

# Frequently Asked Questions

## Criminal Division



### **Who is the defendant?**

The “defendant” is the suspect within an investigation, who has been claimed as committing a criminal offense.

### **Who is the victim?**

The “victim” within a case is identified as the individual that the criminal offense is committed against.

### **Who are the witnesses?**

Witnesses are anyone who may have information regarding a case. An identified “victim” is also a witness in an investigation and may be referred to as a “witness” in trial.

### **Who are the attorneys?**

There are two kinds of attorneys in a criminal case. The prosecutor works for the State prosecuting the case, against the defendant. The defense attorney works for the defendant to defend them against the alleged offense they are being accused of committing.

### **Who is the defense attorney?**

The defense attorney may be appointed to the defendant by the Public Defender’s Office, or may be privately chosen by the defendant. This is determined by the amount of income available to the defendant at the time of their arrest.

### **What is the role of the defense attorney?**

The defense attorney’s job is to defend their client (the defendant) by questioning the credibility and authenticity of evidence provided by the State’s prosecutor. This includes physical evidence as well as statements made by witnesses.

### **Who is the prosecutor?**

The prosecutor is the State’s attorney, assigned to prosecute the defendant in each criminal case.

### **What is the role of the prosecutor?**

The job of the prosecutor is to collaborate with law enforcement to collect evidence, including physical evidence, and witnesses’ statements, and to present all evidence to the Court. It is the job of the prosecutor to seek justice in a criminal case.

### **What is the role of the social worker?**

The social worker’s role is to contact the victim and family throughout the prosecution process. This includes providing updates of court hearings to the family, as well as sharing questions the victim or family may have regarding the outcome of cases with the prosecutor. The social worker may also provide resources regarding victim services.

### **Do children have to testify?**

Yes, children and anyone who has the ability to verbalize their claims can potentially testify. Children, or individuals with developmental delays, may be interviewed at the Children’s Advocacy Center during the course of investigating a case. These interviews are videotaped, and may be used to help during trial. Nonetheless, these individuals will have to “take the stand” and identify themselves, the authenticity of what was discussed in their statements, and state if they were truthful while being interviewed.

Anyone who testifies in a trial is subject to cross-examination by the defense. This is the opportunity for the defendant’s attorney to question the witness on the stand.

### **Can we use children's taped statements for the (entire) trial?**

Taped statements may be used in a trial, but additional questions may be asked of the witness who is testifying. This would include questions asked, in the courtroom, by the defense team during cross examination.

### **If I am called as a witness to testify, what do I say?**

Tell the truth. You should always contact the prosecutor or victim assistance staff before the trial starts if you have any questions.

### **Are you (the State) working for me specifically?**

No. The State prosecutor and social worker's position is to provide justice regarding the outcome of the case, and to provide support to the identified victims of the offense. Any legal decisions, including offering a plea agreements or proceeding to trial, are made by the assigned prosecutor. Identified victims or witnesses do NOT have the discretion to "drop charges" or to proceed with charges that they believe "fit the crime." Please cooperate with your assigned prosecutor or social worker to discuss your wishes to resolve a case. This input will be used by the prosecutor to determine the best course of action in each case.

### **Do I have to participate during Court hearings?**

Identified victims and witnesses will receive notifications, such as when preliminary hearings, arraignment, case reviews, trial and sentencing are scheduled. All of these court hearings, in Superior Court, are open to the public. Preliminary hearing, arraignment, case review, and sentencing are all optional appearances for victims and witnesses. **If any Court appearance is received by a victim or witness by a subpoena, then your presence is mandatory. This would include all trial notifications.** Please check with the assigned social worker or prosecutor for details regarding these appearances.

The more cooperation, participation, and input provided in each case, by victims/witnesses, the more appropriately the case can be resolved.

### **How is a defendant found guilty?**

A defendant may be found guilty if they choose to accept a plea agreement (admit their guilt) prior to trial or if they are convicted of a crime in trial.

### **What does Nolle Prosequi mean?**

This is a Latin legal term meaning "will no longer prosecute." It is equivalent to "dropping" a charge. Sometimes, it is appropriate for charges to no longer be pursued. An example of this is, if a defendant pleads to a lesser included crime, in a plea agreement, the remaining charges may be "dropped" or "Nolle Prosequi".

### **When is a defendant sentenced? When do I get a chance to explain my feelings regarding the case?**

After a conviction, each defendant is sentenced. In some cases, immediate sentencing is appropriate. This would include a sentence order on the same day that the defendant accepts a plea agreement. In other cases, sentencing is deferred to a date after the plea agreement is made in Court.

At the time of sentencing, the victim and family has an opportunity to make a victim impact statement, expressing their feelings regarding the impact of the offense, and their wishes for the outcome of the defendant. Please discuss your feelings about this resolution with the assigned case prosecutor and/or social worker in advance, to be sure your thoughts and feelings are expressed at the time of sentencing.

Please note: Witnesses (other than the victim or their family) are not contacted to submit victim impact statements.

### **What is a victim impact statement?**

This statement is obtained to express how the crime committed has affected the identified victim and family. It may include the physical and emotional impact the case has had on the identified victim and family. This statement is shared with the defense and given to the Judge in each case. This statement may also include an individual's wishes for the defendant, including incarceration, probation, no contact orders, or other restrictions/provisions.

Victim impact statements may be prepared as written letters to the Court, or stated at the time of sentencing. The victim or an identified family member may present this information, or provide a written copy for the prosecutor to provide on their behalf. Any statement prepared should be addressed to the Judge.

### **What is the Pre-Sentence Investigation (PSI) Office? Why are they contacting me?**

Some cases are ordered to have a PSI report completed between the time of the defendant's conviction (guilt) and before the sentence is ordered. The PSI Office is a separate State agency, contracted to collect information regarding the defendant and victim's background. A report is written by the assigned PSI officer and presented to the Judge prior to the sentencing of the defendant. This information is reviewed by the Judge to order an appropriate sentence to the defendant.

If the PSI Office contacts you via standard mail or phone, please consider responding to their inquiry. The more information collected by the PSI office, the more background information the Judge is informed of at the time of sentencing.

### **I received a subpoena to appear weeks ago. How do I know if the case is still going to trial that day?**

If you haven't heard from the prosecution team assigned to your case, please call our office the day before trial to confirm that the case is still scheduled.

### **Do I actually have to appear?**

Yes. You have received a subpoena from the court and cannot ignore it. If you do not appear the judge could issue a warrant for your arrest.

### **How does restitution work?**

Once you gather all the appropriate documents (medical bills, receipts, etc...) and submit them to Victim Services, that information will then provide that figure to the court and defense counsel. There is a specific time frame to submit your restitution paperwork so if you are not sure please contact our office. There is also a 30-day period for defense counsel to dispute. If undisputed, the court will issue a judgement. The defendant will then make payments to the court, and the court will then make payments to you. They have the term of their probation to make the full restitution amount, if not there is a chance that the court will violate the probation and issue further sanctions. **\*If you plan on filing a civil suit against the defendant please communicate that along with your attorney's contact information \***

### **How do I drop or modify a no contact order against the defendant?**

The defendant is responsible for filing a motion in court to have the no contact order dropped or modified to no unlawful contact. A hearing on the dropping/modification of the no contact order will then be scheduled as a separate matter and ruled on by the presiding judge. Once the motion is filed by the defendant, the State will then contact the V to see if they want the n/c order amended. The State will then respond to the motion and there may be a hearing on the matter.

### **Do cases always have a trial?**

No. Although the defendant has a right to a trial, cases can also be resolved through plea agreements or because charges were dismissed.

### **Why are charges dismissed?**

Charges may be dropped before the indictment or information because they may have been initially inappropriate, or some charges are so similar it is not appropriate to proceed on all of them. Charges may be dropped after indictment or information because there are problems with evidence, witness availability, valid defenses, credibility, or other reasons.

### **Why are charges reduced/plea agreements made?**

Charges are reduced/plea agreements made when the penalty and possible sentencing conditions are similar to what the defendant would get for the original charges: or the prosecutor believes there may not be enough evidence to get a conviction on the original charges. Plea agreements remove all of the risk that is part of a jury trial. It is a sure thing. When the defendant enters a guilty plea, there is no appeal.