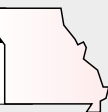


# The **court** process

How the criminal  
justice system works.

**CONSUMER GUIDE**

FROM ATTORNEY GENERAL  
**JEREMIAH W. (JAY) NIXON**



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# The process

A crime committed against a person violates state laws, and, thus, is a crime against the state of Missouri. The county prosecuting attorney usually handles the case.

In a criminal case, the state has the burden of proving beyond a reasonable doubt that the defendant committed the alleged crime. Defendants are presumed innocent and never have the burden of proving their innocence.

Defendants have the right to be represented by a lawyer throughout the process.

## **ARREST AND COMPLAINT**

Once a formal charge has been filed, usually in the form of a written complaint, the prosecuting attorney can go to a judge to obtain an arrest warrant. This arrest warrant will allow local law enforcement personnel to arrest the person named in the warrant on the suspicion that he has committed the crime set forth in the complaint.



## PRELIMINARY HEARING

*(Held for felonies only, not misdemeanors)*

Felony cases begin with a preliminary hearing — a mini-trial in which testimony is taken under oath. The defendant may waive a preliminary hearing. If the defendant chooses to proceed with a preliminary hearing, the judge, the defendant, the defendant's attorney, the prosecutor, and any victims or witnesses subpoenaed will attend.

At the preliminary hearing, the prosecutor will present evidence to show the judge that there is probable cause to believe a crime has been committed and that the defendant has committed the crime.

The defense attorney can cross-examine the state's witnesses and produce any evidence. If probable cause is established, the judge will order the defendant to be "bound over" for trial in circuit court. If the defendant waives the preliminary hearing, the case usually will be sent directly to circuit court for trial.

If the judge decides that probable cause has not been established, the court dismisses the case and the defendant is released. This also may occur if witnesses fail to appear to testify.

If probable cause is not found, the



During a preliminary hearing, a prosecutor will present evidence to show the judge there is probable cause to believe a crime has been committed and the defendant did it.



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prosecutor can later file another complaint against the defendant, based on the same crime. But the prosecutor would typically need to present additional evidence to prove probable cause.

At any point during the prosecution, the prosecutor may decide voluntarily to dismiss the charges. This is called a “nolle prosequi.”

## **GRAND JURY**

A grand jury replaces the preliminary hearing in certain cases as a method by which criminal charges can be filed. A grand jury is a panel of private citizens, chosen in a manner similar to the way in which trial juries are chosen, whose job is to look into allegations of criminal activity.

The prosecutor presents evidence to the 12 grand jurors, nine of whom must agree on whether a crime was committed and whether there is probable cause to believe the defendant committed it.

As with a preliminary hearing, the case is either bound over to the circuit court or the defendant is freed.

Grand jury proceedings are closed to the public. Defendants do not attend unless they are testifying as witnesses.

## **TESTIFYING**

During a felony trial, witnesses probably will have to testify at least two times:

- At the preliminary hearing or before the grand jury
- At trial

Witnesses also may have to testify:

- At depositions
- At hearings on pretrial motions, such as hearings on motions to suppress the victim's identification of the defendant
- At sentencing

Grand jury proceedings are closed to the public.



## **ARRAIGNMENT**

This is the first formal presentation of charges to the defendant, who must enter a plea. The defendant may plead guilty, not guilty, not guilty by reason of insanity, and if the defendant refuses to enter a plea, the judge will enter a plea of not guilty on their behalf. Also, the judge can raise or lower the defendant's bond, if any.

The arraignment is open to the public.

In larger counties, an assistant prosecuting attorney is assigned to the case after arraignment (in some cases, the same prosecutor will be assigned from the onset) and the case is added to a judge's docket.

The court — with input from the prosecutor and defense attorney — sets a trial date and hearing dates on pretrial motions. The trial date may change because of requests for continuances in the case or because of other cases on the trial docket for that day.

## **THE TRIAL**

A jury usually is selected on the first day of trial in a process known as voir dire. The prosecutor then must make an opening statement. The defense attorney then either may make his opening statement or he may wait to make it until after the state has



presented its evidence. After the prosecutor presents the state's case, the defense may, at its discretion, present evidence.

Once all evidence is heard, the court reads written instructions to the jury. The instructions state the law that applies to the case. The prosecutor then makes a closing statement, the defense makes its closing statement, and the prosecutor then may make additional closing remarks.

The jurors then retire to deliberate. They are required to decide whether the state has presented evidence to establish “beyond a reasonable doubt” that the defendant committed each element of the charged crime.

The jurors must unanimously agree on either guilt or innocence. If they cannot, the trial will end in a hung jury or mistrial and the case may be tried again.

If the defendant is found not guilty, the state is barred from retrying him or her on that charge (this is known as the prohibition against double jeopardy).

If the defendant is found guilty, the prosecutor and defense are then allowed to present additional evidence to the jury on the issue of sentencing. Once the evidence concludes, the judge reads further instructions to the jury, which retires to deliberate the appropriate sentence.

All jurors must agree on guilt or innocence. If they cannot, the trial will end in a hung jury or mistrial and the case may be tried again.



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In some cases where the defendant has prior convictions, the judge will impose a sentence without a jury recommendation.

## **CAPITAL CASES**

When a defendant is found guilty of first-degree murder, which carries a possible death sentence, a separate hearing on punishment is held before the same jury. Jurors will recommend a sentence of death or life imprisonment without parole.

## **PRESENTENCE INVESTIGATION**

Before sentencing, the state Board of Probation and Parole may investigate to determine if the defendant is an appropriate candidate for probation and may make a recommendation to the judge.

## **SENTENCING**

For each crime, the statute creating the offense specifies a range of punishment, such as “five to fifteen years imprisonment.”

If the defendant was sentenced by a jury, the judge cannot increase the punishment specified by that jury but can reduce it. In some cases where the defendant has prior criminal convictions, the jury does not consider the sentence. Instead the judge decides the punishment.

The defendant may be jailed, imprisoned or placed on probation. If a defendant is sentenced to imprisonment, that sentence will be stated as a specific term of days or years, such as “fifteen years imprisonment.”

The defendant also may be ordered to make restitution, to pay court costs or to pay a fine.

An offender convicted of a nonviolent class C or D felony with no prior prison commitment, after serving 120 days of his sentence, may, in writing, petition the court to serve the remainder of his sentence on probation or an alternative sentence. The judge, after recommendations by the Department of Corrections, will decide whether to grant the request.

## **PAROLE HEARING**

A prisoner probably will be eligible for parole before the sentence is completed. The Board of Probation and Parole decides when a prisoner will be eligible for parole, based on various guidelines, and when that prisoner actually will be released. A victim or family of a deceased victim may attend parole hearings and request that parole be denied. A prisoner who has been granted parole will be given a date when he will be released (the “release date”).



The Missouri Attorney General's Office handles all the felony appeals in the state.



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## **APPEALS PROCESS**

If found guilty, the defendant can appeal the decision after the court officially pronounces the sentence.

The Missouri Attorney General's Office handles all the felony appeals in the state. If the appeal is from a misdemeanor conviction, the state will be represented by the prosecuting attorney.



# Court terms

**Arraignment:** Court appearance where formal charges are read to the defendant and where the defendant is asked to enter a plea.

**Arrest warrant:** An order made on behalf of the state, based on a complaint, and signed by a judge authorizing police to arrest a person thought to have committed a crime. A person arrested on a warrant stays in jail until bail is posted or until released by order of the court.

**Bail (or bond):** Cash or security bond produced so a defendant may be released while the criminal matter is pending. Bail is used to ensure the defendant's appearance in court at upcoming hearings. The court sets the bail amount depending on several factors, including seriousness of the charges and the likelihood that the defendant will attempt to flee prior to the required court appearances. Bail is forfeited if a defendant fails to appear in court.

**Charge:** Formal accusation that a person has committed a crime.

**Circuit court:** Court that holds felony trials.



Anyone arrested on a warrant stays in jail until bail is posted or until released by order of the court.



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**Complaint:** A preliminary charge made by the state that a person has committed a specified offense.

**Continuance:** A delay or postponement granted by the court in a legal proceeding. A case can be continued for good cause, such as illness or witness unavailability, or by agreement of the parties.

**Defendant:** Person formally charged with committing a crime.

**Defense attorney:** Lawyer who represents the defendant.

**Deposition:** Sworn testimony of a witness taken outside of court in the presence of the attorneys for the defense and prosecution. A deposition can be used at trial to impeach or discredit a witness's testimony or can be read to a jury if the witness is unavailable.

**Felony:** A serious crime punishable by more than one year in prison.

**Grand jury:** A body of persons, selected and convened upon order of a judge, to inquire into and return indictments for crimes. The grand jury has the power to request that the circuit clerk issue subpoenas to bring people to testify before it.



**Indictment:** Formal charging document presented by the prosecuting attorney to a grand jury. The grand jury may then issue, or “return,” the indictment if it believes the accusation, if proved, would lead to a conviction.

**Information:** Formal charging document issued by a prosecuting attorney (with no grand jury involvement).

**Jail:** Local facility where persons in lawful custody are held. Defendants awaiting trial and defendants convicted of minor crimes usually are held in jail, not in prison. Any person who receives a prison term of one year or less will serve it in county jail. Those with terms longer than a year will go to state prison.

**Misdemeanor:** An offense less serious than a felony and punishable by a maximum one-year prison term.

**Nolle prosequi:** Voluntary dismissal of criminal charges by the state.

Anyone sentenced to one year or less in prison will serve it in county jail.





**Plea:** In criminal law, a defendant's formal answer in court to the charge that he committed a crime. The four types of pleas are:

- **Not guilty:** Complete denial of guilt. A trial will follow.
- **Not guilty by reason of insanity:** Denial of guilt because of mental disease or defect excluding responsibility. A trial will follow in which the defendant's mental fitness will be an issue. A defendant may plead both not guilty and not guilty by reason of insanity simultaneously.
- **Guilty:** Complete admission of guilt. The defendant, by pleading guilty, forfeits his right to trial.
- **Alford plea:** So-called following the case of *North Carolina v. Alford*. Similar to a guilty plea because while the defendant does not admit to all or some portions of the crime, he forgoes a trial anyway; also similar to a plea of *nolo contendere* (no contest).

**Plea bargain/plea agreement:**

Agreement between the state and the defendant in which the defendant agrees

to plead guilty under certain terms and conditions. To avoid going to trial and to reach a reasonable disposition, the defendant may plead guilty to a lesser offense or fewer charges. The victim has the right to know of the agreement and to comment. The judge must approve the agreement.

**Persistent offender:** Someone who has pleaded guilty to or has been found guilty of two or more felonies committed at different times. Persistent offenders may be sentenced to extended imprisonment.

**Prior offender:** Someone who has pleaded guilty to or has been found guilty of one felony.

**Prison:** State facilities where persons convicted of more serious crimes are held. Prisons are operated under the direction of the Missouri Department of Corrections.

**Probable cause:** Degree of proof needed to arrest.

**Probation:** Conditional freedom granted by the court to a convicted person, who usually is supervised by a probation officer. If a defendant violates the conditions of probation, probation may be revoked following a probation revocation hearing, and he will be taken into custody.

The victim impact statement is the only time a victim will address the judge, who decides the fate of the accused.



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**Prosecutor:** Lawyer employed by the government to represent the general public's interests in court proceedings against people accused of committing crimes.

**Public defender:** A lawyer employed by the state to represent defendants who can't afford a private lawyer.

**Restitution:** Money paid by a defendant to reimburse victims for monetary losses incurred as a result of the crime. Ordered by the court as part of a sentence.

**Subpoena:** Court order telling you to appear in court — usually to testify or to produce documents or records. Failure to appear constitutes contempt of court.

**Summons:** Court order used to bring a person accused of a minor crime to court.

**Truth in sentencing:** Requires someone convicted of a dangerous felony to serve a minimum 85 percent of the sentence. Missouri law defines dangerous felonies as:

- Arson, first degree
- Assault, first degree
- Assault of law enforcement officer, first degree
- Attempted forcible rape if physical injury results

- Domestic assault, first degree
- Elder abuse, first degree
- Forcible rape
- Forcible sodomy
- Kidnapping
- Murder, second degree
- Robbery, first degree
- Statutory rape, first degree (when victim is younger than 12)
- Statutory sodomy, first degree (when victim is younger than 12)
- Certain child abuse cases

**Victim impact statement:** Statement given by a victim that explains how a crime has affected him and what sentence he thinks would be appropriate. The statement is the only time a victim will have to address the judge, who decides the fate of the accused. The statement is given to the prosecuting attorney, who forwards it to the judge after a verdict is reached and prior to sentencing.

**Voir dire examination (or voir dire):** Procedure in which the prosecuting and defense attorneys question prospective jurors to pick a jury.

The victim impact statement is the only time a victim will get to address the judge, who decides the fate of the accused.



# Prison terms

Missouri Revised Statutes, Chapter 558, provides for these terms of imprisonment:

**Class A felony:** 10-30 years or life imprisonment.

*Examples: Second-degree murder; first-degree robbery.*

**Class B felony:** 5-15 years.

*Examples: Voluntary manslaughter; second-degree robbery; first-degree burglary.*

**Class C felony:** Up to seven years.

*Examples: Involuntary manslaughter; second-degree assault; deviate sexual assault; second-degree statutory rape; stealing a car; third stealing offense; forgery.*

**Class D felony:** Up to four years.

*Examples: Passing bad check with no account; second-degree odometer fraud; parental kidnapping.*

**Class A misdemeanor:** Up to one year.

*Examples: Fraudulent use of a credit device, value of property or services is less than \$150; false advertising; reckless burning; passing bad checks worth less than \$150.*



**Class B misdemeanor:** Up to six months.

*Examples: First DWI offense; first-degree trespass; removing plants from highways and roadways.*

**Class C misdemeanor:** Up to 15 days.

*Examples: Driving with excessive blood alcohol content, first offense; library theft of less than \$150.*

A driver with a first-time DWI offense can go to prison for six months.



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# Fines



Chapter 560, RSMo, allows for persons convicted of crimes to be sentenced to pay these fines:

**Class C or D felony:** Up to \$5,000, or up to twice the amount of the offender's gain from the crime, not to exceed \$20,000.

**Class A misdemeanor:** Up to \$1,000.

**Class B misdemeanor:** Up to \$500.

**Class C misdemeanor:** Up to \$300.

**Infraction:** Up to \$200.

These penalties do not apply in cases where the statutes outline fines for a specific offense.

In lieu of the fines listed above, a person convicted of a misdemeanor or infraction may be fined up to twice the amount of the offender's gain from the offense, not to exceed \$20,000.





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