

PART II: WHAT HAPPENS IN A FELONY CASE?

There are two categories of crimes: felonies and misdemeanors. A felony is an offense punishable by imprisonment exceeding one year. Felonies are the more serious of the two types of crimes. The prosecutors and the courts handle felony cases differently from misdemeanor cases (cases with possible sentences of less than one year).

This part of the handbook is intended to explain the way a felony case moves through the court system. Each step is explained in the sections below. **WITNESSES ARE NOT NEEDED AT EVERY STEP IN THE PROCESS.** Most witnesses are asked to come to court only for a preliminary hearing, a grand jury hearing, a witness conference, and the trial.

1. INITIATING CHARGES BY COMPLAINTS . . .

Most felony cases begin when a law enforcement officer files a criminal complaint before a Magistrate. The complaint is a statement under oath, of facts sufficient to support probable cause to believe that an offense against the laws of the State of West Virginia has been committed by a defendant. If the Magistrate accepts the complaint, a summons or arrest warrant will be issued for the defendant. Sometimes the defendant may have been arrested without a warrant, in which case the defendant is presented to the Magistrate at the time the complaint is filed. Victims and witnesses of offenses may be interviewed by a law enforcement officer prior to the filing of this complaint. In those situations the law enforcement officer will report the statements of the victim or witness to the Prosecuting Attorney's office. Sometimes the Prosecuting Attorney may wish to interview the witness in person.

2. THE INITIAL APPEARANCE . . . ARRAIGNMENT

This is the defendant's first hearing after arrest. It takes place before a Magistrate, usually the same day the defendant is arrested. Witnesses are not needed for testimony at this hearing. The defendant is told his or her rights and the charges are explained, and the necessity for a court appointed attorney is considered. The Court sets the conditions of release on "bail".

Many defendants charged with a felony are released at the end of this hearing after either posting money to guarantee their return for trial and other hearings, or by being released on conditions which include their promise to return for future hearings or the trial. Those conditions may include the requirement that they must not personally contact witnesses in their case.

Victims or witnesses have the right to be free of harassment or intimidation by the defendant or others. If you are being harassed or intimidated by the defendant, call the Prosecuting Attorney's office, or the police agency conducting the investigation.

3. PRELIMINARY HEARING . . .

The purpose of a preliminary hearing is to determine whether there is enough evidence for the Magistrate to believe that the defendant has probably committed the crime charged. At this hearing the Prosecutor does not have to prove that the defendant is guilty, but nevertheless must present sufficient evidence to show that there is good reason (probable cause) to proceed with the charges against the defendant. The date for this hearing is usually set within 10 days of the defendant's arrest.

Sometimes the law enforcement officer alone can give sufficient evidence to support a finding of probable cause, but

occasionally witnesses may be subpoenaed to testify. If you receive a subpoena you should immediately call the Prosecuting Attorney's Office and ask to speak with the attorney for the State's case.

If the Magistrate decides that probable cause was not shown by the evidence, the charge is dismissed at this stage. However, if further investigation produces more evidence, the charge may be presented to the next Grand Jury.

4. GRAND JURY HEARINGS . . .

A Grand Jury is a group of sixteen (16) citizens from within the county who meet to examine the evidence against people who may be charged with a crime. Their work is done in complete secrecy. Only the Prosecuting Attorney or an Assistant, and a stenographer meet with the Grand Jury — plus those witnesses that are subpoenaed to give evidence.

Although a Grand Jury hearing is not a trial, it is a serious matter. Witnesses testify under oath, and the testimony is recorded. It is important to review carefully what you remember about the crime before you testify before the Grand Jury. Obviously, you must tell the truth as you recall it. Before testifying, you will probably meet with an attorney from the Prosecutor's Office who will help prepare for your Grand Jury appearance.

After hearing the evidence presented by the Prosecutor, the Grand Jury will decide whether the case should proceed to trial. If the Grand Jury believes the case should proceed to trial, an "indictment" is returned. If the grand jury finds that the case should not be prosecuted, they will return a "no true bill" which signals the end of the case.

Not every witness in a serious crime is called to testify before the Grand Jury. Sometimes the Grand Jury will issue indictments on the basis of an officer's testimony alone. If you are called to testify, the Prosecuting Attorney's Office should be able to give you an approximate time when your testimony will be heard. Unfortunately, it is not always possible to precisely schedule testimony. Your appearance may involve some waiting, so we recommend that you bring reading material along with you.

5. ARRAIGNMENT ON THE INDICTMENT . . .

In the arraignment hearing, the charges which are contained in the indictment are read to the defendant by the Judge. The conditions of bail are reviewed. Occasionally, a defendant who has not been in jail prior to indictment will have the bail conditions changed. Witnesses are not called at this hearing. Shortly after the hearing, a date is set for the trial of the case.

6. HEARINGS ON MOTIONS . . .

Before the date of the trial the Court may hear "motions" made by the defendant or by the State. These may include motions to suppress evidence, to compel discovery, or to resolve any other legal questions incident to trial. In most cases witnesses are not needed at these hearings. If you are needed at this hearing, you will receive notice from the Prosecuting Attorney's office.

7. THE WITNESS CONFERENCE . . .

At some time before the trial date, the Prosecutor, or Assistant Prosecuting Attorney in charge of your case, will send you notice of the trial date. This notice may be written or by telephone. If you have received a written notice, please call the Prosecuting Attorney's office immediately to let them know that

you have received it and to schedule a date for the conference that is convenient to you.

The purpose of this witness conference is to review the evidence you will be testifying about, with the attorney who will be trying the case.

8. TRIAL . . .

In many felony cases, the only contact witnesses have with the Prosecutor comes at the witness conference and at the trial. Normally, when the trial date has been set, you will be notified by a subpoena — a formal written order from the court to appear. Often this will be followed up by a telephone call from the Prosecutor, an Assistant Prosecutor or the Victim/Witness Assistance Program.

You should be aware that a subpoena is an order of the court and serious penalties can result from your failure to appear as directed on that subpoena. Check your subpoena for the exact time at which you should appear. If for any reason you are unable to appear as the subpoena directs, you should immediately notify the Prosecuting Attorney's Office, or the VWAP.

Usually felony trials proceed as scheduled, but not always. For instance, the defendant may sometimes plead guilty at the last minute making the trial unnecessary. The defendant may ask for and be granted a continuance. Sometimes the trial has to be postponed a day or more because earlier cases being heard by the court have taken longer than expected. When possible, the Prosecuting Attorney's Office, or the VWAP, will notify you in advance of such a postponement.

Although all of the witnesses for trial appear early in the day, most must wait for a period of time to be called to the courtroom

to give their testimony. For this reason it is a good idea to bring some reading material or handwork to occupy your waiting time. You will most likely not be permitted to listen to the other witnesses testify until after you have testified. You may not be permitted to listen even then, depending on the nature of the case.

After a witness has testified in court, (s)he should not tell other witnesses what was said during the testimony until after the case is over. Thus, you should not ask other witnesses about their testimony and you should not volunteer information about your own.

9. SENTENCING . . .

In a criminal case, if the defendant is convicted or pleads guilty, the judge will set a date for sentencing. The time between conviction and sentence is most often used for the Probation Office to prepare a pre-sentence report. At the time of sentencing the judge will consider both favorable and unfavorable facts about the defendant before determining the appropriate sentence to impose.

The sentencing decision is made by the Judge alone. (S)he has a wide range of alternatives to consider and may place the defendant on probation (which means the defendant is released in the community under the supervision of the court for a period of time), impose a fine, send the defendant to jail or to the penitentiary, or formulate a sentence involving a combination of these sentencing alternatives.

The court will also consider requiring the defendant to make restitution to victims who have suffered physical or financial damage as a result of the crime. If you are a victim, the Probation Office will contact you about preparing a victim-

impact statement. You should cooperate fully with that office to prepare the report. This report will give the judge information regarding the personal impact the crime has had on you.

So that you may attend the sentence proceedings, you will receive notice of the sentencing hearing. If you wish, you will have the opportunity to address the court about the impact of the crime. You may discuss such an oral presentation with the Prosecuting Attorney or Assistant if you have questions. Any oral presentation by the victim is a *right* not a requirement.

- * The Victim/Witness Assistance Program (VWAP) is available to you during any and all phases of this legal procedure. The Coordinator, Sally Alford, is there to answer your questions, and help in any way possible (financial, emotional, legal). In most cases the VWAP will be attending nearly all phases of the process described above to help keep you better informed regarding your case. This program is solely for meeting the needs of the *victim*, so please do not hesitate to call at any time (291-7250).