

OUTLINE OF CRIMINAL JURY TRIAL

1. Jurors must first be selected who will hear the case. The selection process is totally random. Depending upon the county in Indiana within which you reside you may be summoned for jury duty if you are a registered voter, own real estate in the county, obtain your driver's license in the county or pay income taxes while residing in the county.
2. Typically, 30 to 60 people are randomly drawn for jury duty depending upon the complexity of the particular case. Once your name is drawn you will receive a Summons to appear for jury duty on a certain date.
3. Prospective jurors will check in on the date and time they were directed to appear in court for jury duty. Jurors are compensated for their jury service at different rates depending upon the county in Indiana within which the trial will take place. In Steuben County jurors are paid \$15.00 if they appear for jury duty but are not seated as a juror, plus mileage, and \$40.00 per day if they are actually seated to serve as a juror, plus mileage.
4. As the jurors are checking in for jury duty the Judge and the attorneys will be in the courtroom settling preliminary matters which must be addressed prior to the commencement of the trial. These preliminary matters are always settled outside the presence of the prospective jurors. A typical preliminary matter which would have to be settled by the Judge and the attorneys prior to the commencement of trial would be what preliminary jury instructions will be given to the jury.
5. Once all preliminary matters have been settled, the Bailiff will escort all prospective jurors into the courtroom and seat them.
6. At this point during the trial it is customary for the Judge to enter the courtroom. The Judge will explain to the prospective jurors the nature of the case in which they have been called upon to serve as a juror, and will introduce the attorneys and their clients to the prospective jury panel.
7. The prospective jurors are then administered an oath by the Judge. By taking this oath, the prospective jurors promise

that they will answer all questions truthfully which will be put to them by the attorneys during the voir dire process concerning their qualifications to serve as a juror on this case.

8. The attorneys for the litigants will then conduct what is called a voir dire examination of the prospective jurors. The voir dire examination is that part of the trial where the attorneys ask questions of prospective jurors to attempt to uncover any bias or prejudice which a prospective juror may possess, thus making that person unsuitable to sit as a juror in the case. Also, prospective jurors, at least in certain courts throughout Indiana, are permitted to ask questions of the attorneys about the case. This is the only part of the trial where such a verbal exchange between juror and attorney is permitted.
9. Once the attorneys have concluded their voir dire examination of the prospective jurors the striking or removal process begins. Jurors may be stricken from the panel "for cause" or by virtue of any attorney exercising a "peremptory" strike. The attorneys on each side of the case are permitted an unlimited number of strikes for cause. Typical reasons for striking a prospective juror for cause would include:
 - a. The juror admits during voir dire examination that he or she would have difficulty keeping an open mind during the course of the trial;
 - b. The juror is not a resident of the county in which the case is being tried;
 - c. The juror suffers from serious medical problems which would distract him or her from paying careful attention to the testimony of the witnesses; or,
 - d. The juror is a close friend of a party, witness or attorney involved in the case.

The Judge must always rule upon whether a prospective juror will be excused for cause.

10. After the attorneys have concluded striking jurors for cause, the attorneys are then permitted to exercise peremptory strikes. Peremptory strikes are strikes the attorney on each side of the case is permitted to make for any non-discriminatory reason. These are frequently used

by a defense attorney, at the insistence of the Defendant, simply because there is something about a particular juror the Defendant just doesn't like. In misdemeanor criminal trials, such as the one you will be viewing, the State and Defendant are each entitled to use five (5) peremptory strikes. With but few exceptions, the Judge is not called upon to rule upon the propriety of using peremptory strikes. When, and if, an attorney should exercise a peremptory strike against a potential juror is purely a matter of trial strategy, and is of no concern to the Judge.

11. After the attorneys have concluded the striking process, and there has been arrived at the number of jurors necessary to try the case, the Judge will announce "the jury has been selected who will hear the case."
12. In misdemeanor criminal trials six (6) jurors must be seated to hear the case, and in the discretion of the Judge, one or more alternate jurors may be seated. If an alternate juror is seated the State and Defendant are each permitted one additional peremptory strike which may only be used against the alternate juror.
13. The jurors selected to hear the case will then be administered an oath by the Judge. The purpose of this oath is to impress upon the seated jurors that the verdict they return must rest exclusively upon the evidence which is presented to them throughout the course of the trial by the attorneys and the law upon which they will be instructed by the Court.
14. The Bailiff will then distribute to each juror a copy of the preliminary jury instructions, along with a note pad and pencil.
15. Jurors are permitted to take notes to assist them in remembering what they have seen and heard throughout the course of the trial.
16. The Judge will then read to the jurors their preliminary jury instructions. Generally speaking, the preliminary jury instructions serve to educate the jury regarding what crime the Defendant has been charged with having committed; the precise elements of the crime which must be proven by the State; and, that the State must prove each of the elements of the crime by proof beyond a reasonable doubt.

17. After the preliminary jury instructions have been read the State and Defendant will present to the jury their opening statements. The State goes first in making its opening statement and is followed by the Defendant. It is important to remember that the opening statements presented to the jury by the attorneys are not evidence. The function of a good opening statement is to provide to the jury a road map of what to look for as each side presents their case to the jury. The State will attempt to present to the jury through opening statement the strengths of its case and the weaknesses of Defendant's case. The Defendant will attempt to present to the jury the strengths of his or her case and the weaknesses of the State's case.
18. At the conclusion of opening statements, the State will put on its case in chief for the jury. The State goes first because it has the burden of proving the Defendant guilty by proof beyond a reasonable doubt. A person charged with the commission of a crime does not have to prove his or her innocence. To the contrary, the Defendant need not say a single word throughout the entire course of the trial because he has a constitutional right to remain silent. This, of course, is why you never see the State call the Defendant as a witness. The evidence presented to the jury by the State may consist of, among other things, testimony from fact witnesses or expert witnesses, documents, depositions and/or video/audio presentations.
19. After a witness testifies on direct examination he or she will be subject to cross examination. The purpose of an effective cross examination is to elicit from the witness something that is favorable to the examiner's client, or, at least impeaches the witness' testimony by showing that the witness has made statements in the past which differ from what he or she is telling the jury now.
20. In Indiana, after the attorneys have concluded their direct examination and cross examination of any witness, jurors are then permitted, under the careful guidance of the Judge, to put forth in writing any questions they would like to have answered by the witness. It is the duty of the Judge after reviewing the written question of the juror, and consulting with counsel, to decide whether the question is a proper question to require the witness to answer.

21. After the State has put on its case in chief for the jury the Prosecutor will announce to the Court that "the State rests".
22. The Defendant at this time usually puts on his case in defense. Defenses asserted by a Defendant might include such things as insanity, alibi or self defense. It is important to remember that it is not necessary for a Defendant to put on a case in defense in order to receive a favorable not guilty verdict. Instead, a Defendant may elect at this point in the trial to rest his case and argue to the jury during closing argument that the State's case is simply so weak on one or more of the essential elements which must have been proven by the State by proof beyond a reasonable doubt that the jury must return a not guilty verdict for the Defendant even though the Defendant has not put on a shred of evidence in defense. This is an extremely risky trial strategy for a Defendant to use and is rarely successfully employed.
23. The Defendant most often elects to tell the jury his side of the story. This is done by introducing evidence in the form of testimony from lay witnesses or expert witnesses, introducing documents, reading from depositions and/or video/audio presentations, among other things.
24. Defense witnesses, just like State witnesses, are subject to cross examination. This includes the cross examination of the Defendant if he elects to waive his right to remain silent and testify in his or her own behalf.
25. After the Defendant has put before the jury his case in defense, counsel will announce to the Court that "Defendant rests".
26. We have now arrived at that point in the trial that it is necessary to read to the jury their final jury instructions. The issue of what final jury instructions will be read to the jury customarily has been decided by the Judge, following argument from counsel, long before this time. Generally speaking, final jury instructions serve the purpose of explaining to the jury what the State must prove in order for the jury to return a verdict of guilty; that the State must prove the elements of the crime with which Defendant has been charged by proof beyond a reasonable doubt; and, how the jury should go about its duty of weighing or examining the evidence with which it

has been presented during the course of the trial to determine if, in fact, the State has proven its case by proof beyond a reasonable doubt. Each juror will be provided by the Bailiff with an exact copy of the final jury instructions.

27. After the Judge has read to the jury their final jury instructions the attorneys for both sides of the case will be called upon to present their closing arguments to the jury.
28. Closing arguments, like opening statements, are not to be considered as evidence by the jury. The purpose of a good closing argument in a criminal case is to refresh in the minds of the jurors what counsel believes has or has not been proven by the evidence, and then to attempt to persuade the jury that if they apply the evidence to the law upon which they have been instructed by the Court through preliminary and final jury instructions, the jury must feel compelled to return a verdict in favor of the attorney's client.
29. In criminal cases the State makes its closing argument first. This is then followed by defense counsel giving his or her closing argument. Lastly, the State is permitted to give a rebuttal closing argument to the jury. At first blush this would seem to be unfair to the Defendant. Why should the State get two bites of the apple and the Defendant but one? The justification most often cited for this rule is the fact that the State has to meet the highest burden of proof recognized in the law (proof beyond a reasonable doubt) in order for the jury to return a verdict of guilty. Therefore, so the argument continues, it really is not unfair to give the State two bites from the apple.
30. After closing arguments have concluded the Court will administer to the Bailiff an oath. The purpose of the oath administered to the Bailiff is to impress upon the Bailiff the importance of keeping the jurors together during their deliberations, and to permit no form of outside interference with the jury from any person unless authorized by the Court.
31. When the jury has arrived at their verdict the Bailiff will be notified of this fact and will then escort the jury back into the courtroom.

32. Please note that the verdict of the jury, whether guilty or not guilty, must be unanimous.
33. If the jurors cannot arrive at a unanimous verdict the Court must declare a mistrial and the process will commence again at some future date with a new jury being seated.
34. The foreperson of the jury will hand the signed and dated verdict form to the Judge who will then read aloud the verdict that has been reached by the jury.
35. If the verdict is not guilty the jurors are released from service and the Defendant is immediately discharged and the case dismissed.
36. If the verdict is guilty, upon request by Defendant's attorney, the jury will be "polled." To poll the jury is the process of the Court asking each juror individually whether he or she voted to return a verdict of guilty during deliberations. Remember, a guilty or not guilty verdict returned by a jury in Indiana must be unanimous.
37. If all jurors indicate when polled that they voted individually for a guilty verdict during deliberations the jury will then be discharged, a judgment of conviction will be entered by the Court upon the jury's guilty verdict, and the Defendant will either at that time, or some point thereafter, be sentenced by the Court. Jurors, except in death penalty cases or life without possibility of parole cases, play no role in the sentencing process. The responsibility for sentencing a Defendant who has been convicted of a criminal act rests solely with the Judge within certain guidelines established by the legislature.