

Victim / Witness Handbook

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A Few Words About the Criminal Justice System

One of the first things victims and witnesses learn about the Tennessee criminal justice system is that it frequently takes enormous lengths of time for a case to wind its way to completion. This is not the fault of judges, prosecutors or defendants and their lawyers. It happens primarily because Tennessee's criminal justice system is old fashioned and time consuming. There are so many stages through which a case must progress that it is very difficult for ordinary citizens to understand the process. Please understand that usually

neither the judge nor the district attorney has the legal authority to speed up this process. Any changes in the law must be made by the legislature.

A second factor causing delay in-the processing of criminal cases is the fact that in Tennessee several counties must share judges and prosecutors. These counties together are called a judicial district.

Because judge's cannot be everywhere at once we have what are known as terms of court. A "term of court" is the time that the judge makes available to hear cases in any one place. In most districts, terms are rotated so that each area gets its fair amount of court time. This rotation, however, means that it frequently is several months between arrest and trial of a criminal defendant.

What follows is a brief description of each of the stages that a criminal case must move through on its way to final disposition.

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Arrest Warrants

Most criminal cases begin when one person signs an arrest warrant against another person accusing that person of a crime. An Arrest Warrant is a document which formally charges a person with having committed a crime. Persons charged with crimes are referred to as defendants. A warrant also authorizes law enforcement officers to arrest the person against whom it is issued. In Tennessee, arrest warrants are usually obtained by going to the appropriate court clerk's office and requesting that a warrant be issued.

Before a warrant may be issued, Tennessee law requires that the clerk or deputy clerk take an affidavit (a sworn statement of facts) from the person requesting that the warrant be issued. This means that the person requesting the warrant will be asked to relate the facts of the crime to the clerk and then will be required to swear or affirm that those facts are true.

Please understand that the clerk is required by law to obtain this information before issuing the warrant and that when the clerk asks you additional questions he or she is not being nosy but is simply trying to make certain your warrant is done correctly. Some districts require that a case be investigated by some law enforcement agency prior to a warrant being issued.

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Subpoenas

A subpoena, or summons, is a court order directing a person to appear in court at a stated time and place, usually for purposes of giving testimony. If you receive a subpoena, you MUST appear in court on the date and at the time marked on the subpoena. If you feel you cannot appear when subpoenaed, call the District Attorneys office or the appropriate clerk's office at once.

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Misdemeanors & Felonies

Crimes in Tennessee are divided into two categories. You will hear crimes referred to as either misdemeanors or felonies. A MISDEMEANOR is a crime punishable by a fine or confinement in the county jail for eleven months and twenty-nine days or less. A FELONY is a crime punishable by imprisonment for a period of one year or more in a state penitentiary. Felonies are considered more serious than misdemeanors, and as you read through this web site you will notice that the procedures for dealing with the two are sometimes different.

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General Sessions Court

When a person is charged with a misdemeanor, the general sessions court judge has authority to conduct a trial to determine the guilt or innocence of the defendant. Before conducting such a trial, however, the general sessions judge must obtain permission from both the defendant and the district attorney. This is because both the defendant and the State of Tennessee have a right to a trial by jury. Remember there are no juries in general sessions court. Usually, in misdemeanor cases, the defendant chooses to be tried by the judge alone, and the State agrees to allow this. If the defendant is found guilty, he has a right to appeal the judge's decision to the circuit court and have an entirely new trial before a jury there. When this happens, witnesses may have to repeat their testimony in the jury trial.

If the general sessions judge finds the defendant not guilty, the trial is over and the defendant cannot be tried again for that offense. This would be double jeopardy. The state does not have the right to appeal a judge's decision that a defendant is not guilty.

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Arraignment at General Sessions Court

The general sessions judge does not have the jurisdiction to determine guilt or innocence in felony cases. Felony cases must be heard in the circuit court. Felony cases do begin in general sessions court, however, with a procedure called arraignment and something called a preliminary hearing.

The ARRAIGNMENT is the process by which the defendant is advised by the judge of the charge(s) against him/her and of his/her right to be represented by an attorney. If the Defendant is indigent, the court will appoint an attorney (usually the public defender) to represent him/her. Also at the general sessions arraignment, which usually is the defendant's first court appearance, the judge will determine whether and under what conditions the defendant will be released until his trial. This usually results in the general sessions judge setting bail for the defendant. In Tennessee the law provides that the only legal purpose of bail is to insure that the defendant will appear in court on the scheduled date. BECAUSE OF THIS RESTRICTION, THE AMOUNT OF BAIL SET DOES NOT NECESSARILY REFLECT THE SERIOUSNESS OF THE OFFENSE CHARGED AGAINST THE DEFENDANT OR THE DEFENDANT'S DANGEROUSNESS TO SOCIETY. Only the legislature can correct this situation. The judge is required by law, however, to set bail in most cases.

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Preliminary Hearing

For serious crimes, known as felonies, cases must be scheduled for what is known as a preliminary hearing in the general sessions court. At the PRELIMINARY HEARING the judge will listen to testimony from witnesses to determine whether the evidence presented is sufficient to transfer the case to the circuit court for a trial. This transferring is called "binding the case over." Defendants are also entitled to preliminary hearings in misdemeanor cases if they demand them, but usually a defendant charged with a misdemeanor will "waive" or give up his/her right to a preliminary hearing and allow the general sessions judge to try him/her without a jury. The State must present enough proof at a preliminary hearing to show that there is "probable cause" to believe the defendant committed the crime with which he or she is charged. PROBABLE CAUSE is a legal term for the amount of proof which must be presented at a preliminary hearing. Generally speaking, probable cause is shown when the proof shows that the defendant "probably" committed the crime with which he/she is charged. It is usually necessary for all witnesses to appear at the preliminary hearing.

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Grand Jury

A case transferred to circuit court by "binding over" must then be presented to the GRAND JURY, a group of thirteen citizens chosen from the jury panel. One of these thirteen is the fore person and will preside over the grand jury. The grand jury hears testimony from witnesses in a private session. Neither the defendant nor his lawyer will be present at the grand jury hearing. A representative of the district attorney general's office may be present when witnesses present their testimony, but the grand jury's voting must be done in secret. If twelve of the thirteen grand jurors believe a crime was committed by the defendant, they will charge or " indict" the defendant for that crime. The formal charge by the grand jury is called an INDICTMENT. Sometimes this charge is also referred to as a "true bill". When the grand jury refuses to indict someone, its action is sometimes referred to as a "no true bill." When the Grand Jury returns a "no true bill" against a defendant, then that person cannot be brought to trial.

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Arraignment at Circuit Court

Following indictment by the grand jury, a defendant is formally notified of the grand jury's action at a circuit court arraignment. You may recall that the defendant has already been arraigned once in the general sessions court. Nevertheless, Tennessee law requires that this process be repeated in the circuit court, this time by the circuit court judge. The judge will advise the defendant as to the charges brought against him by the grand jury and will also review or set bail as appropriate. The defendant will then be ordered to reappear on a later date known as appearance day. If the Defendant is indigent, the court will appoint an attorney (usually the public defender) to represent him/her.

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Appearance Day at Circuit Court

Prior to each term of court, the circuit judge will review every pending criminal court case to determine which cases will be heard that term. Defendants and their lawyers are required to be present on this day, but victims and witnesses are not required to be present. On appearance day, the judge will set cases for trial unless the defendants involved plead guilty. As mentioned before, victims and witnesses are not required to attend this proceeding but are welcome to do so if they wish.

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The Jury Trial In Circuit Court

If a defendant does not plead guilty on appearance, day his/her case will be set for trial. Most trials in the circuit court are heard before a jury of twelve men and women, although occasionally, cases are heard by a judge sitting alone without a jury. The decision as to whether a case will be heard by a jury or a judge sitting alone will be made by the defendant and the lawyers trying the case.

If there is a jury trial the district attorney or an assistant district attorney will present evidence to the jury by questioning witnesses, and if appropriate, by presenting physical objects, photographs and written documents. The defense attorney will also have the right to question or "cross-examine" those witnesses and may also present evidence and witnesses of his/ her own, although he/she has no obligation to do so. The defendant may take the stand and testify if he/she chooses to do so. He/she is not legally required to do so, however, because the State cannot force a defendant to testify.

In order for a defendant to be found guilty, every single one of the twelve jurors must decide that the defendant is guilty beyond a reasonable doubt of the crime charged. This is more than the probable cause requirement at the preliminary hearing.

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What Happens After The Trial

If the defendant is found not guilty, the case is over, and the defendant is free to go as he/she wishes. The state has no right to appeal a not guilty verdict and is constitutionally prohibited from trying a defendant again for the same offense. This would be what is sometimes referred to as double jeopardy.

If the defendant is found guilty, the judge will schedule a sentencing hearing and will also order the Department of Corrections to conduct a pre-sentence investigation to help the judge determine what sentence is appropriate. As part of this investigation, a probation officer may contact victims ask questions about the case and its impact on their lives. He/she will be especially interested in the physical or emotional harm a victim may have suffered as a result of the defendants actions. Please provide as much information to the probation officer as you can.

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The Sentencing Process

At the sentencing hearing the judge must sentence the defendant within a very limited and specific framework set out by the state legislature. Possible punishments vary from one offense to another and cannot be changed except by legislative action. Someone from

the District Attorneys office will advise you of the punishment ranges of the case in which you are involved. Possible sentences might include imprisonment, confinement in the county jail, community service, probation, fines and restitution.

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What Punishment Will The Defendant Receive

One of the first questions most victims ask concerning their cases usually concerns the amount and kind of punishment the defendant can be expected to receive in court. Unfortunately, that question is a complex one and is contingent upon many factors. You must understand that **IN ORDER TO SEND A CRIMINAL TO PRISON IN TENNESSEE, THE PROSECUTOR'S OFFICE MUST PROVE MORE THAN JUST THAT THE DEFENDANT COMMITTED THE CRIME CHARGED AGAINST HIM.** Our appellate courts have ruled that the District Attorney must also prove that a given defendant does not deserve probation or some other less severe punishment than confinement. As strange as it may seem, that is the state of the law under which we live. Because of this, many factors will influence the actual type of punishment an offender receives. These factors include, but are not limited to, a defendant's prior criminal history, his/her work record, his/her family situation, whether or not restitution has been or can be made, and finally, the conditions under which the crime was committed.

Complicating the picture even further is the **EXTREMELY OVERCROWDED CONDITION OF OUR CORRECTION SYSTEM.** Our prisons and jails in Tennessee are literally overflowing. Federal Court orders have placed a ceiling, or cap, on the number of prisoners we can confine at any given time. Because the State often exceeds that cap, the Department of Corrections many times releases a prisoner in order to make room for a new defendant. Since approximately seventy percent of the people in prison today are violent criminals, this means the likelihood of a violent person being released each time we send a defendant to prison is extremely high.

Because of this, prosecutors try to dispose of the cases in there district in a way which preserves our correctional resources as best they can be preserved while still protecting our counties from dangerous people.

Please understand that prosecutors will do everything that they legally can do to see that persons who commit crimes in Tennessee are punished appropriately and that their punishments reflect the seriousness of the crimes committed. In doing that, however, they must abide by the laws of Tennessee. They must also take into account the fact that our penitentiary system is overflowing. Whatever they decide in that regard, you can be assured they will make every effort to inform you well in advance of any actions they plan to take. Even though you don't have the final say, you can also be assured that they welcome your comments and suggestions as to what you personally think would be an appropriate disposition of your case.

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Length Of Prison Terms In Tennessee

It would be less than honest if it was not pointed out that criminals sentenced to prison terms in Tennessee serve substantially less than is generally believed. In the usual case a defendant will be released after serving less than thirty percent of the stated sentence imposed against him/her. The reason for this is that due to the overcrowded condition of the Tennessee prison system, a defendant is eligible for release after he has served a small percentage of his sentence. The decision as to when to release a given defendant is made at the location of the defendant's confinement by the Tennessee Board of Paroles.

PLEASE UNDERSTAND THAT NEITHER THE DISTRICT ATTORNEY'S OFFICE NOR THE JUDGE HAS ANYTHING WHATSOEVER TO DO WITH THE EARLY RELEASE OF PRISONERS.

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Parole Eligibility

All prisoners, including those sentenced to life sentences, are eligible to be released on parole at some time. The District Attorney's office will make every effort to honestly and accurately advise you as to when any given defendant will become eligible for parole. Should the Tennessee Board of Probation and Paroles grant a defendant's release, the defendant will be assigned a parole officer who will monitor his/her actions and maintain certain imposed rules until the expiration of the defendant's original sentence. Should the defendant defy the conditions of parole, the balance of his sentence may be reinstated, and he may be returned to prison. This decision is made by the Board of Probation and Paroles.

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Alternative Sentencing Possibilities

Occasionally a defendant will be sentenced by the judge to what is known as a community corrections or alternative sentencing program. Such programs are very closely monitored by probation officers, and persons serving such sentences are required to meet very stringent requirements as to employment and activity. Generally only non-violent offenders are placed in this type of program. Should the judge sentence the

defendant in your case to any sort of alternative sentencing program someone from my office will explain to you the requirements the defendant must meet.

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Negotiated Pleas; Will My Case Be Plea-Bargained?

The district attorney and the defendant, through his defense attorney, will frequently reach an agreement prior to trial as to the term of sentence a defendant will receive if he pleads guilty. This agreement will then be presented to the judge, usually on appearance day. There are a number of reasons why this practice is sometimes necessary. If you are concerned about your case being "plea bargained away, please contact the District Attorney's office personally.

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When Will The Case Be Tried?

Because of the uncertainties and complexities of the criminal justice system, it is not always possible to know exactly when a case will be called for trial. Delays occur for numerous reasons, every effort will be made to keep you informed of any changes. Call you District Attorney's office at any time to learn the latest status of the case in which you are interested.

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Continuances

Occasionally, court hearings cannot take place as scheduled and will be postponed. Again, every effort will be made to notify you of any postponements in order that you can avoid unnecessary trips to court.

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Difficulties With Your Court Appearance?

If your employer will not give you time off from work to testify, please let the District Attorney's office know. If you like, someone from the District Attorney's office will

contact him or her and ask for cooperation. The District Attorney's office can also provide verification of the time required for your court appearance. If you have any other difficulties with your appearance in court, please let someone in the District Attorney's office know. We will make every effort to help.

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Out Of Town Plans

Although we monitor the court calendar carefully, it is often not known what cases are going to be tried until shortly before the trial begins. For that reason, it is important that witnesses keep us informed of any out of town plans. Also, please notify us if you have a new address or phone number.

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Return Of Your Property

Sometimes it is necessary for law enforcement agencies to hold personal property as evidence until trial, but this is seldom necessary. **SHOULD YOUR PROPERTY BE IN THE CUSTODY OF LAW ENFORCEMENT OFFICERS AND YOU ARE IN NEED OF ITS RETURN PRIOR TO TRIAL, PLEASE CALL THE DISTRICT ATTORNEY'S OFFICE FOR ASSISTANCE.**

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Restitution - Reimbursement For Your Losses

As a victim of a crime, any information regarding your injuries or out-of-pocket losses resulting from the crime should be brought to the attention of the victim witness coordinator in the District Attorney's office. This information will be made known to the judge at the time of sentencing. In appropriate cases the judge may order the defendant to reimburse you for your financial loss as a part of the sentence imposed. This restitution will then be collected and monitored by the circuit court clerk and the defendant's probation officer. This way you will not have to have any personal contact with the defendant

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Tennessee Criminal Injuries Compensation Fund

If you are the victim of a crime involving personal injury, you may be entitled to make a claim against the Tennessee Criminal Injuries Compensation Fund. Someone from the District Attorney's office can provide you with information concerning the way in which qualifying persons may claim against this fund.

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Contact With The Defense Attorney

The attorney for the defendant may contact you to discuss your testimony. He or she has a right to do so. There is no reason not to discuss the case with the defense attorney, but you have the right to do so on your own terms. If you desire, someone from the District Attorney's office will arrange to be present during such a conversation. IF THE DEFENDANT CONTACTS YOU, PLEASE LET THE DISTRICT ATTORNEY'S OFFICE KNOW IMMEDIATELY. This is highly irregular and you are under no obligation to speak to him/her.

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Victim Impact Statement

In felony cases a victim is entitled to be present at the sentencing hearing and may make a statement to the court, orally or in writing, as to the impact of the crime on his or her life. Some people feel comfortable doing this; others do not. Whether or not you make such a statement is entirely up to you. the District Attorney's office would be glad to discuss this with you personally, if you wish.

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Witness Fees

All subpoenaed witnesses who appear in court are entitled to a small witness fee, whether or not they actually testify. This fee is for travel expenses; it is not reimbursement for lost wages. After you have testified, the victim-witness coordinator or the circuit court clerk's office will assist you in obtaining this fee.

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A Final Thought

We would like to again stress the importance of the role served by victims and witnesses within the criminal justice system in Tennessee. Because of this, you deserve all the help and service the District Attorney's office can offer. We hope that this web site has answered some of your questions and addressed some of your concerns. Our desire is to make your experience as a witness for the state as comfortable and understandable an experience as possible, for it is only through your willing cooperation that criminals can be brought to justice.

If you are confused about any aspect of your role as a witness, please do not hesitate to call your District Attorney's office at any time to speak to the victim-witness coordinator. Remember, without your help, there can be no justice!

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Source : Tennessee District Attorney General's Conference