

## A Survivor's Guide to a Domestic Violence Criminal Case

### Criminal law basics

Some acts of domestic violence are crimes. A **crime** is a behavior that violates criminal law. If someone reports a crime to the police, the person who did the crime may be arrested, prosecuted, and punished in criminal court.

In a criminal case, the person who did the crime is called the **defendant**. The person harmed by the crime may be called the **victim**, the **complainant**, or the **complaining witness**.

The **prosecutor** is the government lawyer responsible for filing and proving the court case. Depending on where your case is, the prosecutor may be called the district attorney, state attorney, or county attorney.

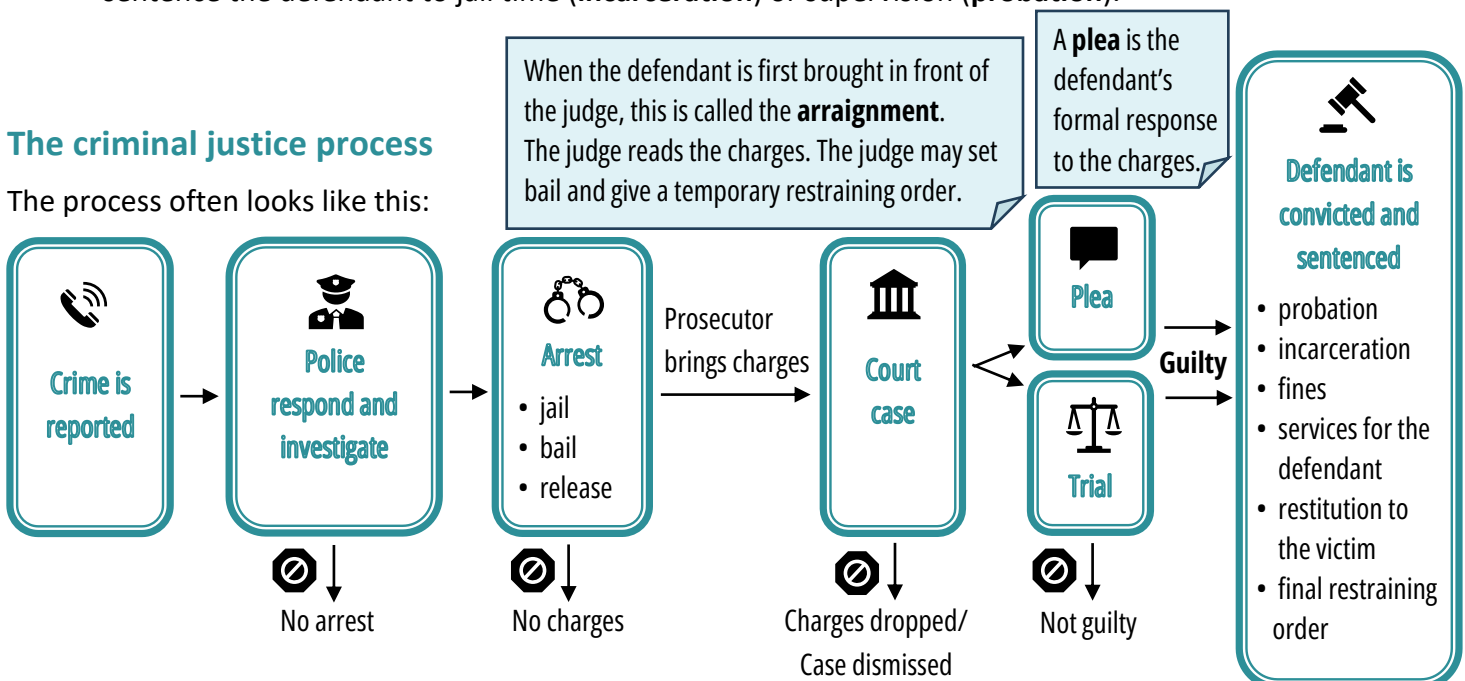
After a crime is reported to the police, a detective may reach out to you while the case is being investigated to ask more questions or gather more evidence. If the defendant is arrested, the assigned prosecutor or a victim advocate will likely contact you about the case. The prosecutor may ask you to sign a sworn statement (**affidavit**) describing what happened. You can tell the prosecutor if you do not want to "press charges," but the decision is ultimately up to the prosecutor's office. They decide what crime to charge, whether or not to go forward with a case, and if the victim has to testify.

The purpose of a criminal case is to hold the defendant accountable for his/her actions. If the defendant is convicted, the judge will set the punishment (**sentence**). The judge can:

- order the defendant to pay a fine, restitution, or both;
- give a restraining order to protect the victim;
- order services for the defendant; and
- sentence the defendant to jail time (**incarceration**) or supervision (**probation**).

### The criminal justice process

The process often looks like this:



## Proving the case

If the case goes to trial, the prosecutor must prove to the judge or the jury that the defendant is guilty “beyond a reasonable doubt.” This is the highest level of proof, more than what is needed to win in civil court. The prosecutor needs strong evidence to convince the judge or the jury that the defendant did the crime.

## Restraining order

You may get a temporary restraining order, often called a no-contact order, soon after the defendant is arrested. If the defendant was living with you, the order may allow him/her to return to the home with the police to pick up personal belongings. You may get a longer, final restraining order at the end of the case. Even when a restraining order is final, it will usually have an expiration date. If the defendant breaks (violates) the order, s/he may be arrested again. Then, you may get another restraining order, your current order’s expiration date may be extended, or new protections may be added.

## The defendant’s rights

The defendant has rights so that the criminal prosecution is fair. These rights come from the United States Constitution and federal and state laws. Because of the defendant’s right to a “speedy trial,” the prosecutor must be ready to go to trial within a set amount of time, or else the case will be dismissed. Among other things, the defendant also has the right to know the charges and evidence against him/her, to be at the trial, to cross-examine the prosecutor’s witnesses, and possibly to have a public defender represent him/her.

## The victim’s rights

In many state and federal criminal cases, victims also have rights. You may have the right to:

- know about court dates and certain other events - for example, if the defendant is released from jail;
- have your physical safety and personal information protected;
- speak to the prosecutor about the case;
- attend the criminal court dates related to your case;
- give a victim impact statement telling how the crime affected you; and
- get restitution from the defendant to reimburse you for losses you suffered because of the crime.

However, victims are not considered a “party” to the criminal case, which means they don’t have the right to drop the case, to cross-examine witnesses, etc. Ask a victim advocate in your area to learn about your rights.

## Immigrant survivors and criminal cases

If you are an immigrant without permanent status in the U.S., you may be afraid to report a crime. However, immigration laws may protect victims of domestic violence, human trafficking, or other serious crimes. If you help law enforcement investigate or prosecute certain crimes, you may be able to file for a U visa. If you are a victim of trafficking, you may qualify for a T visa. Or, if you are married to a U.S. citizen or lawful permanent resident who abused you, you may be able to get a green card without your spouse’s help through VAWA.

## More information

You can find state-specific legal information and resources for getting help on [WomensLaw.org](https://www.womenslaw.org). Use our Email Hotline to ask questions and get personalized information and referrals – go to [Hotline.WomensLaw.org](https://www.hotline.womenslaw.org).

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