



Commonly Used Terms in Criminal Justice



Accessory: A person who is involved in a crime but is not present when the crime is committed.

Accomplice: A person who helps another person commit a crime. May also be an accessory.

Accused: A person who has been charged with a crime.

Acquittal: The decision, usually by the jury, that an accused person is not guilty of the charged offense.

Admissible evidence: Evidence that is relevant and can be admitted by the court. Cannot be hearsay or privileged.

Affidavit: A written description of facts made under oath.

Affirm: To confirm the judgment of a lower court after an appeal.

Aggravated assault: More serious than simple assault. Involves the intent to kill or do serious physical harm. Examples are assault with a deadly weapon and assault with intent to commit murder.

Aggravating factors: Information about a criminal offense or defendant that the court can consider before imposing a sentence, especially a death sentence. Aggravating factors in death-penalty cases are usually dictated by statute. The Model Penal Code has a list of aggravating factors in death-penalty cases.

Aid and abet: To help or encourage someone to commit a crime. (See also *Accessory* and *Accomplice*.)

Arraignment: The first step in a criminal prosecution where the accused is brought before the court. He/she hears the charges made against him/her and says whether he/she will plead guilty or not guilty.

Arrest Warrant: An order by a court directing a law enforcement officer to arrest a named person on a specific charge.

Beyond a Reasonable Doubt: The amount of proof needed for a jury to find a person guilty of a crime: a jury has to believe a person is guilty beyond a reasonable doubt. A "reasonable doubt" is a fair doubt based on reason and common sense. It is the highest level of proof the law requires. In deciding whether guilt has been proved beyond a reasonable doubt, the jury must presume that the defendant is innocent.

Charge: An accusation that someone has committed a crime.

Circumstantial Evidence: Evidence that does not bear directly on a fact in dispute, but may lead to an inference that the fact exists. For example, in a case involving an allegation of robbery, a witness may testify that she saw the defendant with items that were stolen during the robbery. Although this is not direct evidence that the defendant participated in the robbery (after all, he may have innocently purchased the items at a pawn shop), it is circumstantial evidence that – particularly in combination with other evidence – may ultimately support a conviction for the crime of robbery. Two common forms of direct (non-circumstantial) evidence are eyewitness accounts of the event, and confessions of guilt.

Clemency: Mercy; the power of the President or a state governor to pardon a criminal or commute a criminal sentence.

Commutation of Sentence: A change of sentence or punishment to one that is less severe.

Count: A separate and distinct part of an indictment stating a separate and distinct offense. Division of an indictment into counts is necessary when two or more offenses are charged in an indictment.

Criminal Complaint: A formal charge accusing a person of a criminal offense. It outlines the facts relating to a crime.

Cross-examination: When an opposing party questions a witness to test the accuracy and truth of testimony given on direct examination.

Cruel and Unusual Punishment: Punishment far out of proportion to the crime that is prohibited by the Eighth Amendment to the Constitution.

Diminished capacity: When an accused's mental capacity is lessened by intoxication, trauma, retardation, or mental disease. Diminished capacity is short of insanity but it prevents the accused from having the specific mental state or intent essential to the particular offense charged. Diminished capacity is not a defense in every state.

Direct Examination: The initial questioning of a witness by the party who calls him or her to the stand.

Discovery: Providing information that relates to the case when the opposing party requests it before trial.

Dismiss: To order a motion or prosecution to be terminated, especially before trial of the issues, or before a verdict is reached.

Double Jeopardy: A rule that prohibits a second punishment or second trial for the same offense. Based on the Fifth Amendment

Due Process of Law: Law that applies to everyone under rules that do not violate basic fairness. For crimes, this includes the right to be heard by an fair judge and jury, the right to an attorney, the right to cross-examine witnesses, the right to testify on your own behalf, and the right to advance notice of trial and of the charges in enough detail to prepare a defense.

Extradition Clause: A rule that an accused person who flees to another state must be returned to the state where the crime was committed, if the governor of that state so requests. Based on Article 4, Section 2 of the Constitution. Extraditions can also be requested from a foreign country under certain circumstances. Most abolitionist countries refuse to extradite individuals to countries where they will face the death penalty unless assurances are given that capital punishment will not be imposed.

Felony-Murder Rule: A principle under which an individual may be convicted of murder (and even sentenced to death) even where he did not kill anyone, did not assist in the killing, and never intended that anyone be harmed, so long as he participated in a crime that is considered inherently dangerous and someone was killed during the commission of the crime.

Forensic Evidence: Evidence used in court and obtained by scientific or technical means, such as medical evidence. Analysis of DNA and body fluids is an example of forensic evidence.



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Guilt Phase: That part of the criminal trial where the fact-finder decides whether the defendant committed a crime.

Habeas Corpus: An order stating that a detained person must be brought before the court to decide whether his/her detention or imprisonment is legal. In death penalty cases, federal habeas corpus is the process by which the federal courts review the constitutionality of state criminal proceedings.

Hearing: A judicial proceeding to decide issues of fact (what actually happened) or of law (how the laws apply). The rules of procedure are more relaxed in hearings.

Hearsay: Testimony given by a witness not based on what the witness knows himself, but on what others have said. It is based on the believability of someone other than the witness. Such evidence is generally not admissible under the rules of evidence.

Homicide: The killing of another person. It may be criminal or non-criminal. A criminal homicide is either murder or manslaughter.

Indict/Indictment: To make formal accusation of a crime, often by the findings of a grand jury.

Jury Instructions: Directions that a judge gives a jury about the relevant law and what must be proved by whom.

Juvenile: A minor or someone who is not an adult. Under international law, a minor is anyone below the age of 18.

Ker-Frisbie Rule: The rule that the government's power to try a criminal defendant is not lessened by the defendant's having been brought illegally to the United States from a foreign country. (See *Ker v. Illinois*, 119 U.S. 436 (1886) and *Frisbie v. Collins*, 342 U.S. (1952))

M'Naghten Rule: Says that a person cannot be guilty for an action when a mental disability prevented the person from knowing either the nature of the action or whether the action was right or wrong.

Manslaughter: The unlawful killing of a person without malice beforehand. Voluntary manslaughter is murder reduced to manslaughter because of extenuating circumstances such as great provocation or diminished capacity. (Manslaughter is not as serious a crime as murder.)

Mental Illness/Insanity: Different states have different standards to determine whether a criminal defendant was insane at the time he/she committed a crime. The most important of these standards are the M'Naghten Rule and the Model Penal Code standard: the lack of capacity to appreciate the criminality of one's conduct. The law also requires that a criminal defendant be sane at trial and at execution.

Mental Incompetence: A defendant can be found mentally incompetent and therefore unable to stand trial or be executed. A defendant is not competent to stand trial when he or she lacks the ability to understand the charges against him or her and the ability to communicate effectively with his or her lawyer. A defendant lacks the competency to be executed when he or she can neither understand he or she is going to be executed imminently nor the reasons why.

Mitigating factors: A fact or situation that the jury or court may consider when imposing a lighter sentence. Laws may not limit a court's power to consider mitigating factors. The Model Penal Code has a list of mitigating factors in death penalty cases.

Model Penal Code: Prepared by the American Law Institute and published in 1962. Many states have adopted parts of the Model Penal Code, but some provisions of the Code have not been widely accepted. For example, while several states still use the Code's test in their definitions of insanity, many others do not.

Motion: A formal request to a court to obtain an order or ruling directing that something be done in favor of the party making the request.

Order: A written command delivered by a court

Pardon: An act by the President or a state governor that erases a conviction.

Penalty (sentencing) phase: That part of the criminal trial in which the fact-finder decides on the punishment after a defendant has been found guilty

Plea: An accused person's response to a criminal charge: guilty, not guilty, or no contest.

Privilege: The right to refuse to tell and to prevent anyone else from telling confidential communications. Privileged communications include: attorney-client (confidential communications between client and attorney); doctor-patient (any confidential communication that a patient makes to a doctor relating to treatment or diagnosis); marital (confidential communications between spouses).

Quash: To suppress, annul or set aside.

Remand: When an appellate court returns a case to the trial court for further proceedings, a new trial or entry of judgment based on the appellate court's order.

Reverse: To overturn a judgment after an appeal

Search Warrant: A judge or magistrate's order authorizing law enforcement personnel to search a place and to seize evidence.

Stay: Postponing or halting an execution, proceeding, judgment or the like.

Subpoena: An order for a person to appear and testify before a court and/or bring certain records, subject to penalty for not doing so.

Unreasonable Search and Seizure: A search and seizure done without the probable cause that would make it legal. Based on the rule that one's home can be searched only with a warrant based on probable cause. Forbidden by the Fourth Amendment.

Voir dire: When a judge or lawyer asks a potential juror questions to decide if he or she is qualified and acceptable to be a juror. A potential juror may be challenged and removed from the jury.

* NOTE: These definitions are for descriptive purposes only and are not intended to be a source of legal information or advice.