

Office of Crime Victim Services

How a Crime is Prosecuted

Laws very specifically govern how a crime is prosecuted in Wisconsin. When a crime is reported to a law enforcement agency, the agency investigates the crime and may refer the criminal matter to the district attorney's office. The prosecutor is the District Attorney or an Assistant District Attorney, who represents the state of Wisconsin. The prosecutor decides what criminal charges are appropriate against whom and files criminal charges against the offender who must answer to those charges in court. The prosecutor must decide whether there is sufficient evidence against the suspect to prove the alleged crime. The prosecutor must make a reasonable attempt to inform you of a decision not to file charges. As the victim of a crime you are entitled to be informed of the process. You may request to be notified of the time, place and date of court proceedings and to attend those proceedings. The only time that you are required to appear in court is when you have received a subpoena to appear.

The person charged with a crime is called a defendant. A criminal prosecution is started by the arrest of a defendant or by summoning him/her into court. The prosecutor files a criminal complaint which sets forth the charge against the defendant and the facts that support the charges. The first court appearance in a criminal case is the initial appearance. At the initial appearance, the judge or court commissioner will set bail for the defendant. Bail is the condition or conditions under which the defendant will be released from custody. The main purpose of bail is to ensure the defendant's appearance at future court appearances. These conditions can include the posting of cash bail or a written promise to appear, often referred to as a signature bond. In some cases, the conditions of bail will include a condition that the defendant has no contact with the victim of the crime.

Criminal procedures vary in a case depending on whether the charge is a misdemeanor or a felony. Criminal cases are either misdemeanor or felony cases depending upon the maximum penalties that could be imposed. A misdemeanor is an offense punishable by imprisonment up to a year in the county jail. Felonies are offenses punishable by a year or more in the state prison system.

Defendants in misdemeanor cases at the initial appearance, in addition to having bail set, will be asked to enter a plea of not guilty, guilty, or no contest. A plea of no contest means that the defendant does not admit their guilt, but concedes that the state can prove them guilty.

In felonies, the second appearance is a preliminary examination. At the preliminary examination, the prosecutor must call witnesses to establish that the defendant probably committed a felony. If the prosecutor proves this, the case continues. If the prosecutor fails to prove that a felony was committed, the case is dismissed. However the prosecutor could recharge the defendant after this dismissal if they have additional evidence, which they did not present at the first preliminary examination. After the preliminary examination, the felony defendant will have an arraignment, where they will enter a plea of not guilty, guilty, or no contest. The defendant's bail conditions are also reviewed at the hearing.

Following the initial appearance in a misdemeanor case and an arraignment in a felony case, there may be a motion hearing. Motion hearings are appearances where the judge will decide legal issues in the case before the trial. Some types of motions will require witnesses to testify.

The defendant pleading guilty or no contest resolves most criminal cases. This generally occurs after the defense has learned what evidence the prosecution has. The defendant's plea of guilty or no contest can be with or without an agreement on disposition from the prosecutor. The decision of whether to offer a plea agreement and its terms is made by the prosecutor. As a crime victim, you may request to speak with the prosecutor or the prosecutor's designee concerning plea agreements and possible case outcomes. Where there has been a plea agreement reached, the prosecutor generally will agree what charges the defendant should plead guilty or no contest to and what sentence the prosecutor will recommend to the judge. The prosecutor in arriving at the plea offer will take into account many factors including the nature of the crime, its impact on you as a victim, any information he/she learned while conferring with you, the criminal record and background of the defendant and the protection of the community. If a plea agreement is reached, the defendant will enter a plea of guilty or no contest to the agreed upon charges. The court will consider the agreement, but is not bound by it. If the judge does not follow the plea agreement, the defendant is not allowed to withdraw or take back his plea.

If the case is not resolved with the defendant pleading guilty or no contest, there will be a trial. All criminal defendants have a right to a trial by a jury of twelve persons. The jurors are generally citizens of the county in which the charges were filed. A defendant can waive his right to a jury trial, and if the prosecutor agrees, the case will be heard and decided by a judge rather than a jury.

The criminal trial, whether to a jury or a judge, has a number of parts. After the jury is selected or waived, the prosecutor and defense will give an opening statement where they summarize what they intend to prove during the case. After the opening statements, the prosecutor will call witnesses and present evidence to prove that the defendant committed the crime charged. After the prosecutor has presented his/her proof, the defense can present its side of the case. The defense is not required to present any proof, but it can if it wants. The defendant cannot be forced to testify and may decide not to testify. If the defense presents evidence, the prosecutor for the state can present additional evidence in response to the defense evidence.

Once all of the evidence has been presented, both sides can present an oral argument to the judge or jury. Either before or after the arguments the judge tells the jury what the law is using jury instructions. After being instructed, the jury will return to the jury room to decide whether the state has proven its case. If the jury finds that the state has proven beyond a reasonable doubt that the defendant committed the charged crime, they will find him/her guilty. If the jury finds that the state has not proven the case beyond a reasonable doubt, they must find the defendant not guilty.

If a defendant is found not guilty, he/she is released from the conditions of his/her bail and the case is dismissed. If the defendant is found guilty, the court will then schedule the case for sentencing.

Prior to the sentencing of a defendant, the victim of the crime has a right to provide a statement to the court on the impact the crime had on him/her. At the sentencing, the two sides can call witnesses and make arguments on what they believe to be the appropriate sentence. After the evidence and arguments are presented, the judge will impose a sentence upon the defendant. The judge will take into account the gravity of the offense, the impact the crime had on the victim, and the facts surrounding the defendant. The judge has a wide range of sentencing options. The judge can impose imprisonment in either a county jail or prison, a fine, the payment of restitution, or impose probation with these same conditions.

This discussion shows that the criminal process can be complex and confusing. If at any point you are confused or have a question about the process, please ask your victim/witness coordinator or prosecutor to clarify the proceedings for you. In order for you to exercise your rights or if you change your address and wish to continue to receive notices and services, you will need to communicate with the victim/witness specialist. If you have not received information about Crime Victim Compensation, you may receive this from the victim/witness specialist or call the toll-free number, 1-800-446-6564 to request information and, if appropriate, a form to apply for benefits.