

DCI victim/witness glossary of court language and definitions for the court process

Subpoena and Attendance of Witnesses: used by both the prosecutor and defense attorney, to ensure the attendance of victim and witnesses at court. Subpoenas may also be used to obtain documents.

Alternate counts: this is considered when having a jury trial. If a jury does not believe the burden of proof has been met in count a, they can find a person guilty of the alternate count. The jury cannot find them guilty of both counts, but can find them not guilty on both counts. This is a decision of the prosecutor to include alternate counts at the time of charging out an offense(s).

Accused: a person who has been charged with committing a crime but has not yet been tried

Acquittal: in a criminal case, a verdict by the jury or judge that the defendant is not guilty.

Adjudicatory hearing: a hearing to determine whether the allegation of a petition alleging that a child is a delinquent are supported by evidence beyond a reasonable doubt.

Advisory Hearing: The initial hearing conducted by the court to inform the child and the child's parent, guardian, custodian, or other interested parties of their statutory and constitutional rights.

Appeal: the defendant has a right to appeal his case to the South Dakota Supreme Court. Any notice appeal needs to be given within 30 days of sentencing. This needs to be a written notice sent to all parties involved. The Supreme Court reviews legal aspects of the case, and not factual issues. No evidence is heard. Written briefs are done and oral arguments may be scheduled.

Appeals Court: a court which decides question of law. Anyone may take his case to an appeals court if he/she believes his rights have been ignored or the law is unfair.

Arraignment: a court appearance at which the defendant is formally charged and is asked to enter a plea of guilty, not guilty, and no contest. In a felony case, an arraignment follows a preliminary hearing or grand jury indictment. If the

defendant pleads not guilty, the case is set for trial. Bail can also set, or addressed at this time.

Arrest: to take a person suspected of committing a crime into legal custody so that he/she can be charged with committing the crime.

Assault: an unlawful physical attack, whether aggravated or simple, upon a person or law enforcement personnel. Includes attempted assaults with or without a weapon.

Bail: an amount of money set by a judge and paid to the court by the defendant to insure that he/she will appear for trial. If the defendant appears, the bail money is refunded. If the defendant does not appear, the court might keep the money. A defendant who is unable to pay bail is usually held in the county jail until his/her trial takes place. There are conditions placed on the defendant when bail is set. If the defendant violates one of these conditions, he/she can potentially be arrested for additional charges. Violations should be reported to local law enforcement at the time they are committing the violation.

Cash only: the defendant must post 100% of the amount set by the judge.

Cash or surety: the defendant must post 10% of his bond without a bail bondsman.

Personal Recognizance: no money is needed for the defendant's release.

Bail Bondsman: a person who makes his living by paying the bail amount for a defendant and charging an extra fee for his service.

Bailiff: an officer of the court whose job it is to keep order in the courtroom, call the court to order, escort defendants and carry out other tasks.

Bench Warrant: an order issued by a judge for the attachment or arrest of a person. The name of a process sometimes given to an attachment issues by order of a court, against an individual for some contempt, or for the purpose of arresting a person accused. If a person fails to appear in court when he has been properly ordered to do so, the judge is authorized to issue a warrant (a court order authorizing a law enforcement officer to arrest someone) for his arrest.

Beyond a Reasonable Doubt: the standard for the burden of proof is placed on the prosecution in a criminal case. Reasonable Doubt, is a doubt that would cause a juror, after careful and impartial consideration of all the evidence, to be so undecided that he/she cannot say that he/she has an abiding conviction of the defendant's guilt. It is such a doubt as would cause a reasonable person to hesitate or pause. It is not an imaginative doubt, nor a doubt based on conjecture, it is based on reason. The government is not required to establish guilt beyond all doubt, its burden is to establish guilty beyond a reasonable doubt.

Bound Over: at the completion of the preliminary hearing, if the judge found that it is reasonable to believe that a crime was committed, and the crime was probably committed by the defendant, the defendant is sent before the court to be arraigned.

Brief: a written summary of the arguments a lawyer intends to make in court.

Burden of Proof: The requirement that a particular party, who is the proponent of a factual proposition, must persuade the trier of fact (judge or jury) by evidence of the truth of his/her proposition in a criminal case. The burden of proof is on the prosecutor.

Charge: an accusation made against the accused that he/she committed the crime.

Child: a person less than 18 years of age who is before the court for an alleged delinquent act committed before the person's 18th birthday, and/or any person under 21 years of age who is under the continuing jurisdiction of the court

Circumstantial evidence: evidence which gives a basis for making some conclusion about a fact but does not prove the fact itself.

Citation: a call or summons to appear in court on a given day

Civil Disabilities: the way in which those who have "paid their debt to society" have their rights lifted after a conviction. Voting and license eligibility, certain jobs, and ability to run for certain offices may be limited by different states. Usually, individuals may be released from these, only by obtaining sworn statements from reputable individuals attesting to the "rehabilitation" of the offender. Release does not erase the record of conviction.

Community Services: court ordered public services that benefit the victim or the general public working for non-profit organizations, other agencies that the sentencing judge deems appropriate to the offender. The defendant will not be entitled to any wages for the work completed.

Complaint: a legal document of the essential facts constituting an offense, prepared by the State's Attorney based on police reports. It lists the charges and some of the evidence against the defendant. The complaint must be signed under oath before a person authorized to administer oaths in the State of South Dakota and is filed in Court.

Contempt of Court: any action that involves disrespect of the presiding judge or a failure to obey the rules set by the presiding judge.

Continuance: when a court hearing is extended to another date for a justified reason

Court: an agency of the judicial branch of the government, which constitutional authority to decide questions of law and disputes brought before it.

Court Services Officer: an employee appointed by the court that investigates and reports to the court regarding the person and incident bringing the person to the attention of the court. Court Services Officers make recommendations to the Judge regarding disposition/sentence and can be appointed to supervise the person placed on probation.

Criminal Law: the law relating to crimes. The general theory of "common law" is that all wrongs are divisible into two categories:

1. Civil or private wrongs, which are called torts. Torts are remedies by civil actions, usually brought by private persons.
2. Criminal or public wrongs, which are called crimes. Crimes are remedied by criminal prosecutions, brought by a public official.

A wrong may be both a tort and a crime, for example, embezzlement, in which the victim may sue for damages for the amount embezzled, and the offender is subject to punishment

Crisis Intervention: A person assisting another during an emotional or traumatic event with the prime purpose of calming the affected person, or returning the person to normal behavior.

Cross Examination: a procedure in which a witness is questioned by a lawyer for the opposing side.

Decline: the office of the State's Attorney or Attorney General decides not to issue any criminal charges

Defendant: the person accused of or charged with a criminal offense. This is the person alleged to have committed a particular crime.

Defense: a defendant and his/her attorney

Defense Attorney: a lawyer for the defendant/accused

Deferred Prosecution: a program that allows a person suffering from an alcohol, drug, or a mental health problem, to seek permission of the court to go through an intensive treatment program in lieu of being prosecuted. Successful completion of the treatment program, and continues lawful conduct will result in dismissal of the charge.

Delinquent child: a child aged 10-17 who has been charged with violating a law or city ordinance for which an adult can be charged (also called Juvenile Delinquent)

Detention: the temporary custody of a child in secured physically restricting facilities for children, sight and sound separated from adult prisoners

Direct Evidence: a statement or document or something else which by itself shows that a fact exists

Direct Examination: a procedure in which a lawyer questions a witness for his own side.

Discovery: The exchange of information between the defense and prosecution, as to what evidence each side is going to present at trial.

Dismissal: the charge or charges against the defendant are dismissed. No conviction.

Dispositional Hearing: the hearing after adjudication at which the court makes an interim of final decision in the case. This is known as sentencing in adult court.

Diversion: this is pre-prosecution probation made available to the lesser offender as an alternative to standard criminal prosecution. The decision to divert is a joint decision of the district attorney and the court when it appears that both society and the defendant will benefit by involving the defendant in a meaningful rehabilitation program, thereby avoiding damaging effects that normal criminal prosecution has on the offender and the resources of the justice system. Diversion is accomplished by deferred sentencing and deferred prosecution. It is sometimes administered after a guilty plea is entered, which plea is expunged from the defendant's records if he/she meets the terms of diversion.

Docket: the list of cases heard in court each day or the names of persons who have cases pending. May also include a list of the charges, the amount of bail, how the bail was posted, lawyers and witnesses, how the action was initiated, complaints name, dates of each significant proceeding, disposition of the case, etc

Double Jeopardy: trying a person for the same crime twice. Under our legal system, no person may be tried twice for the same crime, unless if the jury cannot reach a verdict, a new trial must be held until a verdict can be reached.

Due Process: the idea that everyone has the right to a fair and speedy trial according to the law and without regard to race, beliefs, gender or the ability to pay. Due process also means that fair procedures must be used and that every accused person has the right to the help of a lawyer to make sure that these procedures are observed.

Elements of the Crime: definition of a crime. A defendant's actions must match the definition of the crime in order for the accused to be guilty of committing it.

Evidence: any facts or physical items presented in a court trial by the prosecution and defense.

Exclusionary Rule: The exclusion from trial of any evidence that was illegally obtained. Any evidence obtained in violation of the Fourth Amendment cannot be used in any state or federal court.

Felony: a serious crime punishable by confinement in a state prison, for any period of time.

Gag Order: A judge's order which limits the amount of publicity on a case. The purpose of a gag order is to protect defendant's rights to a fair trial.

Grand Jury: a jury made up of six to ten county citizens from the master jury list. This jury has a broad range of power to handle misdemeanors and felony cases committed within the county. They may call witnesses, hear sworn testimony, and require records and other evidence be produced in addition to whatever evidence or information is provided by the State's Attorney or Attorney General's Office. The grand jury may call on the State's Attorney, Attorney General's or the Judge to seek advice concerning law and legal procedures.

Because Grand Jury proceedings are not open to the public, the only person permitted to attend its sessions is a witness who is called to testify. When the grand jury is discussing or voting on a case, even the Judge and the State's Attorney or Attorney General's Office cannot be present. The grand jury can return an indictment or may decide no crime has been committed. Under an indictment, the defendant is brought before a circuit judge for arraignment and trial.

Guilty: a decision of a judge or jury in a criminal case that the accused committed the crime he/she was charged with.

Guilty Plea: a statement by the accused that he/she is guilty of the crime he/she was charged with

Habeus Corpus: a writ addressed to one who has a person in custody, commanding him to produce the person, i.e. "have the body", before the court at a certain time. The purpose of the writ is to test the legality of the detention.

Hearings: there are several types of hearings that can be set during the court process. They are held when any matter needs to be taken up before the court. This includes, but is not limited to:

Preliminary Hearings, motions Hearings, both evidentiary and non-evidentiary, status hearings, and bond hearings

Hearsay: a statement in which a witness repeats what he heard someone else say, not what he actually saw or heard himself. This kind of evidence is usually not allowed in court.

Hung Jury: a jury which is unable to reach a unanimous verdict

Indemnity: a contract someone engages into to save someone else from a legal consequence of the conduct of one of the parties or some other person.

Indictment: a statement charging that a crime has been committed

Initial Appearance: a defendant's first appearance in court. A judge may read the charges, and sets bail. In felony cases, a date is set for the preliminary hearing. In misdemeanor cases, the initial appearance is also the arraignment where the defendant enters an initial plea.

Injunction: a judicial order requiring the party enjoined to take or refrain from taking some specific action.

Intake Officer: the judge of a circuit or someone appointed by the judge who must decide, based upon established criteria, whether to temporarily hold a child in custody, until a temporary custody hearing can be held. (cannot be court services, law enforcement officers or prosecuting attorney)

Investigation: the gathering of evidence by police and prosecutors to seek to prove the accused committed or did not commit the crime.

Judge: a person who presides over a court of law.

Jury: a group of citizens who hear the evidence presented in court and decides whether the accused is guilty or not guilty. **MATTER OF FACT.** An actual happening, thing done, or event which is often said to be a question for the jury in a jury trial.

Juvenile Court: the circuit court. Proceedings are closed to the public

Juvenile Diversion: an informal plan of treatment and rehabilitation for a child for up to 90 days that is designed to divert the child from being petitioned to juvenile court.

Juvenile Petition: A document that tells the youth, parents, and the court what he/she is charged with doing and which brings the child within the court's jurisdiction.

Juvenile Delinquent: A child aged 10-17 who has been charged with violating a law or city ordinance for which an adult can be charged for the same thing.

Legal Aide: Legal assistance for people who are involved in a civil case and cannot afford to pay an attorney to help them.

Matter of Law: a principle or rule of duty to be decided by a judge.

Misdemeanor: a crime less serious than a felony that is punishable by confinement in county jail, for one year or less.

Mistrial: a trial that ends when jury cannot decide whether the accused is guilty or not guilty, or when a legal procedure is violated.

Mitigating circumstances: facts tending to lessen the severity of an offense.

Motion: oral or written requests about legal questions made by the prosecutor or the defendant before, during or after a trial. Motions ask the court to issue a ruling or order regarding the case.

Motion for Discovery: the exchange of information between the two sides, as to what evidence each side is going to present at trial. (the defendant is entitled to the prosecutor's internal reports, however, they are generally provided without this motion being filed.)

Nolo Contendere: a plea by the defendant in a criminal prosecution that, without admitting guilt, subjects himself to conviction but does not preclude him for denying the truth of the charges in the collateral proceeding.

Objections: the judge must decide if the objection is proper and if so, the judge will sustain the objection and exclude the evidence. If the objection is improper, the judge will overrule the objection and the evidence will be submitted for consideration by the jury. If the objection involves something that should not be discussed in front of the jury until the judge reaches a decision, the jury will be excused from the courtroom or the lawyers and the judge may retire to the judge's

chambers to discuss the matter. When the judge makes a decision, the trial will resume.

Offender: the perpetrator of a crime, the term generally is applied in relation to crimes entailing contact between victim and perpetrator.

Offense: a crime

On-call: an arrangement with a witness to appear at a court hearing for a scheduled hearing appearance. This method is used for persons who can avoid waiting long periods in court because of their ability to reach the court at a specific time.

Parole: conditional release from prison before the end of the maximum sentence. Violation results in being returned to custody, pending a hearing to determine if a violation occurred and if the defendant did it.

Perjury: the crime of lying under oath

Plea: a person accused admits or denies commission of a crime by pleading guilty, no contest, or not guilty. The accused can be convicted on his/her plea of guilty or no contest.

Plea Bargaining: the process in which the prosecuting attorney and defense attorneys, judge, and defendant agree that the defendant will plead guilty to a less serious crime than the one of which he/she is accused and will accept the sentence for a lesser charge.

Preliminary Hearing: in felony cases, an evidentiary hearing at which the state must prove to the judge that there is enough evidence to believe the defendant committed a felony. This hearing includes the prosecutor's evidence that a felony has been committed and that the accused is probably the one who committed it. A defense lawyer may examine any witness the prosecution calls.

Preliminary Investigation: an investigation performed by the State's Attorney or Attorney General's Office after a police report is received, to determine whether further action should be taken.

Presentence Investigation (PSI): a report regarding the defendant completed and presented to the sentencing judge upon the offender's conviction of a felony and sometimes misdemeanor by a Court Services Officer. The report provides the Judge with an understanding of the convicted offender, circumstances surrounding the offense committed, and recommendations for the sentence or disposition. The defense and the prosecutor have access to this report, however the victim/victim witness specialist DO NOT. The defendant may argue against the information in the PSI report.

Prima Facie Case: a case which has proceeded upon sufficient proof to that state where it will support a finding, if evidence to the contrary is disregarded: a case where evidence in ones' favor is strong enough for his/her opponent to be called upon to answer

Prison: an institution ran by the state or federal justice system, for the confinement of offenders convicted of felonies. From some prisons, offenders may earn parole early

Probably cause: a judicial determination that there is sufficient evidence for the case to proceed to trial.

Probation: a person who is convicted of a crime may be granted probation instead of or in addition to a jail sentence. On probation, he is placed under certain conditions, or restrictions which he must follow. If he fails to fulfill the conditions, the probation can be revoked and he may be returned to jail.

Prosecuting Attorney: under state law, the prosecuting attorney who represents the State of each county

Assisting Prosecutor, Assistant Attorney General or Assisting State's Attorney: an attorney who acts on the prosecuting attorney's behalf

Prosecution: the actions of the prosecuting attorney in a criminal case which involve the attempt to obtain some right or to punish some wrong

Prosecutorial Discretion: the power of the prosecutor to decide what cases will be dropped and what cases will be prosecuted.

Public Defender: a lawyer employed by the government to represent defendants who cannot afford to pay for a lawyer's services

Psycho Sexual Evaluation: an evaluation done for certain sex crimes. This evaluation is performed by a licensed psychiatrist, to determine if the defendant is at risk of reoffending, and what their sexual deviancies include. This is done through stages of testing.

Rape: sexual penetration through the use of force, threat of force, incapability of consent, or difference in ages, this includes attempts.

Restitution: an amount of money set by the court to be paid to the victim of a crime for property losses, or injuries caused by the crime (excludes pain and suffering, mental anguish and loss of consortium)

Revocation: a decision to withdraw probation, parole or privileges in a particular case.

Right to Counsel: the constitutional right of a person accused of a crime to have the assistance of a lawyer in preparing his defense.

Robbery: theft or attempted theft, directly from a person or a business, of property or cash by force or threat of force, with or without a weapon.

Self-Incrimination: when the offender says something that becomes evidence against him/her

Sentence: the accused person's punishment after being convicted of a crime.

Sexual Contact: any touching, without penetration, of a breast, genitalia, or anus for the purpose of sexual gratification.

Sixth Amendment: guarantees every citizen the right to a fair and speedy trial by an impartial jury of the jurisdiction wherein the crime was committed and ascertained by law, and to be informed of the nature and cause of the accusation to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

Sentencing: the hearing at which the court imposes a sentence to be held at least 48 hours after a jury verdict is read or after a guilty plea is entered. The 48 hour delay and the PSI report may be waived by the defendant. Before the Judge

imposes sentencing, both sides are allowed to present evidence and opinions of their belief as to what sentence should be imposed. The judge may have already ordered a PSI to be completed by Court Services. There are several sentences a Judge can impose when sentencing a defendant:

Judgement Plea of Guilty: The court will be imposing jail or penitentiary time.

Suspended Imposition of Sentence: Defendant is placed on probation and is only eligible if he has NO PRIOR felony convictions. If this sentence is entered, no judgement of guilty will be entered. If probation is completed successfully, the case will be sealed and they will not have to admit they were ever "convicted" of the crime. If probation is violated, the Judge could revoke the Suspended

Suspended Execution of Sentence: The Court could impose part or all of a jail or Penitentiary Sentence be suspended on the condition that the defendant successfully completes a number of court ordered requirements.

Of these options, the Judge can impose: County Jail, Penitentiary time, Probation, Psychiatric Exam/Treatment, Alcohol and Drug Treatment, Sex Offender Treatment, Anger Control Counseling, Restitution, Costs, Fines.

Social Case Study: a report prepared by the court services officer prior to the dispositional hearing, which describes the child's background and current situation, circumstances of the crime committed, and recommendations to the court for disposition.

Status Hearing: court hearings to make sure that both the prosecution and defense are ready for trial

Subpoena: a written order requiring a person to appear in court to testify. The subpoena states the date, time, place and proceeding at which the witness must appear.

Summons: A written statement indicating the time and place of a court hearing, the time in which a response must be made and who is required to appear at the hearing. The statement must inform the parties that they have a right to an attorney, and if they do not appear, the allegations will be presumed to be admitted.

Suspect: a person who is thought to have committed a crime and is under investigation, but who has not been arrested or charged.

Temporary Custody: the court may order the temporary holding of a child pending a final adjudication and disposition of a delinquency petition.

Testimony: information given by a witness, usually in court.

Tort: any private or civil wrong, by act or omission for which a civil suit can be brought

Transfer Hearing: taking a case out of juvenile court and placing it in adult court, or taking it out of adult court and referring it to juvenile court. Under SD law, some crimes automatically result in a child being placed in adult court. Any alleged delinquent child 16 years of age or older against whom a serious felony charge for certain crimes has been filed must be tried in circuit court as an adult. However, the child may request a Transfer Hearing. In determining transfer, the judge must consider the following:

1. Seriousness of the alleged felony offense to the community and whether protection of the community requires a transfer
2. Whether the alleged felony offense was committed in an aggressive, violent, premeditated or willful manner
3. Whether the alleged felony offense was against person or property with greater weight being given to offenses against a person
4. Merit of the complaint (is there evidence to prove the case?)
5. Whether adults were involved in the alleged offense
6. Record and previous criminal history
7. The prospect for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile

Trial: a hearing for presenting physical and testimonial evidence to a judge or jury for a determination of whether an accused is guilty beyond a reasonable doubt or not guilty of the crime(s) charged. During the course of a trial, objections of the evidence may be made by lawyers. A defendant may be found guilty of all, some, or none of the charges. If the defendant is found guilty, he/she can then be sentenced for that crime by the judge at the time, or at a later hearing, if the defendant is found not guilty of the crime, the charges are dismissed.

Unlawful Entry: a form of burglary committed by someone having no legal right to be on the premises even though force is not used.

Verdict: a decision made by a judge or jury about the facts of the case.

Victim: any person or entity that has had a crime committed against them.

Victim Compensation: a program to compensate crime victims for medical expenses, loss of income, and other expenses directly caused by the crime.

Victim Impact Statement: a form or letter used by the judge at the time of sentencing that allows victims to describe the physical, emotional, financial, and social impact of the crime on their lives and families. South Dakota also permits victims to deliver impact statements personally, in open court.

Victim Witness Advocate/Specialist: a person who assists a victim or witness through the court process and to assist them in obtaining necessary resources.

Victimization: a specific criminal act as it affects a single victim, whether a person, household, or commercial establishment. In criminal acts against a person, the number of victimizations is determined by the number of victims of such acts, ordinarily the number of victimizations is somewhat higher than the number of incidents because more than one individual is victimized during certain incidents, as well as because personal victimizations that occurred in conjunction with either commercial burglary or robbery are not counted as incidents of personal crime. Each criminal act against a household or commercial establishment is assumed to involve a single victim, the affected household or establishment.

Voire Dire: the procedure used by attorneys and judges for questioning potential jurors about their qualifications of hearing a case.

Warrant: a legal order, usually signed by a judge, authorization either the arrest or a search of a given person or place, for items that must be described with particularity.

Weapon: with respect to personal crimes of violence by armed offenders, a distinction is made between firearms, knives, and weapons of other types such as clubs, stones, bricks and bottles. A fourth category covers weapons of unknown types

Witness: a person who gives information, usually after taking an oath to tell the truth, about what he/she has seen or otherwise observed about a case.