

COURTS IN THE CRIMINAL PROCESS

(TRIBUNALES COMPETENTES EN EL PROCESO PENAL)

This document is intended to serve as an introduction to some entities of, and their function within, the criminal branch of the Guatemalan legal system. It is based on a document prepared for NISGUA in Spanish, and then translated and clarified by NISGUA staff and volunteers. The original Spanish document is available by clicking on the title above.

There are eight courts with jurisdiction over criminal matters in Guatemala. (Civil cases proceed through a different branch of the legal system.) Which one a case is brought before depends upon the issue and where the case is in the legal process. They are:

- A) Justices of the Peace
- B) Judges of Drug-Related Activity
- C) Judges of Crimes against the Environment
- D) Judges of First Instance
- E) Sentencing Courts
- F) Courts of Appeals
- G) The Supreme Court of Justice, and
- H) Enforcement Judges

Some of these eight areas (or jurisdictions) have several individual courts or tribunals. To differentiate them, the Supreme Court of Justice assigns the individual courts or tribunals a number. For example, a case may be heard by the *First Court of the First Criminal Instance for Drug-Related Activity and Crimes Against the Environment of the Department of Guatemala*. In this example, *First Court* indicates that in the Department of Guatemala there is more than one court that hears cases at the level of First Criminal Instance for Drug-Related Activity and Crimes against the Environment.

First Criminal Instance means that it is a criminal case, and that it is currently being heard at the first level of the legal process. *For Drug-Related Activity and Crimes Against the Environment* indicates that this court hears cases regarding illegal drug and environmental crimes. *Department of Guatemala* refers to the geographic area covered.

Each of the eight has its own function and characteristics, which are delineated below.

Justices of the Peace:

- a) hand down sentences on default judgments

- b) hear, on an emergency basis, cases in places where there is no Judge of First Instance, or the office is closed due to scheduling or other reasons
- c) carry out urgent duties and attend to detainees within the time limit required by the Guatemalan Constitution
- d) adjudicate according to the terms defined by Article 308 of the Code of Criminal Procedure, which refers to the investigation by the Office of the Attorney General
- e) authorize the application of the opportunity criteria, when there is no Judge of the First Instance in a municipality, and
- f) carry out duties assigned to them by the Judges of the First Instance, whenever they do not hold office within the same municipal boundaries

They cannot attend to anything regarding preventive arrest or release of accused parties, nor can they substitute one punishment for another, except when the crimes are not punishable by imprisonment, according to the second paragraph of Article 201 of the Code of Criminal Procedure.

Judges of Drug-Related Activity and Crimes against the

Environment: The judges of drug-related activity hear cases of crimes regarding the trafficking, possession, production, and processing of drugs, pharmaceuticals or narcotics and connected crimes. The judges of crimes against the environment hear cases of crimes against the environment. Both are divided into:

- a) judges of the first instance of drug-related activity and judges of crimes against the environment, who have control over the investigative acts related to the crimes of their jurisdiction and who carry out their duties as indicated in the Code of Criminal Procedure
- b) sentencing courts for drug-related activity and courts of crimes against the environment, which conduct the trial and pronounce the corresponding verdict. These courts are comprised of three judges chosen by lottery by the Supreme Court of Justice from among a standing pool of sentencing court judges. This is done three days after the judge of the first instance announces that a trial is to be held.

The Judges of First Instance: The judges of first instance have jurisdiction over the investigation of a case, which is carried out by the Office of the Attorney General, as established by the Code of Criminal Procedure. They also are responsible for carrying out other assigned duties.

In addition, they are in charge of the process for and resolution of intermediary and abbreviated proceedings. They also hear proceedings regarding the settlement of costs.

Sentencing Courts: The sentencing courts conduct the trial and pronounce the sentence as determined by law.

The Courts of Appeals: The Courts of Appeals hear appeals from final proceedings and from sentences dictated in abbreviated proceedings. They also hear special appeals of final sentences issued by the sentencing courts.

The Supreme Court of Justice: The Supreme Court of Justice hears requests for reversals of rulings that are brought against the sentences issued by the Court of Appeals, and of review proceedings.

Enforcement Judges: The enforcement judges are responsible for the enforcing penalties and everything that relates to them.