

**CRIMINAL PROCEDURE
OVERVIEW: A TRAINING
SEMINAR FOR COURT
SUPPORT PERSONNEL**

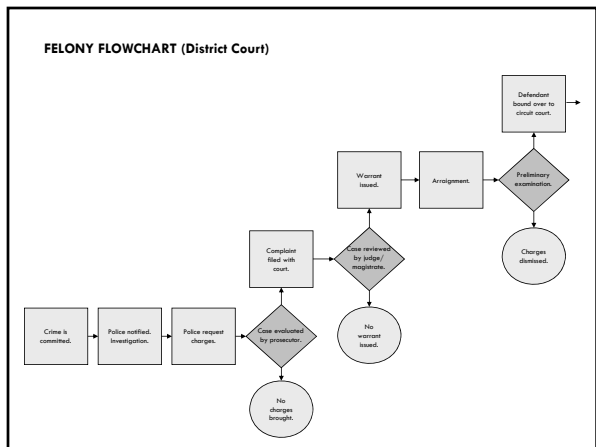
**APRIL 29, 2008
MICHIGAN HALL OF JUSTICE**

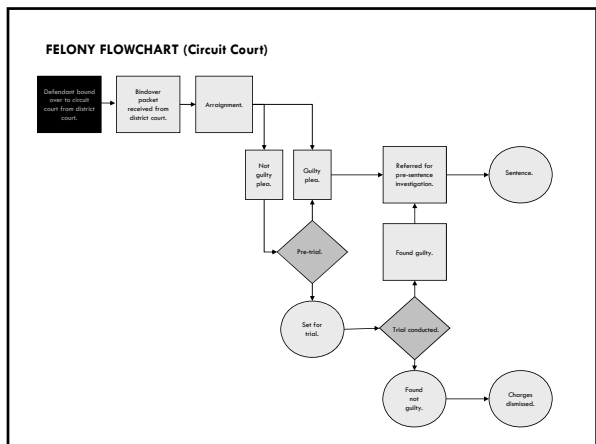
Michigan Judicial Institute

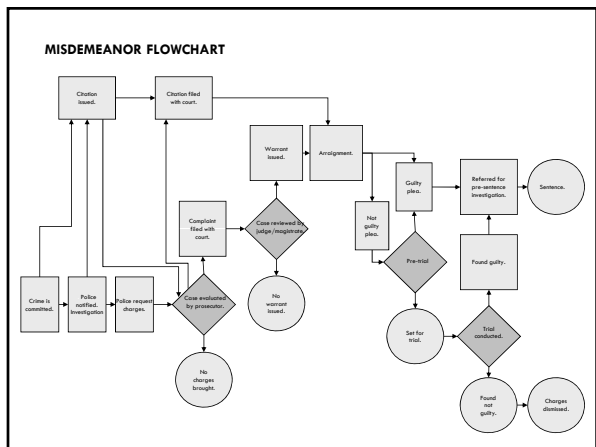
Learning Objectives

While participating in this seminar you will:

- Learn about the role of the prosecutor in criminal cases.
- Observe a "mock" arraignment of a criminal case in district court.
- Follow the process of a felony crime through the district and circuit courts.
- Follow the process of a misdemeanor case through district court.








THE ROLE OF THE PROSECUTING ATTORNEY

Jeff Sauter
Eaton County
Prosecuting Attorney



American Bar Association:

“The duty of the prosecutor is to seek justice, not merely to convict.”



Justice George Sutherland:

“The [Prosecuting] Attorney...is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer”

The Prosecuting Attorney is a constitutional officer.



- Elected to 4 year terms.
- Partisan ballot
- Run with the President

Over 200 Statutes and Court Rules Define a Prosecutor's Duties



- Prosecution of criminals.
- Protection of abused and neglected children.
- Establishment of child support for needy children.

200 Duties Including:

- Assist crime victims.
- Represent and advise county government.
- Oversee the issuance of concealed weapons licenses.
- Reapportion County Government every 10 years.

Criminal Investigations

- Search Warrants
 - Affidavit
 - Search warrant
 - Return
- Prosecutor Subpoenas



Basic "Criminal Justice" Cases

- Civil Infraction
- Misdemeanor
- Felony

Misdemeanor

- Penalty = Less than 1 year jail
 - Most 90 or 93 day max.
 - 93 day is reportable to criminal history.
- 6 person jury.
 - Unanimous verdict.
- Proof required = Beyond a reasonable doubt.

Felony



- Penalty 1 year or more.
- Increased "process" or rights.
 - Preliminary examination.
 - 12 person jury.

A Traffic Case...

- Begins with a citation (ticket).
- Usually filed directly with the court.

Example: Improper left turn.

“Cited” = Summons

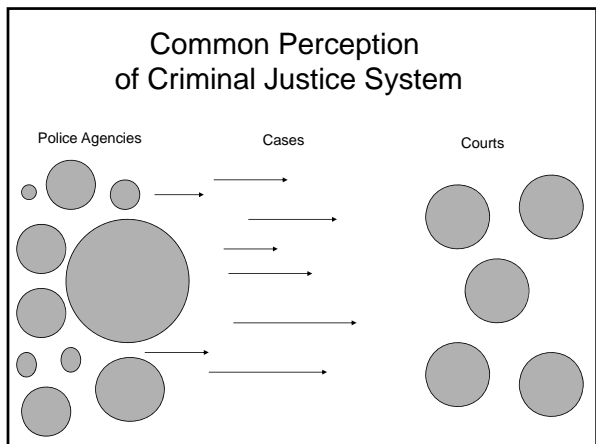
- Some misdemeanors may be filed directly w/ the court by police officer.
 - Reckless driving.
 - OWI 1st.

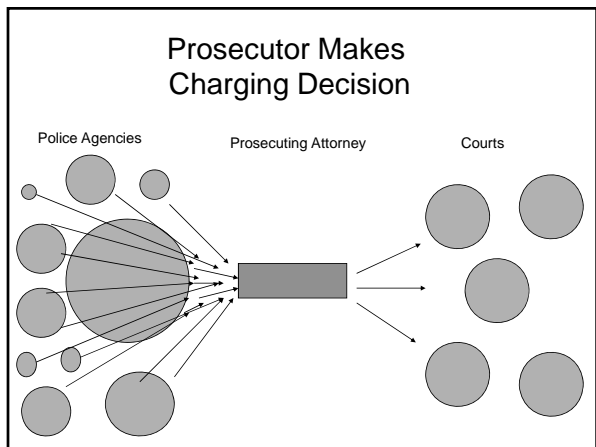


Serious charges are

reviewed by Prosecuting Attorney...

NOT directly filed by police.





Is an Arrest a "Charge"?

- An arrest is a seizure of a person.
- But it does not constitute a "charge."

A cartoon illustration of a man in a dark suit, white shirt, and red tie. He has a somber expression and his hands are cuffed behind his back.

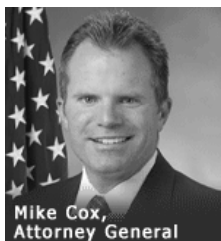
The Prosecuting Attorney

Has broad discretion to determine what, if any, charge will be authorized.



What if PA Declines to Charge?

Attorney General has co-existent authority.



The Plaintiff Is ...

The People of the State of Michigan.

NOT the crime victim.



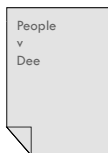
State, Local, or Federal

Michigan's prosecutors are locally elected by county, but enforce state law.

Nationally, state and local prosecutors obtain over 96% of all criminal convictions.

A Charge begins with a Complaint & Warrant

- The complaint contains the charge & maximum punishment.
- It must be co-signed by:
 - Complainant.
 - Prosecuting attorney.
 - Judge or magistrate.
- A warrant is an order to arrest.
 - Signed by a judge/magistrate.



Judge has limited authority over charging decisions.

Issuance of the warrant is based on probable cause.

Absent improper conduct, if charge is supported by evidence judge may not alter.



Court Stages in a Felony Case

- District Court Arraignment
- Preliminary Examination
- Circuit Court Arraignment
- Circuit Court Trial



What is an "Arraignment"?

- The first hearing where the Defendant is notified of the charge or charges.
 - And advised of his/her rights.
- District Court: No plea taken for felony.
 - Pre-trial release (bail) set.
- Circuit Court: Plea taken.

What is a Preliminary Exam?

- Felony hearing to test evidence.
- Prosecutor must introduce "probable" evidence that:
 - Crime charged was committed.
 - Defendant did it.

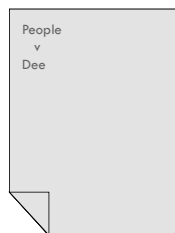
What is a "Bind-Over"?

- The process of moving a felony from district court to circuit court.
- After sufficient evidence at the preliminary exam.
 - Or by a waiver.



What is the "Information"?

- The document alleging a felony charge in circuit court, is called an "Information."



Stages of a Trial

- Jury selection.
- Opening statement.
- Prosecutor's case in chief.
- Defense case (optional).
 - Prosecutor's rebuttal.
- Closing argument.
- Jury instructions.
- Verdict.



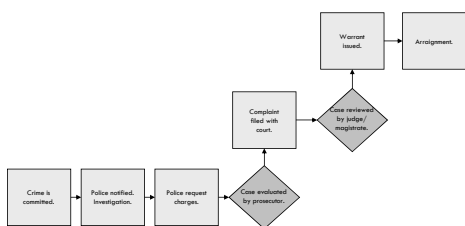
Role of the Prosecuting Attorney

- Jeffrey L. Sauter
- Eaton County Prosecuting Attorney
- jsauter@eatoncounty.org
- Web site: www.prosecutingattorney.info

Arraignment



Felony Crime



Processing in District Court

- D. Amended Complaint
- E. Arraignment
- F. Mental Competency Evaluation
- G. Preliminary Examination

```

    graph LR
      A[Arraignment] --> B{Preliminary examination}
      B --> C[Defendant bound over to circuit court]
  
```

Processing in District Court

- H. Circuit Court Arraignment
- I. File Review at Conclusion

```

    graph TD
      A{Preliminary examination} --> B((Charges dismissed))
      A --> C[Defendant bound over to circuit court]
      C --> D[Bindover packet received from district court]
      D --> E[Circuit Court Arraignment]
  
```

Felony Case Processing in Circuit Court

- A. Bind-Over Packet Received from District Court
 1. Case assigned to judge.
 2. Case number assigned.
 3. Review of paperwork.
 4. Case entered into case management system.

```

    graph LR
      A[Defendant bound over to circuit court from district court] --> B[Bind-over packet received from district court]
      B --> C[Arraignment]
  
```

Processing in Circuit Court (continued)

B. Arraignment

C. Amended Complaint

Processing in Circuit Court (continued)

D. Mental Capacity Evaluation

1. Competency may be raised at any time during proceeding.
2. Court enters order for competency evaluation.
3. Clerk receives competency report.
4. Hearing on evaluation must be held.

Administrative Order 2003-07

- Motions
- Scheduling
- Time Guidelines

Bankruptcy and Criminal Cases

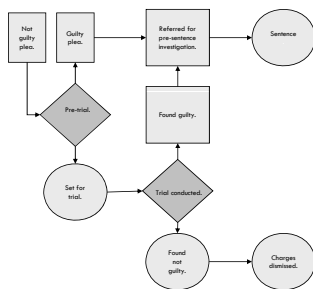
- How does a client's personal bankruptcy case in federal court impact his/her criminal case?

FELONY FLOWCHART (Circuit Court)

E. Pre-Trial

F. Trial

G. Sentencing



Contempt, Probation Violation

- Order to Show Cause
- Arraignment
- Hearing

After Sentencing

I. Appeal

1. Defendant may request court appointed appellate attorney.
2. Court rules on request.
3. Clerk complete appropriate forms for appointment.
4. Appellant files claim with the Court of Appeals.
5. Appellant must follow appeals procedures.
6. Order of Transmittal/Certification of Records form.
7. If case returned to circuit court for new trial, report as reopened on caseload report.

After Sentencing

J. Payment Received

1. Payment applied.
2. Crime victim assessment ordered.

K. Failure to Appear

1. Bench warrant issued.
2. Notice of non-compliance.
3. SOS reportable offenses.
4. Order revoking release and bond forfeiture.

L. Failure to Comply with Judgment

1. Bench warrant issued.
2. SOS reportable offenses.
3. Late penalties.

Disposition Reporting

1. Report to MSP-CJIC on all cases for which fingerprints were submitted.
2. Report disposition to SOS, if applicable.
3. Deferred entry of judgment.
4. Sentencing delayed.

Case Has Been Adjudicated

File Review at Conclusion of Case.

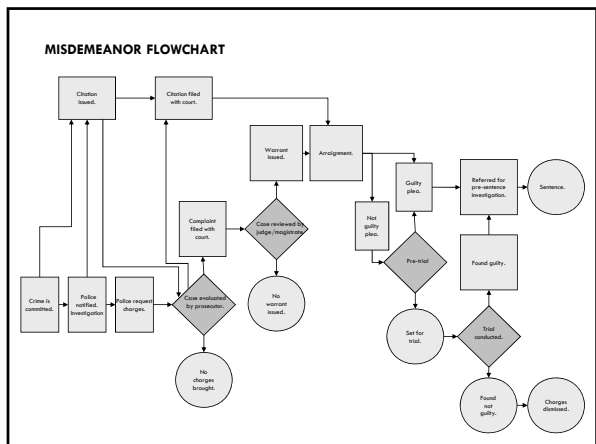
1. Assure all warrants are contained in file.
2. Assure cancellation from LEIN when applicable.
3. Review case for outstanding bonds.

Application to Set Aside Conviction

1. Defendant completes appropriate form.
2. Hearing date set – no earlier than 60 days.
3. No hearing without report.
4. Notify relevant state and local agencies.
5. Application granted: record becomes non-public

Criminal Case Records Retention

- Circuit Court – 25 years minimum
- District Court – 6 years minimum
- Untranscribed Circuit Court Felony Arraignment and Plea
 - Conducted by District Judge on assignment as Circuit Court Judge: 15 years minimum



- Misdemeanor Case Processing Differences**
- | | |
|---|-----------------------------------|
| 1. Uniform Law Citation | 6. OWI processing |
| 2. TCN/OCA fingerprints | 7. Crime Victim Rights Fee |
| 3. Serious Misdemeanor – notice to prosecutor | 8. Minimum State Costs |
| 4. 28-day review of in-custody defendants | 9. Drug Case conviction reporting |
| 5. Delay in Criminal Proceedings: 126 days | 10. Appeal Processing |

QUESTION AND ANSWER
