

Legal Definitions

- A. A County District Attorney or the State's Attorney General is authorized to file and prosecute criminal charges against persons believed to have committed a crime. These cases are filed in the name of the PEOPLE OF THE STATE OF CALIFORNIA against the person charged with a criminal offense, known as the defendant.
- B. The United States and California Constitutions guarantee to one charged with a crime the right:
1. To a speedy and public trial by court or jury.
 2. To appear in person and with counsel.
 3. To produce witnesses on his or her behalf and to be confronted with the witnesses against him or her in the presence of the Court and jury and to cross-examine those witnesses.
 4. Not to testify ("right against self-incrimination").
- C. Crimes are defined as felonies, misdemeanors or infractions:
1. **FELONIES**
 - a. A felony is a crime that is punishable by incarceration in the State Prison for one (1) year or longer and is prosecuted in the Superior Court by way of an Indictment by a Grand Jury, or by an "Information" filed by the District Attorney.
 - b. Common examples of felonies are murders, manslaughter, robbery, burglary, grand theft, forgery, arson, rape and sales of narcotics.
 2. **MISDEMEANORS**
 - a. All other crimes are misdemeanors or infractions. Misdemeanors are punishable by fine and/or imprisonment in the County Jail (not State Prison) for a period less than one year.
 - b. Common examples of misdemeanors are simple assault, battery, petty theft, possession of small amounts of narcotics, disturbing the peace and violations of some City or County ordinances.
 3. **INFRACTIONS**
 - a. Infractions are minor violations of City or County ordinances or State laws. The penalty for an infraction can be either a fine, assignment to public service or both.
 - b. An infraction is not punishable by imprisonment, and a party charged with an infraction is not entitled to trial by jury or to have counsel appointed.
 - c. The defendant, at arrangement, can elect to have an infraction proceed as a misdemeanor.
 - d. Infractions are commenced by the issuance of a citation to the defendant and filing of the citation with the Court.
- D. **HABEAS CORPUS:** Every person unlawfully in prison or restrained of his or her liberty under any pretense whatsoever, may file in a Court of Law a Writ of Habeas Corpus to order the imprisoning or restraining official to bring the individual imprisoned or restrained to court so it can be determined whether that person has been lawfully detained and whether he or she should be released from custody.
1. **APPLICATION FOR WRIT, HOW MADE:** By filing a petition under oath in the court specifying:
 - a. That the person is imprisoned or restrained by an official (naming same) and giving the place of restraint.
 - b. That the imprisonment or restraint is contrary to law, stating the reasons.
 2. **WRIT:** The writ is then issued by the court admitting the accused to liberty under bail, the

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amount being set by the court, commanding the accused to return before the court at a fixed time for a hearing on the petition for the writ.

3. **RETURN:** The official upon whom the writ is served must make a return stating:
 - a. The authority for the imprisonment or restraint.
 - b. The return must be signed by the person making the same, and except where the person is a public officer, must be verified.
 - c. The official to whom the writ is directed must bring the individual imprisoned or restrained to court at a fixed time as commanded by the writ.
4. **PROCEEDING ON HEARING:** The court then proceeds to hear such proof as may be produced in favor of detention or against detention and if no legal cause is shown for detention (such as a valid complaint and warrant for arrest) the court may discharge the accused from custody; otherwise the court must remand the individual to the custody of official.
5. **COURTS THAT CAN ISSUE A WRIT:** In California the Superior Courts, District Courts of Appeal and the Supreme Court may issue writs.

E. **BAIL:** A defendant may be admitted to bail after a criminal charge has been filed against him or her, as a matter of right, unless the charge is one punishable by death and the presumption of guilt is evident. However, the court has the discretion to set bail.

1. **ADMISSION TO BAIL DEFINED:** Admission to bail is the order of a competent court or magistrate that the defendant be discharged from actual custody on bail.
2. **DEPOSIT IN LIEU OF BAIL:** The defendant may deposit cash on bail set by the court.
3. **OWN RECOGNIZANCE:** The court may release the defendant on his or her own recognizance upon a promise to appear without posting bail.

F. BURDEN OF PROOF

1. In all criminal trials, a defendant is **presumed innocent** unless and until the prosecutor proves guilt (to the Judge in a Court Trial or the Jury in a Jury Trial) **BEYOND A REASONABLE DOUBT**. In other words, if after hearing all the evidence, there is a reasonable doubt whether the defendant committed the crime, the defendant must be acquitted, e.g. found NOT GUILTY. On the other hand, if, after hearing all the evidence, there is no reasonable doubt that the defendant committed the crime, the prosecutor has met his or her burden of proof and the verdict must be that the defendant is GUILTY.
2. In civil cases, the plaintiff (the party suing) has the burden of proving his or her right to recover from the defendant by a "preponderance of the evidence," which means the evidence has more convincing force than that opposed to it. This is a lesser burden of proof than a prosecutor has in a criminal case.

G. **UNANIMOUS JURY REQUIRED.** Criminal jury trials require twelve (12) jurors (we use 6 at Boys' State). Before a GUILTY or a NOT GUILTY verdict can be returned, all twelve (12) jurors must agree. If all cannot agree, then the court declares the jury deadlocked ("hung"), declares a "mistrial" and orders a new trial before a new jury. (Civil jury trials require a $\frac{3}{4}$ majority for a valid verdict. Thus, 9 of 12, 6 of 8 or 5 of 6 jurors can reach a verdict in a civil case.)

H. **Trial.** At the Trial, the judge takes the "Bench" with his clerk stationed to one side of the bench, a court reporter in front of the witness stand, the bailiff (deputy sheriff) situated in the middle of the courtroom as a buffer between the audience and the bench (or if the defendant is in custody, the bailiff is seated near the defendant), the witness box and the jury box located on opposite side of the bench from the place the court clerk is seated, and the litigants and counsel seated at the counsel table in the "well" of the courtroom facing the judge.

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1. Bailiff calls the Court to order.
 - a. **Example:** (Clerk of the Court informs the bailiff that the Judge is ready). The bailiff says: "All rise. In the presence of the flag of the United States of America and remembering the principles for which it stands, the Superior Court of the County of _____, California Boys' State is now in session, the Honorable _____, Judge, presiding. Please be seated."
2. Arraignment.
 - a. All criminal cases require an arraignment (formal statement of charges, advisement of rights and taking of plea). Civil cases do not require an arraignment.
 - b. Judge informs all defendants concerning their rights. **Example:** "You are advised that you have a right to represent yourself or be represented by an attorney at all stages of these proceedings. You have a right to cross-examine witnesses against you. You have a right to subpoena witnesses on your behalf. You have a right to a speedy and public trial by Court or by Jury. If you cannot afford an attorney, the Court shall appoint one in your behalf."
 - c. Judge calls the name of the case. **Example:** "People vs. Jones."
 - d. Defendant steps forward.
 - e. Judge announces that defendant is charged with a specific crime and asks for a plea. **Example:** "Mr. Jones, you are charged with a violation of City Ordinance #11, to wit, a failure to stop at the City boundary and ask permission to enter. How do you plead?"
 - f. If defendant pleads guilty, Boys' State Judge accepts his plea and passes sentence.
 - g. If defendant pleads not guilty, Boys' State Judge must accept this plea, ask defendant whether he wants a Court or Jury Trial and sets time for trial accordingly. If the defendant gives up his right to a jury, the court must ask the People if they desire a jury trial. If no delay is requested, trial may be held at once in Boys' State.
3. Order of Trial.
 - a. Judge calls the case by name. **Example:** "People vs. Jones."
 - b. If either the defendant or the prosecutor has asked for a jury trial, twelve (12) (six [6] at Boys' State) jurors are seated in the jury box.
 - c. Clerk swears jurors for interrogation. **Example:** "Do you solemnly swear (or affirm) that you will give true answers to questions testing your qualifications to act as jurors?"
 - d. Judge reads charges to the jury. **Example:** "Defendant is here charged with failure to stop at City boundary as required by City Ordinance #11 - to which he has pleaded not guilty."
 - e. Judge then questions jurors on their qualifications, attitudes and experiences and elicits from them a brief biographical statement. Then, each attorney is permitted to ask questions of these prospective jurors. This is called voir dire examination of the jurors.

Example #1: "Do any of you hold anything against this defendant simply because he has been charged with this crime and asked to stand trial here? You all realize that none of this is evidence against him and that he must be proven guilty solely from testimony produced here in court beyond a reasonable doubt."

Example #2: "Can any of you think of any reason why you cannot decide this case fairly and impartially?"
 - f. Judge then gives defendant or his (or her) attorney an opportunity to ask similar questions. **NOTE:** In a civil case, plaintiff starts the questioning rather than the defendant. **Example:** "Is there anyone here

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who would give more or less weight to the testimony of a Police Officer than to any other witness?"

- g. Prosecutor is then given an opportunity to ask similar questions. **Example:** Only the Police Officer and the defendant witnessed this act. You all understand that just because there is only one witness on each side, that this does not alone raise a reasonable doubt; in other words, it is not the relative number of witnesses, but the convincing force of the evidence that counts. Do you all understand that?"
NOTE: If answers are unsatisfactory to any question by Court or Counsel, the Judge may excuse a juror for cause.
- h. Prosecutor may exercise peremptory challenges – i.e., A challenge may be made without giving a reason – The Judge must excuse a juror thus challenged. (**NOTE:** At Boys' State, each party has two peremptory challenges.)
- i. The defendant may exercise peremptory challenges, alternating with the prosecutor, one challenge at a time.
- j. When a juror is excused whether for cause or peremptory challenge, a new juror is called, and he or she is subject to examination and challenge.
- k. When challenges are exhausted, or parties are satisfied with the jury, the clerk swears in the jury to try the case. **NOTE:** Challenges need not be made – i.e., A party may "pass" rather than challenge.
Juror Oath: "Do you solemnly swear (or affirm) that you will faithfully and fairly listen to the evidence, follow the court's instructions on the law and render a just and true verdict to this court?"
- l. Each attorney at this stage is entitled to an opening statement explaining the case and telling the jury what he or she expects to prove based on the evidence he or she has to offer. The prosecutor presents the first opening statement. The defendant may then present an opening statement or reserve the defense opening statement until after the close of the prosecution's case.
- m. The People present their case first. The clerk swears each witness in turn. Witness Oath: "Do you solemnly swear (or affirm) that the testimony you are about to give in the pending matter before this court is the truth, the whole truth and nothing but the truth (so help me God)?"
- n. The People then examine each witness (direct examination) subject to the Rules of Evidence.
- o. At the conclusion of the direct examination of a witness, the defense counsel has the right to cross-examine the witness, the cross-examination being limited to matters testified to on direct examination, or matters related to impeachment of the witnesses being examined. At the conclusion of the cross-examination, the prosecution has the right to re-direct examination, this being limited to new matters testified to during cross-examination of the witness and not a repetition of the direct examination.
- p. The People call the next witness, followed by cross-examination, and so on until the People have presented all its evidence, at which time the People "rest."
- q. The defendant then calls his or her first witness for direct examination, followed by the People's cross-examination, and so on until he or she has presented all the evidence for the defense, at which time the defendant "rests."
- r. When the defense rests, the prosecutor may then introduce rebuttal evidence. Once the evidence closes, the attorneys give their summations (closing arguments) to the jury. The prosecutor gives the opening argument. The defense gives its one and only closing argument, followed by the prosecutor's closing/rebuttal argument. Because the People (and Plaintiff in a civil case) have the burden of proof the Prosecution (and Plaintiff in a civil case) speaks first and last.
- s. The court may control the order of proof and the manner of examining the witnesses so as to promote efficiency and to protect the witnesses from undue harassment. On direct examination, leading questions are not allowed. On cross-examination, leading questions are allowed. **NOTE:** In a civil case, plaintiff is substituted for the People.

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- t. At this point, if there is no jury, the judge simply decides the question of guilt or innocence and pronounces sentence, if any. In a civil case, the trier of fact decides issues of liability first, and if liability is found, then decides questions of damages.
- u. If there is a jury, the judge instructs the jury by reading the jury instructions to them (see below) after which the clerk administers the following oath to the bailiff:
 “Do you swear (or affirm) to take charge of this jury, keeping them in some private and convenient place, allowing no one to communicate with them and not communicate with them yourself, unless ordered to do so by this court, until they have reached a verdict?”
- v. **JURY INSTRUCTIONS**
 - (1). It becomes my duty as a judge to instruct you concerning the law applicable to this case, and it is your duty to follow the law as I shall state it to you. The function of the jury is to determine the issues of fact that are presented by the allegations in the complaint filed in this court and the defendant’s plea of “NOT GUILTY.”
 - (2). In determining the guilt or innocence of the defendant, you are to be governed solely by the evidence introduced in this trial and the law as stated to you by the court. You should consider the case before you dispassionately and with the sole purpose of reaching a just verdict. Although the issues should be fully discussed in your deliberation, the verdict must express the individual opinion of each juror. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his or her guilt is satisfactorily shown, he or she is entitled to an acquittal. Reasonable doubt is defined as follows:

“It is not a mere possibility, doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they feel an abiding conviction, to a moral certainty, of the truth of the charge.”
 - (3). If the evidence (as to any particular count) is susceptible of two reasonable interpretations, one of which points to the defendants’ guilt and the other to his or her innocence, it is your duty to adopt that interpretation which points to the defendant’s innocence, and reject the other which points to his or her guilt. If, on the other hand, one interpretation of the evidence appears to you to be reasonable and the other to be unreasonable, it is your duty to accept the reasonable interpretation and to reject the unreasonable interpretation.
 - (4). You are the sole and exclusive judges of the credibility of the witnesses who have testified in the case. The defendant is a “witness” if he or she testifies. A witness willfully false in any material part of his testimony is to be distrusted in others.
 - (5). The defendant in this case is charged with violation of city ordinance # _____. The law, insofar as it relates to the alleged offense, provides as follows: (Read the ordinance).
 - (6). Upon retiring to the Jury Room, you will select one of your number to act as foreman, who will preside over your deliberations and who will state the verdict to which you agree. In order to return a verdict, it is necessary that all six (6) jurors agree to the decision. As soon as all of you have agreed upon a verdict, you shall return with it to this Court.
- w. When the verdict is reached by the jury, it is brought back to the court and the judge asks: “Have you reached a verdict?” The foreman answers, “Yes.” and the judge asks the foreman: “Do you find the defendant guilty or not guilty?” The foreman then states the verdict. The judge asks the jury members if they all agree, whereupon the jurors answer. The clerk of the court then records the verdict after the judge examines the written verdict record and approves.
- x. If the jurors cannot agree to a verdict, Boys’ State Judges may declare a mistrial and the case may be tried again, if time permits.

Rules of Evidence

- A. CORPUS DELICTI:** the substantial and fundamental facts necessary to the commission of a crime.
1. Every crime consists of a group of elements laid down by the law defining the offense, and every element must be proved. This group of elements is known as the "corpus delicti." Not limited to murder and does not mean the dead body.
 2. Each party must prove his or her own case. The burden of proof remains on the prosecution in a criminal case, who must prove the case beyond a reasonable doubt and to a moral certainty in order to justify the conviction of a defendant charged with a criminal offense.
 3. In a civil case, the burden of proof is on the plaintiff and the proof must be by a preponderance of the evidence.
- B. EXPERT OPINION:** Rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception exists in the case of an expert witness. A person who by education and experience has become an expert in any art, science, or profession may give his or her opinion as to any matter in which he or she is versed which is material to the case.
- C. ALIBI:** Where a defendant introduces evidence tending to prove that he or she was not present at the time and place of the commission of the crime, he or she is attempting to prove an alibi. If such evidence raises a reasonable doubt as to whether he or she was present, he or she is entitled to an acquittal.
- D. CONFESSION:** A confession is a statement that was made by a defendant, prior to the trial, that acknowledges conduct and acts of his or her own that constituted a crime for which he or she is on trial. To be admissible against the defendant, the confession must be shown to be free and voluntary.
- E. EVIDENCE:**
1. Direct evidence is the testimony of an eye witness relating what he or she actually perceived with his or her own physical senses.
 2. All other evidence is circumstantial evidence consisting of act, statement, conduct, or fact used to prove the guilt or innocence of the defendant.
 3. Both direct and circumstantial evidence must be competent, relevant and admissible evidence.
 4. Evidence may consist of knowledge of the court, testimony of witnesses, documents and writing, and other material objects used as exhibits to prove the case.
- F. OBJECTIONS** (Evidence a lawyer can object to):
1. **IMPROPER EVIDENCE:** Evidence may be said to be incompetent, irrelevant, and immaterial. Incompetent evidence is that evidence which is not fit for the purpose for which it was offered. The word "incompetent" is frequently used in stating objection to evidence and has a meaning practically identical with "inadmissible and irrelevant."
 2. **LEADING QUESTIONS ASKED ON DIRECT EXAMINATION:** A leading question is one that is so formed as to suggest to the witness the answer that is desired. The attorney is in effect "testifying" by means of a leading question. Leading questions on direct and re-direct examination are usually objectionable according to the rules of evidence.
 3. **SUGGESTIVE QUESTIONS:** While not as strong as the leading ones, suggestive questions suggest an answer to the witness and do not leave the witness free to think and express his or her own answer. Questions should be clear, simple (as opposed to compound) and fair.
 4. **"OBJECTION YOUR HONOR:"**
 - a. **Calls for conclusion:** The question calls for a conclusion from the witness.
 - b. **Assumes facts not in evidence:** The question assumes facts not in evidence in the trial, or which will not be made the subject of admissible testimony in the trial.

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- c. **Relevance:** The question calls for irrelevant testimony.
- d. **Personal Knowledge-Lack of Foundation:** The witness has no foundation of personal knowledge from which to answer the question.
- e. **Compound Question:** Contains more than one question.
- f. **Narrative:** The question calls for a narrative response.
- g. **Asked and Answered:** The question has been asked and answered.
- h. **Argumentative:** The question is argumentative.
- i. **Vague/Ambiguous:** The question is vague and/or ambiguous.
- j. **Non-Responsive:** I move to strike the answer as non-responsive.
- k. **Opinion/Speculation:** The question calls for inadmissible opinion testimony or calls for speculation on the part of the witness.
- l. **Expert Opinion:** The question calls for expert opinion testimony and this witness' qualification to render an expert opinion has not been established.
- m. **Hearsay:** The question calls for inadmissible hearsay testimony.

NOTE: If the witness answers before the objection can be made, then a motion to strike the response may be made. **Example:** "Objection, your Honor. I move to strike the response because... (it is hearsay; it is inadmissible opinion, etc.)."

G. HEARSAY RULE:

1. The Hearsay rules make inadmissible any out-of-court statement (oral or written) offered to prove the truth of the matter asserted in the statement. If the statement is not offered to prove the truth of the matter asserted in the statement, it is not hearsay and is therefore not rendered inadmissible by the hearsay rule, though it could be inadmissible for some other reason. Evidence of a statement offered to show the statement itself was made (regardless of its truth), to show that a person speaks a certain language or to show the statement's effect on the listener would be examples of non-hearsay statements, which are admissible.
2. Even if a hearsay statement is offered to prove the truth of the matter asserted in the statement, there may be exceptions to the hearsay rule, which render the statement admissible. For example, out of court statements against their own interests made by parties to the action are not made inadmissible by the hearsay rule. Further, official records of public employees and records made in the regular course of a business are also exceptions to the hearsay rule.
3. Another exception to the Hearsay Rule is a "declaration against interest." Where the out-of-court statement made by the witness tends to put the declarant at risk of civil or criminal liability, it is not rendered inadmissible by the hearsay rule, though it could be inadmissible for some other reason.

California State Court System

- A. The California Constitution creates here (3) court levels:
1. The state trial court is known as the Superior Court.
 - a. There are approximately 1800 Superior Court Judges in the State of California.
 - b. The number of Superior Court Judges in each County depends on the population of the County (e.g., some counties have only 1 or 2 Judges, while Los Angeles has several hundred.)
 - c. Superior Court Judges are elected, but most are first appointed to the Court by the Governor when vacancies develop, and then must run for re-election every six (6) years.
 - d. Superior Court Judges are the only “trial judges” in the state court system.
 - e. All criminal, civil, family, juvenile, traffic and small claims matters are filed and tried in the Superior Courts.
 2. The state intermediate appellate court is known as the District Court of Appeal.
 - a. There are six (6) District Courts of Appeal in the State (approximately ninety Appellate Justices).
 - b. All Appellate Justices are appointed by the Governor for 12-year terms.
 - c. Each appellate court hears appeals from cases tried in specified counties in its assigned District- usually in the geographic area in which the District Court sits.
 - d. A party who loses his/her/its case in the Superior Court has an automatic right to “appeal” the case to the Court of Appeal. The People cannot appeal acquittal in a criminal case.
 - e. The Court of Appeal does NOT conduct trials.
 - f. The Court of Appeal assigns three (3) appellate justices to review the written record of Trial Court proceedings to determine if the trial court judgment was lawfully entered.
 - g. The Appellate Court may affirm or reverse the Trial Court judgment or send the case back to the Trial Court for a new hearing or new trial.
 3. The California Supreme Court
 - a. There is one State Supreme Court (seven Supreme Court Justices, including the Chief Justice).
 - b. All members of the Supreme Court are appointed by the Governor for 12-year terms.
 - c. The Supreme Court is an Appellate Court, not a Trial Court.
 - d. Whereas the Courts of Appeal decide cases with three-Justice panels, all seven-Justices of the California Supreme Court participate in all cases before it.
- B. With few exceptions, the California Supreme Court only hears appeals in cases it chooses to hear, i.e., there is no automatic right to have the California Supreme Court hear the case with the exception of death penalty convictions.
- C. Each State has its own court system that operates independently of the other state court systems.
- D. The United States federal government also has its own court system, known as the “federal court.” The federal courts are described in the United States Constitution and consist of: Trial Courts, known as United States District Courts; intermediate appellate courts, known as United States Circuit Courts of Appeals; and the highest appellate court, known as the United States Supreme Court. The United States Supreme Court has nine members called “Justices” who are appointed by the President of the United States and confirmed by the United States Senate.