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West Tennessee Legal Services, Inc.

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# VICTIM/WITNESS HANDBOOK



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If You Are The Victim Of A Crime

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This booklet was prepared by West Tennessee Legal Services. West Tennessee Legal Services provides free civil legal services to low-income and elderly people.



This booklet is not a substitute for legal advice and is not intended to cover all circumstances.

expenses; it is not reimbursement for lost wages. After you have testified, the victim-witness coordinator or the circuit court clerk's office will assist you in obtaining this fee.

## A Final Thought

We would like to again stress the importance of the role served by victims and witnesses within the criminal justice system in Tennessee. Because of this, you deserve all the help and service the District Attorney's office can offer. We hope that this booklet has answered some of your questions and addressed some of your concerns. Our desire is to make your experience as a witness for the state as comfortable and understandable an experience as possible, for it is only through your willing cooperation that criminals can be brought to justice.

If you are confused about any aspect of your role as a witness, please do not hesitate to call your District Attorney's office at any time to speak to the victim-witness coordinator. Remember, without your help, there can be no justice!

circuit court clerk and the defendant's probation officer. This way you will not have to have any personal contact with the defendant

### **Tennessee Criminal Injuries Compensation Fund**

If you are the victim of a crime involving personal injury, you may be entitled to make a claim against the Tennessee Criminal Injuries Compensation Fund. Someone from the District Attorney's office can provide you with information concerning the way in which qualifying persons may claim against this fund.

### **Contact With The Defense Attorney**

The attorney for the defendant may contact you to discuss your testimony. He or she has a right to do so. There is no reason not to discuss the case with the defense attorney, but you have the right to do so on your own terms. If you desire, someone from the District Attorney's office will arrange to be present during such a conversation. **IF THE DEFENDANT CONTACTS YOU, PLEASE LET THE DISTRICT ATTORNEY'S OFFICE KNOW IMMEDIATELY.** This is highly irregular and you are under no obligation to speak to him/her.

### **Victim Impact Statement**

In felony cases a victim is entitled to be present at the sentencing hearing and may make a statement to the court, orally or in writing, as to the impact of the crime on his or her life. Some people feel comfortable doing this; others do not. Whether or not you make such a statement is entirely up to you. the District Attorney's office would be glad to discuss this with you personally, if you wish.

### **Witness Fees**

All subpoenaed witnesses who appear in court are entitled to a small witness fee, whether or not they actually testify. This fee is for travel

## **VICTIM RIGHTS IN TENNESSEE**

*If You Are the Victim of a Crime*

### **Victim/Witness Assistance Program**

Victims of crime often encounter difficulties in the criminal justice system. This information is designed to help reduce those difficulties. It tries to answer some common questions and to tell you about services available from the District Attorney's office. It cannot take the place of direct communication, therefore, we encourage you to contact your local DA's office or legal services offices for any assistance you may require as a victim or witness in a criminal case.

### **Program Services Information**

- Assistance in understanding the way the criminal justice system works
- Assistance during the court proceedings
- Referral to community agencies
- Notification of parole hearings, release dates, or other information available concerning inmate status
- Communication with employers about court appearances
- Assistance for eligible victims in filing petitions with the criminal injuries compensation program
- Assistance in obtaining restitution to victims of crime directly from the perpetrator of the crime when possible
- Assistance to victims in becoming more involved in the processes which affect the perpetrator of the crime such as the plea negotiation process and the sentencing process including pre-sentence reports and the sentencing hearing itself

## **Victim/Witness Information**

If you are the victim of a crime, you will be notified ahead of most hearings and told whether it is necessary for you to attend. If you are a witness you will only be notified of hearings you need to attend. You are always welcome to attend even if you are not needed.

## **Overview of Tennessee Victim Rights**

### **Constitution**

In the November, 1998 general election, Tennessee voters approved an amendment to the Tennessee Constitution providing for victims' rights.

To preserve and protect the rights of victims of crime to justice and due process, victims shall be entitled to the following basic rights:

1. The right to confer with the prosecution.
2. The right to be free from intimidation, harassment and abuse throughout the criminal justice system.
3. The right to be present at all proceedings where the defendant has the right to be present.
4. The right to be heard, when relevant, at all critical stages of the criminal justice process as defined by the General Assembly.
5. The right to be informed of all proceedings, and of the release, transfer, or escape of the accused or convicted person.
6. The right to a speedy trial or disposition and a prompt and final

## **Difficulties With Your Court Appearance?**

If your employer will not give you time off from work to testify, please let the District Attorney's office know. If you like, someone from the District Attorney's office will contact him or her and ask for cooperation. The District Attorney's office can also provide verification of the time required for your court appearance. If you have any other difficulties with your appearance in court, please let someone in the District Attorney's office know. We will make every effort to help.

### **Out Of Town Plans**

Although we monitor the court calendar carefully, it is often not known what cases are going to be tried until shortly before the trial begins. For that reason, it is important that witnesses keep us informed of any out of town plans. Also, please notify us if you have a new address or phone number.

### **Return Of Your Property**

Sometimes it is necessary for law enforcement agencies to hold personal property as evidence until trial, but this is seldom necessary. **SHOULD YOUR PROPERTY BE IN THE CUSTODY OF LAW ENFORCEMENT OFFICERS AND YOU ARE IN NEED OF ITS RETURN PRIOR TO TRIAL, PLEASE CALL THE DISTRICT ATTORNEY'S OFFICE FOR ASSISTANCE.**

### **Restitution - Reimbursement For Your Losses**

As a victim of a crime, any information regarding your injuries or out-of-pocket losses resulting from the crime should be brought to the attention of the victim witness coordinator in the District Attorney's office. This information will be made known to the judge at the time of sentencing. In appropriate cases the judge may order the defendant to reimburse you for your financial loss as a part of the sentence imposed. This restitution will then be collected and monitored by the

## **Alternative Sentencing Possibilities**

Occasionally a defendant will be sentenced by the judge to what is known as a community corrections or alternative sentencing program. Such programs are very closely monitored by probation officers, and persons serving such sentences are required to meet very stringent requirements as to employment and activity. Generally only non-violent offenders are placed in this type of program. Should the judge sentence the defendant in your case to any sort of alternative sentencing program someone from my office will explain to you the requirements the defendant must meet.

## **Negotiated Pleas - Will My Case Be Plea-Bargained?**

The district attorney and the defendant, through his defense attorney, will frequently reach an agreement prior to trial as to the term of sentence a defendant will receive if he pleads guilty. This agreement will then be presented to the judge, usually on appearance day. There are a number of reasons why this practice is sometimes necessary. If you are concerned about your case being "plea bargained away, please contact the District Attorney's office personally.

## **When Will The Case Be Tried?**

Because of the uncertainties and complexities of the criminal justice system, it is not always possible to know exactly when a case will be called for trial. Delays occur for numerous reasons, every effort will be made to keep you informed of any changes. Call you District Attorney's office at any time to learn the latest status of the case in which you are interested.

## **Continuances**

Occasionally, court hearings cannot take place as scheduled and will be postponed. Again, every effort will be made to notify you of any postponements in order that you can avoid unnecessary trips to court.

conclusion of the case after the conviction or sentence.

7. The right to restitution from the offender.
8. The right to be informed of each of the rights established for victims.

The General Assembly has the authority to enact laws to provide that a judge, attorney for the state, law enforcement officer, or law enforcement agency is not liable for a failure or inability to provide a right given in this section.

The failure or inability of any person to provide a right or service listed in this section may not be used by a defendant in a criminal case as a ground for appeal, new trial, post-conviction relief, or habeas corpus, nor shall it be construed to authorize a court to set aside, reverse, vacate, or void a finding of guilt or an acceptance of a plea of guilty in any criminal case.

Nothing in this section shall be construed as creating a cause of action for money damages against the state, a county, a municipality, or any of the agencies, instrumentalities, or employees thereof. The General Assembly has the authority to provide for other remedies to ensure adequate enforcement of this section.

## **Statutes**

The Victim's Bill of Rights, T.C.A. 40-38-101, grants certain rights:

## **Rights of Victims and Prosecution Witnesses**

- Dignified and compassionate treatment

- Protection from intimidation or retaliation by the defendant and/or the defendant's family
- Separation from defendant and family at court (when possible)

**Victims shall upon request have a right to information about:**

- Court processed
- Continuances
- Plea Negotiations
- Court times, dates, locations
- Victim's role in each stage
- Service agency referral
- Victim's Compensation
- Voicing an opinion on a defendant's
- Sentence or plea
- Recovery of property as soon as legally permissible
- Restitution (information about how to obtain restitution directly from defendant)
- Priority to victims of violent crime (due to legal requirements and limited resources)

**Victim/Witness Responsibilities**

**What you can do to help:**

You may sometimes feel frustrated and discouraged - the process of criminal justice does take time. To avoid the frustration of possible delays, contact the victim/witness coordinator to confirm court dates. Some of the delays you encounter, however, are part of the system that also protects your rights.

must abide by the laws of Tennessee. They must also take into account the fact that our penitentiary system is overflowing. Whatever they decide in that regard, you can be assured they will make every effort to inform you well in advance of any actions they plan to take. Even though you don't have the final say, you can also be assured that they welcome your comments and suggestions as to what you personally think would be an appropriate disposition of your case.

**Length Of Prison Terms In Tennessee**

It would be less than honest if it was not pointed out that criminals sentenced to prison terms in Tennessee serve substantially less than is generally believed. In the usual case a defendant will be released after serving less than thirty percent of the stated sentence imposed against him/her. The reason for this is that due to the overcrowded condition of the Tennessee prison system, a defendant is eligible for release after he has served a small percentage of his sentence. The decision as to when to release a given defendant is made at the location of the defendant's confinement by the Tennessee Board of Pardons.

**Please understand that neither the District Attorney's Office nor the Judge has anything whatsoever to do with the early release of prisoners.**

**Parole Eligibility**

All prisoners, including those sentenced to life sentences, are eligible to be released on parole at some time. The District Attorney's office will make every effort to honestly and accurately advise you as to when any given defendant will become eligible for parole. Should the Tennessee Board of Probation and Pardons grant a defendant's release, the defendant will be assigned a parole officer who will monitor his/her actions and maintain certain imposed rules until the expiration of the defendant's original sentence. Should the defendant defy the conditions of parole, the balance of his sentence may be reinstated, and he may be returned to prison. This decision is made by the Board of Probation and Pardons.

can be expected to receive in court. Unfortunately, that question is a complex one and is contingent upon many factors. You must understand that IN ORDER TO SEND A CRIMINAL TO PRISON IN TENNESSEE, THE PROSECUTOR'S OFFICE MUST PROVE MORE THAN JUST THAT THE DEFENDANT COMMITTED THE CRIME CHARGED AGAINST HIM. Our appellate courts have ruled that the District Attorney must also prove that a given defendant does not deserve probation or some other less severe punishment than confinement. As strange as it may seem, that is the state of the law under which we live. Because of this, many factors will influence the actual type of punishment an offender receives. These factors include, but are not limited to, a defendant's prior criminal history, his/her work record, his/her family situation, whether or not restitution has been or can be made, and finally, the conditions under which the crime was committed.

Complicating the picture even further is the EXTREMELY OVERCROWDED CONDITION OF OUR CORRECTION SYSTEM. Our prisons and jails in Tennessee are literally overflowing. Federal Court orders have placed a ceiling, or cap, on the number of prisoners we can confine at any given time. Because the State often

exceeds that cap, the Department of Corrections many times releases a prisoner in order to make room for a new defendant. Since approximately seventy percent of the people in prison today are violent criminals, this means the likelihood of a violent person being released each time we send a defendant to prison is extremely high. Because of this, prosecutors try to dispose of the cases in their district in a way which preserves our correctional resources as best they can while still protecting our counties from dangerous people.

Please understand that prosecutors will do everything that they legally can do to see that persons who commit crimes in Tennessee are punished appropriately and that their punishments reflect the seriousness of the crimes committed. In doing that, however, they

Since it is not possible to give you all the information, please contact your local District Attorney's office or legal services office for more information.

## **Criminal Prosecution**

### *The Criminal Court Process in Tennessee*

One of the first things victims and witnesses learn about the Tennessee criminal justice system is that it frequently takes enormous lengths of time for a case to wind its way to completion. This is not the fault of judges, prosecutors, or defendants and their lawyers. It happens primarily because Tennessee's criminal justice system is old fashioned and time consuming. There are so many stages through which a case must progress that it is very difficult for ordinary citizens to understand the process. Please understand that usually neither the judge nor the district attorney has the legal authority to speed up this process. Any changes in the law must be made by the legislature.

A second factor causing delay in-the processing of criminal cases is the fact that in Tennessee several counties must share judges and prosecutors. These counties together are called a judicial district. Because judges cannot be everywhere at once, we have what are known as terms of court. A "term of court" is the time that the judge

makes available to hear cases in any one place. In most districts, terms are rotated so that each area gets its fair amount of court time. This rotation, however, means that it frequently is several months between arrest and trial of a criminal defendant.

What follows is a brief description of each of the stages that a criminal case must move through on its way to final disposition.

## **Arrest Warrants**

Most criminal cases begin when one person signs an arrest warrant against another person accusing that person of a crime. An Arrest Warrant is a document which formally charges a person with having committed a crime. Persons charged with crimes are referred to as *defendants*. A warrant also authorizes law enforcement officers to arrest the person against whom it is issued. In Tennessee, arrest warrants are usually obtained by going to the appropriate court clerk's office and requesting that a warrant be issued.

Before a warrant may be issued, Tennessee law requires that the clerk or deputy clerk take an *affidavit* (a sworn statement of facts) from the person requesting that the warrant be issued. This means that the person requesting the warrant will be asked to relate the facts of the crime to the clerk and then will be required to swear or affirm that those facts are true. Please understand that the clerk is required by law to obtain this information before issuing the warrant. When the clerk asks you additional questions, he or she is not being nosy but is simply trying to make certain your warrant is done correctly. Some districts require that a case be investigated by some law enforcement agency prior to a warrant being issued.

## **Subpoenas**

A subpoena, or summons, is a court order directing a person to appear in court at a stated time and place, usually for purposes of giving testimony. If you receive a subpoena, you **MUST** appear in court on the date and at the time marked on the subpoena. If you feel you cannot appear when subpoenaed, call the District Attorneys office or the appropriate clerk's office at once.

## **Misdemeanors & Felonies**

Crimes in Tennessee are divided into two categories. You will hear crimes referred to as either misdemeanors or felonies. A

reasonable doubt of the crime charged. This is more than the probable cause requirement at the preliminary hearing.

## **What Happens After The Trial?**

If the defendant is found not guilty, the case is over, and the defendant is free to go as he/she wishes. The state has no right to appeal a not guilty verdict and is constitutionally prohibited from trying a defendant again for the same offense. This would be what is sometimes referred to as *double jeopardy*.

If the defendant is found guilty, the judge will schedule a sentencing hearing and will also order the Department of Corrections to conduct a pre-sentence investigation to help the judge determine what sentence is appropriate. As part of this investigation, a probation officer may contact victims to ask questions about the case and its impact on their lives. He/she will be especially interested in the physical or emotional harm a victim may have suffered as a result of the defendant's actions. Please provide as much information to the probation officer as you can.

## **The Sentencing Process**

At the sentencing hearing the judge must sentence the defendant within a very limited and specific framework set out by the state legislature. Possible punishments vary from one offense to another and cannot be changed except by legislative action. Someone from the District Attorneys office will advise you of the punishment ranges of the case in which you are involved. Possible sentences might include imprisonment, confinement in the county jail, community service, probation, fines and restitution.

## **What Punishment Will The Defendant Receive?**

One of the first questions most victims ask concerning their cases usually concerns the amount and kind of punishment the defendant

will appoint an attorney (usually the public defender) to represent him/her.

### **Appearance Days in Circuit Court**

Prior to each term of court, the circuit judge will review every pending criminal court case to determine which cases will be heard that term. Defendants and their lawyers are required to be present on this day, but victims and witnesses are not required to be present. On appearance day, the judge will set cases for trial unless the defendants involved plead guilty. As mentioned before, victims and witnesses are not required to attend this proceeding but are welcome to do so if they wish. There may be several appearance days held in court before the actual trial.

### **The Jury Trial In Circuit Court**

If a defendant does not plead guilty on appearance days, his/her case will be set for trial. Most trials in the circuit court are heard before a jury of twelve men and women, although occasionally, cases are heard by a judge sitting alone without a jury. The decision as to whether a case will be heard by a jury or a judge sitting alone will be made by the defendant and the lawyers trying the case.

If there is a jury trial, the district attorney or an assistant district attorney will present evidence to the jury by questioning witnesses, and if appropriate, by presenting physical objects, photographs and written documents. The defense attorney will also have the right to question or "cross-examine" those witnesses and may also present evidence and witnesses of his/ her own, although he/she has no obligation to do so. The defendant may take the stand and testify if he/she chooses to do so. He/she is not legally required to do so, however, because the State cannot force a defendant to testify. In order for a defendant to be found guilty, every single one of the twelve jurors must decide that the defendant is guilty beyond a

*MISDEMEANOR* is a crime punishable by a fine or confinement in the county jail for eleven months and twenty-nine days or less. A *FELONY* is a crime punishable by imprisonment for a period of one year or more in a state penitentiary. Felonies are considered more serious than misdemeanors. As you read through this booklet, you will notice that the procedures for dealing with the two are sometimes different.

### **General Sessions Court**

When a person is charged with a misdemeanor, the general sessions court judge has authority to conduct a trial to determine the guilt or innocence of the defendant. Before conducting such a trial, however, the general sessions judge must obtain permission from both the defendant and the district attorney. This is because both the defendant and the State of Tennessee have a right to a trial by jury. Remember, there are no juries in general sessions court. Usually, in misdemeanor cases, the defendant chooses to be tried by the judge alone, and the State agrees to allow this. If the defendant is found guilty, he has a right to appeal the judge's decision to the circuit court and have an entirely new trial before a jury there. When this happens, witnesses may have to repeat their testimony in the jury trial.

If the general sessions judge finds the defendant not guilty, the trial is over and the defendant cannot be tried again for that offense. This would be *double jeopardy*. The state does not have the right to appeal a judge's decision that a defendant is not guilty.

### **Arraignment at General Sessions Court**

The general sessions judge does not have the jurisdiction to determine guilt or innocence in felony cases. Felony cases must be heard in the circuit court. Felony cases do begin in general sessions court, however, with a procedure called arraignment and something called a *preliminary hearing*.

The *ARRAIGNMENT* is the process by which the defendant is advised by the judge of the charge(s) against him/her and of his/her right to be represented by an attorney. If the Defendant is indigent (unable to afford a private attorney), the court will appoint an attorney (usually the public defender) to represent him/her. Also at the general sessions arraignment, which usually is the defendant's first court appearance, the judge will determine whether and under what conditions the defendant will be released until his trial. This usually results in the general sessions judge setting bail for the defendant. In Tennessee the law provides that the only legal purpose of bail is to insure that the defendant will appear in court on the scheduled date. BECAUSE OF THIS RESTRICTION, THE AMOUNT OF BAIL SET DOES NOT NECESSARILY REFLECT THE SERIOUSNESS OF THE OFFENSE CHARGED AGAINST THE DEFENDANT OR THE DEFENDANT'S DANGEROUSNESS TO SOCIETY. Only the legislature can correct this situation. The judge is required by law, however, to set bail in most cases.

### **Preliminary Hearing**

For serious crimes, known as felonies, cases must be scheduled for what is known as a preliminary hearing in the general sessions court. At the *PRELIMINARY HEARING* the judge will listen to testimony from

witnesses to determine whether the evidence presented is sufficient to transfer the case to the circuit court for a trial. This transferring is called "binding the case over." Defendants are also entitled to preliminary hearings in misdemeanor cases if they demand them, but usually a defendant charged with a misdemeanor will "waive" or give up his/her right to a preliminary hearing and allow the general sessions judge to try him/her without a jury. The State must present enough proof at a preliminary hearing to show that there is "probable cause" to believe the defendant committed the crime with which he or she is charged. *PROBABLE CAUSE* is a legal term for the amount of proof which must be presented at a preliminary hearing. Generally

speaking, probable cause is shown when the proof shows that the defendant "probably" committed the crime with which he/she is charged. It is usually necessary for all witnesses to appear at the preliminary hearing.

### **Grand Jury**

A case transferred to circuit court by "binding over" must then be presented to the *GRAND JURY*, a group of thirteen citizens chosen from the jury panel. One of these thirteen is the fore person and will preside over the grand jury. The grand jury hears testimony from witnesses in a private session. Neither the defendant nor his lawyer will be present at the grand jury hearing. A representative of the district attorney general's office may be present when witnesses present their testimony, but the grand jury's voting must be done in secret. If twelve of the thirteen grand jurors believe a crime was committed by the defendant, they will charge or "indict" the defendant for that crime. The formal charge by the grand jury is called an *INDICTMENT*. Sometimes this charge is also referred to as a "true bill". When the grand jury refuses to indict someone, its action is sometimes referred to as a "no true bill." When the Grand Jury returns a "no true bill" against a defendant, then that person cannot be brought to trial.

### **Arraignment at Circuit Court**

Following indictment by the grand jury, a defendant is formally notified of the grand jury's action at a circuit court arraignment. You may recall that the defendant has already been arraigned once in the general sessions court. Nevertheless, Tennessee law requires that this process be repeated in the circuit court, this time by the circuit court judge. The judge will advise the defendant as to the charges brought against him by the grand jury and will also review or set bail as appropriate. The defendant will then be ordered to reappear on a later date known as *appearance day*. If the Defendant is indigent, the court