

Felony Cases

This outline describes how felony cases generally move through the criminal justice system. Cases may deviate from the outline at any time. It can be difficult to predict how a case will move through the process due to our complex legal system. This outline does not include every type of hearing or process in our criminal justice system, and it should not be used for legal advice. The terms “Prosecuting Attorney’s Office” and “State” are interchangeable when referring to the Prosecutor’s Office.

Police Investigation

If a crime is discovered by a law enforcement agency or reported by a witness or victim, the law enforcement agency may respond and investigate to determine if a crime was committed by someone.

- If no crime has been committed, the law enforcement officer may decide not to write a report.
- If the law enforcement officer believes that a crime has been committed, then a report may be written.
- The law enforcement officer may decide to make an arrest. Law enforcement can only hold suspect for 24 hours if they do not have an arrest warrant.
- If someone is arrested, then the person is booked at the jailhouse. (Log charges, pedigree, arrest date, photographed, etc.)
- Law enforcement officers may apply for charges through the St. Charles County Prosecuting Attorney’s Office for State charges. Depending on the charge(s), law enforcement officers have the option to apply for municipal charges instead of State charges.
- Law enforcement may submit a warrant application, police report, and probable cause statement to the Prosecutor’s Office.
- A prosecutor reviews the warrant application and determines what charges to file, if any.
- The decision to prosecute a person for a crime rests solely with the Prosecutor’s Office.
- If charges are filed, a charging document is created by the Prosecutor’s Office, and it is sent to the Court.
- A Judge reviews the charging document for probable cause, creates an arrest warrant, and sets the bond.
- The Court then assigns a docket number to the case and it is assigned to a division (Judge).
- A warrant allows law enforcement to detain a person longer than 24 hours, unless the defendant can post bond.
- In certain cases, a Judge may decide to hold a defendant without bond.
- The defendant is then transported to the St. Charles County Jail, if not already there.
- The defendant can post bond at any time, if bond is authorized.
- If the defendant is not in custody, the Prosecutor’s Office must wait until the warrant is served (arrested).

Felony Versus Misdemeanor

- One difference between a felony and misdemeanor is that all felonies require a probable cause hearing/review. The probable cause hearing can either be a preliminary hearing or a grand jury. Prosecutors have discretion in choosing between the two hearings. This can create a few possible paths for felony cases. They include the following:
- Preliminary Hearing – The case starts out in Associate Circuit Court, and it is transferred to Circuit Court after the probable cause burden is met at the preliminary hearing.
- Grand Jury – The case skips Associate Circuit Court and is filed in Circuit Court if the probable cause burden is met at the grand jury hearing.
- Combination – The case starts in Associate Circuit Court, but the case is presented to a grand jury before the preliminary hearing. If the probable cause burden is met at the grand jury hearing, then no preliminary hearing is needed. The case is then filed in Circuit Court.

Associate Circuit Court

First Arraignment

- Purpose: Charges are read to the defendant, the Court reads the defendant his/her rights, and the defendant enters a plea.
- The Court is very interested in whether defendant has an attorney.
- It is unusual for a defendant to plead guilty to a felony in Associate Circuit Court, but it can happen at any court date in Associate Circuit Court or Circuit Court.
- Reducing the charges to a misdemeanor and securing a guilty plea can take place at any hearing in Associate Circuit Court.
- If the defendant does not have an attorney, the Court usually sets aside time for the defendant to find and hire one. The next hearing may be a counsel status hearing.
- A defendant can hire a private attorney or apply for a public defender.
- A defendant can represent himself/herself. This is referred to as Pro Se.
- Defendants are usually present for arraignments in felony cases. In some cases, an attorney may appear without the defendant and waive the defendant’s right to an arraignment.

- The Court will typically set the case for one of the following hearings after an arraignment: setting/disposition hearing,, case review hearing, bond reduction hearing, counsel status hearing, indigency hearing, and/or a preliminary hearing. In some cases, multiple types of the above hearings may take place at one court date or multiple dates.
- If the defendant is in custody, it is common for the Judge to arraign the defendant in the county jail or arraign the defendant in court via video system in the County Jail or State Prison.

Case Review Hearing

- Purpose: A case review hearing is a very generic term for describing a court date, and it is often used to describe a lot of different scenarios. The Court will usually set a case review hearing if it needs to review the status of the case.
- The Court will often set this court date when a defendant is arrested due to a warrant it issued. Once arrested, the Court will often set this court date a few to several days into the future to start the case moving through the system. The Court will often check if the defendant has an attorney. If the defendant does not have an attorney, the court will usually set the case for a counsel status hearing.

Bond Reduction Hearing or Bond Hearing

- Purpose: If a defendant is unable to post bond, then the defendant/defense attorney can ask the Judge to reduce the bond or change conditions of the bond.
- A defendant or defendant's attorney makes arguments for lowering the bond.
- A prosecutor will give arguments for why the bond should stay the same, whether the bond should be increased, or consent to the bond reduction.
- At a bond reduction hearing, the Judge will consider the following: the nature of the crime, whether the defendant is a flight risk, whether the defendant has ties to the community, and/or other relevant information.
- The victim may be able to give a victim impact statement concerning the bond reduction depending on the type of crime.
- The Judge makes the final decision about the defendant's bond.
- The Judge could release the defendant on his/her own recognizance. This means the defendant is not required to post any bond.
- Friends or family members could come up with the money or property to post bond.
- The defendant can hire a bondsperson to post the bond for a fee, if allowed by the Court.
- Some bonds may be cash only, in the defendant's name only, or allow a defendant to post ten percent of the bond.
- Depending on the type of crime, the Prosecutor's Office may receive less than 24 hour notice or no notice at all.
- Defendants/defense attorneys can request a bond reduction at any point in the process or multiple times.

Counsel Status Hearing

- Purpose: The Judge gives the defendant time to obtain an attorney.
- The defendant is required to appear before the Court and give the Court the status of counsel.
- If the defendant has counsel the defense attorney will enter into the case. This is referred to as an entry of appearance. Typically, the defendant is not required to appear, if counsel has been obtained.
- If the defendant does not appear and no counsel appears, the Court may issue an arrest warrant for the defendant.
- If the defendant does not have an attorney, the defendant may ask for more time to seek counsel.
- Judges have the discretion to give more time to the defendant. A case may be set several times for a counsel status hearing before an attorney is obtained by the defendant.
- If the defendant cannot afford an attorney, the defendant may apply for a public defender.
- If the defendant does not meet the selection criteria for a public defender, the defendant may ask for an indigency hearing.
- An indigency hearing is an appeal to the Judge, asking the Judge to order the Public Defender's Office to represent the defendant.
- Generally speaking, if the defendant has a job, property, or assets, the public defender system will turn down a defendant.
- A counsel status hearing may take place at any time during the legal process. For example, the defendant's attorney may withdraw from a case due to a conflict, nonpayment for services, or for other reasons.
- It should be noted that a defense attorney can withdraw at almost any point in the case.
- If the defendant fails to hire an attorney in a reasonable time, the Court could rule the defendant waived his or her right to an attorney.

Setting and/or Disposition

- Purpose: Setting and/or disposition is a very generic term for describing a court date, and it is often used to describe a lot of different scenarios. The case either ends or it is set for a new court date. "End" can be defined as the following: defendant pleads guilty, charges are dropped, the defendant waives his or her right to a preliminary hearing, or the case is dismissed by the Court.
- The setting and/or disposition is one of the most common court dates.

- The defendant may or may not be present at a setting/disposition.

Preliminary Hearing

- Purpose: The State must prove to a Judge that probable cause exists that the defendant committed a specific crime or crimes.
- Preliminary hearings exist to protect the defendant's rights. It keeps the State from taking a very weak case or a case with no evidence to trial. Trials are extremely expensive and can damage a person's reputation if found guilty or not guilty.
- The State may decide at any time before the preliminary hearing to submit the case to a grand jury. If the State chooses this option, then the preliminary hearing is not legally necessary. The case is then filed directly into Circuit Court.
- Only a defendant can request a preliminary hearing.
- The Prosecutor's Office files charges against a person if the State believes it can prove proof beyond a reasonable doubt that a specific person committed specific crime(s) to a jury/Judge. As a result, the probable cause standard is usually easy to obtain. The State typically meets the burden of proof standard in preliminary hearings. However, sometimes the standard cannot be met due to a number of reasons.
- If the State cannot meet the probable cause standard, then the Judge will dismiss the case. This is somewhat rare, but it does happen occasionally.
- Most defendants waive their right to a preliminary hearing, so it not necessary to subpoena parties to the case. It should be noted that waiving a preliminary hearing is not an admission of guilt.
- If a defendant requests a preliminary hearing, then the State must subpoena the parties to the case. It is generally not necessary to subpoena all the parties because the State only needs to prove probable cause.
- Probable cause is a much lower standard than proof beyond a reasonable doubt; therefore the testimony is often less complex than a normal trial.
- Why would a defendant want a preliminary hearing?
 - The defendant/defense attorney does not have to give a reason for requesting a preliminary hearing. Requesting a preliminary hearing is an individual decision, typically with the advice of an attorney. Some of the reasons to request a preliminary hearing may include the following:
 - It allows the defense to preview the case before a possible trial.
 - The defense has the ability to ask questions to the parties involved.
 - If the defendant is looking at serious prison time or the death penalty, then the defendant may take the option to preview the case.
- If the defendant waives the preliminary hearing or a Judge determines that probable exists that the defendant committed a specific crime(s), then the case is bound over to Circuit Court. A grand jury is not needed, if the State fulfills the preliminary hearing requirement.

Grand Jury

- Purpose: The State must prove to the grand jury that probable cause exists that the accused committed a specific crime or crimes.
- Grand juries exist to protect the suspect's rights. It keeps the State from taking a very weak case or a case with no evidence to trial. Trials are extremely expensive and can damage a person's reputation if found guilty or not guilty.
- The grand jury is not needed if the State is successful at the preliminary hearing.
- The grand jury is a closed proceeding that meets in secret by State statute. Members of the public are not allowed to attend the hearing.
- The suspect, defense attorney, or Judge is not present at the grand jury.
- Prosecutors present the case to 14-16 grand jurors. Prosecutors must subpoena some of the parties to appear before the grand jury.
- Grand jurors are allowed to question witnesses.
- If the grand jury believes that probable cause exists that the suspect committed a specific crime, then a true bill of indictment is issued by the grand jury. The indictment is then filed directly into the Circuit Court. The Court then creates an arrest warrant and sets bond as discussed above.
- The indictment is sealed until the warrant is served. This means the case is not public until the person is arrested.

Circuit Court

Arraignment in Circuit Court

- Purpose: Charges are read to the defendant, the Court reads the defendant his/her rights, and the defendant enters a plea.
- The defendant usually enters a not guilty plea at the arraignment in Circuit Court. However, the defendant can plead guilty at the arraignment.

- If the defendant does not have an attorney, the Court usually sets aside time for the defendant to find and hire one. The next hearing may be a counsel status hearing, if the defendant does not have an attorney.
- A defendant can hire a private attorney or apply for a public defender.
- A defendant can represent himself/herself. This is referred to as Pro Se.
- Defendants are usually present for arraignments in felony cases. In some cases, an attorney may appear and waive the defendant's right to an arraignment.
- If the defendant is in custody, it is common for the Judge to arraign the defendant in the County Jail or arraign the defendant in court via video system in the County Jail or State Prison.
- The Court will typically set the case for one of the following hearings after an arraignment: setting/disposition hearing, case review hearing, bond reduction hearing, counsel status hearing, indigency hearing, motions hearing, jury trial, bench trial, or plea hearing.

Plea Hearing

- Purpose: A hearing in which the defendant pleads guilty to a specific crime or crimes.
- Typically, only a defendant can request a plea hearing, and it is an indication that defendant will plead guilty.
- A case may be set for a plea hearing a few times before the defendant decides to plead guilty
- However, defendants can change his decision to plead guilty anytime.
- The Judge can only accept a guilty plea if the Judge believes proof beyond a reasonable doubt that the defendant committed a crime(s).
- In most cases, the defendant is pleading guilty to an agreed upon sentence.
- The defendant will either be sentenced on the date of the plea hearing or a sentencing hearing, which may take place on a later date.
- The defendant can plead guilty with an open sentence or against the recommendation. This means the defendant is going to let the Judge decide on the sentence.
- A Judge can order a Sentencing Assessment Report (SAR). The SAR is a needs/risks analysis of the defendant that is usually conducted by the Probation and Parole, which is a division of the Department of Corrections. This report can take several weeks to prepare, and it aides the Judge in deciding the appropriate sentence.

Motions

- Purpose: The Judge sets aside time for both sides to file and argue legal issues before the Court.
- The Court will often set a motions hearing date, if the case is set for trial.
- Both the prosecutor and defense may file motions to resolve various legal issues before the trial.
- Generally, motions are filed to suppress evidence, statements, witnesses, and/or identifications.
- The defendant may or may not be present at the motions hearing.
- It is possible that a defendant could plead guilty at a motions hearing.

Jury Trial

- Purpose: A hearing before a jury and the jury determines if the defendant is guilty or not guilty. Both prosecutors and defense have the opportunity to present arguments, evidence, and witness(s).
- The State must prove there is proof beyond a reasonable doubt that the defendant committed a specific crime or crimes. As a result, the State must present evidence. The defense is not required to present a case or make arguments at a jury trial. However,
- If a Judge sets the case for a jury trial, it does not mean that a jury trial will take place. Cases are often set for a jury trial a few times before the jury trial actually takes place. If there are multiple jury trials scheduled for a certain date, older cases often get the priority setting. Other factors can also determine which case will get a priority setting.
- The defendant has the right to ask for a jury trial despite the evidence in the case. However, very few cases end in a jury trial.
- The defendant could plead guilty on the jury trial date or even during the trial.
- Generally, the defendant will ask for a plea hearing before or on the jury trial date, if the defendant decides to enter a guilty plea.
- A jury trial can last anywhere from one day to several months. Most jury trials last a few days to a week.
- The basic stages of a jury trial include the following:
 - Jury Selection/Voir Dire – The prosecutor and defense are allowed to ask potential jurors a range of questions relating to the law and the case. In the end, 12 jurors are selected to hear the case.
 - Opening Statements – The prosecutor and defense have the opportunity to give statements about what the parties intend to present during the trial.
 - Presentation of Evidence – Both sides have the opportunity to present legally relevant evidence and testimony.
 - Closing Arguments – Both sides have the opportunity to summarize and give arguments about evidence that was presented in trial

- Jury Instructions – The Judge gives the jury an important set of documents that aid the jury in its deliberations. The instructions give the jury the statutory elements and defines various legal terms such proof beyond a reasonable doubt.
- Jury deliberations – The jury discusses the case, reviews the jury instructions and determines if the defendant is guilty or not guilty of the crime(s).
- Verdict – The verdict is the final decision of whether the defendant is guilty or not guilty. All 12 jurors must agree on the verdict. If the verdict is not unanimous, the case will end in a mistrial, and the State has the option of retrying the case on a future date with a new jury.
- Some jury trials are referred to as bifurcated. In certain cases, when a jury returns a guilty verdict, a sentencing phase takes place. The jury recommends a sentence to the Judge after evidence is presented to the jury by prosecutors and the defense.
- In non-bifurcated trials, the Judge decides sentencing after evidence is presented to the Judge by prosecutors and the defense.
- Defendants can waive their right to a jury trial and request a bench trial. In a bench trial, the Judge determines if the defendant is guilty or not guilty. Bench trials for felony cases are relatively rare.

13) **Other Important Notes**

- On average, a felony case takes around 9-18 months to move through the court system. The process can be slower or faster depending on a number of factors.
- A felony criminal case can easily have 10-15 court dates or more before ending. Many of these court dates are necessary by law.
- Continuances are a normal process in the legal system. Defense attorneys and prosecutors are allowed to request a continuance, if the attorney has an appropriate reason to ask for one. The judge decides whether a continuance should be granted, if the attorneys disagree.
- Plea-bargaining may take place at any time during the process.
- A defense attorney may withdraw from the case at any time with permission from the Judge.
- It is possible that any court date could change or be continued to a future date at any time.
- It is possible that a defendant could be sentenced on a different day than the plea. The court will usually set a case for a sentencing hearing if the court is going to consider sentencing at a later date.
- The prosecutor can refuse to file charges or drop charges at any time.
- A warrant may be issued for the defendant, if the defendant fails to appear for a court date.
- It is not necessary for a victim or witness to attend a hearing UNLESS the person receives a subpoena or is ordered by a Judge. However, most court hearings are open to the public.
- Most defendants plead guilty and a trial is not needed; but defendants have the right to request a trial.