

Plea Bargains

A plea bargain is an agreement between the prosecutor and defendant and his/her attorney in which the State recommends a specific punishment in the case if the defendant enters a plea of guilty. The punishment agreement is not binding until final approval is provided by the judge. The judge may impose any punishment within the range authorized by law.

Trial

In a trial, the prosecutor presents the case for the State. The prosecutor's job is to prove beyond a reasonable doubt the defendant committed the crime as charged. The defendant has the right to present or not present his/her case. The jury or the judge must decide if the State's case has been proven beyond a reasonable doubt.

Sentencing

If the defendant is found guilty, the law allows for a second stage of trial at which time punishment is set.

The defendant can choose in advance to have his/her punishment set by the judge or jury. A range that is allowable by law will determine the punishment. In addition, a judge may rely on the probation department to conduct a sentencing investigation and offer recommendations.

Appeals

Following a conviction, the defendant has a right to appeal his or her case to an appellate court. The defendant may appeal on the grounds that an error occurred at trial requiring a reversal of conviction.

Texas Crime Victims Have a Right to:

- Be protected from further harm or threats for cooperating with prosecution efforts.
- Be informed about the defendant's right to bail and have the victim's safety considered in the setting of bail.
- Be informed about relevant court proceedings
- Be informed about procedures in a criminal investigation and the criminal justice system.
- Provide information to the probation department on the impact of the crime for inclusion in the pre-sentence investigation report to the judge
- Receive information about the Crime Victims' Compensation Program, including information about compensation, eligibility for compensation, and procedures for application for compensation.
- Be notified of parole procedures and release of the defendant.
- Be provided with a separate and secure waiting area for witnesses at trial.
- Prompt return of property held as evidence when no longer required.
- Have the state attorney notify the victim's employer if victim's cooperation and testimony requires absence from work.
- Counseling and testing regarding acquired immune deficiency syndrome (AIDS/HIV) if the crime was sexual in nature.
- Request victim-offender mediation coordinated by the Texas Department of Criminal Justice Victim Services Division.
- Be informed of uses of a victim impact statement and have the opportunity to complete such a statement to be considered by the state attorney and the Board of Pardons and Paroles.
- Be present at all court proceedings related to the offense, subject to a judge's approval.

A Guide to the Texas Criminal Legal System

For Family Violence Victims



Thirty Years of Building a Safer Texas

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Family Violence

Family violence is a crime that can cause psychological, physical, and emotional harm. The crime may involve a knife, a gun, or some other object used as a weapon, but the most common weapon involved in family violence cases is physical force through use of hands, feet and fists.

Family violence is defined in the Texas Family Code as:

- (1) An act by a member of a family or household against another member of the family or household intended to result in physical harm, bodily injury, assault, or sexual assault or is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault, but does not include defensive measures to protect oneself."¹
- (2) Abuse... by a member of a family or household toward a child of the family or household; or"¹
- (3) "Dating violence..."¹ which is "an act by an individual against another individual with whom that person has or has had a dating relationship and is intended to result in physical harm, bodily injury, assault, or sexual assault or is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault, but does not include defensive measures to protect oneself."²

1 TX Family Code § 71.004,

2 TX Family Code § 71.0021

When a Crime Occurs

Call 911 for law enforcement and/or emergency medical care. The National Domestic Violence Hotline is available for crisis intervention, safety planning, and referrals to domestic violence shelters and services 24-hours a day at 1-800-799-SAFE (7233), 1-800-787-3224 (TTY for the Deaf). For legal referrals and information contact the Texas Advocacy Project Family Violence Legal Line at 1-800-374-4673.

The Complaint

Before an arrest, a complaint must be filed charging a specific person with a violation of criminal law. Someone familiar with the facts of the crime, either by direct knowledge or through investigation, must swear to the complaint. It can be filed by an individual or law enforcement officer. That person then becomes a witness for the state.

Sending Charges to the Prosecutor

The prosecutor's office will often 'screen' the case to determine if there is sufficient evidence to:

- prove a crime was committed and
- show probable cause the accused is the person who committed the crime.

Once the prosecutor's office accepts the case, an arrest can be made and bail set.

The Arrest

A judge may issue an arrest warrant once a complaint has been issued. In the case of family violence offenses, a law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense involving family violence.

A law enforcement officer must also arrest a person without a warrant if the person violates a protective order in the presence of the officer.*

"A peace officer shall arrest, without a warrant, a person the peace officer has probable cause to believe has committed an offense under Section 25.07, Penal Code (violation of Protective Order)...if the offense is committed in the presence of the peace officer."*

* *Texas Criminal Code Art. 1403*

After the Arrest

The accused will be taken before a judge to be formally charged. The judge will explain the complaint charges and advise the defendant of his/her rights. The judge is also required to set a bail amount for the defendant.

Bail

Bail is defined in the Texas Code of Criminal Procedure 17.01 as:

"the security given by the accused he will appear and answer before the proper court the accusations brought against him, and includes a bail bond or a personal bond."

The legal purpose of bail is to guarantee the defendant's appearance in court at a later date. The judge is required to consider the seriousness of the offense, defendant's ability to raise the necessary money, and future safety of the victim and the community.

If a defendant cannot post bail, she/he remains in custody.

The victim may request an emergency order of protection against his/her abuser when the abuser posts bail.

"At the defendant's appearance before a magistrate after arrest for an offense involving family violence...the magistrate may issue an order for emergency protection on the magistrate's own motion or on the request of:

- (1) the victim of the offense;
- (2) guardian of the victim;
- (3) a peace officer, or
- (4) an attorney representing the state."*

"The magistrate shall issue an order for emergency protection if the arrest is for an offense involving family violence also involves:

- (1) serious bodily injury to the victim; or
- (2) use or exhibition of a deadly weapon during the commission of an assault."*

**Texas Criminal Art. 17.292*

Further Detention After Posting

There are instances where a defendant may be further detained after posting bail, such as the arrest of a person without a warrant in the prevention of family violence. The individual may be:

--held "for a period of not more than four hours after bond has been posted."*

--held for up to 24 hours if the detention is authorized in writing by a magistrate who concludes the violence would continue if the person is released.

--held for up to 48 hours if probable cause exists to believe the person committed the offense, violence would continue if the person is released and, during the 10-year period preceding the date of the offense, the person has been arrested:

(1) "if on more than one occasion for an offense involving family violence; or"*

(2) "for any other offense, if a deadly weapon... was used or exhibited during commission of the offense or during immediate flight after commission of the offense."*

**Texas Criminal Code Art. 17.291*

The Grand Jury

The grand jury is comprised of twelve citizens who serve a set term and decide if enough evidence exists against the accused to go to trial. If it determines there is sufficient evidence against the accused, it returns an indictment, or a 'true bill.' At least nine jurors must vote in favor of an indictment, or the case is 'no-billed,' which terminates the case.

Grand jury proceedings are not open to the public and its deliberations are secret. Only the grand jurors are present when voting takes place.

Pre-Trial Hearing

Once an indictment has been returned by a grand jury, the case will be scheduled for a pre-trial hearing. At this hearing the defendant and defendant's attorney advise the judge if the defendant wants a trial or will plead guilty. If a trial is desired the defense will inform the judge a jury is required. Each defendant has a right to a trial by jury or judge. Certain motions concerning legal issues may be heard at the pre-trial hearing. On occasion, witnesses may be needed for the pre-trial hearing. If one's presence is required the prosecution will provide notification.