

## Criminal Proceedings

### EXPLANATION OF THE CRIMINAL JUSTICE SYSTEM

(Based on Maricopa County, Arizona)

#### **Police Investigation**

When the police have completed the investigation of a possible crime, the officer in charge of the case submits a police report (paper referral) of the crime to the County Attorney's office to determine if charges will be filed. Police may either arrest the suspect prior to submitting the report or submit the report without arresting the suspect.

#### **Arrest**

When a suspect is arrested, they are booked into jail. If the suspect has not already been fingerprinted and photographed in relation to this charge, this is done at the time of booking.

#### **Initial Appearance**

This is a hearing held before a magistrate or justice of the peace to do the following:

- a. Inform the defendant of the charges and appoint an attorney

An attorney will be appointed if the defendant qualifies as indigent. In most cases this will be a public defender, an attorney who works for the county public defender's office. However, if there are multiple defendants (only one defendant in a case may be represented by the public defender) or a conflict of interest exists, a private attorney, under contract to the county, may be appointed to represent the defendant.

- b. Set terms and conditions of release

If the defendant is in custody, a bond may be set or the defendant may be released on their own recognizance (promise to appear without bond being set) or to a third party. If the defendant is out of custody, a bond may be set (in which case the defendant may be taken into custody until the bond has been posted), or remain out of custody on their own recognizance or in the custody of a third party.

The defendant may also be placed under certain conditions at this time, such as having no contact with the alleged victim or witnesses, being ordered not to leave the state, or to undergo drug testing.

- c. Set date for preliminary hearing

Unless an indictment has been issued by the grand jury, the defendant has a right to a preliminary hearing (to determine if probable cause exists) within a specific period of time. The initial appearance magistrate will notify the defendant of this date.

Time and location of the hearing:

1. If the defendant has been arrested and jailed, the initial appearance must take place within 24 hours of arrest, and this hearing is held in a courtroom at the jail facility.

2. If the defendant is not in custody and a complaint has been issued, the hearing is held at the justice court in which the complaint was filed and is presided over by the justice of the peace for that precinct.

3. If a defendant has been indicted and a summons has been issued, the initial appearance is held at the time of the arraignment.

### **County Attorney**

All police reports in which a suspect has been charged by the police with a felony offense (a crime for which, if convicted, a person could be sentenced to prison for a year or more), whether or not the suspect has been arrested, are reviewed by a county attorney. The attorney must decide to proceed in one of three ways:

1. File charges immediately if the police report is complete;
2. Return the report to the police for further investigation; or
3. Decline prosecution.

Prosecution may be declined for several reasons: the state may not be able to prove beyond a reasonable doubt that the defendant committed a crime, no crime was actually committed or the appropriate charge is a misdemeanor (a crime punishable by up to six months in jail) and should be submitted to the appropriate city prosecutor for review.

If the defendant has been arrested, the reviewing attorney must make a decision within 48 hours of the initial appearance (excluding weekends and holidays), or the defendant will be released from custody. However, this release does not preclude charges from being filed at a later time.

### **Filing Charges**

The reviewing attorney may either file a complaint charging the defendant with a crime (in which case a preliminary hearing will be held), or take the case to a grand jury who may issue an indictment.

Both a complaint and an indictment set forth the nature of the crime, the date(s) of occurrence and the applicable statutes.

### **Warrant or Summons**

If a defendant is not in custody at the time a complaint or indictment is issued, he or she may be notified of the next court date by either a warrant or summons. An arrest warrant notifies law enforcement that the defendant should be arrested when he/she is located. Warrants may authorize law enforcement to arrest a defendant anywhere in the United States, or they may be confined to arrests solely in Arizona. If a defendant is arrested out of state, he or she must be extradited (or waive extradition) in order to be returned to the state.

A summons is served on the suspect, like a subpoena and notifies him or her to appear in court at the date and time indicated. If the defendant fails to appear, a warrant may be issued for his or her arrest.

### **Preliminary Hearing**

A preliminary hearing is a proceeding to determine if probable cause exists to believe a crime has been committed and the defendant committed it. This hearing is held before the justice of the peace of the precinct in which the crime occurred. Less evidence, and therefore fewer witnesses, is needed than at trial. A victim or witness may be subpoenaed for the hearing or the prosecutor may rely on a police officer to testify to the victim's statement, as reliable hearsay is allowable, but in most cases the victim will be asked to testify.

All testimony is recorded by a court reporter. Once the State has presented its evidence, the Justice of the Peace must either find that probable cause exists or dismiss the charges for lack of probable cause. If probable cause is found, the defendant may be allowed to put on an offer of proof to show that probable cause does not exist, but this usually occurs only if the Justice of the Peace feels the defendant's evidence would rebut the finding of probable cause.

If probable cause is found, the defendant is bound over (held to answer) to Superior Court and an arraignment date is set.

The defendant may waive a preliminary hearing, thereby effectively transferring the case into Superior Court. The defendant may also waive his preliminary hearing and plead guilty (waiver with a plea) at his arraignment. This plea may be to the charge or to a lesser offense; the agreement is worked out with a deputy county attorney, the defendant, and counsel.

After the defendant is held to answer, the County Attorney files an information, in the same basic form as a complaint, in Superior Court. At this time the case is given a CR (criminal) number, which is the way the case will be identified in Superior Court. An indictment is also given a CR number when it is filed.

The preliminary hearing can be a difficult part of the criminal process for a victim or witness. The defense attorney may use the hearing as a way of "sizing up" the victim or developing inconsistent statements. A jury is not present, so attorneys may be more zealous in their questioning of a witness.

### **Grand Jury**

A Grand Jury is another type of probable cause hearing, but neither the defendant nor the attorney is present. It is most often used in cases where the victim has been physically assaulted by the defendant, complicated cases, cases involving undercover operations, or cases in which the crimes were committed in several precincts.

Grand Jury proceedings are secret. The Grand Jury is made up of 16 jurors who are selected to serve on a panel for approximately three months. Each Grand Jury panel meets twice a week for an all day session. A Deputy County Attorney presents evidence to the Grand Jurors through the testimony of witnesses (reliable hearsay is allowed). Usually only the investigating police officer testifies, although sometimes a physician or other expert may be subpoenaed to testify about a complicated subject matter. The Grand Jury may request the prosecutor to present further evidence or witnesses, and jurors may question each witness who testifies. A defendant may request to address the Grand Jury, but the Grand Jury may refuse to hear from the defendant. After the presentation of evidence, the Grand Jury deliberates in secret. A minimum of nine members must agree that probable cause exists to believe a crime has been committed and the defendant committed it. If the Jury finds probable cause exists, it instructs the prosecutor to prepare an indictment listing the charges the Grand Jury feels are appropriate.

The Grand Jury may also decide if a summons or warrant should be issued.

Grand Jury proceedings are brief, as no cross-examination takes place. This proceeding, since it is secret, allows the State to charge a person with a crime without the person's knowledge prior to the indictment being issued. It is a crime to divulge the happenings and decisions of a Grand Jury.

While Grand Jury proceedings are useful, there are drawbacks. If a victim or witness testifies at the Preliminary Hearing, that testimony may be used at trial if the victim or witness is unavailable. Yet, if a statement by the victim or witness is testified to by the police officer in the Grand Jury, no sworn testimony will exist to use at trial if the victim or witness becomes unavailable.

### **Arraignment**

This is a brief hearing held in front of a court commissioner at which the indictment or information is read to the defendant; the defendant then pleads guilty or not guilty. If the plea is not guilty, the case is assigned to a judge and a trial date is set. Conditions of release, including bond, may be reviewed at this

time. If the defendant pleads guilty, a sentencing date is set. Victims and witnesses do not need to be present for an arraignment.

## **Trial**

If you are a witness at a trial, you will probably be subpoenaed several weeks in advance of the trial. However, criminal trials usually do not take place on the first trial setting, due to ongoing discovery, plea negotiations, and date conflicts of the attorneys and judge. If a trial is continued, it is usually for a 30 day period. Always call the number on the subpoena the day before you are to appear to avoid appearing in court unnecessarily.

All defendants have a constitutional right to a trial, which can be before a jury or judge. Juries are made up of either 8 or 12 people as well as one or more alternates, who are selected by lot immediately prior to deliberations. Alternates are used if a juror is unable to complete the trial. A defendant may waive a jury trial and have his case tried by a judge.

All defendants also have a constitutional right to confront their accuser. All witnesses who are available may be subpoenaed to court to testify. The subpoena may come from either the State or the defendant. If you are subpoenaed, you must appear in court. If you fail to appear, a warrant may be issued for your arrest, and the court may hold you in contempt.

The defendant has a right to be present throughout the trial.

Although the law allows the testimony of a child victim to be taken via closed circuit television or videotape, there are certain requirements that must be met; these make this option unlikely in most cases. The prosecutor must make this decision based on the individual case.

A jury trial proceeds as follows:

The jury commissioner will send a panel of potential jurors to the courtroom. Potential jurors are questioned by the court about their employment, prior jury experience, knowledge of the case, possible conflicts, or other relevant issues. This is known as voir dire. The attorneys may submit to the judge specific questions they want asked which help determine the juror's appropriateness to hear this particular type of case (e.g., to determine if a juror has been a victim of sexual abuse or knows someone who has been accused); the judge decides which questions are appropriate to ask the jury panel. When voir dire is finished, the panel is excused for a period of time while the attorneys exercise their "strikes" of the jury panel, cutting down the number to 8 or 12 plus the alternates. This final group will hear the trial.

Sometime prior to trial (either before jury selection or after jury selection but prior to opening statements), the judge will hear various pretrial motions. Pretrial motions, which may be filed by either party, address such issues as the admissibility of evidence and the voluntariness of the defendant's statement (the judge must find that the defendant's statement to law enforcement was voluntary in order for it to be admissible).

After the motions are heard, both attorneys may give an opening statement, which is an outline of what they believe the evidence will be. The State then presents its case through the testimony of witnesses (direct examination) and the admission of physical evidence. After the prosecutor has questioned each witness, the defense attorney may question the witness (cross-examination).

After the cross-examination, the prosecutor may again question the witness (redirect examination).

When the State has questioned all its witnesses and admitted all its evidence, the State rests. The defense may then present a case, proceeding in the same manner as described above, except the direct examination is done by the defense attorney and the cross examination by the prosecutor. If the defense does put on witnesses, the State may call rebuttal witnesses after the defense has rested its case.

After all testimony has been received, the State presents its closing argument, followed by the defense closing argument. Because the State carries the burden of proving the case beyond a reasonable doubt, the prosecutor gets a final rebuttal argument in front of the jury. After the closing arguments, the judge will read the jury instructions (law the jury must follow in deciding the case) which have been agreed upon out of the presence of the jury. The alternates are then chosen and excused, and the jury retires to deliberate in private until a verdict has been reached.

The jury may find the defendant guilty, not guilty or be unable to come to a verdict. Verdicts of guilty or not guilty must be unanimous. Each count must be decided independently, so a defendant may be found guilty of some counts, not guilty of others and still others may result in a hung jury because the jury was unable to come to a unanimous verdict. If the defendant is found guilty, the judge sets a date for sentencing. If found not guilty, the charges are dismissed and the defendant is released from custody or conditions of release. If there is a hung jury, the judge will set a date to retry the case in approximately 60 days.

### **Probation Presentence Report**

A defendant who pleads guilty or is convicted at trial of a felony offense usually has a presentence report prepared by the probation department. The presentence probation officer does a background study of the defendant and contacts interested parties, including the victim, in order to make a recommendation to the court concerning the sentence. The report is in writing and is submitted to the judge prior to sentencing. This allows a victim and other interested parties to let the court know of their wishes regarding sentencing.

### **Sentencing**

After a defendant has been convicted of a crime, the judge will impose a sentence on him or her. Arizona law sets guidelines (minimum and maximum prison sentences, eligibility for probation) which the judge uses in determining an appropriate sentence. The judge takes mitigating and aggravating circumstances into consideration in determining the sentence. Depending on the crime, a defendant may have the sentence suspended and be placed on probation; probation does allow the imposition of jail time (up to one year) as a term and condition of probation.

Other terms and conditions, including limiting access to the victim and participating in therapy or drug treatment, may also be imposed. If the defendant violates any of the imposed conditions, the court may find, after a hearing, that the defendant has violated his probation and revoke it, in which case the defendant is sentenced to prison. Restitution and/or fines also may be imposed as a term of probation.

The defendant may also be sentenced to prison, in which case the defendant is sent to the Department of Corrections.

*Note: Every jurisdiction handles criminal cases somewhat differently. For example, the prosecutor may be known as a county or district attorney, a Grand Jury may or may not be used, the child may have to testify at a preliminary hearing. The following is an explanation of the Maricopa County, Arizona system as of 1994 and should be generally accurate, although minor variations may exist between courts and police jurisdictions. CASAs are encouraged to learn how the system in their jurisdiction functions to assist them in working effectively with criminal justice agencies.*

### **Sample Criminal Civil Child Abuse Definitions**

Arizona Revised Statutes 13-3623 (Criminal Code)

"Abuse" when used in reference to a child, means abuse as defined in ARS 8-546, subsection A, except for those acts in the definition which are declared unlawful by another statute of this title...

"Physical Injury" means the impairment of physical condition and includes but shall not be limited to any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition/dehydration, burns, fracture of any

bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils health or welfare.

"Serious physical injury" means physical injury, which creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of the function of any bodily organ or limb.

Crime of child abuse: Under circumstances likely to produce death or serious physical injury, (or under circumstances other than those likely to produce death or serious physical injury) any person who causes a child to suffer physical injury, or, having the care or custody of such child, causes or permits such child to be placed in a situation where its person or health is endangered is guilty of an offense...

*Note: Sexual Offenses are defined independently of child (physical) abuse in most jurisdictions. Arizona Revised Statutes 8-4546 (Child Welfare Code)*

"Abuse" means the infliction of physical injury, impairment of bodily function or disfigurement or the infliction of serious emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist ... and shall include inflicting or allowing sexual abuse.... sexual conduct with a minor...sexual assault...molestation of a child...commercial sexual exploitation of a minor, sexual exploitation of a minor... or incest.

*Note: The child welfare code also covers abandonment and neglect in other definitions.*

### **Sample CASA Experience**

Police officers were called to investigate a report made by a neighbor who heard a child screaming in a next-door apartment. Upon arrival at the apartment complex, the officers went to the apartment in question and spoke with the occupants -- the mother (Beth), her boyfriend (John), and a five year old child (Beth's daughter, Alison). During the investigation, officers questioned John and Beth about bruises that were evident on Alison's body. Both John and Beth stated that the bruises were the result of an accident. The police officers continued to investigate this incident and also notified the Department of Economic Security (DES). The prosecutor, however, eventually decided not to file charges.

A concurrent DES investigation revealed serious concerns about John and his attitude toward Alison, about Beth and her view that physical discipline toward Alison was appropriate and necessary, and about Alison and her apparent fear of John. Subsequently, upon a finding of abuse and neglect in the juvenile court, Tom was appointed as a CASA for Alison and a protective order was issued in the case. The protective order required that John and Beth abstain from abusive or offensive conduct toward Alison and refrain from any physical discipline of her whatsoever. In addition, the order required that John and Beth fully cooperate with DES and Mental Health, and allows DES and CASA access to Alison's home. Further, John was ordered not to have any contact with Alison unless through a supervised visit conducted by DES. This order was issued prior to the prosecutor's decision to not file charges.

John did plan a visit with Alison at DES. During the supervised visit, John convinced the supervisor to allow him and Alison to go by themselves to the water fountain for a drink. John and Alison returned a few moments later. Several weeks later, Alison arrived at school and was having difficulty sitting in her chair. She complained of feeling pain and, upon examination of her back, legs, and buttocks, Alison's teacher discovered numerous welts. When questioned about the welts on her body, Alison stated that John had moved back into the home and was responsible. The teacher made a report, which resulted in Alison's being removed from the home and being placed in foster care. She later told Tom that she had lied about the bruises; they resulted from her falling down the stairs.

Based on this report, the prosecutor decided to file criminal charges for both the prior and the recent incidents of physical abuse. John was arrested and held in jail. Although Tom did not attempt to reach John after he was arrested, John sent Tom a letter stating that he was not guilty and that he had no knowledge of the marks on Alison's body.

