

CRIMINAL VS. CIVIL LAW

The failure to understand the inherent differences between criminal and civil law often leads to public confusion and frustration when police action is requested to deal with civil problems.

Criminal law is relatively straight forward and is concerned with actions which are dangerous or harmful to society as a whole. Criminal actions are complaints brought against parties accused of violating a law. The general purpose of the criminal law system is to punish individuals found guilty of violating the law.

In contrast, civil laws are rules and regulations which govern transactions and grievances between individual citizens. Civil actions are defined as any non-criminal actions and involve private rights and remedies. Some examples of civil actions are breach of contract, divorce, child custody and/or visitation, and real estate matters. The purpose of a civil proceeding is generally not to punish a defendant, but to compensate the wronged party.

Three primary differences between civil and criminal actions are: (1) the parties who may bring the actions, (2) the societal purposes for the actions, and (3) the procedural rules and requirements for prosecuting criminal and civil actions.

Only the state or federal government may prosecute criminal actions. When they prosecute a criminal action they are acting on behalf of the citizens of the state or the United States. In criminal cases the party pursuing the action is called the state or the prosecutor and the party charged with the crime is the defendant, or, the accused. In contrast, both private citizens and the state and federal government can bring civil actions. When the state or federal government brings a civil action, it is acting on behalf of the citizens of the state or United States and when private citizens file civil actions, they are acting on their own behalf. In civil actions, the party pursuing the action is called the plaintiff and the party responding to the action is called the defendant.

In both civil and criminal actions, the basic progress through the judicial system is the same. The pleadings or formal allegations of the parties regarding their claims are filed. The parties undertake discovery to obtain facts and information about the case. A trial is held at which the evidence is presented, witnesses are heard, and judgment is rendered.

There are, however, many significant differences in the rules and procedures governing the progress of actions through the judicial system as well. For instance, in a civil proceeding, the action is set in motion when the complaint is filed with the clerk of court and depending on the jurisdiction, served on the defendant with a summons. In a criminal action, however, the process is more complex. After the defendant is arrested and the police officer drafts the complaint, the prosecutor conducts a preliminary review of the arrest and complaint to insure that there is probable cause to believe that the defendant committed the crimes alleged in the complaint. If the prosecutor determines the complaint is adequate to establish probable cause, the complaint is filed.

The courts serve as the venue wherein disputes are settled and justice is administered. While it may anger and frustrate citizens who request an officer to respond to, for example, a perceived violation of a child visitation order, an officer can not force one parent to turn the child(ren) involved over to the other parent. Rather, the parties involved will be advised to contact their respective attorneys and to resolve the issue in civil court.