

Stages in a Capital Case

from <http://deathpenaltyinfo.msu.edu/>

Note that not every case goes through all of the steps outlined here. Some states have different procedures.

I. Pre-Trial

Crimes that would be eligible for the death penalty almost always involve brutal murders which shock the community. There is often considerable pressure on the police to make an arrest, and on the prosecution to get a conviction.

Only rarely do the police come upon such a crime in progress. Usually, they must depend on evidence gathered at the scene of the crime and on possible eyewitnesses.

Police often rely on photographs of individuals who have committed crimes in the past to display to eyewitnesses who might be able to identify a suspect. Thus, even though a particular individual has no connection to a crime, he might become a suspect if he looks like the actual perpetrator.

The police also use informants who hope to gain something by providing information about a particular case. Their information may or may not be reliable, but may form the basis for building a case around a particular suspect.

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Arrest

The taking or keeping of a person in custody by legal authority in response to a criminal offense or charge.

Arraignment

The initial step in a criminal prosecution whereby the defendant is brought before the court to hear the charges and enter a plea.

Preliminary Hearing

A criminal hearing to determine whether there is sufficient evidence to prosecute an accused person. If sufficient evidence exists, the case will be bound over for grand-jury review or an information will be filed in the trial court.

Grand Jury

A body of people (often 23) who are chosen to sit permanently for at least a month and who decide whether indictments should be issued. If the grand jury decides that the evidence is strong enough to hold a suspect for trial, it returns a bill of indictment (a true bill) charging the suspect with a specific crime.

Indictment

The formal written accusation of a crime, affirmed by a grand jury and presented to a court for commencement of criminal proceedings against the accused.

Information

A formal criminal charge filed by a prosecutor without the aid of the grand jury. The information is used for the prosecution of misdemeanors in almost all states, many of which allow for its use for felony prosecutions as well.

Hearing on Pre-trial Motions

A judicial session held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying, before the trial begins.

Intention to Seek the Death Penalty

At some point before the trial, the prosecution announces its intention to seek the death penalty if the defendant is found guilty.

II. Guilt Phase Trial

Jury Selection (voir dire)

A preliminary examination of prospective jurors by a judge or lawyer to decide if the prospects are qualified and suitable to serve on a jury. In a capital case, prospective jurors must be “death qualified,” i.e., questioned about their ability to consider both aggravating and mitigating evidence and to render a death sentence in an appropriate case.

Opening Statements

The statements, at the outset of a trial, in which the lawyer for each side gives the fact-finder (the jury, or sometimes the judge alone) a preview of the case and of the evidence that will be submitted.

Prosecution's Case

The government, which has the burden of proving the defendant's guilt beyond a reasonable doubt, offers evidence in an effort to convince the jury that the defendant committed the offense.

Defendant's Case

The defendant offers evidence to rebut the prosecution's evidence. Although the defendant has no burden of proof, and is presumed to be innocent until proven otherwise, he or she may introduce evidence either to weaken the prosecution's case or to help establish innocence.

Closing Statements

The final statements to the judge or jury before they begin their deliberations to decide the case, in which the lawyer for each side asks the jury, or judge, to consider the evidence and apply the law in his or her client's favor.

Jury Instructions

The direction or guidelines that the judge gives the jury concerning the law that is applicable to the case.

Verdict

The jury's finding or decision on whether the defendant's guilt on the charges has been proved beyond a reasonable doubt.

III. Penalty Phase Trial

Aggravating Circumstances

Facts that make a crime worse or more serious by such circumstances as the facts of the crime, the defendant's prior criminal record, etc. Some aggravating circumstances are very specific, e.g., the murder of more than one victim. Other aggravators are broad, e.g., the murder was committed in a heinous, cruel or atrocious manner.

Mitigating Circumstances

Facts that do not justify or excuse an act or offense, but may reduce the degree of moral culpability, and thereby reduce the penalty. Examples include mental impairments, deprived background, etc.

Victim Impact Statements

Statements read into the record, or presented through testimony of witnesses, during sentencing to inform the jury of the financial, physical, and psychological impact of the crime on the victim and the victim's family.

Jury Sentence Recommendations

The jury considers the aggravating and mitigating circumstances surrounding the crime and the defendant and returns with a recommended sentence. In a death penalty case, the jury chooses between a death sentence and a lesser sentence of life without parole, life, or a term of years.

Judge Sentencing

After considering the jury recommendation, the court formally pronounces punishment on the defendant. In some states, the judge must follow the jury recommendation. In other states, a judge may sentence without a jury, or override a jury's recommendation.

IV. Direct Appeal

Introduction: The Appeal Process

Once a person is found guilty, the presumption of innocence is removed. The defendant now has the burden of showing that a critical mistake was made in the process that convicted him.

Most of the review which occurs does not revisit factual issues decided at trial. Some states have time limits as short as three weeks for the admission of any new evidence after the conclusion of the trial.

The constitution does not require that a defendant be provided with a lawyer representing him throughout the appeals process. Even when represented, the lawyer must be aware of numerous procedural rules for filing appeals.

If the rules are not precisely followed, issues may be lost forever from the appeals process.

Motion for a New Trial

A post-judgment request that the court vacate the judgment and order a new trial for any of various reasons, such as insufficient evidence, newly discovered evidence, or jury misconduct.

In some jurisdictions, this motion is required before a party can file an appeal. In most cases, this motion is quickly denied.

Appeal to the State's Highest Criminal Court

A proceeding undertaken to reverse a decision by bringing it to a higher authority. The defendant submits the trial court's decision to a higher court for review and possible reversal.

Petition to U.S. Supreme Court for Writ of Certiorari

The Supreme Court can, at its discretion, decide to review the decisions of a lower court on federal issues. However, the Supreme Court only takes about 1% of the cases submitted for its review.

V. Post-Conviction Review

Petition to State Trial Court

The defendant can raise issues in his or her case that are not reflected in the record on appeal, such as ineffective assistance of trial counsel, prosecutorial misconduct, or juror misconduct. This petition is usually submitted to the same judge who presided over the trial.

Appeal to State's Highest Criminal Court

The decision of the state's trial court can be appealed to the state's highest criminal court.

Proportionality Review

The state appellate court can compare the sentence in the case being reviewed with sentences in similar cases within the state. Where utilized, this practice can help the state to identify and eliminate sentencing disparities. However, many states have abandoned a formal review of this type.

Petition to U.S. Supreme Court for Writ of Certiorari

See the definition above under Direct Appeal. A defendant can ask the Supreme Court to review the denial of his post-conviction review, just as the defendant could ask the Supreme Court to review the denial of his direct appeal.

VI. Federal Habeas Corpus

Petition to Federal District Court

A pleading presented to the federal court seeking a writ to bring a person before a court to ensure that the party's imprisonment is not illegal. Such petitions are now closely regulated and limited through federal legislation passed in 1996.

Evidentiary Hearing

A hearing before a federal judge similar to a trial, in which evidence is presented to prove or disprove a statement in the federal habeas corpus petition. The judge has the discretion to deny such a hearing.

Appeal to Federal Court of Appeals

The losing party may appeal the District Court's ruling to the U.S. Court of Appeals. The appeal is heard by a panel of three judges.

En Banc Review

A rarely granted review of the panel's decision in the defendant's case in which the full Circuit Court participates.

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VII. Clemency

Pardon Board

An administrative board or panel authorized to assist the governor in making a clemency decision. In a few states the governor is not authorized to grant clemency unless the pardon board has first recommended it.

Executive Clemency or Commutation

The power of the state's governor, or the President, to reduce the punishment imposed by the courts.

VIII. Execution

Death Row

The area of a prison where those who have been sentenced to death are confined.

Death Warrant

A paper, typically signed by the governor or a judge, setting a date of execution. The warrant is then served on the defendant and his or her attorney. Typically, shortly before the execution the inmate is moved to a cell closer to the death chamber and kept on 24 hour suicide watch.

Execution

The carrying out of a death sentence by lethal injection, electrocution, lethal gas, hanging, or firing squad.