

TAKE THIS BOOK

CLIENT AND FAMILY HANDBOOK



32nd District

Public Defenders

109 N. Central Avenue
Centerville, TN 37033

Mailing Address:

P.O. Box 127
Centerville, TN 37033
931-236-5560

Melanie Totty Cagle
32nd District Public Defender

Introduction

The 32nd District Public Defender's Office is pleased to offer this book to assist our clients, their families, and members of the public to better understand how our local criminal justice system works. I hope it answers any questions you have, but I want to encourage you to call our office if you have more specific questions about a particular case or situation. As a public agency, we strive to provide the best possible service to our clients and this community. Additionally, if you have a complaint or suggestion for how we can do better, please call the office to discuss same.

Beyond the facts and data contained in this book, you should know that the entire staff at the 32nd District Public Defender's Office takes great pride in the work we do. Our mission is to defend the liberty, honor and constitutional rights of the individuals, of all ages, whose cases have been entrusted to us. Through zealous advocacy, we strive not only to deliver excellence in our representation of each and every client, but also to stand with our clients and the community in working to create a more just, fair and compassionate legal system. We are truly honored to make the Sixth Amendment right to counsel a reality in Hickman/Lewis/Perry Counties. With all of the problems in our criminal justice system today, we want to be one of the solutions.

Melanie Totty Cagle

32nd District Public Defender

The 32nd District Public Defender's Office Contact Information

Main Telephone Number: 931.236.5560

Melanie Totty Cagle: 32nd District Public Defender
931.253.4911
Melanie.cagle@tnpd.org

William (Bill) Eledge: 32nd District Assistant Public Defender
931.253-4920
Bill.eledge@tnpd.org

J. Isaac Devine: 32nd District Assistant Public Defender
931.253.4913
Isaac.devine@tnpd.org

Michael Auffinger: 32nd District Assistant Public Defender
931.253.4916
Michael.auffinger@tnpd.org

John Michael Schweri: 32nd District Assistant Public Defender
931.253.4915
John.schweri@tnpd.org

Glenda M. Lane: Legal Assistant - Hickman County
931.253.4917
Glenda.lane@tnpd.org

Chelsey B. Spitzer: Legal Assistant - Lewis & Perry Counties
931.253.4919
Chelsey.spitzer@tnpd.org

Physical Location: 109 N. Central Avenue
Centerville, TN 37033

Mailing Address: P.O. Box 127
Centerville, TN 37033

How the Office Operates

The lawyers in the Public Defender's Office are appointed by the courts to represent people who have been accused of crimes and do not have money to pay a lawyer. This office does not handle civil cases and it does not bring lawsuits or criminal charges against people.

In addition to the lawyers in the office, your case will receive the attention of support staff, which includes paralegals, investigators, social workers, interns, legal assistants, and law clerks.

All lawyers in the 32nd District Public Defender's Office are licensed to practice law in the State of Tennessee and must attend classes every year to learn new developments in the law. The office holds training classes for the staff and always keeps up with the latest legal decisions.

Using this Handbook

The Client and Family Handbook is designed to help you and your family understand the criminal process, the legal steps your case will go through, how your public defender will handle your case, and what resources are available to help you and your family get through this difficult time.

We have tried to be as accurate as possible, but the criminal justice system is always changing and every case is different. This is only a guide, however, and you should always listen to your attorney because he or she knows the facts of your particular case.

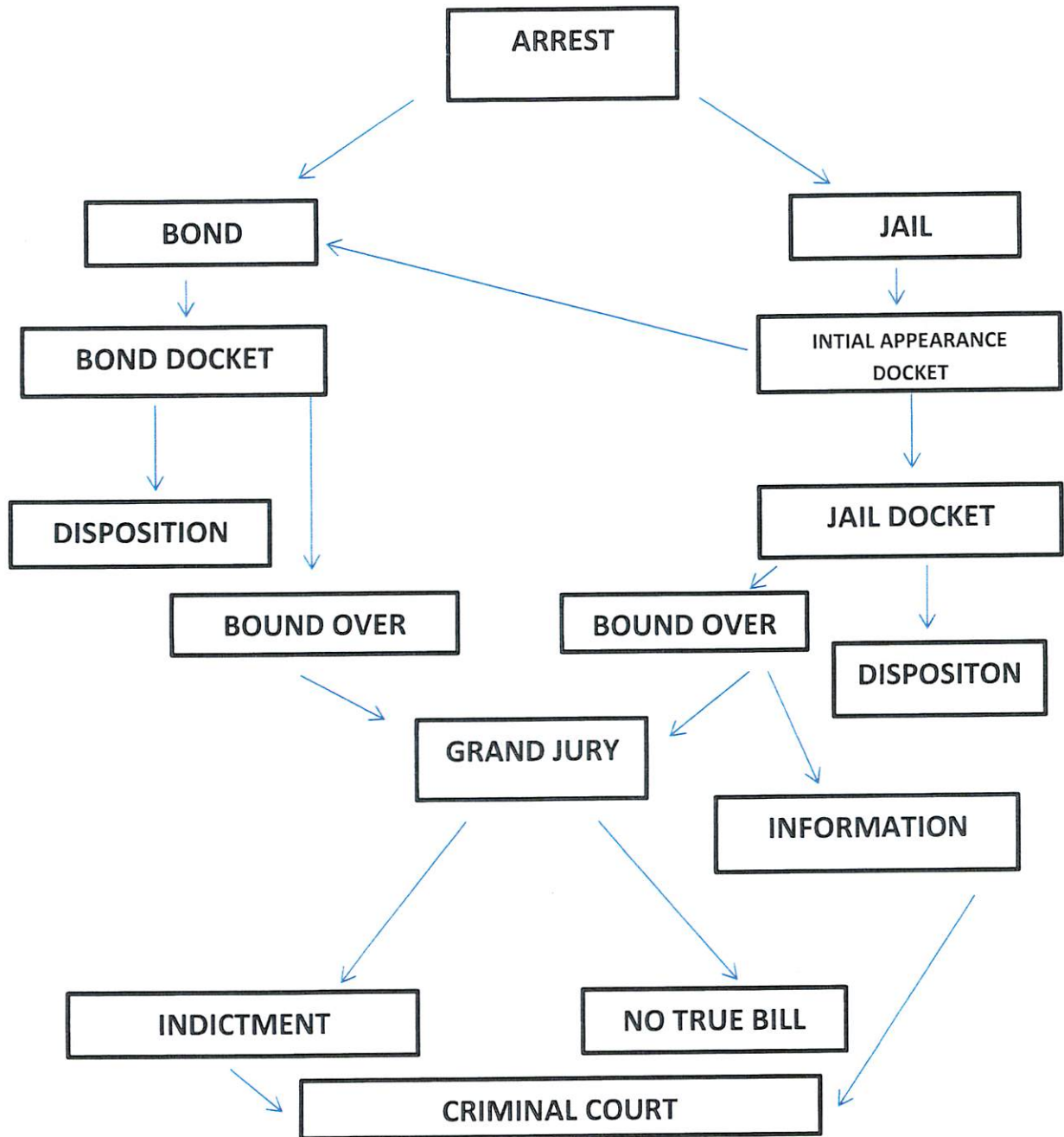
Following Your Case

The legal process is very hard to understand. There are many steps in the process, and you will have several decisions to make. The charts on the following pages attempt to show the steps of the legal process and how a *typical* case would flow through the system. Because every case is different, the charts may not show the exact steps of your case, but they are close. Please keep these diagrams handy so when you are talking to your attorney, she or he can explain where you are in the process and explain the next steps.

Many of the steps in these diagrams are explained in the sections that follow. Your attorney will help you to understand these steps, but you should read this handbook carefully so that you can help in making important decisions.

The General Sessions Court Legal Process

The following chart describes the process from arrest through indictment by the Grand Jury.



Bond

If you are arrested, you will have your first court appearance before the Judicial Commissioner. The Commissioner will tell you what you have been charged with and will set the terms on which you can be released before your trial date. The Commissioner has several options. One of those options is to set a cash bond.

Types of Release if a Cash Bond is Set

<u>Cash Bonds</u>	<u>Bonding Company</u>	<u>Property Bonds</u>
You or someone you know posts the <i>entire</i> bond amount.	Bonding companies will generally charge you 10% of your entire bond amount <i>plus</i> a bonding fee.	You must own land without a mortgage or a lien on the property. You can take the title to the Criminal Court Clerk's Office and they will allow you to make the bond.
Refund: You will get the money back if you turn in the receipt to the Criminal Court Clerk's Office at the end of your case.	Refund: This money is <i>not</i> refundable.	Refund: If you do not show up to court, you lose the property.

Appearing in Court

It is very important that you appear in court **on the correct date and on time.**

If you want to be represented by a lawyer but cannot afford to pay, you should inform the Court and ask for an Affidavit of Indigency. Once you complete same, give it to the Clerk of Court and wait for the Judge to address you.

Bond and Jail Dockets: Felonies and Misdemeanors

<u>Misdemeanor Bond and Jail Dockets:</u>	<u>Felony Bond and Jail Dockets:</u>
<u>Bond</u> • Misdemeanor cases (a crime for which the punishment is less than one year) will be scheduled on this docket. • Your case may be settled on this docket by what is called a plea agreement. A plea agreement is the way in which the district attorney agrees to reduce the charge, dismiss all or part of the charge, and/or recommend an agreed punishment in return for your guilty plea. If you do not agree to the plea agreement offered, you may have a trial or a preliminary hearing. • There are no juries in General Sessions Court. You can have a bench trial where the judge hears the proof, decides if you are guilty or not guilty and sets punishment (sentence) if you are found guilty. If found guilty, the sentence is typically is given at the time of the end of the trial. • Although it is unlikely, the state may demand a preliminary hearing in a misdemeanor case. After the hearing, if the judge decides there is probable cause or if you decide not to have a hearing, your case will be sent to the next level. This is called binding over the case to the Grand Jury. Your case will be referred to as "bound over".	• In a felony case, the state may demand a preliminary hearing instead of offering you a plea bargain. After the hearing, if the judge decides there is probable cause or if you decide not to have a hearing, your case will be sent to the next level. This is called binding over the case to the Grand Jury. Your case will be referred to as "bound over". • It is very important to discuss the advantages of a preliminary hearing with your lawyer. • The State may offer you a plea bargain on a felony case. If the offer is for you to plead guilty to a felony, then that plea must be entered in Criminal Court. General Sessions Courts cannot accept felony pleas. When an agreement like this is reached, it is called an "Information" agreement.
<u>Jail</u> • If you are on this docket, you are still in jail, your case will be heard within a few days of your arrest, and you and your lawyer will not have as much time to prepare. • Just like on misdemeanor bond dockets, you may have the option to take a plea bargain, to have a bench trial, or to have a preliminary hearing in your case.	

Grand Jury or Information

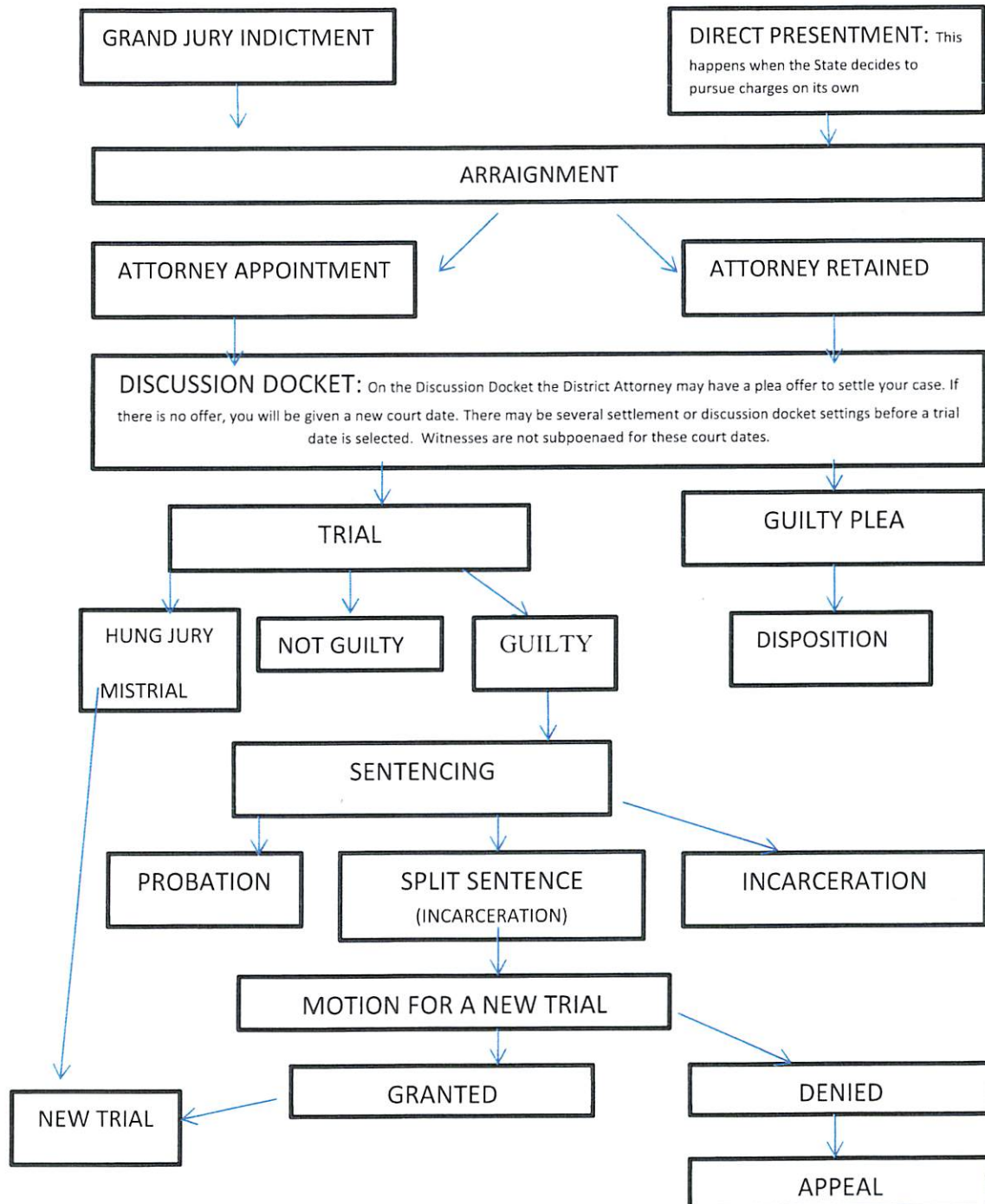
Who: The Grand Jury consists of thirteen people who hear evidence and determine if you should be formally charged with a crime. You and your lawyer do not have the right to appear before the Grand Jury and the Grand Jury does not determine guilt or innocence. Their job is to determine if there is good reason or probable cause to pursue the charges against you.

What: If the Grand Jury determines there is probable cause, they return a **true bill**, which means you have been “indicted” and your case will be set for arraignment. If the Grand Jury returns a no true bill, the case against you is over *unless* the district attorney resubmits the case to a new Grand Jury and the new Grand Jury indicts you.

How: Your case will go to the Grand Jury by direct presentment or by being bound over after the preliminary hearing. **Direct presentment is when the prosecutor goes directly to the Grand Jury through a “sealed indictment”.** **If a General Sessions judge dismisses a case at the Jail or Bond Docket, the prosecutor may seek a direct presentment.**

When: Your lawyer can get a court date sooner if you agree to bypass the grand jury by “information” and go directly to Criminal Court. An **Information** is an agreement between you and the district attorney to settle on a plea agreement that will be entered in the Criminal Court. The typical time frame for these cases being set in Criminal Court is usually within two months.

The Criminal Court Legal Process: Indictment-Appeal



Arraignment

When a case has been indicted by the Grand Jury, it is assigned to one of the Criminal Courts and set for arraignment. (Arraignment is when the defendant is officially called before a court of competent jurisdiction, informed of the offense charged in the complaint, information, indictment, or other charging document, and asked to enter plea of guilty plea, not guilty, or as otherwise permitted by law.)

STEP ONE

The court will ask if you have a lawyer or if you qualify for the services of a public defender. The judge will ask you to complete a form called "Affidavit of Indigency" which will ask you questions regarding your income, etc. If you cannot pay a lawyer, the court will provide you with one.

STEP TWO

Your lawyer will receive a copy of the indictment against you and enter a plea of "Not Guilty" on your behalf.

STEP THREE

During the weeks between your arraignment and discussion date, your lawyer will discuss your case with you, file motions, do investigation and research, and discuss the charges and proof with the district attorney. It is *VERY* important to remain in contact with your lawyer during this time.

Court Appearances

You **MUST** appear in court, on time, for all scheduled court dates and hearings unless your lawyer has told you not to attend.

If you change your address or phone number while waiting for your case to be resolved, you must notify your bondsman and your lawyer. If you have been released without a bondsman, notify the Criminal Court Clerk's office.

Always arrive early for your court appearance, as your lawyer may need to discuss your case with you. If an emergency prevents you from being in court, or if you must be late, notify your bondsman and your lawyer immediately. If no one knows where you are when your name is called, the judge may revoke your bond and issue a warrant for your arrest. This means the police will arrest you again and you **no longer have a bond**.

Equally as important as showing up on time is your appearance. **The judges enforce a dress code**, and a neat, clean appearance will only help you. On the other hand, a sloppy or too casual appearance will reflect poorly on you. Judges have different requirements for the dress code in their courtrooms. **For men:** no shorts, no saggy pants (must be belted around the waist with the shirt tucked in), no t-shirts with offensive slogans, no tank tops or undershirts, and no hats.

Women: should not wear clothing that is revealing in any way. DO NOT wear shorts, halter tops, see-through tops or expose the midriff. *Be advised that some judges will make you leave the courtroom to change if the judge thinks your clothing is inappropriate.*

Investigating Your Case

Anything you tell your lawyer or your **lawyer's investigator and staff** is **confidential**. You should NEVER discuss the facts of your case with anyone else-- including your family and friends—unless your lawyer has told you to do so. ***Information you give to other people may be used against you in Court—be careful.*** Additionally, if you are in jail you should NEVER discuss the facts of your case over the phone. Jail calls are RECORDED and will be used against you in court.

You play a very important part in the investigation of your case. Your lawyer needs to know as soon as possible the names and addresses of any witnesses. You can help finding witnesses and notifying your lawyer by letter, phone, or coming into the office. If you are in jail, your family and friends may be able to help.

A witness can be anyone who was present when the incident occurred, who knows you could not have committed the crime because you were somewhere else when the crime occurred, or has any information that may show that you are not guilty or the crime was not as serious as the State claims.

Preparing Your Case

Motions

Your lawyer may determine that certain motions should be filed in your case.

A motion is when your lawyer asks the judge to decide something such as whether a line-up identification or statement should not be used against you.

After any motion is filed, it will be set for hearing in court, and the judge will rule on it.

Discussion Docket

Your *next scheduled court appearance after your arraignment is on a **Discussion Docket***. Discussion or Settlement Dockets are held on different days and times in each of the Criminal Courts.

Discussion Dockets are when you can enter your plea if you, your lawyer and the district attorney have reached a plea agreement. If a plea agreement is not possible, a trial date will be selected for some time in the future.

The decision whether to enter a plea or take a case to trial is yours. The Public Defender's Office will advise you, but **the final word is yours**.

If you feel a motion should be filed in your case, talk to your lawyer and let your lawyer file it. It is not a good idea for you to file your own motions, because you are not a lawyer and you may include information in your motion that could hurt your case. Allow your lawyer to handle motions for you.

Diversion Programs

Diversion allows people to avoid permanent criminal convictions and instead to complete a program geared towards rehabilitation. Tennessee places strict limits on who is eligible for these opportunities. If you have no criminal record, ask your lawyer if you are eligible for diversion.

<u>Pre-trial Diversion</u>	<u>For persons without prior convictions</u>	Program is <u>very selective</u> and cannot accept you until you have been screened by the Sherriff's Office, recommended by the DA and accepted by the Judge	This program includes placing you on probation for a specific period of time without any finding of guilt. If probation is completed, then the charge is dismissed, but if not, then the case is set on a Settlement Docket again.
<u>Judicial Diversion</u>	<u>For persons without prior convictions</u>	Requires screening by the Tennessee Bureau of Investigation (TBI) to certify that you qualify	REQUIRES A PLEA OF GUILT , unlike Pre-trial Diversion, but it is a conditional plea. There is no conviction on the record with a conditional plea. You are placed on probation for a specific time. If completed, then case is dismissed, but if not, then you lose Diversion and the conditional plea will automatically become a permanent conviction

THE TRIAL: THE PROCESS

If your case is not settled on a Discussion/Settlement Docket, it will be set for trial. There is a chart on the following page that shows some of the basic steps in most criminal trials. If you have any questions, ask your attorney.

A jury trial is where the judge presides, and people from the community determine whether you are guilty. A bench trial is where the judge decides the case. You and your lawyer must decide whether you want a jury or bench trial. Both the defendant and the State have the right to demand a jury trial.

If you have a trial, you and your lawyer must make several decisions about the presentation of your defense including whether or not you will testify. You are not required to testify, but you can testify. Your lawyer will give you advice about this and help you decide.

You and your lawyer must be ready for your trial on the date your case is set, even though there is a chance that you will not be tried on that date. There are many people waiting for a trial so the judge often sets several cases on the same day. Another person's case may take priority over your case if it has been set once before, if the defendant is in jail and you are not, or if another good reason is shown. You may not know until you are in Court for your trial whether or not you will actually have a trial that day. It is very important, however, that you and your lawyer be prepared for trial.

Pleas

Most guilty and nolo contendere pleas are entered as part of a plea agreement. A plea agreement is when the district attorney agrees to reduce the charge, dismiss all or part of the charges, and/or recommend a sentence in return for your plea. Plea agreements can only be entered with your approval and the judge's acceptance.

<u>Types of Pleas:</u>	<u>When Plea is Entered:</u>	<u>Effect:</u>
<u>Not Guilty Plea:</u>	Entered when you are not guilty of the crime, when you are not sure which plea to enter, when there is not enough evidence to prove your guilt, or when you want a trial	A not guilty plea <i>can</i> be changed later
<u>Guilty:</u>	The judge must be convinced that there is a factual basis for your plea, you understand your rights when you plead guilty, and no one has forced you to enter a plea	If you plead guilty, you must admit you committed the crime to which you are pleading.
<u>Nolo Contendere (No Contest):</u>	You give up your right to a trial, to confront the witnesses, and to remain silent. You cannot appeal a no contest. The court determines your sentence, either through a plea arrangement or by sentencing you.	If you plead nolo contendere, you do not admit your guilt, but the judge finds you guilty. Nolo contendere pleas often have the same collateral consequences as pleading guilty to a crime

The Legal Process: Trial

Steps in the Trial Process	Court Action	Prosecutor Action	Defense Action
Motion in Limine	Rule on the Defense Motion	Argues against defense motions	Files motions concerning certain aspects of the case
Jury Selection	Jurors asked about their ability to sit on a jury	Asks questions. May strike someone from jury	Asks questions. May strike someone from jury
Reading of the Indictment		Reads indictment to jury	
Defendant Enters Plea			Responds to the charges with a plea of not guilty
Opening Statements		Makes a statement about what they can prove	Makes a statement about what they can prove
State's proof	Judge rules on objections	Puts on witnesses and evidence to prove guilt	Cross-examines witnesses and objects to evidence
Motion for Acquittal	Judge rules on motion and can acquit		Asks for acquittal because not enough proof
Defense Proof	Judge rules on the objections	Cross-examines witnesses and objects to evidence	Puts on witnesses and evidence to prove innocence
Prosecutions' Rebuttal		Puts on witnesses and evidence to rebut defense proof	Cross-examines witness and objects to evidence
Closing Argument		Makes a statement about what they proved during trial	Makes a statement about what they proved during trial
Jury Instructions	Judge instructs the jury about to decide innocent or guilty		
Deliberations	Jury meets to decide		

Pre-Sentence Investigation

If you plead guilty or nolo contendere without an agreement as to sentence, or if you are found guilty after a trial, the judge will set a date for a sentencing hearing and order that a pre-sentence investigation (PSI) report be prepared. The PSI gives the judge information he or she needs to help decide your sentence.

A **probation officer** will question you and may question your family, friends, employer, and witnesses in order to prepare this report. The PSI report will include a statement of the facts of your case, your prior criminal record, family background, employment history, and possibly a statement from you. The presentence report will also include something called a Risk Assessment Score, which is a score that estimates if you are at risk of being re-arrested again in the future. Your lawyer will discuss with you what your Risk Assessment score means and how it might affect the judge's decision in your case. **Be truthful with the probation officer** because *all* information is verified and any untruthful statements will be reported to the judge. In making any statements, be careful not to discuss the actual facts of your case until you have first talked to your lawyer. Your lawyer can help you in filling out the forms for the probation officer and advise you as to how you should conduct yourself.

After the report has been prepared, your lawyer will receive a copy, review it with you, and prepare for your sentencing hearing.

Sentencing Hearing

The judge will review the pre-sentence investigation report and consider other testimony at the Sentencing Hearing. He/she will give you an opportunity to talk. You and your lawyer should discuss this and carefully prepare for your testimony should you decide you want to talk to the judge. The judge will also consider statements from the D.A., your lawyer, and other interested persons. If you have people who would testify on your behalf, be sure to give their names and addresses to your lawyer so they can be contacted before your hearing.

Remember, every case and every defendant is different. Do not try to compare your sentence to sentences received by others in their cases.