

BURDEN OF PROOF

The burden of proof is the amount of evidence the person bringing a lawsuit needs to prove in order to succeed in winning his or her case. It is the responsibility of the prosecution in a criminal case or the plaintiff in a civil case to prove the facts at a certain level of certainty in order to find the defendant guilty in a criminal case or responsible in a civil case.

In a criminal case the prosecution must prove its case “beyond a reasonable doubt” in order to find the defendant guilty. This is not 100% certainty but it is close. There should be no reasonable doubt in the judge or jurors’ mind in order to find the defendant guilty. Note that the defendant does not have to prove his or her innocence. The entire burden is on the prosecution representing the State to prove the guilt of the defendant.

In the US the defendant also does not have to testify or present any witnesses. The attorney for the defendant at the end of the prosecution’s last witness could simply tell the judge “we have no witnesses.” Closing arguments would follow and the defense attorney would highlight all the faults in the prosecution case creating as much doubt as possible. In Croatia, the judge or judges ask questions of the witnesses they decide to call including the defendant. Based on all the information the judges collect, they determine whether they are convinced with certainty that the defendant is guilty.

In a civil case the plaintiff has the burden to prove the facts by a preponderance of the evidence. This is less than a criminal case. A civil case usually results in a request for money, return of property, or an order to do something. If a defendant in a criminal case is found guilty, the consequences of losing personal freedom by being sent to prison, fined and ordered to perform community service under court supervision is much more serious.

Preponderance of the evidence means that it is more likely than not that the defendant is at fault or responsible for the alleged harm. The burden is still on the plaintiff to prove its case since it is complaining of the harm. The defendant in a civil case will often attempt to show that the plaintiff is at least partially at fault for the harm or damages.

If the judge or jury decides that the defendant is at **fault** they will then determine how much money should be paid to the plaintiff. The term **guilt** is only used in a criminal case.