# Criminal Process

Even though criminal law and penal codes differ among states, the criminal process is always comparable to all states. This is due to the fact that the purpose of the criminal process is to determine the availability of satisfactory evidence to render an arrested person guilty of an offence. The law states that a person should be assumed innocent until he or she is proven guilty beyond any reasonable doubt. This gives the prosecutor the task of searching for enough proof to charge any convicted person as guilty of the stated crimes. The criminal process starts from the arrest of the offender to appeal. A case passes through several stages. In this write up the criminal process will be considered together with the strengths and weaknesses facing each step and various recommendations given to correct the weaknesses occurring at each stage.

## CRIME AND ARREST

The criminal process normally starts with a criminal offence. In the event of a crime, police officers are contacted to carry out an investigation in order to collect evidence in regard to the misconduct. The United States constitution necessitates that there be a reasonable cause before an arrest is carried out. If there is lack of any judicious grounds at the scene where a crime has been committed, the police have no right to arrest the suspect. In this instance the police are required to obtain a warrant from a judge before carrying out any arrest. When being arrested every person has the right to be informed of their Miranda Rights which includes the right to remain silent, anything you say can be used against you in a court law and you have the right to seek for the assistance of an attorney (Ashworth & Redmayne, 2010).

The strength of this stage is that the offenders have a right of not being arrested until there is prove that they have actually committed the crimes they are being accused of. In addition, the suspect has constitutional right to remain silent. However, this stage is faced by weaknesses that include delay of administering justice to the victims whereby in absence of enough evidence at the scene where a criminal offence has occurred hence the police have to seek for a warrant before arresting the suspected offender. This can also result in the offender going into hiding to avoid prosecution resulting in failure for the victims to obtain justice. The weaknesses that are encountered at this stage can be corrected by empowering the police officers to arrest suspected offenders in absence of enough evidence at the site of the criminal offence, where the police are convinced beyond reasonable doubt that the suspect has committed a criminal activity as they continue in carrying out investigations to gather enough evidence. However the factors that push against the correction of this challenges are the constitutional rights of the offenders and the criminal justice system procedures that dictate the police to observe human rights and seek for arrest warrant.

## PRELIMINARY HEARING

If the arrested person is charged with a felony, a preliminary hearing is conducted. A preliminary hearing is a mini-trial whereby a testimony is taken by administering an oath. However, the defendant may decide to abandon the preliminary hearing. In circumstances where the defendant decides to get on with the preliminary hearing, the presence of the following is required; the judge, defendant, attorney for the defendant, prosecutor, victims of the crime or witnesses of the crime (Ashworth & Redmayne, 2010). At this stage in the criminal process the prosecutor is required to present to the judges any available evidence to prove that the defendant has actually committed the offence in which he/she is being charged with. The defendant attorney can also produce evidence regarding the innocence of the defendant. If the judges determine the probable cause that the defendant had actually committed the crime, an order is issued to hold the defendant awaiting trial in the circuit court. In the case where the defendant abandons the preliminary hearing, the case directly proceeds to the circuit court for trial (Neubauer & Fradella, 2015). If a probable cause lacks or the witnesses fail to attest, the case is terminated by the court and the defendant is set free. However, the prosecutor may later file grievance against the defendant in respect to the earlier crime, but he is required to present extra evidence in order to demonstrate for the probable cause. In the course of the hearing, the prosecutor may choose to terminate the charges against the defendant and this is termed as “nolle prosequi.”

The strength of this step in a criminal process is that it grants the judge an opportunity to determine the occurrence of a criminal offence and whether the suspect actually did commit the crime. The step offers the prosecutor and the defendant attorney an opportunity to evaluate the strengths and faults of the case. This step also offers the defendant a chance to recognize key witnesses, assess the testimonies and negotiate a better petition with the prosecutor (Israel & LaFave, 2014). The weakness of this step is that the judge might drop the charges against the defendant at this stage where there is lack of enough evidence or where the witnesses are unavailable. This may result in a criminal being set free and denying justice to the victims of the criminal activity. The weaknesses encountered at this stage can be overcome by reducing the depth of evidence required to ascertain that a suspected criminal did commit the crime he or she is being charged with. The correction of the weaknesses in this step is hindered by the criminal justice system that dictates the probable cause standard that need to be attained by a given level of evidence or witnesses and when absent can lead in release of suspects who actually committed a criminal offence.

## GRAND JURY

In some cases the preliminary hearing is substituted by a grand jury. A grand jury is made up of a panel of private citizens who are selected using the similar approach that is being used when choosing the trial juries. They are assigned the task of considering the charges of criminal activities. Evidence is presented to the 12 grand jurors by the prosecutor. Nine of the members of the grand jury must approve that a criminal offence took place and the defendant committed the offence with probable cause. Then the defendant is either set free or held to the circuit court for trial. During a felony trial witnesses are required to attest at least three times (Bottoms & McClean,2013).

## ARRAIGNMENT

Arraignment is a term used to refer to the first hearing in court after being arrested. The defendant is informed of the criminal charges that he or she is accused of and is required to make a plea in respect to the crimes. The defendant have choices of either to plead guilty or not quilt in regard to the crimes charged against him. The defendant has a right to seek the assistance of an attorney during his arraignment and if he is not able to pay for an attorney he has the right to request to be allocated for a public defender at no fee (Neubauer & Fradella, 2015). A trial date is set by the court in consultation with the prosecutor and the defendant’s attorney.

The strength of this stage is that the defendant is in a position to make an informed decision when pleading quality or not quality since he or she is conversant of the crimes he is accuses of. In addition the defendant has the right to be assigned an attorney at no cost.

## TRIAL

Though a process referred to as voir dire a jury is nominated on the first day of the trial. The prosecutor presents his final statement. The defense attorney can either make his initial testimonial at the beginning of the trial or he can wait to make his testimonial after evidence has been presented by the state. Once the prosecutor has presentation the state case, the defense, may at its will, provide evidence. After the hearing of all the presented evidence is done, the written instructions that are available are read to the jury by the court. The instructions provide the laws that are applicable to the given case. The prosecutor then makes a closing declaration followed by a closing declaration from the defense after which the prosecutor may give any other closing comments. The jurors then leave to determine whether the state has provided enough evidence to establish that defendant committed the criminalities pressed against him beyond any reasonable doubt (Messmer & Otto, 2013). The jurors then agree whether to charge the defendant as either being guilty as charged or as being innocent in regard to the pressed charges against him. If the jurors do not come with an agreement, the trial ends as either a suspended jury or a mistrial which results in the case being tried again. If the defendant is found to be innocent, the state is prohibited from retrying him or her in regard to the charges. If found guilty, for the purpose of passing a sentence, the prosecutor and the defendant are given a chance to provide added evidence to the jury. After the additional evidence has been offered to the jury, the jurors retire to contemplate on the appropriate sentence to be passed to the defendant. In situations where the defendant is faced with previous convictions, a sentence may be enforced by the judge without approval from the jury at a different sentencing hearing.

In circumstances where the defendant found guilty of a first degree murder where the defendant might be faced with a death sentence, a different hearing concerning punishment is held before the same adjudicators (Ashworth & Redmayne, 2010). The jurors will endorse a death sentence or imprisonment for life without a liberation.

Before a sentence is passed, the state Board of Probation and Parole may carry out an investigation to determine the suitability of the defendant to be granted probation and if the defendant is found suitable for granting a probation an endorsement is made to the judge (Bottoms & McClean,2013).

The trial stage has various strengths when the jury system is used in ensuring justice by carrying a fair trial. Some of the strengths seen in this step include an opportunity to cater for diverse views and opinions across a wide-ranging range of society since the juries represent the whole community. The jury system results in minimal individual biasness by allowing sharing of decision making. The system also reduces the likelihood of corruption and it also makes law easily available since the jurors are normal members of a community. The weaknesses at this stage result when the jury comprises of biased members who are predisposed by their personal partialities. Also in most instances there are no reasons offered in regard to the resolved verdict. Also in some instances the jurors might not represent the community fully. In order to correct the resultant weaknesses it is important to ensure the jurors represent the community at large by ensuring they are well qualified, eligible, unbiased and incorruptible.

## SENTENCING

For every criminal offence, the statute making the offence stipulates a range of punishment to be offered when those offenses have been committed. If the sentencing was determined by the jury, the judge has the power to reduce the sentence but has no power to increase the sentence from the one passed by the jury. Where the defendant has past sentences the punishment is determined by the judge without considerations from the jury. The defendant may be restrained, detained or put under probation. If the sentence that is passed against the defendant is imprisonment, a specific term of imprisonment is often stated. The defendant may also be commanded to pay fines or any other costs passed by the court. An offender sentenced with a nonviolent class C or D felony with no past prison obligation, after serving 120 days of his verdict ,may petition the court in writing to serve the remaining term of his ruling on probation or a substitute sentence. The judge, after commendation by the Department of Corrections, will resolve whether to accept the request (Messmer & Otto, 2013).

Strength of this step is that there are statutes in place that dictates a least set of a sentence that is administered to all persons sentenced with a criminal offence. This allows for sentence to be certain and equal for crimes that are equal. The weakness in this step is that the determinate sentence denies the judges the power to alter the sentence where they consider the sentence passed is unfair (Israel & LaFave, 2014). To correct the weakness the judges should be granted powers by the constitution to lessen punishment depending on the depth of the crime committed. the push back for correcting this weaknesses is the criminal justice system that sets minimum and maximum sentences that should be passes when certain criminal offences.

## APPEAL PROCESS

When the defendant is found guilty of the charges pressed against him and a sentence has been passed in regard to the charged crimes, the defendant can appeal to the court requesting for his or her case to be heard by a higher court. The higher court on reviewing the case, and a fault is found concerning the case or the sentence enforced, the court may reverse the verdicts that were imposed or order for the retrial of the case (Cole,Smith &DeJong, 2016).

Advantage of appeal process in that can grant the convicted criminals a chance to appeal for their sentencing and this might result in ruling out of errors. The disadvantages of this stage is that this can result in time wasting if after appealing the defendant is again found guilty as charged earlier. Also there is a long procedure required when appealing. Correction of this weakness is hindered by the justice system. The weaknesses can be corrected by changing the justice system to reduce the procedure taken in appealing and dictating certain terms for appealing to prevent time wasting.

Political power and realities is a factor that influences criminal process by influencing the punishments imposed on criminal offences. they influence the system by through acts,law and political beliefs that exist at the time when an offence was committed (Wenzelburger, 2015). This makes it hard to correct the weaknesses eencountered since changing political beliefs is not an easy task. Budgetary is another factor that influence the strengths and weaknesses in the criminal process. This is because the government allocates finances to be used in controlling crimes. The cost of controlling the crimes might be high than the allocated budgetary posing a challenge to the criminal justice system to efficiently control crimes.

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