**Steps in a Criminal Case**

***The Law***

### The Crime

* On some occasions, a police officer will witness the crime.
* In most cases, the crime is reported by the victim or by witnesses.

### The investigation

**Police**

* question anyone who knows about the crime,
* try to talk to the suspect,
* collect and evaluate physical evidence.
* When they have enough evidence to believe that the defendant was involved in the crime, they will make an arrest.

**Complaint filed by prosecuting attorney or indictment by grand jury.**

* A written statement of the charges against the defendant is made under oath and signed.
* Procedure slightly different for misdemeanors.

**Warrant or summons issued**

If it appears from the complaint and any attachments or supporting affidavits that

* probable cause exits to believe that a crime was committed and that
* defendant committed it,
* a summons or warrant is issued by the judge.
* Summons: used if the judge believes that the defendant will show up for court. The summons is mailed to the defendant.

**Warrant: issued if**

* defendant unlikely to respond to the summons, or
* defendant’s whereabouts are unknown, or
* defendant is a threat to public safety.
* If the defendant fails to respond to a summons, a warrant is issued.
* Warrant for arrest is executed by the police or county sheriff.

### The Arrest

* The arrest requires that there is probable cause to believe that a crime has been committed and
* that the suspect committed the crime.
* If felony level offense, defendant is taken to jail.
* If misdemeanor offense, defendant is given a citation (ticket) by arresting officer and released with the defendant’s promise to appear in court.

### Booking

At the jail,

* Defendant’s fingerprints and photograph are taken.
* Police will ask for name and address and
* Police make a formal record of the arrest.
* Defendant is placed in jail to wait for the next step.

### Probable cause hearing

If the defendant was arrested without a warrant,

* a judge must review the evidence and
* decide if probable cause exists within 48 hours of arrest (including day of arrest, Saturdays, Sundays, and legal holidays.
* If there is no probable cause, defendant must be released.
* If there is probable cause, defendant is either held over for trial or released (with bail or on own recognizance).

### Initial Appearance

Defendant is brought in front of a judge within 36 hours of arrest, not counting the day of the arrest, Sundays, and legal holidays.

* The judge will explain the charges against the defendant and his or her rights (right to remain silent, right to an attorney, right to jury trial).
* Defendant may request a public defender.
* If it’s a misdemeanor, defendant can plead not guilty or guilty at this time.
* If the defendant pleads guilty, he or she will be sentenced.
* If the defendant pleads not guilty, the date for trial is set.
* If the charge is a felony, the defendant won’t enter a plea until later at an appearance called the arraignment.
* Bail and conditions of release are set.
* Bail is money paid by the defendant’s family to get the defendant released until the court date. The money will be paid back if the defendant shows up for the court date.
* If the judge sets bail and the defendant or his or her family don’t have enough money, the family may pay a bail bond company a fee (percentage of the bail amount). The company guarantees payment of the bail if the defendant does not appear as required. Failing to show up for court, known as “jumping bail,” is a crime.
* Sometimes, the court will release the defendant on his or her own recognizance, which means that the defendant doesn’t have to pay bail.

### Omnibus hearing

* Felonies and gross misdemeanors continue with an omnibus hearing.
* Probable cause determination.
* Reading of complaint to defendant.
* Entry of pleas of guilty or not guilty.
* Constitutional challenges to the arrest or search of the defendant.
* Judge rules on evidentiary, procedural, or constitutional issues.

### Pretrial conference

* Used in misdemeanor charges
* Attorneys disclose the witnesses; medical records, lab reports, photos, and all other tangible evidence, and note defenses (for example, self-defense, and insanity).
* Can enter guilty plea or have discussion of plea-bargains.

### Trial Management conference

* This step completes the process started at the pretrial conference and sets the date for trial.
* Motions are made.
* Jury instructions and jury selection procedures decided upon.

### Trial

* Jury is selected (Six people for misdemeanor and gross misdemeanor cases, 12 people for felony cases).
* State (prosecutor) presents its case, questioned through cross examination
* Defense presents case, questioned through cross examination.
* Jury decides. State must prove its case beyond a reasonable doubt. Unanimous decision required. (Defendants can chooses to try case before a judge instead of a jury, waiving right to a jury trial.)

### Sentencing

Offenders convicted of felony crimes are sentenced according to a uniform set of guidelines.

* The purpose is to assure that people sentenced for similar crimes who have similar criminal backgrounds receive similar sentences.
* The guidelines are based on two elements of an offender’s behavior:
* the seriousness of the offense and
* the offender’s criminal history.
* A judge may depart from the guidelines but only for very good reasons that the judge must explain in writing.

### STANDARDS OF PROOF

**Innocent until Proven Guilty**

The defendant is presumed to be innocent of the offense charged. This presumption of innocence goes with the defendant through the entire case. The state must prove that the defendant is guilty beyond a reasonable doubt or the jury must find the defendant not guilty. The decision must be based on the evidence presented.

### Reasonable Doubt

If an ordinary person has reason to believe that the person might not have committed the crime, the defendant cannot be found guilty.

**Proof Beyond a Reasonable Doubt**

This is proof that leaves the jury firmly convinced that the defendant is guilty of the crime charged. If the jury thinks there is a real possibility that he or she is not guilty, the defendant must be given the benefit of the doubt.

**Preponderance of the Evidence**

The plaintiff in a civil case must prove that their version of the facts more likely occurred than the defendant’s version. In a civil case, the jury should find the evidence presented by the defendant to be more credible and convincing that the defendant’s evidence.

**Clear and Convincing**

The plaintiff in a civil case must prove by clear and convincing evidence that his or her version of the facts is more likely to be true than the defendant’s version of the facts. This standard falls between preponderance of the evidence and beyond a reasonable doubt.

**Steps in a Criminal Case**

***Activity: Creating a flow chart***

Complete the tasks below, using the information in “Steps in a Criminal Case,” “Investigation and Arrest,” and “Your Right to An Attorney” from the unit The Legal System.

1. Arrange the steps in the order that they will occur

2. Add 2 additional points to each step, selecting from the readings and your own experience. Pick points of information you think are necessary, helpful, confusing to most people, etc.

3. Using your computer, create a flow chart with arrows showing the order of the process or mount your steps and additional points in the order that they will occur on a larger piece of paper or poster board.

4. You may add graphics if you wish.

### STEPS

1. A crime is committed

2. The police begin to investigate

3. The police identify a suspect, a 19 year-old

4. The police question the suspect

5. The police arrest the suspect

6. The police take the suspect into custody

7. The suspect is booked

8. The suspect appears in court for the initial appearance

9. The county attorney charges the suspect with a crime

10. The suspect pleads not guilty.

11. A public defender is appointed for the suspect

12. Challenges to violations of the Constitution (such as illegal search)

13. Probable cause hearing

14. Trial

15. Sentencing

**Steps in a Criminal Case**

***Activity: Mini-Mock Trial***

**District Court**

**Criminal Division**

)

**State**  )

)

**v.** )

)

**Kelli Nealy** )

**Facts**

A wallet was reported stolen from a neighborhood SuperAmerica store on Friday evening November 4.

**Witnesses**

|  |  |
| --- | --- |
| **Prosecution Witnesses** | **Defense Witnesses** |
| Elaina Walter, SuperAmerica Clerk  Nikki Spaulding, Police Officer  Molly Harper | Kelli Nealy, Defendant  Sam Haugen, eyewitness  Shirlyn Turner |

***State v. Kelli Nealy***

#### Prosecutions witnesses

**Elaina Walker, SuperAmerica clerk**

I am a clerk at the SuperAmerica store in my neighborhood. On November 4, I was working late. It was a Friday night, store was busy. Lots of young people because we are located next to a video rental store. Everyone stops in to get junk food. I was running the cash register. There was a long line. I looked up as someone butted in line. She was there for only a second and then she left. I thought it was strange, but I didn’t do anything until the lady next in line screamed that someone had stolen her wallet. Although I did not get a real good look at her, she was tall and thin. I ran out of the store and pointed her out to a police officer. The video camera wasn’t working that night.

**Nikki Spaulding, Police officer**

I have been a police officer for 8 years. On November 4, I was nearing the end of my shift. I was just down the block when I got the call that a wallet had been stolen from the SuperAmerica store. The report described the suspect as a tall, thin woman in a dark coat. I drove quickly thinking I might catch the suspect. As I drove up another woman came out of the store, pointed at the defendant who was walking quickly down the street and said “that’s her”. I told her to stop. She did. When I asked her a couple of questions, she said that she had just been in the store but left before there was any trouble. I saw a bundle of money sticking out of her purse. I asked her about it. She said she just got paid at her part time cleaning job. When I asked how much cash she had, she said she wasn’t sure. I asked her to count the money. She did, it totaled $160. I arrested her. The stolen wallet was later found behind a bush next to the store.

**Molly Harper**

I stopped in the SuperAmerica store on Friday night, November 4, to pick up some Tylenol for my baby and some cereal for my three-year-old. I got $150 out of the ATM machine to pay for the groceries and to pay for my children’s day care. There was a line at the ATM machine so it took me a few minutes. The store was very crowded. After I got my cash, I went to check out. Once again I had to stand in line for a time. My three-year-old was restless and kept trying to get me to buy stuff for her. When we finally got to the front of the line, she pulled a number of items off the racks below the checkout counter. I scolded her, put the stuff I was buying and my wallet on the counter, bent down to pick the items up and replace them. When I stood up a second later I realized that someone had taken my wallet. There were so many people around the checkout counter; I didn’t see the suspect.***State v. Kelli Nealy***

##### Defense witnesses

**Kelli Nealy, Defendant**

I was in the SuperAmerica store on the evening of November 4. I stopped in quickly to buy a couple of things after work. I work part-time cleaning a shoe repair shop. I get paid in cash. The store only had one of the items I wanted, but when I looked at the checkout line I decided to forget it and go to a different store. I had a hand full of trash that I had just pulled out of my purse and I wanted to throw it away. I went to the check out line, slipped in at the front of the line and threw my trash into a wastebasket behind the counter. Then I left. As I walked down the street, I was looking through some old receipts that I had found in my purse. I was surprised when the police stopped me a few moments later and arrested me for the robbery. I am 5 feet 8 inches tall and weigh 125 pounds.

**Sam Haugen, eyewitness**

I was getting cash at the ATM when the defendant pushed by me. She clearly was frustrated that there was a line for everything. I heard her say, “Oh forget it, I’ll buy these things tomorrow at Rainbow.” She was digging in her purse. She pulled out a bunch of empty candy wrappers. I followed her up to the front of the store, where she butted in line and appeared to throw something over the counter. I then saw her leave. I left right after her. I didn’t see her take a wallet. But I did see her carefully looking at something as she was walking down the street.

**Shirlyn Turner**

Defendant works for me part time cleaning my shoe repair business. I usually have her clean three times a week in the evenings. She is usually done around 9 p.m. My shop is just down the street from the SuperAmerica. I pay her in cash so that she doesn’t need to cash a check. I know that she likes to use cash and always has quite a bit with her. I paid her $100 on Friday, November 4. I have known the defendant for about a year. She is a real good worker. I trust her with my store. I can’t believe that she would steal someone’s wallet.

***State v. Kelli Nealy***

**The Law:**

Whoever intentionally and without claim of right takes, uses, transfers, conceals, or retains possession of another’s property without consent, and the property is valued at less that $200, is guilty of a misdemeanor, subject to a fine of a maximum of $1,000 or 90 days in jail, or both.