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Criminal Procedure FAQ

1) What's the difference between a felony and a misdemeanor?

Most states break their crimes into two major groups: felonies and misdemeanors. Whether a crime falls into one category or the other depends on the potential punishment. If a law provides for imprisonment for longer than a year, it is usually considered a felony. If the potential punishment is for a year or less, then the crime is considered a misdemeanor.

Certain crimes are known as "wobblers," which means that the prosecutor may charge the crime as either a misdemeanor or a felony.

Behaviors punishable only by fine are usually not considered crimes at all, but infractions -- for example, traffic tickets. But legislatures sometimes label a behavior punishable only by fine as a misdemeanor -- such as possession of less than an ounce of marijuana for personal use in California.

2) What is the "presumption of innocence"?

All people accused of a crime are legally presumed to be innocent until they are convicted, either in a trial or as a result of pleading guilty. This presumption means not only that the prosecutor must convince the jury of the defendant's guilt, but also that the defendant need not say or do anything in his own defense. If the prosecutor can't convince the jury that the defendant is guilty, the defendant goes free.

The presumption of innocence, coupled with the fact that the prosecutor must prove the defendant's guilt beyond a reasonable doubt, makes it difficult for the government to put innocent people behind bars.

3) How can I tell from reading a criminal statute whether I'm guilty of the crime it defines?

Criminal statutes define crimes in terms of required acts and a required state of mind, usually described as the actor's "intent." These requirements are known as

the "elements" of the offense.
A prosecutor must convince a judge or jury that all of the elements of the crime have been satisfied -- meaning that the defendant did the acts and had the intent described in the statute.

For example, burglary is commonly defined as entering a building belonging to another person, with the intent to commit petty or grand theft (that is, to steal), or any felony. To convict a person of this offense, the prosecutor would have to prove three elements:

The defendant entered the structure.
The structure belonged to another person.
At the time the defendant entered the structure, he intended to commit petty or grand theft, or any felony.

Break the crime down into its required elements to see if each applies in your situation.

4) What standard is used in criminal trials to prove a defendant is guilty?

The prosecutor must convince the judge or jury of a defendant's guilt "beyond a reasonable doubt." This burden of proof is the highest that our system of justice imposes on a party to a trial. By contrast, in civil cases, such as those seeking damages for personal injuries or breach of contract, a plaintiff's burden is to prove a defendant liable by a preponderance of the evidence -- just over 50 percent.

As a practical matter, the high burden of proof in criminal cases means that judges and jurors are supposed to resolve all doubts about a defendant's guilt in favor of the defendant. With such a high standard imposed on the prosecutor, a defendant's most common defense is to argue that there is reasonable doubt -- that is, to argue that the prosecutor hasn't proved beyond a reasonable doubt that the defendant is guilty. To learn about other defenses used in criminal cases, read

5)If I'm accused of a crime, am I guaranteed a trial by a jury?

The U.S. Constitution gives a person accused of a crime the right to be tried by a jury. However, this right does not extend to petty offenses -- defined as offenses that do not carry a sentence of more than six months.

Usually, a right to a trial by jury means a 12-person jury must arrive at a

unanimous decision to convict or acquit. However, a jury can consist of as few as six persons. (Williams v. Florida, U.S. Sup. Ct, 1970.)

The size of juries tends to vary depending on the seriousness of the charge. For example, California requires 12-person juries for both felony and misdemeanor trials, except that the state and defendant may agree to less than 12-person juries in misdemeanors. Florida law provides for six-person juries in noncapital cases and 12-person juries in capital cases.

In most states, a lack of unanimity is called a "hung jury" and the defendant will go free unless the prosecutor decides to retry the case. In Oregon and Louisiana, however, 12-member juries may convict or acquit on a vote of ten to two.

6) Why would an innocent defendant choose not to testify?

The 5th Amendment to the U.S. Constitution gives every criminal defendant the right to remain silent. This means that a criminal defendant has no obligation to testify or to call witnesses. When a defendant remains silent, judges instruct jurors that the defendant has exercised a constitutional right and that they cannot infer guilt from the defendant's silence.

But there are some excellent reasons why even innocent defendants might remain silent at trial:

If the defendant has previously been convicted of a felony, the prosecutor may be able to attack the defendant's credibility as a witness by offering evidence of the conviction. Jurors may infer from a defendant's previous conviction that the defendant has committed the charged crime, though a judge instructs them not to. By choosing not to testify, a defendant can prevent jurors from finding out about previous convictions.

A defendant may have a poor demeanor when speaking in public. A judge or jury may not believe a defendant who, though telling the truth, is a nervous witness and makes a bad impression.

By presenting a defense case, defendants run the risk that jurors will find them guilty simply because they are not convinced that the defendant's evidence is accurate. Yet in reality, it is the prosecution that has the burden of convincing jurors of the defendant's guilt.

7) What happens if a defendant is judged "incompetent to stand trial"?

The question may arise as to whether a defendant is mentally capable of facing a trial. Defendants cannot be prosecuted if they suffer from a mental disorder that prevents them from understanding the proceedings and assisting in the preparation of their defense.

Based on a defendant's unusual behavior, a judge, prosecutor, or defense attorney may ask that trial be delayed until the defendant has been examined and his or her ability to understand the proceedings has been determined in a court hearing. If a judge finds that a defendant doesn't understand what's going on, the defendant will probably be placed in a mental institution until competence is reestablished. At that time, the trial will be held.