

Felony Procedures

As a victim of or witness to a crime, you probably will have many questions about what to expect when you are involved in the criminal justice process. The following is a brief description of the process followed to prosecute a person accused of committing a felony offense. If the offense is a misdemeanor or if the person accused is a juvenile, the steps involved in prosecuting the offender are different. Please refer to the **Juvenile Court Process** <<http://www.maricopacountyattorney.org/CCProcess/juvecourt.asp>>page for more information. If a juvenile is transferred from the juvenile justice system to stand trial as an adult, the case will proceed through these same steps.

The Crime

When you are the victim or witness of a crime, you should immediately call 9-1-1 or the law enforcement agency (Police, Sheriff or Department of Public Safety) which has responsibility for the area where the crime occurred. The best thing you can do is to call the law enforcement agency immediately; the longer you wait, the harder it will be to catch the criminal.

Initial Investigation

In most cases an initial investigation of a crime is conducted by a patrol officer who travels to the crime scene or the location of the victim, shortly after the crime is reported. The patrol officer will interview the victim(s) and any witness (es) and will begin an initial report listing the circumstances of the crime. In addition, any officer may take photographs and dust for fingerprints during an inspection of the scene.

In certain felony cases, a Deputy County Attorney may be present at the scene.

The patrol officer then completes an incident report which is channeled to detectives who investigate that particular type of crime.

Follow-up Investigation

The patrol officer's report is then reviewed by a sergeant or another ranking officer in the Detective Division. He/she may assign the case to a detective for a more complete follow-up investigation. Detectives may contact witnesses for a formal statement, may obtain further physical evidence, and may request further descriptions of suspects or stolen property.

Formal Charging Procedure

When the investigating officer believes that a suspect has been identified and that there is sufficient evidence, the case is presented to the prosecutor for review. If the offense is a felony that has been committed in Gila County or a misdemeanor that has been committed within the county but outside the city limits of the towns of Hayden or Payson, a Deputy County Attorney with the Gila County Attorney's Office will review the case. The Deputy County Attorney may request that the detective furnish additional investigative work to complete the case. If the prosecutor believes that the report provides sufficient evidence to indicate that the alleged offender has committed a crime, and if in his/her judgment the case has a reasonable likelihood of a conviction at a trial, the prosecutor will file a criminal complaint or seek an indictment from the Grand Jury. Sometimes, the prosecutor determines that there is insufficient "legal evidence" to justify a criminal charge.

If filed, the Criminal Complaint/Indictment is then presented to a Judge, who will either issue a warrant authorizing the arrest of the suspect, or a summons requiring the suspect to appear in court on a specific day.

Arrest

When a defendant is arrested either near the scene of the crime or as a result of an arrest warrant, he/she is taken to jail. Within twenty-four (24) hours after the arrest, the defendant must be taken before a Judge or commissioner for an Initial Appearance. Many defendants are released at this time on their own recognizance (OR), a personal promise to return to court when required. When released on his/her own recognizance, the defendant is not required to post money bail or a bail bond because it is believed that he/she has sufficient community ties to assure his/her appearance. Defendants with serious records, those who have committed dangerous felonies or those who have a history of not returning to court as required, are more likely to be held in jail or released after posting a cash bond. The amount of bond set by the Judge or commissioner depends on many factors including the type of crime for which the person has been arrested.

Most defendants are released after the Initial Appearance, but their travel is limited. Contact between the defendant and victims or witnesses are also restricted. It is against the law for anyone to harass or intimidate a witness. Any harassment should be reported to the police, the prosecutor, or the Victim Services Division as soon as possible. Remember that if the harassment is not reported, it probably will not stop.

Preliminary Hearing/Grand Jury

After felony charges are filed, a hearing is scheduled to determine whether or not there is sufficient evidence (probable cause) to justify holding the defendant for trial. Probable cause is determined either by a Justice of the Peace at a Preliminary Hearing or by a Grand Jury. The grand jury, however, may consider evidence of a crime even when no charges have been filed. A Grand Jury is made up of a group of citizens (usually 9-16 people), selected at random. In both proceedings, the victim(s) or witness(es) may be called to testify.

Sometimes charges against the defendant are dismissed because either the Justice of the Peace or the Grand Jury determines that there is insufficient evidence to justify a trial. If additional evidence does come to light at a later date, it is possible for charges to be refiled. This is accomplished by an Indictment issued as a result of the Grand Jury hearing or a new complaint.

A probable cause hearing is not necessary if the offense charged is a misdemeanor.

Preliminary Hearings and Pleas at Justice Court

Preliminary hearings at Justice Court require the attendance of the prosecutor, the defendant, the defense attorney, the victim, and the prosecutor's witnesses. The defendant may demand a hearing, or waive the hearing.

If the defendant demands a hearing, the prosecutor must call witnesses to establish sufficient evidence for the charge (probable cause). Prosecutors do not need to present all of the evidence at a preliminary hearing, and they may use hearsay evidence. For example, a police officer may testify about what other witnesses have said. In a trial, unlike in a preliminary hearing, each witness must testify personally. If the Justice of the Peace finds that the charges are supported by sufficient evidence, the defendant is Held to Answer in Superior Court. In other words, the defendant is scheduled for an arraignment in Superior Court.

If the defendant waives the preliminary hearing, the defendant will be scheduled for an arraignment in Superior Court. The arraignment will take place approximately twenty days after the defendant waives the preliminary hearing.

Arraignment

The first appearance of the defendant in Superior Court is called an Arraignment. The Arraignment serves several purposes. First, the defendant is informed for the first time of the exact nature of the charge(s) against him/her. The defendant is also 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 charges against him/her. Normally, a plea of "not guilty" is entered and a case management conference date is set usually within five or six weeks from the Arraignment. At the case management conference the Court will set a trial date. Defendants are entitled to a speedy trial. If the defendant remains in custody, a trial date must be set within one hundred twenty (120) days from the initial appearance, or ninety (90) days from arraignment, whichever is the lesser. Defendants released from custody on bail or personal recognizance must receive a trial date within one hundred fifty (150) days from initial appearance. In extraordinary circumstances, the trial may occur later than these time frames.

If the defendant enters a plea of "guilty" at arraignment, a sentencing date is set. The defendant may be sentenced not less than fifteen days nor more than thirty days after the guilty plea arraignment unless the defendant agrees to an earlier sentencing date.

If the charged offense is a misdemeanor, the defendant will be arraigned in Justice Court and the trial or plea agreement will remain in the assigned Justice Court.

Pretrial Actions/Hearings

After the arraignment and before a trial, there are many activities performed in preparation for trial. By Arizona Rules of Criminal Procedure, both the prosecutor and defense must disclose information to the other party.

This process, called Discovery, includes providing the defense attorney with a copy of the police report and any other written information. The rules of discovery also allow attorneys to interview prospective witnesses in the case. In Arizona, the defense has the right to interview all of the State's witnesses prior to trial or a plea agreement. If you are a victim, you have the right to refuse to submit to a pretrial interview, deposition or other discovery request by the defendant, the defendant's attorney or other person acting on behalf of the defendant. If anyone approaches you about the case, you should insist that he/she identify him/herself as representing either the prosecution or the defense. You may call your victim advocate to determine your rights before setting up any interviews.

In addition to discovery, there may be several court hearings that are scheduled before the trial. At the court hearings, called Case Management Conferences, Pretrial Conferences, Status Conferences or Pretrial Hearings, motions may be heard from either the prosecutor or the defense, or other matters of concern to the attorneys or the court may be addressed.

Competency of the Defendant

If a defense attorney thinks that a defendant may not be competent to stand trial because the defendant cannot assist in his/her defense, the defense attorney may request that the court order a psychiatric evaluation of the defendant. The court may order that the defendant submit to a psychiatric evaluation (commonly called a "Rule 11 evaluation") conducted by two doctors appointed by the court. Typically the Rule 11 process takes at least one month. A hearing is then scheduled for the Judge to decide if the defendant is or is not competent to stand trial. After hearing testimony and/or reviewing the reports of the doctors, the Judge makes a determination about the competency of the defendant. 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 needs mental health treatment. A Judge may order that the defendant undergo mental health treatment until he/she becomes competent. If a Judge determines that the defendant is incompetent and will not become competent in the near future, the Judge has two options. Under certain circumstances, the Judge may order that the defendant be involuntarily committed to the Arizona State Hospital for mental health treatment. If the defendant is not civilly committed, the Judge may dismiss the charges and the defendant is then released from custody.

Even if the defendant has been determined to be competent, the defendant is still allowed to raise an insanity defense at trial.

Plea Agreements

Before the trial, the Deputy County Attorney prosecuting the case may discuss the possibility of a negotiated case settlement with the defense attorney. The defense attorney may seek an agreement enabling the defendant to plead guilty to the original charge(s) or to some lesser charge(s), 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 his/her right to a trial and the right to cross-examine witnesses. If you are a victim, you have the right to be present and to make a statement expressing your opinion about the plea agreement. The Judge may consider your opinion when deciding whether or not to accept the plea agreement. Upon the acceptance of the plea agreement the Judge will enter a finding of guilt against the defendant.

Trial

If a plea agreement is not reached, the case may go to trial. All parties to the case including prosecution witnesses and defense witnesses will be subpoenaed (summoned) in advance to testify before a Judge, or a Judge and jury. 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. If you are a victim, you have the right to be present throughout the trial.

Once the jury is selected and sworn, the prosecution and the defense make opening statements to the jury to explain the case. The Deputy County Attorney 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 cross-examined by the defense attorney.

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 in matters of law as applied to the case and about the duty of the jury.

The prosecution must prove its case "beyond a reasonable doubt." Since a unanimous verdict is required by law, a jury that is unable to reach agreement on a verdict is declared "hung" by the Judge. The State may then request that the case be retried within sixty (60) days. If the jury returns a verdict of "not guilty," it means that, in the jury's opinion, the State failed to prove the case beyond a reasonable doubt and the defendant is released. If this occurs, 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.

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 within thirty (30) days. In the meantime, the court will request a Pre-Sentence Report on the defendant from the Gila County Probation Department (only for felony cases).

The Pre-sentence Report discusses the defendant's life and any other crimes he/she may have committed, and will contain a recommendation for a specific sentence. The Probation Officer will contact the victim(s) as part of the investigation. The victim may also submit a written statement to the Judge through the Probation Officer. This statement may contain the victim's request for restitution (payment of monetary losses suffered by the victim). 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. If you are a victim of a felony, you are allowed to make a statement to the Judge at the time of the sentencing.

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 paid as a condition of probation or parole. Restitution payments are paid to the Clerk of the Court, who then mails the payments to the victim.

Probation, Prison, Parole or Community Supervision

If the defendant is placed on probation, he/she will be under many restrictions of conduct and travel. Any inappropriate action by a defendant placed on probation, including unauthorized contact with victims and witnesses should be reported to the Gila County Probation Office.

On January 1, 1994, Arizona's sentencing structure changed. The revisions in the criminal code are to provide for "truth in sentencing." The changes in the law will ensure that defendants who are sentenced to the Department of Corrections will serve the majority of the prison term ordered by the Judge. Many of the early release mechanisms allowed for inmates sentenced for crimes that occurred prior to January 1, 1994 will not be allowed. If the sentencing Judge orders a defendant to serve a prison sentence, the defendant must serve at least 85% of the sentence imposed. 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 parole 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.

If the crime 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 in 1993 or earlier, and the

Judge sentences the offender to be imprisoned in the Department of Corrections, he/she may be come 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 (formerly the Arizona Board of Pardons and Paroles), a separate agency from the Arizona Department of Corrections, is the agency that determines if the inmate is to be released from prison or parole. If he/she is released on parole, the Arizona Department of Corrections, Parole Divisions, is responsible for supervising him/her, and they should be contacted if any problems occur.

If you are a victim, you have the right to be notified of a parole hearing by the Arizona Board of Executive Clemency, and you have the right to be heard at any parole hearing. You also have the right to be informed by the Arizona Department of Corrections, on request, when the inmate is released from prison. The Arizona Department of Corrections will notify you if the inmate escapes, even if you did not request this notification.

Appeals

After a defendant has been convicted of a crime, he/she has the right to appeal his/her conviction and/or sentence. 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 Gila County Attorney's Office or the Arizona Attorney General's Office will handle the appeal on behalf of the State. Cases are reviewed on appeal in writing. In some cases, oral arguments of the attorneys are heard by the court. The testimony of the victims and witnesses is not allowed.