

Trials - Bench and Jury

The only difference between trials in county court and district court are the number of jurors who hear the case and whether a defendant must request a jury or automatically has a right to one.

Jury trial vs. Bench trial

Most trials are heard by a jury. But a defendant can waive a right to a jury trial and chose instead for the case to be decided by the judge. In that case, a judge alone would decide if the state proved its case.

In county court, if a defendant faces the possibility of jail time if convicted, but the charge is less than a Class I misdemeanor, they must request a jury trial, if they want one, within 10 days of arraignment.

The roles of the parties:

- **The state:** The prosecutor has the burden to prove *beyond a reasonable* doubt that a crime was committed, and the defendant committed the charged offense.
- **The defense:** The defense represents the accused, cross examining the state's witnesses, but has no burden to present any evidence.
- **The judge:** The judge applies the *rules of evidence* to determine what can go before the jury and what doesn't.
- **The jury:** The jury hears the case, determines what facts have been proven and, in criminal cases, if someone is guilty or not guilty. They do not determine sentences.

The parts of a trial:

A trial begins with jury selection, also known voir dire. A judge starts by introducing the jury pool to the process and asking questions to determine if potential jurors can be fair and impartial. Then attorneys for the state and for the defense are allowed to ask them questions, before they pare the group down to those who will hear the trial.

In misdemeanor cases in county court, a jury is made up of 6. In felony cases in district court, juries are made up of 12. In district court, if all the counts being tried are misdemeanors (which would be rare), the defendant can request a 6-person jury. (Often in felony cases, an alternate juror is chosen to hear the case in the event one of the other jurors gets sick or otherwise cannot finish hearing the case.)

Once a jury is chosen, they take an oath; and the trial begins with opening statements where each side tells the jury what they believe the evidence will show. The state presents evidence first because the burden is on the prosecutor to prove its case.

After the prosecutor is finished with its case, the judge determines whether the state presented enough evidence legally to establish that a crime was committed, and the defendant committed the offense. If the judge finds that the state failed to meet its burden, the case is dismissed. If the judge finds that the state met its burden, the defendant may present evidence.

The defendant may testify but cannot be forced to testify. The defendant is not required to present any evidence at all. The burden of proof remains at all times on the prosecutor. If the defendant presents evidence, the prosecutor may present rebuttal evidence and then rest.

After both sides have rested, the defense typically makes a motion (out of the presence of the jury) for the judge to find that the state failed to present enough evidence to prove its case. If the judge finds that the state has presented sufficient evidence, the case proceeds to closing arguments. The state goes first, then the defense, then the state returns for an opportunity for rebuttal.

Once the case is submitted to the jury, the jury must unanimously decide if the prosecutor has proven beyond a reasonable doubt that a crime was committed, and the defendant committed the charged offense or offenses.

If a jury finds the defendant guilty, the judge sets a sentencing date.

If a jury finds the defendant not guilty, the judge dismisses the case.

If a jury cannot reach a unanimous verdict, a judge may declare a mistrial, and the state can retry the case.

Motion to Withdraw a Plea

If a defendant entered a plea, whether guilty or no contest, he or she may ask a judge to allow them to withdraw it for good cause and to start the case over as if it hadn't happened. To be successful, the defense must show, for instance, that the defendant wasn't properly advised of certain constitutional rights or was impaired at the time of the plea or couldn't understand what he or she was doing at the time of the plea.

Death Penalty Cases

The initial appearance, pre-trial and trial are the same as other felonies. But, once a jury finds the defendant guilty, a second phase of trial begins, where the state must present evidence of aggravating circumstances beyond a reasonable doubt. If the jury finds even one, the case is eligible for the death penalty.

Three Judge Panel

The case then moves on to a third trial phase where a panel of three judges (the judge who presided over the initial phases of trial and two others randomly appointed by the Nebraska Supreme Court) determines if there are mitigating circumstances in the case. This is the defense's opportunity to present evidence of things such as mental health diagnoses, abuse as a child, etc.

Once the panel hears that evidence, it then convenes in private to weigh whether the mitigators exceed or come close to the weight of the aggravators and determines if the defendant should receive a death sentence. The decision must be unanimous in order for the

death sentence to be imposed. A hearing is set later to announce the decision.

If the defendant is given a death sentence, an appeal is automatic and goes directly to the Nebraska Supreme Court, bypassing the Nebraska Court of Appeals.

A list of aggravating and mitigating circumstances is found in Nebraska State Statute 29-2523.

For more detailed information on the death penalty process read: Capital Murder - Three Judge Panel

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