
Anatomy Of A Prosecution

Crime Committed

Police Notified

Police Investigate

Investigation may include interviewing victim, witnesses and suspects ... collecting physical evidence ... visiting/viewing/photographing/measuring crime scene ... identifying suspects through line-ups ... etc.

Police Make an Arrest (or Request a Warrant)

When a crime is committed in a police officer's presence – or he or she has probable cause to believe that certain misdemeanors or any felony was committed that he did not see happen – an officer may arrest a suspect on the spot without an arrest warrant. The officer will later submit a charging/warrant request to the Prosecuting Attorney, suggesting potential charges be authorized.

Warrant/Charging Request Reviewed by Prosecuting Attorney

Most cases begin with a warrant request. This is generally the first time that the Prosecuting Attorney is involved in a case, unless he reviewed a search warrant or visited the crime scene. At this stage, the Prosecutor determines whether a person should be charged with a crime and, if so, what the crime should be. The Prosecuting Attorney must thoroughly review all reports and records concerning the case, including witness statements. The Prosecutor also reviews the suspect's prior criminal or traffic record. Occasionally, the reviewing Prosecutor sends the case back to the police to conduct additional investigation.

Warrant Issued

The Prosecutor can issue a charge if he reasonably believes probable cause exists that the suspect committed the offense. But, most Prosecuting Attorneys apply a higher standard: whether he or she reasonably believes that he can prove the charge beyond a reasonable doubt at trial with the information known at that time.

Suspect Arrested (if not already in custody)

The delay between the crime date and the defendant's arrest on an authorized charge can take any length of time (e.g., if the defendant's whereabouts are unknown, or if he/she has left the State of Michigan).

District Court Arraignment

This is the first court appearance for any misdemeanor or felony. Once arrested and charged with a felony, the suspect appears in District Court for arraignment. At arraignment, the defendant is told what the charge(s) is (are) and the maximum penalty if convicted, and is advised of his constitutional rights. The charging document is called a Complaint. The conditions and amount of bond are determined. In some cases – generally based on the nature of the charge, the Judge imposes conditions on the bond, such as “no contact” with the victim. You should be aware that bond is set in almost every case, but it is up to the defendant’s own resources to post the bail money, which allows him to be released. Whether the defendant is charged with a felony or misdemeanor determines all further pre-trial procedures.

Misdemeanor

At a misdemeanor arraignment, the defendant will be given a chance to enter a plea to the charge; either plead guilty, plead not guilty, or stand mute (i.e., remain silent, which is treated by the court as if the defendant pled not guilty). If he pleads guilty or no contest, the Judge may sentence him on the spot or may reschedule the case for a sentencing date, which will give the probation department time to prepare a pre-sentence report including background information about the defendant and the crime, make a sentencing recommendation, etc. If the defendant stands mute or pleads not guilty, the case will be scheduled for a pre-trial conference.

Pre-trial Conference – In traffic and non-traffic misdemeanor cases, this is the defendant’s second court appearance. It is a scheduled meeting between an Assistant Prosecuting Attorney and the defendant (or his attorney) to determine whether the case will go to trial or be resolved with a plea. This meeting will focus on resolving the case short of trial. The Judge and witnesses are not involved in misdemeanor pre-trial conferences. If a plea bargain is going to be offered by the Prosecutor, it is done here.

Pre-trial Proceedings – Many other events can occur prior to trial. Depending on the nature of the case, there may be pre-trial hearings on Constitutional issues (confessions, searches, identifications, etc.). The issues are presented to the Court through written “motions” (e.g., Motion to Suppress Evidence, etc.). The Judge must determine whether evidence will be admitted or suppressed at the defendant’s trial, whether there is some legal reason why the defendant should not be tried, or decide other ground rules for trial.

Felony

At a felony arraignment in District Court, the defendant does not plead guilty or not guilty. He is advised of his right to a preliminary examination within 14 days of the

arraignment. If the defendant requests a court-appointed attorney, the court will review that request at the time of the arraignment.

Felony Preliminary Examination – This is a contested hearing before a District Court Judge, sometimes called a Probable Cause Hearing. The Prosecutor presents witnesses to convince the Judge that there is probable cause to believe that a crime was committed and that the defendant committed the crime. Because the burden of proof is much less than at a trial, the Prosecutor generally does not call all potential witnesses to testify at the “prelim”; generally, the victim and some eye witnesses plus some of the police witnesses testify. The defendant has an attorney, can cross-examine the witnesses, and can present his own evidence (including witnesses). If probable cause is established, the defendant is Bound Over (i.e., sent to) Circuit Court for trial. If the Judge decides that there is not probable cause that the defendant committed the crime, the charge can be dismissed or reduced to a misdemeanor for the trial in District Court. A defendant can decide not to have a Preliminary Exam. Most felonies arrive in Circuit Court after such a Waiver.

Circuit Court Arraignment – After the case is sent to Circuit Court, the defendant is again arraigned (given formal notice of the charges against him or her). The charging document is called an Information. He or she is again advised of his/her constitutional rights, and enters a plea to the charge (guilty, not guilty or stand mute).

Pre-Trial Conference – As with District Court misdemeanors, the Circuit Court schedules a meeting between an Assistant Prosecuting Attorney and the defendant’s attorney to determine whether the case will go to trial or be resolved in a plea.

Pre-Trial Proceedings – **As with District Court misdemeanors, the Circuit Court Judge is called upon to resolve various pre-trial issues, some of which determine whether the case will continue to a trial, be resolved with a plea, or be dismissed.**

Trial (Judge or Jury)

A trial is an adversary proceeding in which the Prosecutor must present evidence to prove the defendant’s guilt beyond a reasonable doubt. The Prosecutor must call all the witnesses to the crime. The defendant is not required to prove his or her innocence or to present any evidence, but may challenge the accuracy of the Prosecutor’s evidence.

Both the defendant and the Prosecutor (representing the “People of the State of Michigan”) have the right to a trial by a jury. Sometimes, both sides agree to let the Judge listen to the evidence and decide the case without a jury; this is called a Bench Trial. In a jury trial, the jury is the “trier of fact”; in a bench trial, the judge is. After the evidence is presented, the judge or a jury will determine whether the evidence proved that the defendant committed the crime.

Here is a general outline of the steps in a jury trial:

- 1) residents of Sanilac County are randomly summoned to the Court as potential jurors
- 2) a blind draw selects twelve people from that group in felonies (six in District Court misdemeanors);
- 3) the Judge, Prosecutor and defense attorney question the jurors about their backgrounds and beliefs (see voir dire);

- 4) the attorneys are permitted a limited number of peremptory challenges to various jurors (or an unlimited number of challenges for good cause);
- 5) after twelve (or six) acceptable jurors remain, the Judge administers an oath to the jury and reads basic instructions about the trial process, etc.;
- 6) the Prosecutor gives an opening statement to outline his case and evidence to the jury;
- 7) the defense may give a similar opening statement, or wait until later in the trial;
- 8) the Prosecutor calls his witnesses, which the defense may cross-examine;
- 9) the People close their proofs;
- 10) the defense may call witnesses, if it wants, and the Prosecutor may cross-examine them;
- 11) the defense rests
- 12) the Prosecutor may present “rebuttal” witnesses/evidence to challenge evidence presented by the defendant during his proofs;
- 13) the Prosecutor rests;
- 14) the Prosecutor presents a closing summary to the jury;
- 15) the defense attorney presents a closing summary to the jury;
- 16) the Prosecutor may present a rebuttal argument to the jury to respond to the defendant’s attorney’s closing summary;
- 17) the Judge gives the jury detailed legal instructions about the charged crimes, the deliberation process, etc.;
- 18) the jury deliberates and gives a verdict.

Pre-Sentence Investigation and Report

The court’s probation department prepares a report for the Judge summarizing the crime, and the defendant’s personal and criminal backgrounds. Generally, the victim is contacted for a recommendation of sentence. The probation officer concludes the report with a recommended sentence.

Sentence

Sentencing in Michigan varies with the crime and can be the most confusing part of the criminal process. Most often, sentences are at the Judge’s discretion. At the time of sentencing, the Judge will consider the information in the presentence report before determining the sentence. The parties may correct factual errors in the presentence report and offer additional evidence relevant to the Judge’s sentencing decision. For certain felony crimes, the Judge will consult the “sentencing guidelines” (established by the Michigan Supreme Court as a reference for framing an appropriate sentence throughout the state, considering factors of the crime and the defendant’s criminal background) to determine the minimum jail/prison sentence. The Judge may consider different alternatives, such as a fine, probation, community service, a sentence to jail or prison, or a combination. The Judge must also order the defendant to make restitution to any victims who have suffered financial harm.

Appeals

Appeals from the District Court are heard in the Circuit Court. Appeals from a Circuit Court or Probate Court order are heard in the Michigan Court of Appeals. Appeals from Court of Appeals decision are heard in the Michigan Supreme Court.

There are three kinds of appeals: Interlocutory, of right, and by leave.

- Interlocutory Appeal: occurs when a party tries to appeal a judge's decision before the case has come to trial or before a trial is finished.
- Appeal of Right: occurs after a final order has been entered by the trial court (either a sentencing order, or an order dismissing the charge). A recent amendment to the Michigan Constitution has eliminated most appeals of right when a defendant pleads guilty. Most appeals of right now focus on the sentence imposed.
- Appeal by Leave of the Court: occurs when an appeal of right is not available (e.g., because an available appeal of right was not filed on time). The appellate court has the discretion to reject the appeal or can "grant leave".

If the appellate court grants leave to appeal, the defendant and Prosecutor file briefs that summarize the case facts, frame the legal issues to be decided, and present persuasive written arguments (supported by constitutional, statutory or prior case decision authority). Either party can request that the case be scheduled before the appellate court judges for oral argument. The appellate court will eventually issue a written opinion (or several opinions, if the justices disagree). Not all appellate opinions are "published" (i.e., printed in official "reporter" services, such as Michigan Appellate Reports). The legal analysis and conclusions in published opinions are given greater precedential authority than "unpublished" opinions.