

GLOSSARY OF LEGAL TERMS AND PHRASES*

Accelerated Rehabilitative Disposition (ARD): A pre-trial diversionary program established and run by the district attorney of each county. A voluntary program for non-violent offenders involving the concept of probation supervision without conviction. The suspension of criminal prosecution for a set period of time by the prosecutor, in exchange for the defendant's successful completion of rehabilitation program. Upon successful completion of the program, the defendant's criminal record is expunged or erased.

Accused: Person(s) formally charged but not yet tried for committing a crime.

Acquittal: A judgment of a judge or jury that the defendant is not guilty of the offense(s) for which he has been charged and tried.

Actus Reus: The wrongful deed or act. That part of a crime when combined with the mens rea makes the complete crime.

Adjudication: The judicial decision that ends a criminal proceeding by a judgment of acquittal, conviction, or dismissal of the case.

Admissible: Evidence, including testimony, documents, or physical objects, which may be legally used at trial to prove a material issue of fact or an element of a crime. Inadmissible evidence may be important to prove a material issue of fact or an element of a crime, but may not be used due to some legal defect. For example, hearsay is a statement or action which is made outside of court and offered for the truth of the matter asserted at trial. Courts do not allow such evidence to be admitted at trial based on long-standing policy concerns regarding the veracity of such evidence. Hearsay, with limited exceptions, is not admissible.

Adult: A person who by virtue of his age, 18 or older, is within the jurisdiction of criminal court.

Advocate: (1) n.- One who represents and supports the victim of domestic violence. (2) v.- To assist or argue for another. (3) n.- As alluded to in the Basic bill of rights for victims, one who may accompany a victim at all public criminal proceedings. 71 P.S. Section 180-9.3(3).

Affiant: Someone who makes or files an affidavit. Usually the arresting or investigating officer in cases of reported domestic violence. However, it may also be a person who signs and acknowledges that the facts contained within an affidavit are true and correct under penalty of the law. Such as in cases where a private criminal complaint is filed.

Affirm: To declare the judgment, order, or decree of a lower court valid.

Affidavit: A written, sworn statement in which the writer swears that the information stated therein is true and correct to the best of his knowledge.

Aggravated Range Sentence: A sentence that departs from the standard range sentence by a greater number than the standard range sentence by a specified period of months.

* Additional terms and definitions may be found at 18 Pa.C.S.A. §103.

Aggregate Sentence: The sum total of all consecutive or partially concurrent sentences currently being served by a convict.

Alleged: The term used to modify any fact or charge not yet proven true.

Alibi: A defense claim that the defendant did not commit a crime because he was not physically present at the location and time when the crime occurred. Commonwealth must receive notice of an alibi defense to be offered by a defendant at trial within the time for filing an omnibus pre-trial motion. Pa.R.Crim.P. 573(C)(1)(a). An alibi defense must be disproved by the Commonwealth beyond a reasonable doubt once placed at issue by the defendant.

Alternate Issuing Authority: An issuing authority appointed by order of the court of common pleas to temporarily preside over a criminal matter arising out of a different magisterial district or jurisdiction. Pa.R.Crim.P. 132.

Alternate Jurors: A reasonable even number of jurors in addition to the principal jurors that may be impaneled to sit as alternate jurors. Only twelve persons may deliberate and render a verdict in Pennsylvania. Alternates are selected in most cases as a safety precaution in case one of the principal jurors can not sit and deliberate for the entire case. Alternate jurors may not deliberate unless replacing a juror removed or excused during the trial.

Allocatur: A legal term used to describe a petition for allowance of an appeal to the Pennsylvania Supreme Court.

Appeal: A petition to a higher court for a reversal or modification of the judgment of a lower court.

Appellant: The person or entity taking an appeal from a judgment or order.

Appellee: The adverse party to an appeal from a judgment or order. The party who is opposing the appellant.

Arraignment: Generally means an accused person's appearance in a court at which the court may inform him of the charges against him, advise him of his rights to pre-trial relief, appoint a lawyer for him, and/or hear his plea.

Arrest: The taking into custody of a person suspected of a crime for the purpose of charging him with committing a specific offense.

Arrest Warrant: A document issued by a judicial officer which directs a law enforcement officer to arrest a person who has been accused of an offense. See "Warrant", supra.

Apprehension: See Arrest.

Assailant: The batterer, suspect, or defendant.

Assault: A threat or attempt to inflict offensive physical contact or bodily harm on a person that puts the person in immediate danger of or in apprehension or fear of such harm or contact or causing bodily injury intentionally, knowingly or recklessly. No physical contact is necessary. An attempt, with unlawful force, to inflict bodily injury upon another, along with the current ability to succeed in the attempt unless prevented

from doing so. No physical contact is necessary. An assault could be either a tort or a criminal offense, and therefore a basis for a civil action and/or a criminal prosecution. Assaults may be categorized as "simple" or "aggravated" depending on such factors as the extent of bodily injury, use of a weapon, status of the victim, etc. 18 Pa.C.S.A. §§2701; 2702

Attorney: One who is admitted to the practice of law within his respective state. A lawyer, counselor at law, legal advocate. A district attorney is a lawyer that is statutorily assigned to prosecute criminals.

"Backtime": Legal slang for the remainder of a parole sentence. The period of time that a criminal defendant is released on parole from the expiration of their minimum sentence.

Bail: Money or property promised or given to the court as security when an accused person is released before and during his trial with the agreement that the defendant will return to court when ordered to do so. The purpose of bail is to secure the appearance of the defendant at all subsequent times required and to protect the community and any identified person(s). Bail is forfeited if the defendant fails to return to the court. If someone is "out on bail" that means that they have posted bond, or a portion of their bond. A bail bondsman may post bond for a defendant.

ROR- "Released on Own Recognizance." Nonmonetary bail that requires the signing of the defendant's signature to the general bail conditions. No amount of cash or property need be posted.

Nonmonetary Conditions: Bail without the need for posting of cash or property. A defendant is given a set of conditions in addition to those imposed by ROR bail, above cited. These conditions may include reporting requirements, restrictions on travel, and any other conditions deemed appropriate, such as psychological or drug/alcohol counseling.

Unsecured Bail: A dollar amount that is set by an issuing authority to be paid by the defendant or a surety upon breach of the bail conditions.

Nominal Bail: A minimal amount of cash or property to be posted in order to meet the monetary requirement of bail. Conditions of bail are always present.

Monetary Condition: Also referred to as "release on monetary condition." A bail or issuing authority may require the defendant to post an amount of cash or property in order to be released from a secured facility. Monetary conditions are in addition to mandatory bail conditions, such as refraining from the commission of a new crime.

Bailiff: A uniformed court officer whose function is to keep order in the courtroom.

Bar: A part of the courtroom located in front of the judge's bench.

Battered Woman's Syndrome: The theory that a woman who has been abused by her partner over a period of time becomes psychologically unable to leave her abuser. Often used in addition to the self-defense theory when a battered woman kills. Not a recognized defense in Pennsylvania. However, a long-standing period of abuse may be admissible evidence to establish a woman's reasonable fear of her husband's attack.

Battery: The infliction of physical contact with force by one person against another. Battery can be against one's body or close to the person's body, for example, clothing, car, or umbrella.

Bench: Where the judge sits during court proceedings; the term also is often used for referring to the judge.

Bench trial: A trial in which the judge hears the case without a jury and decides whether the accused is guilty. Also referred to as a "waiver trial" or a "non-jury trial."

Bench warrant: A court order which directs that an accused person who has been released before trial and fails to return when ordered to do so be brought to court to appear before the judge.

Beyond a Reasonable Doubt: The degree of proof needed for a jury or judge to convict an accused person of a crime. Not reducible to a mathematical certainty, such as 95%. It is that amount of doubt which would cause a reasonable person to hesitate before acting in a matter of importance in their own affairs. See Burden of Proof, supra.

Bill of Particulars: A more detailed and specific accusation made by the Commonwealth against a criminal defendant. Must be requested within 7 days of formal arraignment.

Bond: Money or property promised or given to the court to insure the presence of the defendant in all future criminal proceedings. Factors the judicial officer considers in setting the amount of bond include whether the defendant is likely to flee, and whether the defendant presents a danger to the community. Bond is forfeited if the defendant fails to return to the court.

Personal Recognizance/Release on Recognizance (ROR bond): The promise of an accused person to the court that he will return to court when ordered to do so which is given in exchange for release before and during his trial.

Surety Bond: Guarantee by a third party to pay the court the amount of bond set in the event that the defendant fails to appear at the next duly set judicial proceeding regarding the defendant's case.

Cash Bond: A sum of money in the amount designated by the court in an order setting bond, posted by a defendant or by another person on behalf of the defendant with the court or other authorized public officer.

Booking: A police administrative action officially recording the arrest and identifying the person, place, time, the arresting authority and the reason for the arrest. Fingerprinting and photographing are also performed. Information is entered into state and national data banks such as AFIS (Automated Fingerprint Identification System).

"Bound Over": Legal jargon meaning that evidence sufficient to support a prima facie case against a defendant has been presented by the Commonwealth. In the context of a preliminary hearing, a Magisterial District Judge must find that a prima facie case exists for each charge that is forwarded ("bound over") to Common Pleas Court for further disposition.

Burden of Proof: The duty of one party to prove an allegation in order to convince the judge or jury of the truth of that particular allegation. The amount of evidence that one party must present in order to win her or his case. In criminal cases, the burden of proof is "beyond a reasonable doubt"; in civil cases, the burden of proof on the plaintiff is "preponderance of the evidence".

Beyond a Reasonable Doubt- This is the highest standard of proof under the law. The standard that is applicable to the Commonwealth in criminal trials. The amount of doubt that would cause a reasonably prudent person to hesitate before acting in a matter of importance in their own affairs.

Clear and Convincing Evidence- Highly likely, more than a preponderance of the evidence, but less than beyond a reasonable doubt.

Preponderance of the Evidence- Evidence that is of greater weight than the evidence offered in opposition to it; more probable than not; slightly greater than 50%.

Prima Facie- The lowest standard of proof. Evidence which suggests that a crime has occurred and a defendant had some part in the commission of the crime. Common sense application to a set of facts in determination of whether or not a crime may have occurred.

Capias: A bench warrant issued by a judge of the court of common pleas for a defendant's non-compliance with the conditions of bail or other order of court that sets forth a mandate to appear.

Case-In-Chief: The primary presentation of evidence by either the Commonwealth or the defense. The Commonwealth must establish the elements of the crime(s) charged and the criminal responsibility of the accused. The defense may present evidence to prove an affirmative defense such as legal justification, entrapment, or legal insanity or place at issue another matter which may create a reasonable doubt, such as an alibi defense.

Certiorari: Review by the United States Supreme Court.

Challenge for Cause: A motion made by either the defense or the Commonwealth which indicates to a trial court that a prospective juror may not be suitable for a jury due to some pre-existing bias or knowledge about a case and the juror should be removed due to such. Both the defense and the Commonwealth have unlimited challenges based upon cause.

Chambers, Judges: The office of the judge which is sometimes used for private sessions on cases. For example, the prosecutor and the defense attorney may meet the judge in chambers before sentencing in order to make a recommendation.

Charge: A formal allegation that a specific person(s) has committed a specific offense, also referred to as pressing charges.

Charge of the Court: The jury instructions read to the jury by the trial court after the closing arguments of counsel.

Circumstantial evidence: Indirect evidence. The proof of certain facts through which a fact finder may infer or deduce that another fact or facts are in existence. For example, it rained last night. I did not see or hear the rain. However, when I awoke the sidewalk, cars, and buildings were all wet. Logically, therefore, I may infer or arrive at the conclusion that it rained last night. Compare "Direct Evidence", supra.

Citation: One means by which summary criminal proceedings may be commenced. A citation may be issued by a uniformed officer to an accused or the citation may be filed by the officer at the office of the Magisterial District Judge with appropriate jurisdiction in which case the citation is served on the accused by mail.

Clear and Convincing Evidence: See Burden of Proof. A standard of proof somewhat greater than a "preponderance of the evidence" but somewhat less than "beyond a reasonable doubt"—sufficient proof for the judge or jury to believe the facts that are sought to be established.

Closing Argument: The final persuasive statements made to the jury from the prosecutor and defense counsel based upon the facts presented at trial and reasonable inferences deduced therefrom.

Collateral: Cash or a cash equivalent deposited in summary cases. Pa.R.Crim.P. 3, 42 Pa.C.S.A.

Collateral Appeal: An appeal by a defendant or petitioner pursuant to the Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. Sections 9541-9546.

Collateral Estoppel: The theory which allows for a perpetrator's criminal conviction to be accepted as proof of the perpetrator's legal liability in civil cases filed by the victim. See also Res Judicata.

Colloquy: A discussion held between parties. A "guilty plea colloquy" may be given either orally or in writing and outlines or discusses the rights a criminal defendant waives or gives up by pleading guilty or nolo contendere (no contest), the maximum possible penalties for all the crimes charged, and whether the defendant has knowingly, voluntarily and intelligently given up their rights by pleading guilty.

Commitment: The action of a judicial officer ordering that an adjudicated and sentenced adult be admitted into a correctional facility.

Common Law: Law or rules of law established by the courts. Decisional law. Derived from cases decided by the courts of Pennsylvania or from federal courts which are binding precedent or persuasive authority.

Common Pleas Court: See Court of Common Pleas.

Commonwealth: The State of Pennsylvania. May also refer to one or more of the law enforcement agencies assigned the duty of carrying out the laws of the State.

Commonwealth Court of Pennsylvania: An appellate court in Pennsylvania that hears appeals from State agency and administrative decisions. There is only one Commonwealth Court in Pennsylvania. This Court hears appeals from decisions rendered by the State Board of Probation and Parole.

Commonwealth's Presenter: The entity or individual assigned the responsibility of setting forth and proving the criminal allegations made against a citizen in a court of law. This may include an arresting officer, an affiant, or a district attorney.

Community Correction Center: Commonly referred to as "half-way homes," this is a residential facility run by the Pennsylvania Department of Corrections for state prisoners who meet certain eligibility requirements.

Compensation: Remuneration provided to a victim for the loss resulting from another's criminal actions. Restitution for property losses and medical expenses directly caused by criminality must be ordered by the court of common pleas. 18 Pa.C.S. Section 1106, 42 Pa.C.S. 9721(c). Compensation for losses suffered by victim or family member may also be recouped through the Crime Victim's Compensation Board. 71 P.S. 180-7-180-9.11 (Adm. Code Sections 477-479.11). Compensation through the Crime Victim's Compensation Board is paid through a statewide fund for medical and/or funeral expenses, counseling, lost wages, or support made necessary by injuries or death sustained as a result of the criminal behavior of another.

Complainant/Complaining Witness: The person who files a formal criminal complaint or the victim of the crime described in the complaint.

Complaint: A formal written statement filed in court by any person, often a prosecutor or a victim, which accuses a specific person of committing a specific crime.

Concurrent: Sentences that are served either wholly or partially at the same time including sentences of confinement, probation, or intermediate punishment.

Confidential Communication: Any written or oral communication between two or more parties that is the subject of the protected right of one of the parties as a matter of law. The communication may only be divulged by the other party or one of the other parties if the party with the protected right agrees to the communication being divulged to others. Such confidential communications are protected within the relationship of attorney/client, doctor/patient, psychiatrist or psychologist/patient, clergy/other, just to name a few.

As defined by the Protection From Abuse Act with regard to domestic violence counselor or advocate:

"All information, whether written or spoken, transmitted between a victim and a domestic violence counselor or advocate in the course of the relationship. The term includes information received or given by the domestic violence counselor or advocate in the course of the relationship, as well as advice, reports, statistical data, memoranda or working papers, records or the like, given or made in the course of the relationship." 23 Pa.C.S.A. Section 6102. The communication will remain confidential unless and until a victim executes a waiver in a signed writing. 23 Pa.C.S.A. Section 6116.

Consciousness of Guilt: Generally speaking, a belief by an individual that he/she is in fact criminally responsible for a particular act or offense. When an individual flees or conceals himself such flight or concealment is a circumstance tending to prove the person is conscious of guilt. Such flight or concealment does not necessarily show consciousness of guilt in every case. A person may flee or hide for some other motive and may do so even though innocent. Whether the evidence of flight or concealment in a case should be looked at as tending to prove guilt depends upon the facts and circumstances of a case and especially upon motive which may have prompted the flight or concealment. The judge will tell the jury that they may not find the defendant guilty solely on the basis of evidence of flight or concealment.

Consecutive: Sentences that are not served either wholly or partially at the same time. The total term of supervision or confinement is increased by each respective sentence.

Contempt of Court: An act that is calculated to embarrass, hinder, or obstruct the court in the administration of justice, or that is calculated to lessen the court's authority or dignity. May be either "direct" or "indirect." Direct contempt occurs within the presence of the court or courtroom officials. Indirect contempt occurs outside the courtroom, but in contravention of a court's order. For example, an indirect criminal contempt may occur when a defendant violates a valid protection from abuse order by disregarding all or some of the order's terms.

Continuance: The rescheduling of the hearing on a criminal matter from one date to another for cause shown.

Conviction: A judgment of the court based either on the decision of a jury or a judge or on the guilty plea of the accused, that the defendant is guilty of the crime of which he has been accused.

Corroborate: To give information that supports the statements made by either the victim or the accused.

Count: Each separate offense listed in a complaint, information, or indictment accusing a person of committing a crime.

County Parole Supervision: The parole supervision automatically placed upon a convicted defendant when the maximum term of incarceration does not exceed 24 months when the sentence imposed is a sentence with a minimum and maximum term.

Court: An agency of the judicial branch of the government authorized by law to decide controversies of law and fact brought before it.

Court of Common Pleas: The trial court in Pennsylvania. There are currently 65 courts of common pleas for the 67 counties in Pennsylvania. The Superior, Commonwealth and Supreme Courts are ranked above the court of common pleas.

Court Case: One or more of the offenses charged in a criminal complaint is a misdemeanor, felony, or murder of the first, second, or third degree. Pa.R.Crim.P. 3, 42 Pa.C.S.A.

Court Administrator: An official in charge of the progression of the calendar of the Court of Common Pleas. A court administrator may determine which criminal cases will be heard before other cases.

Court Calendar: The calendar established by the court or other duly designated authority within a county. The calendar determines the timing and duration of all proceedings occurring within the court of common pleas. Proceedings include the scheduling of formal arraignments and trial.

Court reporter: The person employed by a court to record the statements and conversations held before a court. Also referred to as a stenographer. A reporter will make an electronic recording of a statement contemporaneous to its being spoken with a machine similar to a typewriter.

Credibility: The assessment of another's demeanor, manner of speaking, tone of voice, and appearance in determining how much or how little weight to accord his testimony in court. The finder of fact will have to assess the credibility of each witness that comes before it in a determination of the guilt or innocence of an accused.

Crime of Violence: Any crime involving actual or threatened violence against a person. Crimes of violence include, but are not limited to, homicide, voluntary manslaughter, robbery, aggravated assault, rape, kidnapping, burglary, and simple assault.

Crime Victim's Compensation: 71 P.S. Section 180-7, et sequentia. Compensation awarded to a claimant or victim of a crime through the Bureau of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

Crime Victim's Compensation Board: Administrative agency established by the Pennsylvania Legislature to provide victim's assistance. Title 71 P.S. 180-7 through 180-9.11

Criminal: A person who has been convicted by a court of committing a crime.

Criminal Court: The trial court or the Court of Common Pleas where a criminal trial or other disposition will be heard.

Criminal Record: An individual's prior convictions for penal code offenses. The record may include juvenile adjudications, summary offense convictions, and convictions from other states/territories. Primarily a criminal record refers to prior convictions for offenses such as misdemeanors and felonies.

Cross Examination: The question asked of a witness by the opposing attorney for more information. Cross-examination questions may be leading. Compare "Direct Examination," supra.

Deadly Weapon Enhancement: An enlargement of the mitigated, standard and aggravated range sentences of the guidelines by a specified period of months based upon the use or possession of a deadly weapon during the commission of an offense. A deadly weapon is any item that is capable of inflicting death or serious bodily injury.

Declarant: One who declares or makes a verbal or written statement. See Com v. Wilson, infra.

Defendant: A person who has been formally charged with committing a crime and against whom a criminal proceeding is pending (criminal); a person who has been sued by the plaintiff (civil).

Defense Attorney: A privately retained or court-appointed lawyer that will prepare and defend an accused's case. Court-appointed attorneys are either Public Defenders or private attorneys who are retained by a county to represent indigent defendants that a Public Defender may not represent due to a conflict of interest. Court-appointed lawyers are paid by the county government to assist indigent or poor defendants. A criminal defendant has the right to be represented free of charge if he cannot otherwise afford legal representation.

Demeanor: One's physical appearance; outward bearing or behavior. Includes, but not limited to, one's tone of voice, evidence of surprise, emotional state, and facial expressions.

De Novo: Literally anew, as in trial de novo – the granting of a new trial.

Deposition: Part of discovery whereby a witness (whether or not a party) is questioned and cross-examined under oath; the testimony is recorded either stenographically or by audio or videotape recording.

Demurrer: The facts alleged do not support or are insufficient to prove the crime(s) charged.

Detention: The legal confinement of a person subject to criminal or juvenile proceedings.

Direct Appeal: An appeal from a judgment or order that is on review for the first time in an appellate court.

Direct Evidence: A type of evidence (testimony, objects, pictures, confessions) that establishes an element of the crime based upon the contemporaneous (occurs at the same time) observation or perception of a physical event. For example, "I saw the defendant hit the victim twice in the shoulder before reaching for the tennis racket." This is testimony from a witness that establishes what the witness saw or perceived. This is direct evidence of a material element of a crime. It establishes that an action occurred. Another example may be that the defendant confessed to police that he "wanted to make the victim pay for coming home late." This is direct evidence of the defendant's intent to cause harm. The defendant told the police this is what I was thinking when I committed the action. Compare "Indirect Evidence" contained herein.

Direct Examination: The questioning of a witness during a case-in-chief. An attorney must ask

non-leading questions in order to obtain the desired testimony. Compare "**Cross-Examination,**" supra.

Discovery: A pre-trial procedure which allows each party to get written or oral information from the other party. This includes, among other things, depositions and interrogatories. Discovery is to occur within 14 days of a defendant's formal arraignment unless further extended by the Court. Pa.R.Crim.P. 573.

Dismissal: A decision by a judicial officer to end a case for legal or other reasons without a determination of guilt or innocence.

Disposition: The outcome of a case. The ultimate resolution of a criminal matter. For example, a case may result in a guilty plea or a verdict of guilty. In either event, the disposition of the case is a conviction. Information indicating that criminal proceedings have been concluded. Such dispositions include, but are not limited to, acquittal, acquittal by reason of insanity, pretrial probation, probation without verdict, nolo contendere plea, convicted, discharge under the rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained.

District Attorney: See prosecutor. See also Commonwealth's attorney

District Justice: See Magisterial District Judge.

Diversion: The official halting or suspension, at any legally prescribed processing point after a recorded justice system entry, of formal criminal proceedings against an alleged offender, and referral of that person to a treatment or care program administered by a non-justice agency, or a private agency, or no referral.

Docket: The list of cases to be heard on a given day which is posted outside the courtrooms. The cases are listed by the defendant's name, the case number, the charge, the time it is to be heard, and the defense attorney.

Documentation: The recording of facts and evidence in a criminal matter.

Domestic Violence: Any one of several crimes specifically enumerated by statute. Domestic violence crimes include, but are not limited to the following: Simple Assault, 18 Pa.C.S.§2701; Aggravated Assault 18 Pa.C.S.§2702; Involuntary Manslaughter 18 Pa.C.S.§2504; Recklessly Endangering Another Person, 18 Pa.C.S. §2705.

Domestic Violence counselor/advocate: As defined by the Protection From Abuse Act:

"An individual who is engaged in a domestic violence program, the primary purpose of which is the rendering of counseling or assistance to victims of domestic violence, who has undergone 40 hours of training." 23 Pa.C.S.A. Section 6102.

Domestic Violence Program: As defined by the Protection From Abuse Act:

"A nonprofit organization or program whose primary purpose is to provide services to domestic violence victims which include, but are not limited to, crises hotline; safe homes or shelters; community education; counseling systems intervention and interface; transportation, information and referral; and victim assistance." 23 Pa.C.S.A. Section 6102.

Double Jeopardy: A theory involving punishment twice for the same criminal action. The Fifth Amendment of the U.S. Constitution and Article I, Section 10 of the Pennsylvania Constitution prohibits

placing a person in double jeopardy. There are, however, instances whereby a person may be punished both civilly and criminally for the same underlying actions without violating the double jeopardy clause.

Due Process: The guarantee by both the United States Constitution and the Pennsylvania Constitution that certain substantive or procedural safeguards will occur in a criminal matter as a matter of fundamental fairness. A criminal defendant is entitled to procedural due process. This is essentially notice and an opportunity to defend against a criminal charge. A criminal defendant is also entitled to substantive due process. This includes the right to a trial, the presumption of innocence, and the right to testify on his/her own behalf.

Electronic Recording: Documentation of a statement through tape recording, audio/visual recording, or any other method of documenting the words of another. Contemporaneous with their utterance.

Elements: Defined by the Crimes Code, 18 Pa.C.S. Section 103. The components of an offense which make up the entire crime. Most crimes contain an intent element, known as the "mens rea" and an action element, known as the "actus reus." When combined these elements show the entire crime. The Commonwealth must prove each of these elements beyond a reasonable doubt at the time of trial.

Evidence: Testimony and objects used to prove or corroborate the occurrence of the elements of a particular criminal offense. See also "Circumstantial" and "Direct Evidence," supra.

Entrapment: The inducement or encouragement by a law enforcement official for another to engage in criminal activity by either (1) false representations designed to induce belief that such criminal conduct is not prohibited, or (2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by a person other than one who is of a mind to commit the crime. It is the burden of the defendant to prove entrapment by a preponderance of the evidence. See Burden of Proof, supra. 18 Pa.C.S. Section 313.

Evidence Based Prosecution: Prosecution focused on utilizing evidence (tangible objects and testimony of others) other than the testimony of the victim.

Excited Utterance: An exception to the proscription against hearsay where the availability of the declarant is immaterial. "A statement relating to a startling event made while the declarant was under the stress of excitement caused by the event or condition." Pa.R.Evid. 803(2).

Exclusionary Rule: A legal doctrine which provides that a remedy for the unconstitutional behavior on the part of a government agent may render the unconstitutionally obtained evidence suppressible. E.g.: Evidence obtained through an illegal government search may render such evidence suppressible. This means that the Commonwealth may not be permitted to use the evidence to prove its case during its case-in-chief.

Exculpatory Evidence: Any evidence (testimony, tangible objects, forensic evidence) that tends to establish that a particular defendant was less likely to have committed the crime or did not commit the crime. Evidence which tends to disprove any material element of a crime. See "Inculpatory Evidence."

Exhibit: A tangible object that is labeled for identification by a party and admitted as evidence to prove or rebut the existence of a material element of a crime.

Ex Parte: An ex parte judicial proceeding is one brought for the benefit of one party only, without notice to the other party. It refers to an application made by one party to a proceeding in the absence of the other.

Expert (Witness): Any person qualified by special training, education or experience, to render an opinion as to a fact for which he may or may not have personal knowledge. For example, a doctor may state at a trial that a victim suffered a concussion caused by blunt trauma to the side of the head. The doctor may also testify to hypothetical questions for which he has no personal knowledge of the facts; for example, that the injury sustained to the head may have been caused by a club.

Expunge: The sealing or purging of arrest, and other criminal records. To remove information so that there is no trace or indication that such information existed. Expungement of criminal records is governed by statute. It will occur in the following situations; (1) upon the successful completion of an ARD or other pretrial diversionary program; (2) by petition and order of court when the defendant reaches the age of 70 and has been free of arrest for 10 years following the final release from confinement or supervision, or (3) an individual who has been dead for 3 years. 18 Pa.C.S. Section 9122.

Felony: A criminal offense punishable by fines and/or incarceration in a confinement facility for the period prescribed by statute. In Pennsylvania, felonies may be of the first, second or third degree. The penalties are as follows: first degree – imprisonment up to 20 years; fine to \$25,000; second degree – imprisonment up to ten years; fine to \$25,000; and third degree – imprisonment up to seven years; fine to \$15,000.

Finding: The court's or jury's decision on issues of fact. In almost all court orders, the findings of facts precede the actual order of the court.

Formal Arraignment: See Arraignment, supra. Formal arraignment occurs at a set time after the criminal charges have been bound over before an issuing authority. Precedes trial.

Furlough: A court or administratively granted period of leave from incarceration or other supervision for a limited period and defined purpose.

Gagnon I Hearing: Also known as a "probable cause hearing." The first of two hearings to determine whether a criminal defendant has violated a term or terms of his probation or parole sentence. The burden is upon the Commonwealth to show probable cause that a violation has occurred. Named for the United States Supreme Court decision in Gagnon v. Scarpelli (see table of cases index).

Gagnon II Hearing: The second of two hearings to determine whether a criminal defendant has violated the term or terms of his probation or parole. The burden is upon the Commonwealth to establish that a violation has occurred by a preponderance of the evidence.

Greater Included Offense: A criminal offense that has a higher statutory classification than a lesser included offense, possesses the same elements and arises from the same set of facts as a lesser included offense.

Guidelines: A set of standards established by the Pennsylvania Commission on Sentencing to provide uniformity in sentencing across Pennsylvania. The sentencing court must consider the guidelines when imposing its sentence.

Guilty: A verdict of a judge or a jury. The charge has been proven beyond a reasonable doubt.

Guilty But Mentally Ill: A verdict rendered by the trier of fact that a criminal defendant is guilty of a crime, but was mentally ill at the time the offense was committed and was not legally insane when the offense occurred. Mentally ill is defined by the Pennsylvania Crimes Code as “[o]ne who as a result of mental disease or defect, lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.” 18 Pa.C.S. Section 314(c)(1).

Guilty Plea: A formal response by a person accused of committing a specific crime admitting that the charges against him are true.

Hearing: A legal proceeding in which arguments, witnesses, and/or evidence are heard by a judicial officer or an administrative body.

Hearing Officer/Master: An appointed individual who hears Protection From Abuse petitions.

Hearing, Preliminary: A proceeding before a Magisterial District Judge or judicial officer in which arguments, witnesses or evidence is presented and in which it is determined whether there is sufficient cause to hold the accused for trial or whether the case should be dismissed.

Hearsay Evidence: A statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is usually inadmissible, although exceptions exist. Pa.R.E. 801, et seq.

Hearsay Exception: Specified exceptions to the general proscription against the admissibility of hearsay evidence, such as, present sense impression, excited utterance, and court documents. Pa.R.E. 803.

Held for Court: See “Bound Over”, supra.

Held Over: See “Bound Over”, supra.

Homicide: Causing the death of a human being intentionally, knowingly, recklessly or negligently. See 18 Pa.C.S.A. §2501.

Hung Jury: A jury whose members are hopelessly in disagreement about the guilt of an accused. After sufficient deliberation, a trial court may declare a jury “hung” and grant a “mistrial” if the court determines that further deliberation would not produce a unanimous verdict. See “Mistrial”, infra.

Immediate Parole: The release of a convicted defendant from custody to non-custodial supervision at the time of sentencing based upon amassed time credit and the expiration of their minimum sentence.

Impeach: To challenge the credibility of a witness, usually by placing in evidence statements made by that witness at another time which contradict what is being sworn to at that time.

Incarceration: The confinement of a defendant to any federal, state, or local penal facility.

Inculpatory Evidence: Evidence that tends to establish that a criminal defendant committed a particular crime. Evidence that tends to prove any material element of a crime. See “Exculpatory Evidence.”

Indictment: A formal written accusation, now referred to as a criminal information filed in a court, alleging that a specific person has committed a specific crime.

Indigent: A party who has been found by the court to be too poor to pay for his own attorney. The court provides an attorney for indigents in criminal cases only.

Information: A formal written accusation made by a prosecutor and filed in a court, alleging that a specified person(s) has committed a specific offense(s). Most criminal actions in Common Pleas Court are initiated this way.

Injunction: A court order of which there are two types; negative injunctive relief (restraining order) and positive injunctive relief (an order requiring a person to take some type of positive action). The restraining order is an order of the court telling a person or persons to "cease and desist" from doing something.

Innocent: 100% not guilty.

Insanity: A defense to the commission of an offense. The defendant must prove by a preponderance of the evidence (see Burden of Proof) that at the time of the commission of the offense he was laboring under such defect of reason, from a disease of the mind, as not to know the nature and quality of the act being done. Or, if the defendant did know the quality of the act, he did not recognize that what he was doing was wrong. 18 Pa.C.S. Section 314(c)(2), 315.

Intermediate Punishment: A statutorily provided sentencing scheme for specific crimes in which the sentencing court would otherwise impose a sentence of incarceration.

Interrogation: The questioning of a witness or the accused by the police or by an attorney for the purpose of obtaining information about a crime.

Investigation: The procedure by which the facts and evidence of a crime are collected, processed, and assembled for formal presentation in either a criminal complaint or at a trial.

Judicial Officer: Any judge, hearing officer or magisterial district judge.

Jurisdiction: The territory, subject matter, or person over which lawful authority may be exercised.

Jury: A body of 12 persons sworn to render a verdict or true answer on a question or on criminal charges officially submitted to them. The jury is selected by counsel for the prosecution and defense following "voir dire" during which jurors are questioned regarding their fitness to serve in a particular case. A defendant has the right to waive a jury trial in favor of trial by a judge alone. The Commonwealth has the right to demand a jury trial. There must be a unanimous verdict of guilty or not guilty among 12 jurors. If a trial results in a "hung" jury, there may be another trial.

Jury Instructions: The legal charge of the court to the jury regarding the relevant law and the manner in which deliberations are to be conducted.

Jury Selection: The process by which the district attorney and the defendant or the defense attorney make challenges for cause or peremptory challenges against a prospective panel of jurors. The outcome of jury selection will be the seating of 12 jurors and possibly a number of alternate jurors to hear the case.

Law Enforcement Agency: A local, state or federal agency charged with the responsibility of carrying out the duties imposed by the penal laws.

Leading Question: A question posed which indicates a suggested response. For example, "The light was red, wasn't it?" is a leading question. "What color was the light?" is a non-leading question. Compare "Non-leading Question," supra.

Legal Maximum: The longest imposable sentence for any particular crime.

Legal Insanity: See Insanity, supra.

Lesser Included Offense: A crime that possesses the same elements of a greater criminal offense charged and is established by the same set of facts that establish the greater criminal offense.

Magisterial District Judge: An elected member of the minor judiciary. Previously known as "justice of the peace" and "District Magistrate", he hears both certain civil cases and all criminal matters which arise within his jurisdiction, known as a "magisterial district." In situations involving court cases, the magisterial district judge will determine whether the crime should be "bound over" for the court of common pleas after hearing a presentation of the facts. In certain counties, a magisterial district judge will set the defendant's bail at the preliminary arraignment.

Magistrate: See Magisterial District Judge.

Magisterial District: The geographical confines in which a magistrate maintains jurisdiction. A smaller subdivision of a county or legally recognized subdivision of the State.

Mandatory Sentencing: The minimum sentence that must be imposed upon conviction as established by the Pennsylvania Legislature for specific crimes.

Manslaughter: Causing the death of another person either unintentionally but because of recklessness or gross neglect (involuntary or negligent manslaughter) or intentionally but with provocation that a reasonable person would find extreme (voluntary or non-negligent manslaughter).

Medical records: The documented notes, observations, diagnosis, and prognosis of a victim by medical personnel. Includes, but not limited to, doctor's notes, EMT logs from ambulance, triage notes, victim/patient's statements made pursuant to medical treatment, and x-rays. A type of corroborating evidence.

Mens Rea: A guilty mind, the wrongful purpose. The component of a crime that is combined with the actus reus that comprise the entire crime.

Mentally III: See Guilty but Mentally III, supra.

Merger: A legal doctrine which holds that a lesser included offense will be subsumed by a greater offense. Crimes do not merge, or become the same crime, unless (1) the crimes have the same elements (are lesser included offenses) and (2) the facts of the case are such that the facts which establish one criminal charge also serve as the basis for the additional criminal charge. A defendant cannot be sentenced for a crime which merges with another offense.

MIMIC (Motive, Intent, lack of Mistake, Identity, and Common plan, scheme or design): Attorneys and judges may sometimes refer to this list simply as "MIMIC" to save time. MIMIC is a specific type of

evidence of prior acts of a defendant, which may be admissible in court to prove that a crime, in fact, occurred. For example, evidence that a defendant used a garden tool to inflict harm on another five times prior to the current instance giving rise to a criminal charge and prosecution may be admissible at a trial to show a common plan, scheme, or design. "Every time the defendant beats me he uses a shovel." See Pa.R.Crim.P. 405 (b)(2)

Miranda Warning: Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). A United States Supreme Court decision which establishes the rule that anyone subjected to custodial police interrogation must be advised "in clear and unequivocal terms" of the following four rights:

- (1) He has the right to remain silent;
- (2) Anything said can and will be used against the individual in court;
- (3) He has the right to consult with an attorney and have the attorney present with him during interrogation;
- (4) If he cannot afford an attorney, one will be provided free of cost.

Misdemeanor: An offense usually punishable by fines and/or incarceration in a local confinement facility, for the period prescribed by statute. Misdemeanors in Pennsylvania may be of the first, second or third degree. The penalties are as follows: first degree – imprisonment up to five years; fine to \$10,000; second degree – imprisonment up to two years; fine to \$5,000; and third degree – imprisonment up to one year; fine to \$2,500.

Mistrial: A legal determination made within the discretion of a trial court that a material defect has occurred during the course of a trial that would render the ability of the trier of fact to determine a proper verdict improbable or even impossible. In some instances, the declaration of a mistrial may end the criminal process in a particular case forever. In others, it may mean that a new jury or a different judge may re-try the case.

Mitigated Range Sentence: A sentence that departs from the standard range sentence by a sentence of less time than the standard range sentence by a specified period of months.

Monetary Condition: See Bail, supra.

Motion: A verbal or written request made by a party or a party's attorney before, during, or after a trial that the court issue a rule or an order.

Motion for Judgment of Acquittal: A defense motion made requesting that the court dismiss the criminal charge(s) based upon the failure of the Commonwealth to produce sufficient evidence of guilt. Previously termed a "demurrer."

Motion for Recusal: See Recusal, supra.

Motion to Quash: A request that a court of appropriate jurisdiction declare that certain legal process is void and of no effect, e.g., a criminal information or subpoena. Used when a subpoena is oppressive or unreasonable or where a criminal information is legally defective.

Motive: The reason behind a person's acts which may explain his intent or thoughts when he took a particular action. Motive is not an essential element to prove that a crime occurred; however, it is very helpful to a prosecution to prove that a crime occurred.

Murder: Intentionally causing the death of another person without extreme provocation or legal justification or causing the death of another while committing or attempting to commit a felony.

Newly discovered evidence: Evidence discovered after the trial and not discoverable before trial, despite the exercise of due diligence.

No Drop Policy: A policy implemented by police and prosecutors that charges will not be dropped or dismissed by the Commonwealth at a preliminary hearing, despite the victim's failure to cooperate with the prosecution.

Nolo Contendere: A defendant's formal answer in court to the charges in which the defendant states that he does not contest the charges. The nolo contendere plea is not an admission of guilt but carries the same legal consequences as a guilty plea.

Nol Pros: (Nolle Prosequi) a decision by the prosecutor not to pursue the prosecution of a particular charge or case. The literal translation means "not to prosecute."

Nolle prosequi: See Nol Pros, supra.

Nominal Bail: See Bail, supra.

Non-jury Trial: See "Bench Trial", supra.

Non-leading Question: A question which does not indicate a suggested answer. For example, "what color was the light at the intersection?" is non-leading. "The light at the intersection was red, wasn't it?" is a leading question. Compare "Leading Question," supra.

Nonmonetary Conditions: See Bail, supra.

Notes of Testimony: A written transcription of the recorded events of trial.

Not Guilty: A verdict of acquittal by a court or jury. The charges have not been proven beyond a reasonable doubt. A verdict by a judge or a jury that a person accused of a crime did not commit it or that not enough evidence exists to prove beyond a reasonable doubt that the accused committed the crime.

Not Guilty Plea: A formal response by a person accused of committing a specific crime in which he disputes the charges lodged against him.

Notice: A written order to appear in court at a certain time and place.

Nunc Pro Tunc: Literally, "now for then." Decision by a court to allow a matter to proceed which technically is beyond the time prescribed. It is typically invoked in cases of appeals filed after the appeal period has expired where, by virtue of a breakdown in the court system, the ability of a party to file in a timely manner was prejudiced. A nunc pro tunc order is one used by courts to correct a record. It corrects a previous judgment or order or is used in cases where the court hears a matter but does not issue a written order for some time, thereby making it nunc pro tunc, *i.e.*, effective at the time of the hearing as opposed to the time the judge signed the order.

Objection: An indication made by an attorney before the court that a factual, procedural, evidentiary, or other legal problem exists with testimony, an exhibit, or other evidence which may prohibit its admission onto the record.

Offender: An adult who has been convicted of a crime.

Offense: A crime; technically, in some jurisdictions, only the most minor crimes are called offenses.

Offense Gravity Score ("OGS"): A predetermined number between 1 and 14 assigned to a particular offense by the Pennsylvania Commission on Sentencing based upon its severity. The "OGS" is used in conjunction with the Prior Record Score ("PRS") to determine the standard, mitigated and aggravated range sentences to be given to a criminal defendant in Pennsylvania. The more severe the crime, the higher the number.

Offense Tracking Number ("OTN"): A number given by a court to each specific case to identify the defendant, the crime charged, and the respective disposition for all law enforcement agencies.

OGS: See "Offense Gravity Score," supra.

Omnibus Pre-Trial Motion: Literally means "all inclusive." See Pre-Trial Motion, supra.

Opening Statement: The statement provided by a prosecutor and a defendant or his attorney to a jury prior to the taking of testimony and exhibits. The prosecutor will generally provide a preview of what the evidence will be to establish the elements of the crime(s) charged in the information. The defense may give an opening statement, but may also choose to waive it or reserve it to a point later in the trial.

Overruled: The party making a legal objection is not sustained. The party objecting loses.

Pa.C.S.: See Pennsylvania Consolidated Statutes.

Pa.C.S.A.: See Pennsylvania Consolidated Statutes Annotated.

Parole: The conditional release of a convicted offender from a jail or prison before the end of his maximum sentence based upon requirements for the offender's behavior set and supervised by a parole agency.

Parole Revocation Hearing: Normally a two-step process. The first step consists of a preliminary hearing. At the hearing the parolee may present letters, documents and individuals as evidence of his good behavior during the time of his release. If probable cause is not found, the parolee is released. If probable cause is found, a final revocation hearing is held to evaluate all the facts and to determine if parole should be revoked. Sometimes called probation revocation hearing.

Party: A person or entity directly involved in civil or criminal litigation, and may be plaintiff or defendant, petitioner or respondent. The person who sued or is being sued.

Penal Law: Includes all statutes and embodiments of the common law which establish, create, or define crimes or offenses, including any ordinances which may provide for imprisonment upon conviction or upon failure to pay a fine or penalty. Pa.R.Crim.P. 3, 42 Pa.C.S.A.

Pennsylvania Commission on Sentencing: An administrative agency of the Pennsylvania General Assembly that consists of 11 persons who formulate a set of standard guidelines for the judges of Pennsylvania to use in every criminal case in Pennsylvania. These 11 persons consist of two members of the PA House of Representatives, two PA Senators, four judges, a district attorney, a defense attorney, and a professor of law or a criminologist. Each member serves for a two year term.

Pennsylvania Consolidated Statutes: Abbreviated "Pa.C.S." Where the crimes code in Pennsylvania is written.

Pennsylvania Consolidated Statutes Annotated: Abbreviated "Pa.C.S.A." Where many statutes are contained. An annotated version provides additional case law cites for the legal propositions and terms contained in the statute.

Pennsylvania Statutes: Abbreviated "P.S." Where the "Victim's Bill of Rights" is contained.

Peremptory Challenge: A limited number of challenges that either the defense or the Commonwealth may use in selecting a jury for any reason whatsoever, except race, ethnic origin, or gender. Each side is given 5 peremptory challenges in a misdemeanor case and 7 in a felony case. In a death penalty case each side is given 20 peremptory challenges.

Perpetrator: A person who has committed a criminal act.

Petitioner: A party or entity seeking some specific remedy or order from a court.

Physical Evidence: Any evidence that is tangible or capable of being seen, held, smelled, or touched. Tangible evidence used to prove or rebut the existence of a material element of a crime. See also "Tangible Evidence," supra.

Plaintiff: The person filing the case/claim in a civil proceeding.

Plea: A defendant's formal answer in court to the charge that he committed a crime. In Pennsylvania, a defendant may plead guilty, not guilty, nolo contendere or guilty but mentally ill.

Plea Bargaining: A n agreement between the prosecutor and the defense attorney that the defendant will plead guilty to a crime in exchange for some concessions from the State, usually a lesser charge, the dismissal of other pending charges, or a recommendation by the prosecutor for a reduced sentence. The judge is not bound by any agreement between the State and defense, but generally will accept their agreement. Plea bargaining results in a "plea bargain" or "plea negotiation."

Plea Negotiation: The result of a plea bargaining process or the plea bargain itself. See **Plea Bargaining**, supra.

Post Conviction Relief Act: Located in Title 42 Pa.C.S. Section 9541, et seq. Commonly referred to as "PCRA," it is the statutorily provided source of relief for persons convicted of crimes and presently serving a sentence for a crime which they did not commit, or for persons serving illegal sentences. It is what is known as petitioning for collateral relief. A person who requests this type of relief is known as a "petitioner" under the PCRA.

Precedent: That which came before the present. Case law or common law which is binding or persuasive law for the present situation.

Preliminary Arraignment: Occurs after formal criminal charges have been brought by a law enforcement agency. A defendant is advised of the criminal charges being brought against them through a reading of the complaint by an issuing authority. Bail is set and the defendant is notified of certain rights, including the right to be represented by counsel. A date for a preliminary hearing is thereafter set. Pa.R.Crim.P. 140, 42 Pa.C.S.A.

Preliminary Hearing: A legal proceeding before a judicial officer in which arguments, witnesses, and/or evidence are presented to determine if there is sufficient cause to hold the accused for trial. Sometimes called a probable cause hearing or a pretrial hearing. The burden of proof is on the Commonwealth to establish a prima facie case. See Burden of Proof, supra.

Preponderance of the Evidence: Standard of proof which convinces the judge or the jury that the issue of fact before it is more probable than not. The evidence offered in court to prove an alleged set of facts must be better in quality and amount, of greater weight, than the evidence in opposition. See Burden of Proof, supra.

Pre-Sentence Investigative Report: A document which details the past behavior, family circumstances, and personality of a convicted adult offender and gives information about the crime he committed. It is prepared by a probation agency or other authority in order to assist the court in determining the most appropriate sentence. Such a report must be ordered to be conducted for any defendant who will be sentenced to one year or longer incarceration, unless waived by a defendant.

Pre-Trial Discovery: The transmission and disclosure of specifics known by the prosecutor to the defendant and vice-versa. Pre-Trial discovery is to occur within 14 days of formal arraignment. The prosecution must disclose certain items without fail, including any evidence which is favorable either to guilt or punishment of the accused. Pa.R.Crim.P. 305, 42 Pa.C.S.A.

Pre-Trial Motions: Also referred to as "Omnibus Pre-Trial Motions." Any one of several motions that may be made by either the Commonwealth or the defendant prior to trial and within 30 days after formal arraignment. Including a motion for a continuance, severance, joinder, and suppression of evidence.

Principal Jurors: The twelve jurors selected that will hear a criminal case and deliberate on its verdict.

Prior Record Score ("PRS"): A number between 1 and 5 assigned by the Pennsylvania Commission on Sentencing used in conjunction with the Offense Gravity Score ("OGS") to determine the standard, mitigated, and aggravated range sentences for a criminal defendant in Pennsylvania. The severity and total number of prior convictions determines the total Prior Record Score. The higher the number, the more severe the "PRS."

Prima Facie: "Upon first look." The quantity of evidence that must be presented at a preliminary hearing to have the criminal charges bound over for the court of common pleas. It must appear on a common sense level that the specific crime has occurred and that the defendant had some hand in the commission of the crime. See Burden of Proof, supra.

Private Criminal Complaint: An accusation of criminal action that one citizen files against another after obtaining approval by a district attorney.

Privileged Communication: Oral, written, or other communications between individuals which may be statutorily protected from disclosure to outside parties.

Pro-Arrest Policy: The policy of police to treat domestic violence related crimes as they would any other crime. No mediation will be done at the scene.

Probable Cause: The degree of proof needed to arrest and begin prosecution against a person suspected of committing a crime; the evidence must be such that a reasonable person would believe that this specific crime was committed and that it is probable that the person being accused committed it.

Probable Cause Hearing: See "Preliminary Hearing", supra.

Probation: Conditional freedom, instead of confinement to jail or prison, granted to an offender by the court after conviction or a guilty plea with requirements for the offender's behavior set and supervised by the court.

Probation Revocation Hearing: See parole revocation hearing.

Pro Bono: Literally, for the good. When an attorney takes a case, agreeing to represent the party for free.

Prompt Complaint: Prompt reporting to public authority is not required in a prosecution under this chapter: Provided, however, that nothing in this section shall be construed to prohibit a defendant from introducing evidence of the complainant's failure to promptly report the crime if such evidence would be admissible pursuant to the rules of evidence. 18 Pa.C.S. §3105.

Pro Se: Acting as one's own attorney in any legal proceedings; representing oneself.

Prosecutor: An attorney for the county employed by a government agency to represent the interests of the general public, and to initiate and maintain criminal proceedings on behalf of the government against persons accused of committing criminal offenses.

Protection From Abuse- Commonly referred to as a "PFA." A civil remedy prescribed by Title 23 Chapter 61. A civil remedy in the nature of an injunction prohibiting a respondent from approaching a petitioner. Available to family, household members, sexual or intimate partners or persons who share biological parenthood.

PRS: See "Prior Record Score", supra.

P.S.: See Pennsylvania Statutes.

Public Defender: An attorney employed by a government agency or subdivision, whose official duty is to represent criminal defendants unable to hire their own lawyers.

Purge: The complete removal of arrest, criminal or juvenile record information from a given records system.

Qualified Restrictive Intermediate Punishment: One of three sentencing alternatives under the Intermediate Punishment sentencing scheme. It may include residential inpatient drug and alcohol treatment, house arrest, and electronic monitoring.

Rape: Usually refers specifically to unlawful sexual intercourse or attempted sexual intercourse by a male with a female by force or without legal or factual consent.

Rap Sheet: The individual's criminal history record.

Reasonable Doubt: See "Burden of Proof", supra.

Rebuttal: Evidence or argument used to refute or oppose what has already been said during the case-in-chief.

Recess: A call by the judge for a halt in the proceedings during the court session, as a rest period or a time to deal with trial matters outside the hearing of the jury.

Recidivism: The repetition of criminal behavior; habitual criminality.

Record: The written, documented and historical presentation of each and every aspect of a case. The record may include, but is not limited to, the criminal complaint, probable cause affidavit, bail papers, magisterial district judge transcript, preliminary hearing transcript, pre-trial hearing transcript, pre-trial motions, trial transcript, post-trial motions, pleadings, petitions and other documents filed on the behalf of the defendant or the Commonwealth. Saying that something is "part of the record" means that the aspect referred to has become a part of the documented history of that particular case. See also "Criminal record."

Recusal: The exclusion of a particular judge from a case due to prior knowledge or circumstances which make the judge unable to remain fair and impartial.

Re-filing: The charges which have been dismissed before an issuing authority will be recommenced before the same issuing authority or an alternate issuing authority.

Refresh Recollection or Recollection Refreshed: Pa.R.E. 612 allows for a witness' memory of an incident for which they are testifying to be aided by a writing or other item. This includes a prior statement made by the witness.

Respondent: The party or entity that is answering or defending against the request or claim made by a petitioner to the court.

Restitution: A monetary or non-monetary commitment on the part of the offender pursuant to a court order or other agreement whereby the victim or community is compensated for a loss arising out of the actions of the offender. Restitution is a mandatory component of every sentence.

Restorative Sanctions (RS): Non-confinement sentencing alternatives. Includes mandatory restitution, fines, probation, and determination of guilt without further penalty. 204 Pa.Code Section 303.9(f).

Restraining Order: See Injunction.

Restrictive Intermediate Punishment: Programs used with an intermediate punishment sentencing scheme which may (1) house the defendant full or part time; (2) decrease and restrict the defendant's movement; (3) monitor compliance with the court's sentence; (4) involve a combination of the programs that meet the previously stated standards. 204 Pa.Code Section 303.12(a).

Reversed: A decision, judgment or order by a court that is determined to be legally infirm and is set aside by an appellate court.

Revocation Hearing: See Parole Revocation Hearing.

ROR: Stands for "Released on Own Recognizance." See Bail, supra.

Search Warrant: A document issued by a judicial officer which directs a law enforcement officer to conduct a search for specified property or persons at a specific location, to seize the property or persons, if found, and to account for the results. The items identified in the warrant must have been used in the commission of a crime.

Sentence: The punishment or penalty imposed by the court on a person convicted of a crime. May include probation, fines, incarceration and/or restitution.

Sentencing: The announcement of a sentence on the record by a court. Sentencing is to occur within 60 days of a finding of guilt, absent cause.

Sequester: Witnesses in trials and jurors may be sequestered. Witnesses are only brought into the courtroom to testify and cannot hear other testimony or the general proceedings. Jurors are not allowed to hear news reports or information on the case outside of the trial.

Sequestration Order: See Sequester, supra. The court's order directing material witnesses to be removed from the courtroom during the course of another witness' testimony.

Sexual Assault: Broadly, any sexual act or attempted sexual act in which the victim is forced to participate by the threat or use of force.

Sidebar: A conference between the lawyers and the judge held in a courtroom outside the earshot of a jury. A "sidebar" typically occurs at the judge's bench.

Sovereign Immunity: A legal theory which prevents the filing of a civil suit against the government (or any government agency) without its consent if the injury was caused by the government acting in its capacity as the government.

Standard Range Sentence: Referring to a predetermined range of months to be given a convicted criminal defendant in the minimum by a sentencing court. The standard range is computed by calculating the prior record score, determining the offense gravity score of the current offense and cross indexing these two numbers on a standard sentencing matrix to arrive a set range of months to be given a convict in the minimum.

State's Attorney: See prosecutor.

State Parole Supervision: The parole supervision placed upon a defendant when the maximum term of incarceration meets or exceeds 24 months.

Statute of Limitations: A period of time, set by law, after which civil cases and criminal prosecutions cannot be brought.

Stay: A halt in a judicial proceeding where, by its order, all judicial action ceases until some specific event occurs.

Stenographer: See "Court Reporter," supra.

Subpoena: A written order by a judicial officer requiring a named individual to appear in a designated court at a specific time and place in order to serve as a witness in a case or to bring material to the court. (If the witness is to bring material, it is usually called a "subpoena duces tecum".)

Sufficiency: Adequate, enough. A legal term used to describe the amount of evidence necessary to sustain a burden of proof. For example, in order to sustain a verdict of guilty, the Commonwealth must produce enough evidence such that a trier of fact may find each element of every offense has been proven beyond a reasonable doubt.

Summons: A written order issued by a judicial officer requiring a person accused of a criminal offense to appear in a designated court at a specified time to answer to the charge(s).

Superior Court: The first level appellate court in Pennsylvania. The Superior Court has judges that sit on panels in three areas in the Commonwealth- Eastern, Middle, and Western districts. The Superior Court handles appeals from judgments or orders from the court of common pleas.

Suppression of Evidence: A legal determination made by a judge of the court of common pleas that a particular statement, physical evidence, or other inculpatory item, will not be admissible during the Commonwealth's case-in-chief as a remedy for some illegal or unconstitutional action on behalf of a member of a law enforcement agency.

Supreme Court: The highest level appellate court in Pennsylvania. The Supreme Court has 9 justices that hear cases on appeal from the Superior Court and direct appeals in death penalty cases from the courts of common pleas.

Surrebuttal: Testimony or evidence introduced to refute evidence introduced during rebuttal.

Suspect: A person who is believed by criminal justice officials to have committed a specific crime but who has not been arrested or formally charged.

Suspended Sentence: A court decision to postpone the pronouncement of sentence on a convicted person or to postpone the execution of a sentence that has been pronounced by the court.

Sustained: The legal objection made by a party is upheld. The party objecting wins.

Tangible Objects: See "Physical Evidence," supra.

Temporary Restraining Order: See Injunction.

Testimony: Statements made in court by witnesses or parties who have sworn to tell the truth.

“Time Served”: Refers to the period of incarceration an individual has served including time incarcerated in default of bail while awaiting disposition of charges as well as post-sentence incarceration. Such time is credited to the total amount of incarceration time to which a convicted person is sentenced.

Tort: A private wrong, which may be the basis of a civil suit filed by the victim (or her estate) against the perpetrator.

Transcript: The certified record of all relevant matters occurring in court. The transcript from an issuing authority includes a copy of the criminal complaint, bail matters, summons or arrest warrant and its return, and all affidavits. The transcript from a court of common pleas will additionally include a stenographic recording of all matters contained on the record.

Trial: A hearing before a judge, or a judge and jury where issues of fact and law and evidence are presented to determine whether an accused person is guilty of committing a specific crime. The trial concludes when a verdict is reached or the case is dismissed.

Trial Court: In Pennsylvania this is the court of common pleas.

Unanimous: All of the same mind. All persons agree. The verdict in a criminal case must be unanimous among the 12 jurors.

United States Supreme Court: The highest court in the United States. There is only one U.S. Supreme Court comprised of 9 justices.

Unsecured Bail: See Bail, supra.

Vacate: To set aside. An order which has been vacated is void.

Venire: A list of persons summoned to appear as prospective jurors.

Venue: The geographical area from which the jury is drawn and in which the trial is held in a criminal action.

Verdict: The decision made by the jury in a jury trial, or by a judge in a bench trial after full deliberation on the facts. The fact finder may find that a defendant is either “guilty” or “not guilty” of the offense(s) for which he has been tried. In Pennsylvania, judges and juries may also return verdicts of “guilty but mentally ill” or “not guilty by reason of insanity” in cases where the insanity defense has been raised.

Victim: Any person against whom a crime has been committed.

Victim Impact Statement: A written or oral communication provided to a court for consideration as to the appropriate sentence to be imposed to a defendant. A victim is statutorily granted the right to appear before a court and provide such a statement for a court’s consideration. 42 Pa.C.S. Section 9738.

Victim’s Bill of Rights: Established by the Pennsylvania Legislature, cited at 18 P.S. §11.201.

Voir Dire: A French phrase that means “to see and to say.” The method by which the district attorney and the defendant or the defense attorney will ask questions of the prospective jury panel to determine if any of the jurors have any biases or hostilities toward either party. The ultimate goal is to make sure all jurors seated to hear the case will remain fair and impartial.

Waiver: The surrendering of a legally established right.

Waiver Trial: See “Bench Trial”, supra.

Warrant: A document issued by a judicial authority which commands a law enforcement agency to secure the person stated in the document for appearance before the court. An arrest warrant may not be issued unless there is probable cause supported by one or more affidavits sworn before an issuing authority.

Weight of the Evidence: A claim made by a defendant on appeal that the jury’s verdict was so contrary to the evidence adduced at trial that it shocks one’s sense of fairness.

Witness: A person who has directly seen an event, such as a crime, or thing, such as a piece of physical evidence, or who has other knowledge that is related to a court case.

Witness Qualifications: All witnesses are presumed to be competent to testify. Four basic qualifications are necessary for a witness to supply competent testimony: (1) Comprehend the duty to tell the truth; (2) Perception of the events in question; (3) Recall the events in question; (4) Ability to communicate the facts.

Work Release: A sentence imposed by a court which entails partial confinement in a secure facility from which the defendant may work or attend an educational institution.

Writ of mandamus: An order from a court requiring an official to perform an act which that official is required by law to perform.

Writ of prohibition: An order by the court requiring a lower court or a public official over whom the court has jurisdiction to refrain from exceeding or usurping jurisdiction (as it relates to courts) or to refrain from performing an act which exceeds the official’s statutory authority.

GLOSSARY OF CASES

Note to Index:

"Com" stands for "Commonwealth"

"Pa." is the abbreviated citation for the Pennsylvania Supreme Court Reporter

"Pa.Super." is the abbreviated citation for the Pennsylvania Superior Court Reporter

"U.S." is the abbreviated citation for the United States Reporter

"S.Ct." is the abbreviated citation for the United States Supreme Court Reporter

"L.Ed.2d" is the abbreviated citation for the Lawyer's Edition, Second

"L.Ed.3d" is the abbreviated citation for the Lawyer's Edition, Third

"A. 2d" is the abbreviated citation for the Atlantic Reporter, Second

Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000): A United States Supreme Court case which requires that any fact that increases the maximum penalty for a crime must be (1) charged in the information; and (2) submitted to a jury; and (3) proven beyond a reasonable doubt.

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986): A United States Supreme Court case which sets forth the rule of law that peremptory challenges may not be utilized to strike potential jurors on the basis of race or gender.

Brady v. Maryland, 373 U.S. 83 (1963): A United States Supreme Court case that establishes the rule that the prosecution must disclose all evidence in its possession that is either material to the guilt or innocence of the accused.

Com v. Brown, 538 Pa. 410, 648 A.2d 1177, 1189 (1994): A Pennsylvania Supreme Court case which sets forth the rule of law regarding "weight of the evidence." (See Outline at "Appeal"). The weight of the evidence is a legal claim made by a defendant on appeal that the "jury's verdict was so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail."

Com v. Henderson, 275 Pa.Super. 350, 418 A.2d 757 (1980): A Pennsylvania Superior Court case which sets forth the rule of law that a defendant may be removed from a courtroom for disruptive behavior, notwithstanding his right to be present during all proceedings.

Com v. Payton, 449 Pa.Super. 108, 673 A.2d 361 (1996): A Pennsylvania Superior Court case that sets forth the legal principle that a concomitant feature of Commonwealth due diligence pursuant to Pa.R.Crim.P. 1100 (speedy trial) is to have an established case tracking system within the district attorney's office for every criminal case filed on complaint.

Com v. Pierce, 515 Pa. 153, 527 A.2d 973 (1987): A Pennsylvania Supreme Court case that sets forth the standard governing the determination of attorney ineffectiveness under the Post Conviction Relief Act. In order for an attorney to be deemed ineffective the following three (3) tests must be met by the petitioner by a preponderance of the evidence: (1) Is there arguable merit to the claim that counsel's performance was substandard or deficient?; (2) Was there some reasonable basis for counsel's action or inaction designed to effectuate the petitioner's interests at trial?; and (3) Did the alleged defect in counsel's representation cause actual prejudice such that the truth-determining process was rendered unreliable?

Com v. Smith, 545 Pa. 487, 681 A.2d 1281 (1996): A Pennsylvania Supreme Court case which establishes the rule of law that the medical treatment exception to the hearsay rule does not extend to statements made by a child during a medical examination as to the identity of an alleged abuser.

Com v. Wilson, ___ Pa. ___, 707 A.2d 1114 (1998): A Pennsylvania Supreme Court case which establishes the rule of law that prior inconsistent statements of a non-party witness may be admissible as substantive evidence. In order to be admitted, the statement must be either: (1) electronically recorded; (2) written by the declarant; (3) written by another but signed or otherwise adopted by the declarant; or (4) given under oath at a formal legal proceeding. A written statement that is contemporaneously recorded by another and not signed or otherwise adopted by the party speaking is not admissible as substantive evidence.

Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973): A United States Supreme Court decision that sets forth the minimum procedural due process rights to be accorded to a probationer/parolee upon initiation of revocation proceedings. There must be two separate and distinct hearings. The first, known as a "Gagnon I hearing," is where the government must establish that there is probable cause that the probationer/parolee committed the noticed violation. The second, a "Gagnon II hearing," is where the government must establish by a preponderance of the evidence that the noticed violation occurred.

Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972): A United States Supreme Court case that grants certain minimum rights to probationers/parolees facing revocation of their state or county probation/parole sentences. See Gagnon v. Scarpelli, supra.