



## **LEARNING MODULE I**

### **Seminar # 13**

#### The Police Intervention

#### **Learning Objectives**

1. Pre and Post Booking
2. Getting Legal Help
3. About the Arrest Process

**Pathfinder: The 12 Key Issues a Family Faces**

**#1 Enabling vs Consequences**

**#2 Addiction Behavior**

**#3 Family Intervention**

**#4 The Police**

**#5 Emergency Medical Services**

**#6 Legal Court System**

**#7 Treatment Centers**

**# 8 Support Agencies  
Mapping**

**# 9 The Relapse**

**#10 Successful Lifelong Recovery**

**#11 Bereavement (Learning how to move forward)**

**#12 Spirituality, Faith Practices**

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## ***The Police Intervention***

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There is not much one can say to the prolog of an addict being arrested. When the police call, come to your door or ask you to come to the station, there has mostly likely been a crime committed or associated with one. The next step is to find the person or persons who committed the crime and start the process of arrest.

This seminar will address two areas to inform and build knowledge of the family members about the police intervention: 1. The Arrest process and 2. The missing person's process. In a different seminar (The Legal System Intervention) the legal system and its process will be reviewed.

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## ***Learning of Your Rights During an Arrest***

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In 1966, the U.S. Supreme Court ruled in *Miranda v. Arizona*, that individuals who are under arrest for suspicion of having committed a crime have certain rights that must be explained to them before any questioning may occur. The rights are designed to protect your Fifth Amendment right to be free from self-incrimination and are read in a warning as follows:

***You have the right to remain silent and to refuse to answer questions.***

***Anything you say may be used against you in a court of law.***

***You have the right to consult an attorney before speaking to the police and to have an attorney present during questioning now or in the future.***

***If you cannot afford an attorney, one will be appointed for you before any questioning if you wish.***

***If you decide to answer questions now without an attorney present, you will still have the right to stop answering at any time until you talk to an attorney.***

Note: Miranda rights must only be read when an individual is in police custody and under interrogation which would not apply to situations like traffic stops.

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## ***Police Actions During an Arrest and Booking***

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If you are stopped by the police, they may frisk you by performing a "pat-down" of your outer clothing to see whether you are concealing a weapon. Later, if you are arrested, they can perform a full-blown search of your person and immediate surroundings to ensure that you do not have any weapons, stolen items, contraband, or evidence of a crime. If the police take possession of your car, it may be searched as well.

The police may take and secure any personal property or money that you have with you after performing an inventory. The police will ask you to sign the inventory, but you should only do so if you agree with the contents of the inventory.

Once arrested, you will be booked. During this part of the arrest process, the police will ask for basic information about yourself (such as your address and birthdate), and fingerprint and photograph you. You may also be asked to participate in a line-up or provide a handwriting sample.

If you are detained but not booked within a reasonable period (usually several hours, or overnight) your attorney may go to a judge and obtain a writ of habeas corpus. This is an order issued by the court instructing the police to bring you before the court to determine if you are being lawfully held.

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### ***The Post-Booking Process:***

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Once you are arrested and booked, your case is provided to the appropriate prosecutor's office where an independent decision is made as to what charges should be filed, if any. You have the right to a speedy trial, which usually means that the prosecutor must file any charges within 72 hours (48 hours in some states). A prosecutor is not bound by the initial charge decision and can later change the crimes charged once more evidence is obtained.

Next is your arraignment. At this point, the charges against you are read in court and you will be asked whether you plead guilty or not guilty. You can also plead "nolo contendere" or "no contest," which are not technically pleas, but indicate that you do not contest the charges. The plea of nolo contendere cannot be used in other aspects of the criminal trial as an admission of guilt but can be used in the indictment phase as an implied confession of the specific offense charged and an admission of the facts in the indictment. A plea of nolo contendere is only accepted by a judge if made voluntarily and intelligently.

You may be able to get out of jail after your arrest and before trial by posting bail. During this process, you pay money to the court to ensure that you will make future court appearances. If you do, the bail is refunded to you, but if not, the court keeps the money and can issue a warrant for your arrest.

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### ***Getting Legal Help with Questions About the Arrest Process***

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No one looks forward to an arrest, but if it does happen, it is good to understand the process. It is also important to understand that you have rights throughout the arrest process. If you have been arrested and charged with a crime, you may want to contact a qualified criminal defense attorney to discuss your rights and what your legal options are going forward.

#### **What Happens During a Criminal Case?**

This process when not known in advance may be confusing to a victim, witness, or family members. The following summary will explain how a case generally progresses through Michigan's criminal justice system. Specific procedures may be modified by local courts or judges in other states.

Step 1: Crime Committed / Police Notified

Step 2: Police Investigate

Step 3: Police Make an Arrest (or Request a Warrant)

Step 4: Warrant/Charging Request Reviewed by Prosecuting Attorney

Step 5: Warrant Issued

Step 6: Suspect Arrested

Step 7: District Court Arraignment

Step 8: Trial (Jury or Bench/Judge)

Step 9: Pre-Sentence Investigation and Report

Step 10: Sentence

Step 11: Appeals

**Police Investigate** --- Investigation may include interviewing victim, witnesses, suspects; collecting physical evidence; visiting, viewing, photographing, measuring crime scene; identifying suspects; through line-ups ... etc.

**Police Make an Arrest (or Request a Warrant)**

When a crime is committed in a police officer's presence --- or the officer has probable cause to believe that certain misdemeanors or any felony was committed that the officer did not see happen --- an officer may arrest a suspect on the spot without an arrest warrant. The officer will later submit a charging/warrant request to the Prosecuting Attorney, suggesting potential charges to be authorized.

**Warrant/Charging Request Reviewed by Prosecuting Attorney**

Most cases begin with a warrant request. This is generally the first time that the Prosecuting Attorney's office is involved in a case unless a prosecutor reviewed a search warrant or visited the crime scene. At this stage, the Prosecutor determines whether a person should be charged with a crime and, if so, what the crime should be. The Prosecutor must thoroughly review all reports and records concerning the case, including witness statements. The Prosecutor also reviews the suspect's prior criminal or traffic record. Occasionally, the reviewing Prosecutor sends the case back to the police to conduct additional investigation.

**Warrant Issued**

The Prosecutor can issue a charge if he or she reasonably believes that probable cause exists that the suspect committed the offense. But most reviewing Prosecutors apply a higher standard --- whether the charge can be proved beyond a reasonable doubt at trial with the information known at that time.

**Suspect Arrested (if not already in custody)**

The delay between the crime date and the defendant's arrest on an authorized charge can take any length of time (e.g., if the defendant's whereabouts are unknown, or if the defendant has left the State of Michigan).

**District Court Arraignment**

This is the first court appearance for any misdemeanor or felony. Once arrested and charged with a felony, the suspect appears in District Court for arraignment. The defendant is told what the charge(s) is (are) and the maximum penalty if convicted, and is advised of his constitutional rights to a jury or bench trial, appointed attorney, presumption of innocence, etc. The charging document is called a Complaint. The conditions and amount of bond are determined by the judge. In some cases --- generally based on the nature of the charge --- the Judge imposes conditions on the bond, such as no contact with the victim. Bond is set in almost every case, but it is up to the defendant's own resources to post the bail money, which allows him to be released.

All further pre-trial procedures are determined by whether the defendant is charged with a felony or misdemeanor:

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### *Misdemeanor*

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At a misdemeanor arraignment, the defendant will be given a chance to enter a plea to the charge: plead guilty, plead not guilty, or stand mute (i.e., remain silent, which is treated by the court as if the defendant pled not guilty). If the defendant pleads guilty or no contest, the Judge may sentence the defendant on the spot or may reschedule the case for a sentencing date, which will give the probation department time to prepare a pre-sentence report including background information about the defendant and the crime, make a sentencing recommendation, etc. If the defendant stands mute or pleads not guilty, the case will be scheduled for a pre-trial conference.

**Pretrial Conference** --- All misdemeanor cases are scheduled for a meeting between an Assistant Prosecuting Attorney and the defendant (or his attorney) to determine whether the case will go to trial or be resolved with a plea. These meetings focus on resolving the case short of trial. The Judge and witnesses are not directly involved in misdemeanor pre-trial conferences. If a plea bargain is going to be offered by the Prosecutor, it is done here.

#### **Felony**

At a felony arraignment in District Court, the defendant does not plead guilty or not guilty. He is advised of his right to a preliminary examination within 14 days of the arraignment. The arraigning judge may also consider a defendant's request for a court-appointed attorney at this time.

**Pre-Exam Conference** --- Some courts schedule a "Pre-Exam Conference" several days before the scheduled Preliminary Examination. The Pre-Exam Conference operates like a misdemeanor pre-trial conference, as a meeting between the Prosecutor and defendant (or his attorney) to see if the case can be resolved without the need to subpoena witnesses for the "Prelim".

**Felony Preliminary Examination** --- This is a contested hearing before a District Court Judge, sometimes called a "probable cause hearing", held within 14 days after arraignment. The Prosecutor presents witnesses to convince the Judge that there is at least probable cause to believe that the charged crime(s) was (were) committed and that the defendant committed the crime(s). Because the burden of proof is much less than at a trial, the Prosecutor generally does not call all potential witnesses to testify at the "prelim"; generally, the victim and some eyewitnesses plus some of the police witnesses testify. The defendant, through his attorney, can cross-examine the witnesses and present his own evidence (including witnesses). If probable cause is established, the defendant is "bound over" (i.e., sent to) Circuit Court for trial. If the Judge decides that there is not probable cause that the defendant committed the charged crime(s), the judge can bind the case over on different charges, can reduce the charges to misdemeanors for trial in District Court, or can dismiss charges. A defendant can give up his right to a Preliminary Examination. Most felonies arrive in Circuit Court after such a "waiver".

**Circuit Court Arraignment** --- After the case is sent to Circuit Court, the defendant is again arraigned (given formal notice of the charges against him or her). The charging document is called an Information. He or she is again advised of his/her constitutional rights, and enters a plea to the charge (guilty, not guilty or stand mute).

**Pre-Trial Conference** --- The Circuit Court may schedule a meeting between an Assistant Prosecuting Attorney and the defendant's attorney to determine whether the case will go to trial or be resolved with a plea.

**Pretrial Proceedings** --- The Circuit Court Judge may be called upon to resolve various pre-trial issues, some of which determine whether the case will continue to a trial, be resolved with a plea, or be dismissed; whether evidence will be admissible at trial; etc.

### **Trial (Jury or Bench/Judge)**

A trial is an adversary proceeding in which the Prosecutor must present evidence to prove the defendant's guilt beyond a reasonable doubt. The defendant is not required to prove his or her innocence or to present any evidence but may challenge the accuracy of the Prosecutor's evidence.

Both the defendant and the Prosecutor (representing the People of the State of Michigan) have the right to a trial by a jury. Sometimes, both sides agree to let a Judge listen to the evidence and decide the case without a jury; this is called a "bench trial". In a jury trial, the jury is the "trier of fact"; in a bench trial, the judge is. After the evidence is presented, the judge or a jury will determine whether the evidence proved that the defendant committed the crime.

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### *General outline of the steps in a jury trial*

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Residents of the local county are randomly selected from a Secretary of State list of licensed drivers and are summoned to the Court as potential jurors. a blind draw selects twelve people from that group in felonies (six in District Court misdemeanors).

**Voir Dire:** The Judge, Prosecutor and defense attorney question the jurors about their backgrounds and beliefs; the attorneys are permitted a limited number of "peremptory" challenges to various jurors (or an unlimited number of challenges for good cause); after twelve (or six) acceptable jurors remain, the Judge administers an oath to the jury and reads basic instructions about the trial process, etc.

- The Prosecutor gives an opening statement to outline the People's case and evidence to the jury.
- The defense may give a similar opening statement or wait until later in the trial.
- The Prosecutor calls witnesses, which the defense may cross examine.
- The People close their proofs.
- The defense may call witnesses, if it wants, and the Prosecutor may cross-examine them.
- The defense rests.
- The Prosecutor may present "rebuttal" witnesses/evidence to challenge evidence presented by the defendant during his proofs.
- The Prosecutor rests.
- occasionally, the trial judge will let the defense present "sur-rebuttal" witnesses to respond to the Prosecutor's rebuttal witnesses' testimony.
- The Prosecutor presents a closing summary to the jury.
- The defense attorney presents a closing summary to the jury.
- The Prosecutor may present a rebuttal argument to the jury to respond to the defendant's attorney's closing summary.
- The judge gives the jury detailed legal instructions about the charged crimes, the deliberation process, etc.
- The jury deliberates and returns a verdict.
- A criminal case jury verdict must be unanimous.
- Pre-Sentence Investigation and Report
- The court's probation department prepares a report for the judge summarizing the crime, and the defendant's personal and criminal backgrounds.

Generally, the victim is contacted for a recommendation of sentence. The probation officer concludes the report with a recommended sentence.

## **Sentence**

Sentencing in Michigan varies with the crime and can be the most confusing part of the criminal process. Most often, sentences are at the judge's discretion. The judge will consider the information in the pre-sentence report (subject to factual corrections by the parties), additional evidence offered by the parties, comments by the crime victim, and other information relevant to the judge's sentencing decision.



For felonies, the Circuit Court judge will consult "sentencing guidelines" (originally established by the Michigan Supreme Court, but now applicable by recent "Truth in Sentencing" laws). The sentencing guidelines factor in aspects of the defendant's criminal conduct and his prior record, to determine the minimum jail/prison sentence. The judge may consider different alternatives, such as a fine, probation, community service, a sentence to jail or prison, or a combination. The judge must also order the defendant to make restitution to any victims who have suffered financial harm.

### **Appeals**

Appeals from the District Court are heard in the Circuit Court. Appeals from a Circuit Court or Probate Court order are heard in the Michigan Court of Appeals. Appeals from Court of Appeals decisions are heard in the Michigan Supreme Court.

**There are three kinds of appeals: (1) interlocutory, (2) of right, and (3) by leave.**

**Interlocutory appeal:** occurs when a party tries to appeal a judge's decision before the case has come to trial or before a trial is finished.

**Appeal of Right** occurs after a final order has been entered by the trial court (either a sentencing order, or an order dismissing the charge). A recent amendment to the Michigan Constitution has eliminated most appeals of right when a defendant pleads guilty. Most appeals of right now focus on the sentence imposed.

**Appeal by Leave of the Court** occurs when an appeal of right is not available (e.g., because an available appeal of right was not filed on time). The appellate court has the discretion to reject the appeal or can "grant leave".