

# **VICTIM PACKET**

## **Frequently Asked Questions**

Helpful information from the office of:

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**Please keep this packet of information for future reference**

### **How does a complaint become a criminal case?**

Local law enforcement investigates a case and, if they feel there is sufficient evidence, the application for charges is sent to our office. If after reviewing the facts the Prosecutor feels that a crime has been committed and there is enough evidence to prove that in court, charges would be filed. In misdemeanor cases, a summons is sent to the defendant by mail notifying them of the charges and giving them a summons return date (a date to appear in court). In felony cases, a warrant is issued for the defendant's arrest. Once the defendant is arrested, they bond out and are given a bond return date or they remain in custody until they have a court appearance.

### **What is Grand Jury?**

Some felony cases are taken before the Grand Jury. The Grand Jury meets once a month. During this time the Prosecutor presents evidence, usually through the testimony of the investigating officer. The Grand Jury decides if there is probable cause to believe the crime occurred as charged. If the Grand Jury decides there is probable cause, an Indictment is signed and filed in Circuit Court. A warrant is issued for the defendant's arrest. The Grand Jury proceedings are closed and sealed, meaning no one else is present or knows about the Grand Jury meeting. Additionally, no information regarding the outcome can be released until the Grand Jury warrant has been served and the defendant is in custody.

### **What is an arrest warrant?**

An arrest warrant is an order signed by a Judge, authorizing the police to arrest a person.

### **What is the purpose of bail/bond?**

Bail/bond is cash or a security bond (bondsman or property) to assure the defendant's appearance in court. The amount of value of bail/bond is set by the court and may vary depending on a number of factors including the seriousness of the offense charged.

### **What is a subpoena?**

A subpoena is an official court order signed by the Judge ordering a person to appear at the time and place it specifies - usually to provide testimony. You should have your subpoena with you when you appear. Failure to appear constitutes contempt of court. If you should move or change your telephone number after receiving a subpoena, please contact the Prosecuting Attorney's Office immediately.

### **What if I change my mind about prosecuting or testifying?**

A crime committed against any person is a crime against the State. Our community and each of us as individuals deserve protection against criminal wrong-doers. For this reason, the court can compel testimony of a victim or witness to a crime. A great deal of costly work will proceed and be wasted if the victim does not testify. The loss of a case because a victim or a witness drops out, is a tragedy. Should you have any reluctance about testifying in a case, please discuss your concerns with the Victim Services Coordinator. The Victim Services Coordinator will try to help with any problems, doubts or questions you may have.

### **What if someone threatens me to drop the charges?**

Only on extremely rare occasions are witnesses threatened. If anyone has threatened you in connection with the case in which you are involved, either in or out of court, he/she may have committed a new crime. Immediately contact your local police department or the Franklin County Sheriff's Department and report the threat, also let our office know.

### **What if the defense attorney contacts me about the case?**

You may be contacted by the defense attorney or a private investigator hired by the defense attorney. We cannot advise you to refuse to speak with persons connected with the defendant, but you have the right to refuse if you so desire. Additionally you may request that an attorney from our office be present when you are being questioned. In any event, we would appreciate you notifying us of any conversations you have with the defendant or his attorneys or representatives.

### **Can I be compensated for losses I have suffered as a victim?**

If the defendant is placed on probation by the Judge, the Judge could order the offender to make restitution - to pay for out of pocket costs due to injuries, damages or loss. An order does not guarantee restitution will be paid. However, this office will make every effort to see that restitution is paid when ordered. If your case involves restitution, you will be sent a form to complete. If you believe you are due restitution and haven't received notice of this please contact our office.

### **What is a setting and/or appearance docket?**

A setting and/or appearance docket is when the case is on the docket (court calendar). At that time, the prosecutor and the defendant's attorney are required to be present. The defendant may or may not attend. The Judge will ask what the status of the case is and what remains to be done. If the case is ready for final disposition, a plea or trial date will be set. If additional time is needed then an additional setting and/or appearance docket will be scheduled.

### **What is an arraignment?**

An arraignment is the formal reading of the charge(s) that has been brought against the defendant. An arraignment can either be in person or if the defendant is in custody by video. A defendant can also waive their arraignment. This happens in the majority of the cases that are in the Circuit Court (felony cases are in Circuit Court). This means the defendant signs a form which indicates they understand the charges against them and do not need the charges read to them by the Judge.

### **What is a preliminary hearing?**

A preliminary hearing pertains to felony cases only that have not gone through the Grand Jury. A preliminary hearing is like a "mini-trial", in which testimony is taken under oath. The Judge, defendant, defendant's attorney, the prosecutor and any victims or witnesses subpoenaed are present. At the preliminary hearing, the Prosecuting Attorney's Office has to establish that:

- 1) A crime has been committed in Franklin County;
- 2) Probable cause exists to believe that the defendant committed the crime.

During this proceeding, the defendant's attorney may cross-examine the State's witnesses and produce any evidence, if he/she wishes. If probable cause is established, the Judge will order that the defendant be "bound over" (case transferred) to Circuit Court where the rest of the proceedings will take place. In some cases, the defendant may waive (not demand) a preliminary hearing and the case will then be sent directly to the Circuit Court for further proceedings.

### **What does a victim or witness do in a preliminary hearing?**

If you are subpoenaed to testify at a preliminary hearing, the prosecutor will ask that you take the witness chair and, under oath, answer questions about the alleged crime.

### **How does a case get dismissed?**

If the Judge decides at/after the preliminary hearing that probable cause has not been established, the Court will dismiss the case. This means that all legal action has come to an end and the defendant is released. This may also occur if witnesses, such as you/the victim, if subpoenaed, fail to appear to testify in criminal cases. Cases may also be dismissed by the Prosecuting Attorney's Office for other reasons.

### **What is a motion hearing?**

There are several different motions that may be filed by the Prosecutor and the defense attorney. Some of these motions require a hearing. You may or may not be required to testify. If you are required to testify you will receive a subpoena. Some motions only require law enforcement officers to testify, in which case you will not receive a subpoena to testify.

### **What is a bench and/or jury trial?**

In a trial, the prosecutor (from the Prosecuting Attorney's Office), presents the case for the State and has the burden of proving beyond a reasonable doubt that the defendant did commit the alleged crime. The defendant may present evidence, although he/she has no obligation to do so. Furthermore, the defendant may not be forced to testify. The trial may be either before a Judge (bench trial) or jury (jury trial). Misdemeanor cases often get set for what is referred to as a "non-active/no subpoena bench trial"; this means that the defendant should plead guilty on the scheduled court date. There would be no one subpoenaed to court to testify.

### **What is a deposition?**

A deposition is the recorded testimony of a victim/witness, given under oath in the presence of both the defense attorney and the prosecuting attorney. The purpose of taking a deposition is to determine and preserve the testimony of a witness.

### **How and when is sentencing determined?**

A defendant who has been found guilty or has pleaded guilty is sentenced by the Judge presiding over the case. In felony cases, a Sentencing Advisory Report (SAR) is typically ordered by the Judge after the defendant pleads guilty or is found guilty and is completed by the Probation and Parole Office. There are times when a SAR can be waived by the defendant and the defendant would then be sentenced on the same date of the guilty plea. The SAR includes information about the crime, the defendant's background, including criminal history, and a statement from the victim, if one is given. If a SAR is ordered at the time a defendant pleads guilty, a date will be set to come back for the actual sentencing to happen. The defendant may be sentenced to jail, prison, or placed on probation. If the defendant is placed on probation, the Judge may order special conditions of the probation to include paying restitution and court costs. The Judge may also order the defendant to pay a fine.

### **How long does it take for a case to be disposed of?**

There is no specific time frame for a case to be disposed of. The average misdemeanor case takes about six months to a year. A felony case typically takes longer as there are more motions filed and depositions taken in felony cases. There is no guarantee on any amount of time it will take for any given case to work through the criminal justice system.

### **What is the Drug Court Program?**

Drug Court is a program which addresses substance abuse/addiction, while helping individuals become productive members of society. Participants are very closely supervised and undergo extensive counseling. Additionally, part of the program includes making full restitution to any victim. Successful completion of the drug court program takes a minimum of one year. If the defendant successfully completes the Drug Court program, their charges are dismissed.

### **What is the DWI Court Program?**

On some felony driving while intoxicated cases the Judge may order the defendant to complete DWI Court as a special condition of probation. DWI Court is an intensive court treatment program which addresses substance abuse/addiction, while helping individuals become productive members of society. Participants are very closely supervised and undergo extensive counseling. Additionally, part of the program includes making full restitution to any victim. Successful completion of the DWI Court program takes a minimum of thirteen months. If the defendant is terminated from the program for any reason, he or she will be transferred to the original judge for a probation revocation hearing.

## Different types of sentences & recommendations

### 1. Suspended Imposition of Sentence (SIS)

This means that the Judge does not impose a specific sentence at that time. Instead, the defendant is placed on probation for a set period of time. If the defendant completes his/her probation, there is no conviction for employment purposes. If the defendant does not comply with their probation and their probation is revoked, the Judge then has the full range of punishment available to sentence the defendant to.

### 2. Suspended Execution of Sentence (SES)

This means the Judge sentenced the defendant to either jail or prison time, but suspends execution of the sentence and places the defendant on a period of probation. If the defendant's probation is revoked, the Judge could execute the sentence. A SES is considered a conviction for all purposes.

### 3. To Serve

The defendant is ordered to serve time in the county jail or in the Missouri Department of Corrections. At times a defendant in a felony case sentenced to serve time in the Department of Corrections could be sentenced under a treatment program and could be released early to parole after completing such program.

### 4. A Fine

The defendant must pay a fine, the amount to be determined by the Court.

## Points to remember when testifying

### 1. Prepare

Refresh your memory so you can avoid confusion. Before testifying, picture the scene, the objects there, the persons there, and what occurred. If you are asked a question pertaining to distance or time and your answer is an estimate, be sure to state that it is your estimate.

### 2. Dress appropriately, act courteously

Court rules specify that witnesses shall be properly attired. Dress comfortably, but conservatively.

### 3. Control your temper

Losing your temper reduces your credibility as a witness. Remember to stay clam. Stay in control, even if the attorney seems rude or makes you angry.

### 4. Be attentive

If you appear bored or indifferent, the Judge or jury may tend to disregard your testimony.

### 5. Speak clearly and loudly

Everyone in the courtroom must be able to hear distinctly what you have to say. An inaudible voice or mumbling detracts from your testimony and may give the impression that you are not certain of what you are saying. Don't be afraid to speak up - you are not on trial.

### 6. Be fair

Don't exaggerate or try to slant your testimony. Justice will be served only if you make your testimony as objective as possible.

### 7. Be helpful, not funny

A trial is a serious and important matter. Freedom is at stake. The court wants the facts, not comedy.

### 8. Answer all questions directly

Follow this simple guide.

- \* Listen carefully to the question. Take your time and think about your answer.
- \* Answer the question asked - then stop.
- \* Speak distinctly and loud enough for the Judge or jury to hear.
- \* If you do not know the answer to a question, say so.
- \* Don't try to answer a question you do not understand. Ask that it be explained.
- \* Do not argue with the defense attorney.

### 9. Above all, think before you speak and always speak the truth

10. If you move or change your phone number, please contact our office immediately.

### Coming to Court

Please arrive at the Courthouse 30 minutes before the time of the scheduled case.

## Victims' Compensation Fund

In Missouri, it is possible for persons who are victims of violent crimes to be reimbursed for certain expenses they have had because of the crime. Your cooperation with law enforcement is essential in order to be eligible for filing a claim. You may be eligible for benefits if:

- \* You sustained personal bodily injury as a result of a violent crime.
- \* You are a relative of a sexual assault victim requiring counseling in order to better assist the victim in their recovery.
- \* In the event of a victim's death: you are the surviving spouse, child, or other dependent of the deceased victim, you are the family member who legally assumes the obligations or voluntarily pays the medical and/or funeral expenses incurred as a result of this crime, or you are a surviving family member who was living with the deceased victim at the time of the crime and you require counseling as a result of the crime.

It is important to remember that the claim must be filed within two years of the date of the crime being committed, unless the victim is a minor, then the claim must be filed within two years of discovery of the crime. Approved claims can provide compensation for the following expenses: loss of earnings or support, funeral expenses, reasonable medical, drug or counseling expenses. If you have not received an application for Crime Victims' Compensation Fund and you would like one please contact the Victim Services Coordinator.