

# VICTIM/WITNESS PROCEDURES AND INFORMATION

---

## FELONY CASES

### WHAT HAPPENS AFTER A CRIME IS REPORTED?

If the suspect is not arrested immediately, the officer involved will make a written report regarding the incident. At this time, the report is either sent to the prosecuting attorney's office for prosecution or is given to an investigator for further evidence. This process may take 2 to 3 weeks. For that reason, if you have any questions you will need to contact the investigating officer until the report is received in this office. If you receive or remember additional information pertaining to the incident, you will need to contact the officer so a supplemental report can be filed.

### WHAT HAPPENS IF A SUSPECT IS ARRESTED?

If a suspect is arrested, the officer will take him/her into custody for a 24 hour hold. During the 24 hours, the officer will provide a brief report regarding the crime to the prosecutor. The prosecutor will then review the report and determine if criminal charges should be filed. The appropriate paperwork will be prepared and signed by the prosecutor. The judge then decides whether a warrant should be issued for the

person's arrest. This must be done within the 24 hours. Even if the suspect is released, the prosecutor has three years to file a felony charge.

### WHAT IS THE PROSECUTOR'S JOB?

A crime committed against a person violates state law and thus is a crime against the state. The prosecuting attorney in the county where the crime occurred is the attorney who handles the case. In our country a person is presumed innocent until proven guilty. The prosecutor has the burden of proving that the defendant committed the crime.

Before charges can be filed, the prosecutor must determine from the report if there is enough evidence to prove by law that a crime was committed. It could take the prosecutor weeks to review the report due to the large quantity of reports that are received on a daily basis. The prosecuting attorney's job is to represent the State. Although, he will take into consideration the victim's thoughts and opinions. It is important to realize that the prosecutor is not the victim's personal attorney.

## COURT PROCESS

**CHARGE AND WARRANT:** Once the prosecutor determines charges should be filed, he will go to the judge to obtain an arrest warrant. This warrant will allow law enforcement officers to arrest the defendant. Once charges are filed, the suspect becomes the defendant in the case.

**CONTINUANCE:** Any time during court proceedings either the defendant, the defense attorney, the prosecuting attorney or the court may seek a continuance for a number of reasons. Therefore, you should always call this office the day before any hearing to verify it will still be held.

**ASSOCIATE COURT ARRAIGNMENT:** the first hearing is referred to as the arraignment. At this hearing, the associate judge will formally read the charge and advise the defendant of his/her rights. The arraignment can be waived by the defendant's attorney. After the arraignment, the judge will set the case for advise of counsel, disposition hearing or preliminary hearing.

**ADVISE OF COUNSEL:** The defendant has the right to obtain an attorney. At this hearing, an attorney must appear on behalf of the defendant or the attorney must file paperwork informing the court that he/she is representing the defendant.

**DISPOSITION HEARING:** If the prosecutor and the defense attorney can determine a reasonable plea agreement, the case could be resolved at this hearing. Although, the case may be set for circuit court arraignment to finalize the plea. This hearing was established to allow the system to move more swiftly. Any plea agreement made would be based on the evidence in the case and the information provided in the victim impact statement. Agreements could include jail, probation, restitution, fines, treatment, counseling, community service, etc.

**PRELIMINARY HEARING:** This hearing is where the judge, prosecutor, defendant and defense attorney appear. Testimony is taken under oath and all victims and witnesses that were subpoenaed **MUST** appear. If you receive a subpoena, come to the prosecutor's office to check-in before court. If you wish, someone from our office will then escort you to the appropriate courtroom or to a private waiting room. At this hearing, the prosecutor must only establish that 1) a crime was committed in Andrew County; and 2) probable cause exists to believe that the defendant committed the crime. During this proceeding, the defense attorney may cross-examine the State's witnesses and produce any evidence he/she wishes. If the judge decides that there is enough evidence to believe a crime was committed and that most likely the defendant committed the crime, he/she will order that the case be sent to the circuit court. The preliminary hearing can be waived by the defense attorney. If it is waived the case will go directly to the circuit court level without the necessity of testimony.

**CIRCUIT COURT:** All felony charges must go to the circuit court level before any plea offers or agreements may be accepted. When the case is moved to this level, a circuit judge is assigned.

**MOTION, ENDORSEMENTS AND PLEA AGREEMENTS:** Once the case is at the circuit level, the defense attorney and the prosecutor may file motions, plea agreements and endorsement. Common motions that are filed by the defense are change of venue and change of judge. A change of venue is a request to have the case heard in another county. The

prosecutor and judge will remain the same but all hearings will be held in a different county and the jury would be chosen from that county residents. Endorsements such as endorsing additional witness or additional evidence may also be filed. A plea agreement can be made at any time before the jury trial. This is where the defendant would agree to plead guilty under certain terms and conditions. Plea agreements are a means to arrive at a reasonable disposition without the necessity of a jury trial.

**CIRCUIT COURT ARRAIGNMENT:** At this hearing, the circuit judge will formally read the charge and advise the court of a plea at this hearing. If the defendant pleads guilty sentencing will take place. If the defendant pleads not guilty, the case will be set for trial setting.

**TRIAL SETTING:** At the trial setting, the judge will set the date for the jury trial. Jury trials are usually set six months to a year from the trial setting date.

**PRE-TRIAL CONFERENCE:** This is where the judge, defense attorney and the prosecutor meet to discuss any motions and to finalize any details before the trial.

**JURY TRIAL:** Both the prosecutor and the defense attorney must present their case to the jury. Testimony is taken under oath and all victims and witnesses that were subpoenaed **MUST** appear. The jury will review the evidence that was heard and make a decision of guilty or not guilty. All the jurors must agree on the guilty or not guilty decision or it is

considered a "hung jury" and the trial would have to be held again. If found guilty, sentencing may occur immediately by the jury, or at a later date by the judge. If a jail/prison sentence is ordered the defendant may immediately be taken into custody. If the defendant is found not guilty, he/she released of all charges.

**SENTENCING:** For each crime, the law specifies a range of punishment. If the jury recommends a sentence for the defendant, the judge cannot increase the punishment but can reduce it. In some cases where the defendant has prior criminal convictions, only the judge can determine the sentence. In certain serious criminal cases, the victim has the right to make a statement to the court regarding how the crime has affected their life. This is called a victim impact statement.

#### **FELONY MAXIMUM PUNISHMENTS:**

Class A –up to 10-30 years or life

Class B- up to 5-15 years or a \$10,000 fine

Class C- up to 2-7 years or up to a \$5,000 fine

Class D – up to 2-5 years or up to a \$5,000 fine

**APPEALS:** Following the sentencing the defense may appeal the decision to a state appellate court which is the Missouri Court of Appeals. Unless it is a death penalty case, then the case would go to the Missouri Supreme Court. The attorney general represents the state in the appellate court, the prosecutor is no longer involved. Any victim wanting to be

informed of the appellate procedure and case status must make a request in writing to the Missouri Attorney General's Office.

**CONTINUANCE:** Any time during court proceedings either the defendant, the defendant's attorney, the prosecuting attorney or the court may ask for a continuance for a number of reasons. Therefore, you should always call this office before court to verify that the hearing will still be held.