



## Maricopa County Attorney's Office

### Adult Criminal Case Process

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The following is a brief description of the process to prosecute an adult accused of committing a felony offense. Most misdemeanor offenses are handled by municipal prosecutors; cases involving minors under the age of 18 are referred to the juvenile court system.

#### **Initial Investigation**

When a crime is reported to a law enforcement agency, a patrol officer travels to the scene to investigate. After first assisting anyone who may need medical attention, the patrol officer will interview the victim(s) and any witness(es) and compile a report describing the crime. Police Detectives and crime scene investigators may also respond if there is a need to take special photographs of the scene or the victim, record possible fingerprints, or gather additional evidence. In certain felony cases, such as homicides or vehicular collisions involving serious injuries or death, a Deputy County Attorney may come to the crime scene to assist officers with legal issues in the investigation. If police believe that a suspect has been identified and that there is sufficient evidence that the suspect has committed a crime (a finding known as "probable cause"), the suspect may be arrested immediately.

#### **Follow-up Investigation**

If suspects are not arrested at the scene, the patrol officer's incident report may be channeled to detectives within the law enforcement agency for further investigation. Detectives may contact witnesses for formal statements, may obtain additional physical evidence as well as descriptions of suspects or stolen property. Once their investigation is complete, law enforcement officers may either arrest a suspect if they believe there is sufficient probable cause, or submit their findings to the County Attorney's Office for review by a prosecutor.

#### **Formal Charging Procedure**

If the prosecutor believes that the law enforcement agency's report does not provide sufficient evidence to justify filing of criminal charges, he or she may return the report to the submitting agency for more investigation (or "further" the report), decline to prosecute ("not file"), or refer the case to a prosecutorial agency in another jurisdiction for review.

If the prosecutor believes the report provides sufficient evidence to indicate that the alleged offender has committed a crime and that the case has a reasonable likelihood of a conviction at a trial, the prosecutor will file a **direct complaint** and/or seek a **Grand Jury indictment**. Both of these methods constitute a formal filing of criminal charges.

- **Direct Complaint**

A direct complaint is a document prepared by the prosecutor which specifies the felony offense(s) the defendant is alleged to have committed. A judge reviews each complaint to determine if there is enough evidence to sign it and issue a summons ordering the alleged offender to appear at a **preliminary hearing** to be formally notified of the charges that have been filed. The judge may also issue an arrest warrant if there is reason to believe the offender will not voluntarily appear in court at the scheduled time.



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- **Grand Jury Indictment**

In addition to – and sometimes in lieu of – filing a direct complaint, a prosecutor may formally charge a suspect by presenting evidence to a Grand Jury comprised of at least nine citizens selected at random. If the Grand Jury determines that there is sufficient evidence that a suspect committed a crime and should be tried on specific charges, the jurors will formalize these findings by issuing an indictment (sometimes referred to as a “true bill”). The Grand Jury may also issue an indictment alleging charges other than those recommended by the prosecutor, or determine that there is insufficient evidence to support any charges at all. If the Grand Jury delivers an indictment, a judge may issue either a summons ordering the defendant to appear in court or an arrest warrant authorizing law enforcement agencies to arrest the defendant.

### **Initial Appearance**

When a suspect is arrested either at the scene of the crime or as a result of an arrest warrant, he or she is taken to jail and “booked,” or registered in the criminal justice system as having committed a specific offense. Within twenty-four hours of the booking, the defendant must be taken before a Judge or Commissioner for an **Initial Appearance (IA)**. Suspects who receive a Grand Jury summons are also ordered to attend an initial appearance. An IA is the first time the suspect, now referred to as a defendant, appears before a Judge or Commissioner. At the IA, four events take place:

- The defendant is informed of the felony allegations.
- The defendant is advised of the right to an attorney. If the court finds the person cannot afford an attorney, a public defender will be appointed.
- Conditions of the defendant’s release are established. Defendants accused of less serious or non-violent crimes, or who have sufficient community ties, are released at this time on their own recognizance (OR), a personal promise to return to court when required. Defendants accused of serious offenses, or who have criminal records or a history of not returning to court as required, are either held in jail or released after posting a cash bond.
- A date is set for a **status conference** and **preliminary hearing**.

Defendants who are held in custody without bond may be released after 48 hours if the County Attorney has not filed charges in a **direct complaint**.

### **Status Conference**

A status conference provides the first opportunity for the defendant and prosecutor to resolve a case before proceeding to trial. The State will attempt to negotiate a plea agreement with a defendant’s attorney which may include a reduction (or “deviation”) of the sentence normally imposed for the alleged offense. If the parties agree, the case is set for sentencing. If no agreement is reached, the case proceeds to the scheduled preliminary hearing. Both the status conference and the preliminary hearing are cancelled, or “vacated,” if the County Attorney’s Office files formal charges against the defendant by obtaining a **Grand Jury indictment**.



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### **Preliminary Hearing**

When felony charges are filed by a direct complaint, a preliminary hearing is held to determine whether the defendant should face trial on the charges alleged in the complaint. At the hearing, the prosecutor presents a Judge with evidence that would lead a reasonable person to conclude that the accused individual has committed the crime, a finding known as “probable cause.” The Judge can either find probable cause and order the defendant to stand trial, or dismiss the case based on a lack of probable cause. In some instances, a prosecutor will secure a Grand Jury indictment prior to the preliminary hearing. When this happens, the Grand Jury makes a finding of probable cause and the preliminary hearing is vacated.

### **Arraignment**

An arraignment is held within ten days after the filing of an indictment or direct complaint, unless the defendant has not been arrested or has negotiated a plea agreement at the status conference. The arraignment hearing serves several purposes:

- The defendant is informed of the exact charge(s) against him/her.
- The defendant is advised that he/she should have an attorney and if he/she cannot afford an attorney, one will be provided at public expense.
- The defendant is asked to enter a plea to the charge(s).
- A pretrial conference and a trial date are set.

Defendants are entitled to a speedy trial (Rule 8; Arizona Rules of Criminal Procedure). If the defendant remains in custody, a trial date must be set within 120 days from the initial appearance. Defendants released from custody on bail or on their own recognizance (OR) must receive a trial date within 150 days from initial appearance. In extraordinary circumstances, the trial may occur later than these time frames.

If the defendant intends to contest the charges presented at the preliminary hearing, the arraignment is known as a **not guilty arraignment**. If a defendant intends to plead guilty, the preliminary hearing is waived and a **guilty arraignment** is scheduled in Superior Court. The defendant can either plead “straight to the charges,” or enter into a **plea agreement**. Upon accepting the plea, the Court will set a date for sentencing.

If a defendant who is not being held in custody fails to appear at any court hearing, the Court can issue a bench warrant for the defendant's arrest.

### **Regional Court Centers (RCC) for Felony Processing**

There are two Regional Court Centers in Maricopa County where preliminary hearings and arraignments are consolidated into one event at one location to expedite the criminal justice process primarily for lower level offenses. Preliminary hearings at an RCC require the attendance of the prosecutor, the defendant, the defense attorney, and the prosecutor's witnesses. The victim is given notice of this hearing and may also be required to attend. The defendant may demand a hearing, waive the hearing, or accept a plea offer from the prosecutor. A plea offer is an agreement between the prosecutor and the defendant in which the



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defendant agrees to plead guilty or no contest in order to avoid a trial. The prosecutor must make diligent efforts to confer with the victim about any plea offer made to the defendant. In some less serious cases, sentencing will also be set at the RCC.

#### **Early Disposition Court (EDC)**

Previously known as Expedited Drug Court, EDC is designed to handle most first and second-time drug offenses and prevent a backlog of these relatively minor cases by resolving them as quickly as possible. Eligible cases are identified at the IA and set for a preliminary hearing within 10 days. The plea and the sentencing are combined at these hearings and many defendants are ordered to participate in substance abuse treatment programs in lieu of prosecution.

#### **Pretrial Actions/Hearings**

After the arraignment and before a trial, there are many activities performed in preparation for trial.

#### **Initial Pretrial Conference**

Following arraignment, defendants who plead not guilty are scheduled for an initial pretrial conference (IPTC). Here defendants have a hearing before a Commissioner to narrow the issues in controversy surrounding the case and perhaps settle it prior to the trial date. An IPTC is usually held within 45 days after an arraignment.

#### **Discovery**

According to the Arizona Rules of Criminal Procedure, the prosecution and defense must disclose the information each side intends to present at trial, including physical evidence, police reports and a list of witnesses. This process, known as discovery, is reviewed in one or more pretrial status conferences before the Judge. The rules of discovery also allow attorneys to interview prospective witnesses.

#### **Settlement Conference**

In some cases, the trial Judge assigned to a case will order the parties to meet with another Judge to discuss possible resolutions to a case short of trial. At the conference there is an exchange of views, and the Court will typically suggest ideas to attempt a resolution. The victim has a right to be present and express his/her views whenever the defendant is present. The trial Judge can only participate in such discussions with the consent of both parties.

#### **Final Trial Management Conferences**

A final trial management conference (FTMC) is typically held seven days before the scheduled trial date to discuss the trial schedule and address any remaining issues in the case before going to trial. All cases are scheduled for a FTMC prior to ordering a jury.



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#### **Rule 11 Hearing and Evaluation**

If at any point a prosecutor, Judge or defense attorney thinks that a defendant may not be competent to stand trial because he/she cannot understand or assist in his/her defense, they may request that the Court order a psychiatric evaluation of the defendant known as a Rule 11 evaluation. Typically the Rule 11 process takes at least one month after which a hearing is scheduled for the Judge to review evidence from mental health specialists and decide if the defendant is or is not competent to stand trial. If the Judge determines that the defendant is competent, the case proceeds through the criminal justice process. If the defendant is found to be incompetent, the Judge will order a second evaluation to determine if the defendant can be restored to competency with mental health treatment. If the judge finds that the defendant can be restored to competency, the criminal case is placed on hold while the defendant participates in mental health treatment. Once the defendant is determined to be competent to assist in his or her defense, the prosecution resumes. If a Judge determines that the defendant is incompetent and not restorable in the near future, the criminal case must be dismissed and the Judge may order that the defendant be involuntarily committed to the Arizona State Hospital for mental health treatment. Even if the defendant has been determined to be competent, he or she is still allowed to raise an insanity defense at trial.

#### **Plea Negotiation/Agreement**

In any of these hearings, the defendant may change his/her mind and decide to plead guilty to the original charges, or agree to reduced charges. In negotiating a plea agreement with the Deputy County Attorney prosecuting the case, the defense attorney may seek a dismissal of certain charges, a commitment from the Deputy County Attorney not to file additional charges or an agreement to recommend a particular sentence. The Deputy County Attorney will make diligent efforts to confer with the victim concerning any plea agreement.

If an agreement is reached, the attorneys and the defendant appear before a Judge for a **Change of Plea Hearing**. The defendant enters a plea of guilty as agreed, and signs a form declaring that he/she is knowingly giving up various rights, including the right to a trial and the right to cross-examine witnesses. Victims have the right to be present at the hearing and to make a statement expressing their opinion about the plea agreement. The Judge can either reject the plea agreement and set the case for trial, or accept the plea, enter a finding of guilt against the defendant and proceed to sentencing.

#### **Trial**

If a plea agreement is not reached, the case goes to trial. All parties to the case, including prosecution witnesses and defense witnesses, will be subpoenaed (summoned) in advance to testify. Victims have the right to be present throughout the trial.

Once a jury is selected and sworn, the prosecution and the defense make opening statements to the jury to explain the case. The Deputy County Attorney (the State) then presents the case against the defendant. It is the responsibility of the State to prove "beyond a reasonable doubt" that a crime was committed and the defendant is guilty of committing that crime. To meet this burden of proof, the Deputy County Attorney presents evidence and calls witnesses to testify. Witnesses are required to testify under oath and may be



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cross-examined by the defense attorney. Witnesses are excluded from the courtroom until they are finished testifying. The reason for this rule is to ensure that a witness is not influenced by the testimony of another witness.

After the prosecutor presents the case against the defendant, the defense has an opportunity to present its evidence. On advice of counsel, the defendant may or may not testify on his/her behalf. As in the case with the prosecution witnesses, defense witnesses are subject to cross-examination by the prosecutor.

Following the defense's case, rebuttal witnesses may be called by the prosecutor to discredit statements and facts presented by the defense. At the end of the trial, attorneys for the prosecution and defense make their final arguments to the Judge or the jury. The Judge instructs the jury on how the law applies to the case and about the duty of the jury.

The jury must agree unanimously in order to find the defendant guilty or not guilty. If the jury returns a "not guilty" verdict, this means that, in the jury's opinion, the State failed to prove the case beyond a reasonable doubt and the defendant is released. The State cannot appeal the jury's verdict and the matter cannot be retried. If the jury returns a verdict of "guilty," the Judge sets a sentencing date. If the jury is unable to reach a unanimous verdict, it is declared "hung" by the Judge and the State may then request that the case be retried within sixty days.

### **Sentencing**

If the defendant pleads guilty, or if the defendant is found guilty, the Judge will set a date for the defendant to be sentenced. In felony cases, sentencing will generally be held about 30 days after the change of plea or guilty verdict. Prior to sentencing, the court will request a **Pre-Sentence Report** on the defendant from the Maricopa County Probation Department (only for felony cases).

The Pre-Sentence Report discusses the circumstances of the offenses, the defendant's life and criminal history and recommends a specific sentence. The Probation Officer will contact the victim(s) who may also submit a written statement to the Judge through the Probation Officer. This statement may contain the victim's request for payment of monetary losses suffered by the victim (restitution). In some situations, when either the Deputy County Attorney or the defense attorney has strong feelings about the recommended sentence, testimony especially relevant to the sentence may be heard at a special sentencing hearing. Victims are allowed to make a statement to the Judge at the time of the sentencing.

### **Restitution**

Arizona law requires the Judge to order the defendant to pay restitution if the victim has suffered a monetary loss directly related to the crime. Restitution is not available to compensate for pain and suffering in criminal cases. Restitution will be ordered regardless of whether the defendant is placed on probation or sentenced to the Arizona Department of Corrections. Restitution payments are paid to the Clerk of the Court, who then mails the payments to the victim.



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### Sentencing Options

#### Probation

If the defendant is placed on probation, he or she will be under many restrictions of conduct and travel. If a defendant violates the terms of probation, additional restrictions may be imposed or the defendant may be sentenced to serve a term in the Arizona Department of Corrections. Any inappropriate action by a defendant placed on probation, including unauthorized contact with victims and witnesses should be reported to the Maricopa County Adult Probation Office.

#### Prison/Community Supervision

Under Arizona's "truth in sentencing" laws, enacted in 1994, convicted defendants must serve at least 85% of any prison sentence imposed, unless the defendant is convicted of an offense which prohibits early release. At the time of sentence, the Judge will also order the defendant to serve a term of community supervision following the prison term. The term of community supervision will be equal to 15% of the total prison term. During the time the offender is being supervised in the community, the offender will report to a community supervision officer and must abide by certain restrictions on his/her activities. If the offender violates the terms of the community supervision, he/she may be ordered by the Judge to serve the remainder of the term of community supervision in prison.

#### Prison/Parole

In certain rare cases involving crimes that occurred prior to January 1, 1994, the Judge must sentence the offender to a sentence that was the law at the time the offense occurred. If a defendant is convicted of a crime committed in 1993 or earlier and the Judge sentences the offender to be imprisoned in the Department of Corrections, he/she may become eligible for parole unless the crime requires the defendant to serve "flat time" or every day of the sentence. The Arizona Board of Executive Clemency, a separate agency from the Arizona Department of Corrections, is the agency that determines if the inmate is to be released from prison on parole. If the defendant is released from prison on parole, the Arizona Department of Corrections, Parole Division, is responsible for supervising the defendant.

#### Appeals/Post-Conviction Relief (PCR)

After sentencing the two main avenues for a defendant to challenge the prosecution, conviction and sentence are **appeals** and petitions for **post-conviction relief (PCR)**.

An appeal is a formal request from the defendant and/or the defendant's attorney asking for an appellate court to review the case to determine if all of the defendant's rights were observed and that the procedures and laws were followed. Depending on the type of appeal, either the Maricopa County Attorney's Office or the Arizona Attorney General's Office will handle it on behalf of the State. Cases on appeal are reviewed in writing. In some cases, oral arguments are heard by the Court. The testimony of the victims and witnesses is not allowed.

Any person who has been convicted of or sentenced for a criminal offense may file a PCR if they believe the conviction or sentence was in violation of the U.S. or Arizona Constitution; the Court was without jurisdiction to render judgment or impose sentence; the sentence imposed exceeded the maximum allowed by



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law; the person is being held in custody after the sentence imposed has expired; newly discovered material facts exist that may have changed the outcome; or if there has been a significant change in the law that applies to the defendant. A PCR must be filed within 90 days after the judgment and sentence or within 30 days after the issuance of a direct appeal.