearance of the defendant at trial.

bail bond

A written agreement to pay the full bail amount to the court if the defendant fails to appear when required.

personal recognizance

A defendant is released without being required to post bail, on the promise that he or she will appear in court at designated times.

assigned counsel

An attorney who is ordered to represent a defendant, usually because the defendant cannot afford an attorney.

Narrative:

*At a meeting in the prosecutor's office, defense **counsel** proposed that the state issue a determination of **nolle prosequi** or accept a **nolo contendere** plea in return for no jail time. However, the **district attorney** insisted that James **plead guilty** to at least one of the charges. The defense attorney could not agree to this **plea bargain**, so the prosecutor decided to pursue the case.*

counsel

Legal representative. Attorney.

nolle prosequi

The decision of the prosecutor not to prosecute, even though he or she believes that there is sufficient evidence to do so.

district attorney

Prosecutor for the state.

plead

To declare a defendant's position in a criminal trial, usually either "guilty" or "not guilty." Other possible pleas include "nolo contendere" (see definition below).

plea bargain

A defendant in a criminal case agrees to plead guilty, usually to a lesser charge, in return for a reduced sentence.

nolo contendere (or *no contest*)

When a defendant decides not to contest the charges but does not admit guilt. The defendant may be sentenced as though he had pleaded guilty.

Narrative:

At the **preliminary hearing**, the Court determined that there was sufficient **probable cause** to have the case **bound over** to the **grand jury** for consideration. The grand jury, in turn, returned an **indictment**. This was not particularly surprising, since the district attorney ran the grand jury. At the subsequent **arraignment**, the defendant pleaded not guilty.

preliminary hearing

A hearing requiring the State to produce sufficient evidence to establish that there is probable cause to believe that a crime has been committed by the defendant.

probable cause

A reasonable basis to believe that a crime has been committed.

bound over

Submitted to; sent.

grand jury

An investigatory panel that determines whether probable cause exists to return an indictment.

indictment

A formal charge by a grand jury alleging a criminal act.

arraignment

Formal hearing in court where the defendant is informed of charges being brought and generally pleads *guilty*, *not guilty*, or *nolo contendere*.

Narrative:

*The standard for conviction in a criminal trial is much higher than in a civil trial. The jury must find the defendant guilty **beyond a reasonable doubt**. The jury in the case above decided to **acquit** the defendant. The **adverse judgment** upset the prosecutor, but he could not appeal. In criminal matters, the prosecution is prevented from appealing a not-guilty verdict. The state is barred from re-filing the same charges against the same defendant, since to do so would constitute **double jeopardy**.*

beyond a reasonable doubt

The degree of proof required in a criminal prosecution usually requiring unanimous agreement of the jury (although there are a few rare exceptions). The jury may have some doubt and still find the person guilty, but the doubt cannot be reasonable. If the doubt is reasonable, the verdict must be not guilty.

acquit

To find a defendant not guilty.

adverse judgment

A judgment against your client.

double jeopardy

In a criminal case, the state cannot retry a defendant on the same charges once a not-guilty verdict is rendered by a judge or jury.