

Pretrial, Trial, and Sentencing.

After your ARRAIGNMENT, your case really begins.

Pretrial stage:

Your appointed lawyer should have already met with you if you are in custody, and you will certainly want to meet with your attorney after arraignment if you are out-of-custody and have not done so already.

The County Attorney and Attorney General are prosecutors, as are their deputies, and they represent the State of Arizona's interests in upholding the laws.

Usually the first thing that happens after the INDICTMENT is that the County Attorney's Office (or Attorney General's Office) sends to your attorney INITIAL DISCLOSURE and, often, a PLEA AGREEMENT, if one is going to be offered. INITIAL DISCLOSURE is the first concrete insight your lawyer will receive regarding the evidence the state has against you.

INITIAL DISCLOSURE typically contains only the police officers' reports. This is important because it tells you and your lawyer what the police officers will likely testify to if your case goes to trial. Along with the INITIAL DISCLOSURE will often be a PLEA AGREEMENT.

The PLEA AGREEMENT is an offer from the prosecutor to settle your case without going to trial; it requires that you plead guilty to one or more of the charges against you. If you plead guilty, you will have a conviction. Sometimes, the prosecutor will seek a conviction against you—through the PLEA AGREEMENT—for lesser felonies than those contained in your INDICTMENT. Or, the PLEA AGREEMENT could offer the same offense as contained in your INDICTMENT, but with an agreement to dismiss various ALLEGATIONS OF PRIOR CONVICTION, ALLEGATIONS OF COMMITTING AN OFFENSE WHILE ON RELEASE, ALLEGATIONS OF OVER THE THRESHOLD, and other types of ALLEGATIONS. The result of ALLEGATIONS, whether proven at trial or to the judge after trial, is either to require prison time without the possibility of probation or to increase the length of your potential prison time. Therefore, when the County Attorney's Office agrees to dismiss ALLEGATIONS, you normally receive a potential sentencing benefit.

It is solely the prosecutor's choice whether to offer a PLEA AGREEMENT and solely your choice whether to accept the offered plea agreement in exchange for the prosecutor reducing the charges, dismissing the remaining charges and/or dismissing the ALLEGATIONS contained in the INDICTMENT. Ideally, you should make that decision after talking with your lawyer, who will tell you the benefits and pitfalls of

pleading guilty in light of the strength of the evidence against you, as well as the potential sentencing benefits.

If you decide to reject a PLEA AGREEMENT, a formal court hearing will be set where you will reject the plea before a judge. Then, your case will proceed along the TRIAL track. At this point, your lawyer will likely receive SUPPLEMENTARY DISCLOSURE. SUPPLEMENTARY DISCLOSURE often includes forensic testing results, such as DNA or fingerprints, 911 tapes, recordings of police interviews with witnesses, video disclosure, photographs, and all other manner of evidence that the County Attorney may use against you to prove that you committed the offenses charged in the INDICTMENT.

After receiving the SUPPLEMENTARY DISCLOSURE, your lawyer may decide to file various MOTIONS, such as motions to suppress statements, motions to suppress evidence, motions in limine, motions to compel, and other types of motions that are supported by the facts and law of your particular case. Not every case requires every motion; not every motion is advisable even if it could be filed. For example, if the County Attorney's prosecutor is not going to be using any statement at trial that you gave to police, then your attorney may not file a motion to suppress your statement.

You may be wondering why your lawyer doesn't file MOTIONS sooner in your case. There are multiple reasons. One reason is that the County Attorney's Office may not have yet provided the factual basis (SUPPLEMENTARY DISCLOSURE) that the lawyer needs to be alerted to a legal or factual issue. A second reason is that the County Attorney's Office determines the conditions under which it offers its initial PLEA AGREEMENT, as, for example, the PLEA AGREEMENT may be offered on the condition that if any motion is filed, the prosecutor will withdraw the PLEA AGREEMENT. Remember, you don't have the right to a PLEA AGREEMENT, and the prosecutor can take back its plea offer at any time before you formally accept it.

On the way to TRIAL, your attorney will also conduct witness interviews and may seek out the services of an expert witness to the extent and degree their testimony is relevant to your case. These types of decisions are ones your lawyer makes. Also on the way to TRIAL, your lawyer may ask an investigator to look into a particular issue in your case. Paralegals will also be helping with your case by assisting the lawyer outside of court. For example, if you have a medical condition that might provide sympathetic information to the judge at SENTENCING, a paralegal may obtain a medical release and collect your medical records.

Once you are on the TRIAL track, it is unlikely that the County Attorney's Office will offer you another PLEA AGREEMENT.

Trial Stage.

By the time your case is ready for trial, all the motions have been filed, all witnesses have disclosed, and all investigation has concluded.

The first event at trial is VOIR DIRE, or jury selection. Its purpose is to question the potential jurors ordered to show up at the Pima County courthouse to insure that they can be fair to you and follow the law. The result is that 8 or 12 JURORS will make up your JURY, and they will decide whether you are guilty or not guilty. You should be present at this critical stage.

After the JURY is picked, the judge will give the JURY preliminary instructions that outline how your case will proceed. Next, the prosecutor gives his OPENING STATEMENT, and then your lawyer gives his. OPENING STATEMENTS are intended to lay out for the JURY what each lawyer expects the EVIDENCE to show.

EVIDENCE is everything said by a witness under oath. EVIDENCE can also be any physical item admitted, such as clothing, a fingerprint card, a gun. Often, what witnesses say under oath differs—one witness says one thing, a different witness says another. Part of the JURY's job is to determine what happened—the JURY can believe some, all, or none of a witness' testimony. For example, if a police officer says one thing and a civilian witness who was also present at the time of the alleged offense says something different, then it is the JURY's job to decide what the truth is—who is more believable or who is not mistaken.

The prosecutor's CASE-IN-CHIEF usually begins immediately after OPENING STATEMENTS. The prosecutor will call all of his witnesses: police officers, victims, other witnesses, experts if any. The prosecutor will direct each witness to give the EVIDENCE that the prosecutor wants to show: what is the witness' name, does he remember the night of (fill in the blank), what did he see, etc.

Your lawyer will then cross-examine those witnesses as necessary to bring out the points that will help your defense.

The prosecutor then gets an opportunity to re-direct (ask) his witnesses additional questions to clear up confusion created by cross-examination.

Finally, the JURY gets to ask questions (through the judge).

After the prosecutor's CASE-IN-CHIEF, the prosecutor will "rest". This is the time your lawyer will argue what is called a RULE 20. A RULE 20 motion challenges the sufficiency of the prosecutor's evidence. If there was insufficient evidence for the jury to find guilt—on one or more counts in the INDICTMENT—the judge will dismiss those counts, and you can't be tried again on those counts. More typically, all counts go forward to the JURY.

After the RULE 20, if you have evidence to put before the jury, this is when your lawyer will call defense witnesses or experts. You can also choose to testify, or you have the right to remain silent.

If you have no witnesses to testify on your behalf, and if you don't testify, your lawyer will "rest" the defense case.

Occasionally, the prosecutor will have REBUTTAL witnesses.

At the close of all evidence, the judge will read final JURY INSTRUCTIONS. The JURY INSTRUCTIONS tell the jury what the law is.

The lawyers then make CLOSING ARGUMENTS. This is when the prosecutor argues his view of the EVIDENCE. After he is finished, your lawyer will make a CLOSING ARGUMENT to the JURY as well, and try to persuade the JURY that reasonable doubt exists in your case, or whatever else is appropriate to argue given the evidence and your defense. Finally, the prosecutor gets to give a REBUTTAL closing argument. The prosecutor gets the last word with the JURY because the burden of proving your guilt is on the prosecutor.

The JURY then goes into a room in the courthouse to deliberate and decide whether you are guilty. If the JURY decides that you are not guilty on all charges, you will be released. If the JURY decides you are guilty of even one charge, you will generally be held in custody, or, if you were out-of-custody, you may be taken into custody. All the JURORS must agree on your guilt; otherwise, if one juror disagrees, the judge will declare a "mistrial," and you must be retried within 60 days.

Certain ALLEGATIONS will be presented to the same jury in a second, smaller trial after you are convicted.

If you are convicted (through a plea agreement or after a JURY finding of guilt), a SENTENCING hearing will be set.

Sentencing Stage.

After your conviction, an Adult Probation Officer will either visit you at the jail or otherwise speak with you. He or she will prepare a PRESENTENCE REPORT (PSR). The judge always considers the information in the PSR to help him or her decide on your sentence.

You and your lawyer can also prepare a SENTENCING MEMORANDUM or submit other mitigation materials. The SENTENCING MEMORANDUM is where the lawyer will give the judge additional information about you—your childhood and social history, your employment history, your education history, your mental health and physical health history, and any other information that is important to the decision of what sentence to give you. Your lawyer may choose to tell this information to the judge in court rather than write it in a SENTENCING MEMORANDUM.

If you are sentenced to the Arizona Department of Corrections (DOC), you will be transported to DOC's primary intake facility in Phoenix. Your lawyer's representation has generally ended at this point, with two exceptions: Your lawyer must file a NOTICE OF APPEAL OR NOTICE OF POST-CONVICTION RELIEF on your behalf should you ask for those to be filed. (See The Process, Part 3 tab.)

If you are given an opportunity on PROBATION, then you may need to ask your lawyer for continued help in several areas: MOTIONS to modify probation conditions, terminate probation, designate offense a misdemeanor, restore civil rights. (These will be described in the Probation tab, which is currently being worked on.)