

DEFINITIONS

Arraignment. The preliminary step taken by the court in a criminal prosecution, when a criminal defendant is brought before the court to hear the charges, be advised of his rights, and enter a plea.

Arrest Warrant. Criminal court order directing a law-enforcement officer to arrest and bring a criminal defendant to court.

Commitment. Criminal court order directing an officer to bring an incarcerated criminal defendant to court.

Mistrial. A trial that the judge brings to an end without a determination on the merits because of a procedural error or serious misconduct during the proceedings. In a criminal trial, when the jury cannot agree on a verdict unanimously, the judge usually rules that there is a mistrial.

Indictment. Formal written statement of a crime and presentation of the charges made by a grand jury, indicating that the case should be tried, also called a "true bill."

Information. Formal written criminal charge made by the prosecution without a grand-jury indictment, pursuant to a holding order by a criminal court. See preliminary hearing.

Plea. Response of a criminal defendant to the charges. Possible pleas include "Not Guilty," "Guilty," "No Contest," "Jeopardy," or "Not guilty by reason of insanity." A defendant may enter a "No Contest" plea without admitting guilt if he does not wish to contest the charges. For criminal court purposes, a "No Contest" plea has the same effect as a "Guilty" plea.

Preliminary Hearing. Criminal court hearing to determine whether there is sufficient evidence to prosecute a felony. The prosecution presents evidence to show that there is probable cause that a public offense occurred and that the defendant probably committed the offense. At the conclusion of the preliminary hearing, the defendant may be "held to answer," i.e., required to answer the charges.

Pretrial Conference. Meeting in criminal court before trial at which opposing attorneys confer, usually with the judge, to work toward the disposition of the case.

Portions of these definitions were adapted in part from Black's Law Dictionary (7th ed. 1999).

COUNTY OF SANTA CLARA
THE OFFICE OF THE DISTRICT ATTORNEY

HANDOUT 3

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Main Office, San Jose
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Palo Alto
(650) 324-6400

San Martin
(408) 686-3600

Sunnyvale
(408) 737-7422

Victim Witness Assistance
(408) 295-2656

Victim Notification System
1-800-464-3568

Office of Pretrial Services (SORP)
(408) 299-4091

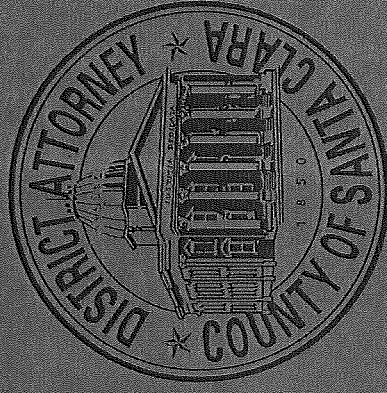
Adult Probation
(408) 435-2000

Jail Booking
(408) 299-2306

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A D U L T C R I M I N A L P R O C E D U R E



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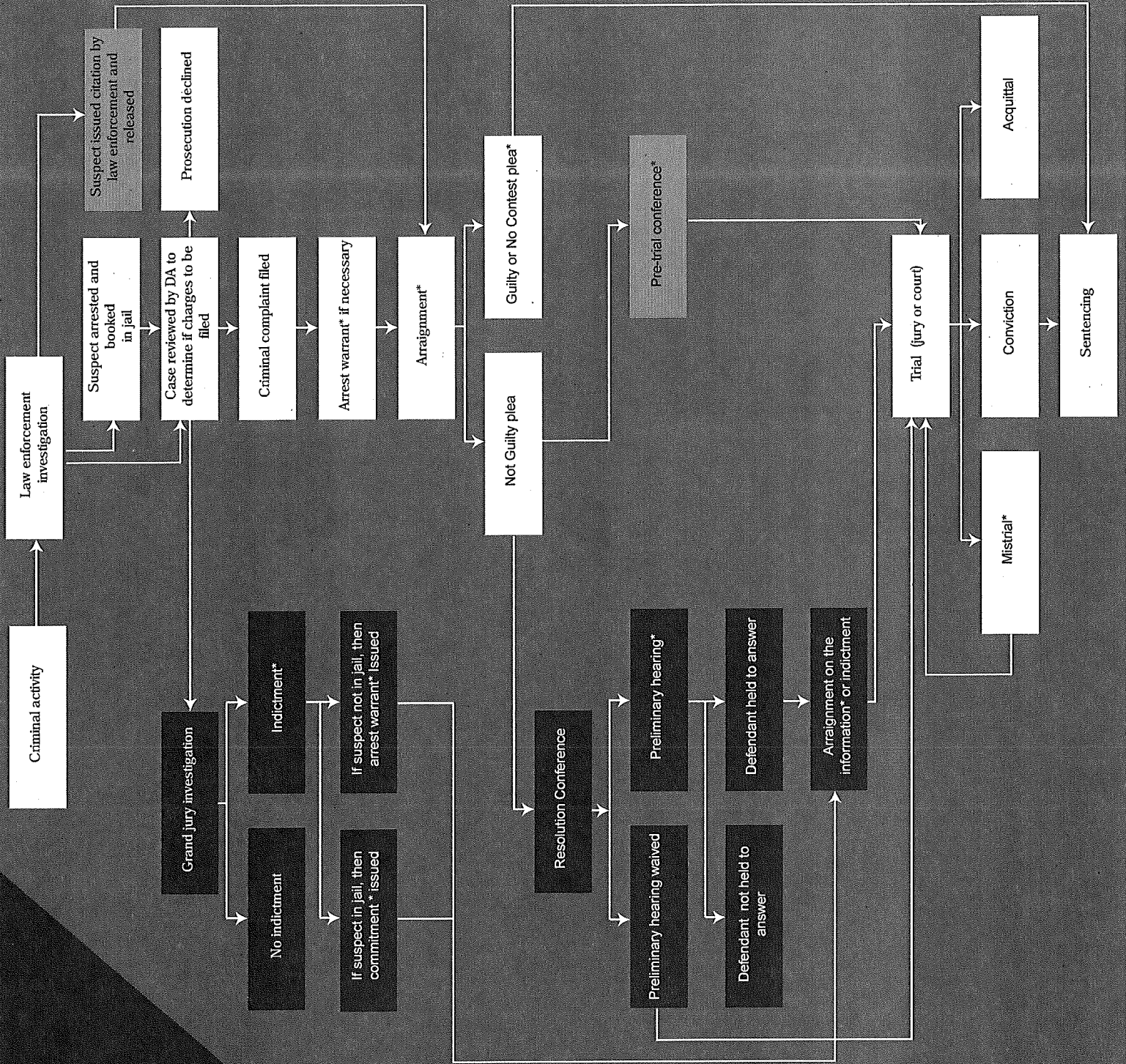
ADULT CRIMINAL PROCEDURE

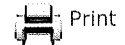
* See definition on front of pamphlet

White boxes
Apply to all crimes

Blue boxes
Apply to felonies only

Light blue boxes
Apply to misdemeanors only





Anatomy of a Criminal Case

A criminal case begins when a crime is committed and reported. Police respond by investigating the crime. This investigation may include interviewing victims, witnesses, and suspects; collecting physical evidence; viewing crime scenes and photographing; and identifying suspects through line-ups.

- Police Make an Arrest/Request a Warrant

When a crime is committed in a police officer's presence an officer may arrest a suspect on the spot without an arrest warrant. The officer may also arrest without a warrant if he/she has probable cause to believe that certain misdemeanors or any felony was committed even though not in the officer's presence. In other situations an arrest warrant is required. Even when an officer has the right to arrest a suspect without a warrant, the officer may decide to wait and obtain a warrant. The officer will later submit a request to the District Attorney's Office requesting a formal complaint and warrant and suggesting potential charges to be authorized.

- Warrant/Charging Request Reviewed by Prosecutor

Most cases begin with a complaint and warrant request. This is generally the first time that a prosecutor is involved in a case. At this stage, the prosecutor determines whether a person should be charged with a crime and, if so, what the crime should be. The prosecutor thoroughly reviews all reports and records concerning the case, including witness statements. The prosecutor also reviews the suspect's prior criminal or traffic record. Occasionally, the reviewing prosecutor sends the case back to the police to conduct additional investigation.

- Warrant Issued

The prosecutor can authorize filing a charge(s) if he/she reasonably believes probable cause exists that the suspect committed the offense, and he/she reasonably believes the charge can be proven beyond a reasonable doubt at trial with the information known at that time.

- Suspect Arrested (if not already in custody)

The delay between the crime date and the defendant's arrest on an authorized charge can take any length of time (e.g., if the defendant's whereabouts are unknown, or if he/she has left the State of California).

- Arraignment

This is the first court appearance for any misdemeanor or felony. Once arrested and charged with a felony, the suspect appears in court for arraignment. At arraignment, the defendant is told what crime he/she is charged with, and is advised of his/her constitutional rights to a jury or court trial, appointed attorney, presumption of innocence, etc. The charging document is called a complaint. The conditions and amount of bail are determined. In some cases, generally based on the nature of the charge, the

judge imposes conditions on bail, such as "no contact" with the victim. Bail is set in almost every case, but it is up to the defendant's own resources to post the bail money, which allows him/her to be released. All further pre-trial procedures are determined by whether the defendant is charged with a felony or misdemeanor:

- Misdemeanor

At a misdemeanor arraignment, the defendant will be given a chance to enter a plea to the charge: plead guilty, plead not guilty, or stand mute (i.e., remain silent, which is treated by the court at the defendant pleaded not guilty). If he/she pleads guilty or no contest, the Judge may sentence him/her on the spot or may reschedule the case for a sentencing date, which will give the probation department time to prepare a pre-sentence report including background information about the defendant and the crime, make a sentencing recommendation, etc. If the defendant stands mute or pleads not guilty, the case will be scheduled for a pretrial conference.

- Pretrial Proceedings

Many events can occur prior to trial. There are case discussions involving the Judge, prosecutor and defense attorney. The focus is on possibly resolving the case short of trial. Depending on the nature of the case, there may be pretrial hearings on Constitutional issues (confessions, searches, identification, etc.). The issues are presented to the court through written "motions" (e.g., Motion to Suppress Evidence). The judge must determine whether evidence will be admitted or suppressed at the defendant's trial, whether there is some legal reason why the defendant should not be tried, or decide other ground rules for trial.

- Felony

At a felony arraignment, the defendant enters a plea to the charge (guilty, not guilty, stand mute). He/she is advised of his/her right to a preliminary examination within 10 court days of the arraignment. If the defendant requests a court-appointed attorney, the court will review that request at the time of the arraignment.

- Preliminary Hearing

This is a contested hearing before a judge, sometimes called a "probable cause hearing." The prosecutor presents witnesses to convince the Judge that there is probable cause to believe that a crime was committed and that the defendant committed the crime. Because the burden of proof is much less than at a trial, the prosecutor generally does not call all potential witnesses to testify at the "prelim;" generally, the victim and some eye witnesses plus some of the police witnesses may testify. The defendant has an attorney, can cross examine the witnesses, and can present his/her own evidence (including witnesses). If probable cause is established, the defendant is "bound over" for trial. If the Judge decides that there is not probable cause that the defendant committed the crime, the charge can be dismissed or reduced to a misdemeanor for trial in court. A defendant can decide not to have a Preliminary Examination.

- Arraignment

After the case is "bound over" for a felony trial, the defendant is again arraigned (given formal notice of the charges against him/her). The charging document is called an Information. He/she is again advised of his/her constitutional rights, and enters a plea to the charge (guilty, not guilty or stand mute).

- Pretrial Proceedings

As with misdemeanors, the judge is called upon to resolve various pretrial issues, some of which determine whether the case will continue to a trial, be resolved with a plea, or be dismissed.

- Trial (Judge or Jury)

A trial is an adversary proceeding in which the prosecutor must present evidence to prove the defendant's guilt beyond a reasonable doubt. The prosecutor calls all the witnesses necessary to prove the crime. The defendant is not required to prove his/her innocence or to present any evidence, but may challenge the accuracy of the prosecutor's evidence. Both the defendant and the prosecutor (representing the People of the State of California) have the right to a trial by a jury. Sometimes both sides agree to let a judge listen to the evidence and decide the case without a jury; this is called a "court trial." In a jury trial, the jury is the "trier of fact;" in a court trial, it is the judge. After the evidence is presented, the judge or a jury will determine whether the evidence proved that the defendant committed the crime. If the defendant is found not guilty, the case ends. If the defendant is found guilty, a sentencing date will be set.

- Pre-Sentence Investigation and Report

The probation department prepares a report for the judge summarizing the crime, and the defendant's personal and criminal backgrounds. Generally, the victim is contacted for a recommendation of sentence. The probation officer concludes the report with a recommended sentence.

- Sentencing

Sentencing in California varies with the crime and can be the most confusing part of the criminal process. Most often, sentences are at the judge's discretion. At the time of sentencing, the judge will consider the information in the pre-sentence report before determining the sentence. The parties may correct factual errors in the pre-sentence report and offer additional evidence relevant to the judge's sentencing decision. The judge will consult the "sentencing guidelines" in the California Rules of Court, which aids the court in deciding upon an appropriate sentence. The judge may consider different alternatives, such as a fine, probation, community service, a sentence to jail or prison, or a combination. The judge must also order the defendant to make restitution to any victims who have suffered financial harm.

Attachments:

 **Adult Criminal Procedure**

