

# Partners in Justice



## The Criminal Process

### The Process

### Commentary

**1. Citation:** This is issued by a law enforcement officer and it commands a person to appear in court. The officer has discretion to issue a citation instead of making an arrest in misdemeanor cases.

**2. Arrest by a law enforcement officer: Arrest can occur under a number of different circumstances:**

**a.** By warrant in the possession of officer. A warrant for arrest is issued by a judicial officer, usually a magistrate after receiving information under oath that a crime has occurred.

**b.** By warrant not in possession of officer if officer knows of it.

**c.** When someone who was issued a citation fails to show up in court.

**d.** By an officer without a warrant if the officer has probable cause to believe a criminal offense has occurred in his/her presence.

**e.** By an officer without a warrant if officer has probable cause to believe felony was committed.

**f.** By an officer without a warrant if officer believes misdemeanor committed and person may cause physical injury or run.

**g.** An arrest is completed when the person submits to control of officer and is taken into custody of the officer. An officer may use reasonable force to control the defendant.

**Example:** Traffic ticket. Can be used for any misdemeanor. A misdemeanor is a lesser crime punishable by a maximum 2- year sentence. Most misdemeanors carry a six month maximum, and crimes such as trespass are misdemeanors.

**a.** This often happens after someone goes to the magistrate's office to swear out a warrant against someone else. (This is an opportunity for a clinical professional to intervene and persuade the officer to issue a citation instead of making an arrest.)

**b.** An example is if Officer A has warrant, Officer B can still make the arrest.

**c.** The presiding judge issues an order for arrest if someone who is scheduled for court does not show up.

**d.** An officer can arrest for any offense, minor or serious if it occurs in his/her presence, misdemeanor or felony.

**e.** This is what you see on television when cops interrupt a burglary or attempted murder.

**f.** This most often will occur in domestic violence situations or other cases where it is not safe to leave the person where they are.

**g.** The officer must identify himself unless it is obvious, and inform the person that he is under arrest.

*NOTE: There is no requirement that an officer inform a person of his or her rights at this time. This is a popular misconception.*

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### 3. Initial Appearance

- a. The arresting officer must take the person to a magistrate without unnecessary delay.
- b. If the person is so intoxicated or unruly as to be unable to participate in initial appearance, the magistrate may have them held until they are capable.
- c. At the initial appearance before the magistrate, the magistrate must inform the person arrested of:
  - I. The charges against him.
  - II. His right to communicate with a lawyer or friends.
  - III. The circumstances under which he may secure release under bail or pretrial release.

- a. This is usually pretty routine, but if an officer gets an emergency call in the meanwhile, he can answer it first.
- b. The person is usually held in a cell in the magistrate's office sometimes known as the "tank".
- c. The person can call anyone including the case manager at this time, and **this is an important opportunity for the CM or other professional to come to the magistrate's office and intervene to prevent the person from being jailed.** You might want to inform your client that this is the time to call you if you are available to respond or there is a crisis line to call. See next section on pre-trial release for details.

### 4. Pre-trial Release

- a. A defendant charged with a crime while still a resident of or committed to a DHHS mental health facility can only be released back to that facility.
- b. Any other defendant charged with a non-capital crime is eligible for pre-trial release.
- c. There are a number of conditions of pre-trial release. They are:
  - 1. Written promise to appear.
  - 2. Unsecured appearance bond.
  - 3. In the custody of person or organization who agrees to supervise him.
  - 4. Secured bond such as mortgage or deposit through bondsman.

- a. This is important for mental health patients. Even if they are away from the campus of the facility with permission, they will be released back to the facility.
- b. A non-capital crime is anything other than murder, but there are some other exceptions for drug-trafficking, etc.
- c. These conditions are important.
  - 1. Promise to appear in court.
  - 2. Agrees to forfeit amount of bond if fails to appear in court.
  - 3. The magistrate at the initial appearance or later the judge is usually willing to turn over a client of mental health to a case manager or any treating professional or facility operator.

*There are exceptions for impaired drivers and domestic violence cases.*

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### 5. First Appearance Before District Court Judge

a. Unless a defendant is released by the magistrate, a first appearance before a district court judge must be held within 96 hours after the defendant is taken into custody.

b. Except when the defendant is accompanied by counsel, the judge must inform the defendant that anything he says may be used against him.

c. The judge must determine if the defendant has counsel and, if indigent, that counsel will be assigned to him.

d. If the defendant is indigent and desires counsel, the judge will appoint counsel at this time.

e. The judge will also determine if the charges against the defendant constitute a proper criminal charge.

f. The judge will review the defendant's eligibility for pretrial release.

### 6. Misdemeanors

Misdemeanors are set for trial in District Court. Most cases result in a plea bargain, but every defendant is entitled to a trial. The District Court Judge decides guilt or innocence and issues the sentence at the same time in most cases.

a. In most communities where there is district court every day, the first appearance takes place the morning after the person is arrested. If the arrest takes place on the weekend, the first appearance will be on Monday morning. In very rural areas where district court is not held every day, the first appearance will take place at the first session of court after the arrest.

b. The appointment of counsel is an important aspect of the first appearance. The lawyer who is appointed is generally not present at this time but is called by the clerk later or sent an order of appointment within a few days. The defendant is given information on how to contact the lawyer.

c. If the defendant is in jail, the lawyer will contact the defendant in jail. If the defendant is released, he will need to call the lawyer to set up an appointment.

d. Once the lawyer is involved, he or she will take over responsibility for the legal aspect of the case. The case manager should be in contact with the lawyer to make sure future court dates are known.

**f. This is an important opportunity for family, area program staff, or other supports for defendant to offer information to the judge to secure pre-trial release of the defendant.**

The District Court Judge will be very interested in hearing from the case manager at any stage of the case whether there is a trial or a guilty plea. Courts tend to be very deferential to mental health professionals and willing to work with you if you come to court.

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### 7. Felonies

Defendants charged with felonies are entitled to a probable cause hearing in District Court. The purpose is for the District Court Judge to screen the case before it is transferred up to Superior Court. Once the case is transferred to Superior Court, the defendant will be entitled to a jury trial.

The probable cause hearing is an opportunity for the lawyer for the defendant and the District Attorney to negotiate a plea bargain if the defendant is willing to plead guilty to a misdemeanor that is a lesser included offense of the felony charged.

### 8. Sentencing

Judges have enormous discretion in sentencing a defendant. Their choices include:

1. Issuing a fine
2. Putting someone on probation
3. Ordering restitution
4. Ordering Community Service
5. Ordering someone to stay away from particular people or places
6. Ordering someone to complete school
7. Ordering someone to accept mental health services or complete certain courses.
8. Sending someone to jail or prison
9. Issuing a split sentence of jail and /or probation.

How a judge decides to sentence someone depends in part on the Judge's prior experience and in part on the information the judge is given about a defendant at the time of sentencing. This is an important time for the case manager to have input to the judge and the judge is usually willing to listen. It would be important, for example, for the judge to know if someone has mental retardation and cannot complete a GED in a regular setting. Otherwise, the defendant is likely to be set up to fail the conditions of probation before he or she ever starts.

Many of the choices are imposed as conditions of probation. Thus a judge will sentence someone to one year in prison, with the sentence suspended and the defendant put on probation for a period of two years. If the defendant completes the probation successfully, the active sentence is never imposed. If the defendant fails the conditions of probation, then the prison sentence can be activated. The standard conditions of probation are to stay out of trouble and report to the probation officer as directed. Other conditions can be imposed as the judge sees fit or as are recommended by the district attorney or defendant's lawyer.

Probation can be a slippery slope for people with cognitive disabilities. Probation officers are essentially law enforcement personnel who expect everyone to respond equally. Clients will need the help of the case manager to make sure they do not miss appointments with the probation officer. This includes calendar planning and transportation.

Regular communication between the case manager and the probation officer can also be essential, as most probation officers have no knowledge about mental illness or developmental disabilities.