

Criminal Law - Trial Rights of the Accused

I. Right to an Attorney under the Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

The right to counsel attaches at all critical stages: when legal rights are in jeopardy.

II. Right to Trial by Jury under the Sixth Amendment

A. When does the right arise? No traffic citations, petty offenses, military trials, juvenile offenses.

B. Maximum sentence determined by legislation

C. Felonies and misdemeanors

III. Right to a Public Trial

A. Closing a trial to the public: state must show compelling interest.

B. Closing jury selection to the public – may question in chambers

C. Closing preliminary hearings to the public. Must be open

D. Rights of the Press: creates a conflict between rights of the accused and rights to coverage by the press. Gag orders. No access to jurors.

E. Number of jury: traditional is 12, but the constitution doesn't say how many, and the constitution also doesn't require unanimous verdicts. But where a state decides to use a jury of 6, it must be unanimous.

IV. Other Trial Rights

A. Confrontation

B. Cross examination

C. Presence:

1. waiver for misdemeanor trials.
2. Removal.
3. flight, may lead to trial in absentia

D. Presentation

V. Presumption of Innocence

A. Inferences and Presumptions

1. Inference, an assumption that may be made from the facts.
2. presumption, a required conclusion from the facts, absent rebuttal.

B. Defendant's silence

C. Burden of proof

D. Speedy trial

VI. Appointed Counsel

A. Appointments and public defender

B. Financial ability to hire an attorney

C. Defendants appearance pro se