

# FUSCO & MACALUSO

## CRIMINAL LAW

### Steps of a Criminal Case

#### A. Arrest and Booking

A criminal case **begins** when police **arrest** a person suspected of committing a misdemeanor or felony crime. The police **must** have **probable cause** to arrest a suspect.

Probable cause means that any **reasonable** police officer, under the **same facts and circumstances**, would decide that a crime has been committed and the **suspect committed the crime**.

Once arrested, the police may **transport** the **suspect** to the **police station for questioning** or directly to the **county jail for booking**.

Booking is the process in which the arresting officer **submits a booking report to the jail** and the **Sheriff takes custody of the suspect and incarcerates the suspect** in the jail until the suspect is **released on bail or his own recognizance**.

#### B. Screening

The arresting officer submits his report to the District Attorney or City Attorney (misdemeanor cases only) with recommendations as to what **charges** should be filed.

The District Attorney and City Attorney are also called **prosecutors**. The prosecutor initially reads the police report and decides what if any **charges will be filed** against the suspect.

The prosecutor has a sworn duty to file charges only if the prosecutor conscientiously **believes** that there is **sufficient evidence to prove the suspect's guilt** beyond a reasonable doubt.

#### C. Arraignment

If the prosecutor believes there is **enough evidence** to convict a suspect, he will file a **criminal complaint with the court**. The complaint consists of **separate counts**. Each count of a complaint sets forth a **separate criminal offense**.

When the complaint is **filed**, the court conducts an **arraignment** in which the court informs you that a criminal complaint has been **filed** by the prosecutor **charging you with certain crimes**. The court asks for **your plea** and **your attorney** will enter a **not guilty plea**.

If you are in custody, the court must decide if the **amount of bail** on which you were booked into jail is appropriate. **Your lawyer** will ask the court either to **release you** on your own recognizance without bail or to **reduce the bail** to the **lowest** possible amount.

After the bail issue is resolved, the **court sets dates** for your readiness **conference** and, if a felony, a **preliminary hearing**. Misdemeanor cases do not require preliminary hearings.

#### D. Readiness Conference

A readiness conference, sometimes called a settlement conference, is a **court proceeding** in which the prosecutor, defense lawyer and judge sit in the **judge's chambers** and **discuss the facts of your case**. The court sets up this conference to see if a judge can encourage the prosecution and defense to **resolve the case by a plea bargain**. Sometimes, the judge will offer certain promises of **leniency** to the defense to induce a settlement.

Your lawyer most likely will **reject any plea bargain** offer if your defense is **strong** and likely to prevail at trial. On the other hand, your lawyer may ask you to **consider a plea bargain** if the prosecution's evidence is **strong** enough to produce a guilty verdict at trial.

**Each case turns on its own facts**, and, for this reason, it is crucial that you choose an **experienced** lawyer who can properly **evaluate your defense** and give you the **right advice**.

If the case is **settled** by a **plea bargain**, the court takes your guilty plea and then sets a **date for your sentencing** in accordance with the plea bargain.

If you **reject the plea bargain**, and the case is a misdemeanor, the case proceeds directly to **jury trial**. If the case is a felony, the case proceeds to a preliminary hearing.

### **E. Preliminary Hearing**

After the readiness conference in a felony case only, a preliminary hearing is held at which a **judge decides** if there is **enough evidence** to require the defendant to **stand trial**.

At this hearing, the **defense** has an opportunity to **cross-examine prosecution witnesses** and test the **integrity** of the **prosecution's evidence**. The standard at a preliminary hearing is not proof of guilty beyond a reasonable doubt as it is at a jury trial; rather the **standard** is whether there is **probable cause** to believe that the defendant has committed the offense(s) charged in the complaint.

**Judges are reluctant to dismiss charges** at a preliminary hearing and, in most cases, rule that there is enough evidence for the defendant to stand trial. The next stage of a felony case is a second arraignment.

### **F. Arraignment #2**

After the preliminary hearing, the court holds a **second arraignment** where the defendant **renews his not guilty plea** and the **court sets dates** for a **second readiness conference** and, finally, a **jury trial**.

### **G. Readiness Conference #2**

This is the final court proceeding before trial. The second readiness conference is very much like the first conference, except, in most cases, a **different prosecutor and judge discuss the case** with the defense lawyer.

At this stage, **if your lawyer has conducted a thorough investigation**, leading to **important evidence** that **discredits potential prosecution witnesses**, the prosecutor may offer a **significantly better plea bargain** to resolve the case.

The judge may also offer **additional benefits** in terms of more lenient punishment to encourage a plea bargain. This is where your **lawyer's experience really counts**.

If your lawyer believes that the case is a **toss-up**, he may advise you to take the offer in order to **avoid the possibility** of a more serious conviction and punishment; however, if your lawyer believes that the **defense strategy is strong** and the likelihood of winning at trial is substantial, he most likely will advise you to **reject the plea bargain** and proceed to defend your case at a jury trial.

## H. Jury Trial

A **jury trial** begins with **motions argued before the judge** to whom the trial has been assigned. The motions usually involve the **admissibility of evidence** that the prosecution or defense is either trying to admit or exclude at trial.

Next, **jury selection** begins. The prosecution and defense are both allowed 10 challenges without any explanation and as many other **challenges** based on reasons involving prejudice and bias. Motions and jury selection can last from one day to several weeks depending upon the seriousness of the case.

After a jury has been selected, the **prosecution puts on its witnesses** and introduces other kinds of **evidence** such as guns, knives, photographs, and laboratory results **Your lawyer cross-examines each prosecution witness**, trying to show prior inconsistent statements, bias and a motive to lie.

After the prosecution finishes its case, **your lawyer** puts on the defense case which involves **witnesses for the defense** and possibly photographs, laboratory **evidence, expert witnesses**.

The prosecution cross-examines each defense witness trying to discredit the defense case in the same manner the defense is trying to discredit the prosecution's case.

The case concludes with **closing arguments** and then **jury deliberations**. A jury which fails to reach a verdict is called a "Hung Jury". The court dismisses the case and the prosecution usually asks for a new trial date.

If the jury returns a **not guilty verdict**, you are a **free man**. If a jury returns a guilty verdict, the judge sets a future date for sentencing.

## I. Sentencing

Whether you plead guilty after accepting a plea bargain or are found guilty by a jury after trial, your lawyer must have the **wisdom and experience to prepare an argument for probation under the most favorable possible conditions**.

Your lawyer prepares a Statement in Mitigation. To support his **Statement in Mitigation**, your lawyer will request **letters** from family, relatives, close friends, clergy, employers and others who will **comment favorably on your character**.

Oftentimes, your lawyer will have you undergo a **psychological evaluation** to show that you are not dangerous to society or that you can **successfully rehabilitate** from drug or alcohol addiction.

Your lawyer **prepares** you for your **interview with your probation officer**. A **well-prepared client** can often **impress** his probation officer which can lead to a **very favorable sentencing recommendation**.

Finally, your lawyer will present a **persuasive and successful argument for probation or leniency** at the time of your sentencing.