
PROCESS OF A CRIMINAL CASE

Every criminal case is different, but most involve the same types of events. The following is a general description of the process.

INDICTABLE OFFENSES

An indictable offense is any criminal offense that is not classified as a simple misdemeanor: serious misdemeanor, aggravated misdemeanor, class D felony, class C felony, class B felony or class A felony. Although the classification of the offense determines the range of possible consequences to the defendant if found guilty, any crime is viewed as a serious breach of the community's safety. Not all of the following steps occur in each case. The defendant often has the opportunity to waive certain steps, and the State can opt out of some. Often cases can be continued, which makes it difficult to estimate how long it will take to resolve the matter.

Law Violation. Every criminal case begins with someone doing something that the law prohibits. Some victims contact law enforcement directly and law enforcement officers witness some crimes; however, most serious crimes are witnessed by regular people – not law enforcement officers. This makes the public an important part of detecting and reporting crime. If law enforcement is not aware that you witnessed a crime, it is likely that the crime will not be detected and that no one will be held accountable for the crime. An observant public that reports crime and suspicious behavior is part of a team with law enforcement and the County Attorney to protect victims, reduce crime and make all of us more safe.

Investigation. Once law enforcement becomes aware of a crime, an investigation is started. The investigation is generally done by the agency that has jurisdiction over the location where the crime occurred; however, any peace officer in the State of Iowa can be involved in an investigation anywhere in the State. Oftentimes, especially with smaller agencies, officers will work together to solve a crime, or may call upon the Division of Criminal Investigation to assist. Every investigation is unique. Oftentimes, it may be concluded very quickly at the scene of the crime. Others may take a few hours, days, weeks or even years to gather physical evidence, conduct interviews, receive laboratory reports, gather supporting and background information and explore other theories or suspects. Some crimes, because of lack of evidence and witnesses, may never reach the point where an investigation can be successfully concluded.

Charging. If the officer has collected enough evidence to believe that a particular person committed a crime, the officer will make a decision of what crimes to charge. This is sometimes done after consultation with other officers, their supervisor and/or the county attorney. The most appropriate charges will be included in a Complaint, and filed with the Clerk of Court.

On occasions, at the conclusion of an investigation, a decision will be made not to proceed with a criminal charge. There may be many reasons for this. The most common is that there is insufficient evidence to proceed with a prosecution. There are specific elements (or facts) that have to be proven for each criminal offense, and the officer must have facts to support each element. In an OWI case for instance, there may be ample evidence that the suspect was intoxicated, but nothing to support the idea that the suspect was operating a motor vehicle. Without evidence to support all of the elements, a charge cannot be filed.

There are also occasions when a witness is unwilling to cooperate, or when a victim is unable to participate because of fear of retaliation or the psychological damage already inflicted by the offender.

Sometimes the investigation shows that the situation did not involve the commission of a crime, but rather is a civil matter between the parties. This can be the case in arguments between neighbors, issues arising out of contract disputes or other disagreements.

Arrest/Summons. If an officer is able to complete a sufficient portion of his investigation at the scene of the offense, the suspect will be arrested at that time or in less serious cases, given a Citation to appear in Magistrate Court. If additional investigation is needed to determine if a charge is appropriate, the suspect will

not be arrested immediately. In those cases, the officer will file the charge with the Clerk of Court, and the Magistrate will make a decision about whether a Summons should be mailed to the defendant or whether an arrest warrant shall be issued. That determination is made based on a number of factors, such as the nature and circumstances of the offense, whether the defendant is likely to appear voluntarily, be a flight risk or harm anyone.

Review by the County Attorney. The officer will then send reports, witness statements, photos, videos or other evidence to the County Attorney. This is a second independent review of the evidence to evaluate the facts, circumstances and evidence in the case and determine if the case will proceed.

Initial Appearance. Shortly after a defendant is arrested, or at the court appearance set in the Summons or Citation, the defendant will have his initial appearance. At this hearing, the defendant will be advised by the Magistrate of the charge(s) that have been made and the possible legal consequences if convicted. The defendant will also be advised of his rights. If the defendant is indigent the Magistrate will determine if he is eligible for court appointed counsel. In domestic or sexual abuse cases, the Magistrate will determine if a No Contact Order will be issued. A preliminary hearing date is set, along with bail conditions. The Magistrate will consider several factors to determine if the defendant is a flight risk or poses a risk to the community. The law presumes that a defendant should *not* remain in jail, and reasonable conditions of release should be imposed. Sometimes bail conditions require the defendant to post money to get out of jail, to be released on pre-trial supervision of a person or agency, or to obtain evaluations.

Preliminary Hearing. The purpose of this hearing is for the Magistrate to determine whether there is sufficient evidence to support the charges against the defendant. The State presents evidence showing the defendant probably committed the crime. The defendant does not present evidence. Rarely is such a hearing held because the same purpose is fulfilled by the State filing a Trial Information.

Trial Information. A Trial Information is a charging document containing the indictment against the defendant. The county attorney prepares this document, along with the Minutes of Testimony, which contains a list of the State's witnesses and a summary of the evidence. A District or District Associate Judge reviews the documents to determine if there is enough evidence to support the charges, and if so, signs an Order allowing its filing and setting a date for Arraignment.

Arraignment. The arraignment is the formal accusation of the defendant. The Court ensures that the defendant has received a copy of the charging document, that the defendant is charged in his correct name, and that he has had adequate time to review the documents. If the defendant does not have an attorney, the Court will review that right with him again. The defendant is required to enter a plea of guilty or not guilty, and a trial date will be set. The defendant has a right to a speedy trial within 90 days of the filing of the Trial Information. Usually an Arraignment hearing does not occur. If represented by an attorney, the defendant may file a written arraignment that addresses all of the issues that would have occurred at the hearing. Most of the time a defendant will plead not guilty at arraignment, and can change their plea to guilty at any time. Most cases are resolved by the defendant pleading guilty sometime after arraignment.

Pre-trial activities and motions. If the defendant pleads not guilty, the defendant conducts discovery of the State's evidence in the case, including receiving copies of all documents and recordings, viewing the physical evidence, taking depositions of the witnesses, or conducting their own testing. The defendant's investigators or attorney may contact victims and witnesses. Victims/witnesses are not obligated to talk to anyone without a subpoena, and are entitled to ask for identification and for the county attorney to be present during the conversation. It would be helpful to also notify the county attorney of the conversation. Victims/witnesses who receive a subpoena should contact the county attorney to schedule a time to prepare for their testimony. The defendant may also file motions to suppress evidence or deal with other issues, such as where the trial should be held.

Plea Negotiations. The County Attorney and the defendant or the defendant's attorney usually engage in plea negotiations. This can involve having the defendant plead to a different charge than what was originally filed to decrease the range of penalties, or pleading to the original charge with an agreement for a sentencing recommendation. Many factors play into plea negotiations – for both sides. The defendant usually takes into account the risk of being convicted and the possible sentence. The State typically takes into consideration the strength of its evidence, witness' willingness, reluctance, fear or inability to testify, the anticipated sentence the Court will impose if the defendant is convicted, and the victim's wishes. If a satisfactory agreement cannot be reached, the case will proceed to trial.

Trial. Few cases require a trial, which is fortunate, because trials can be very intimidating for witnesses, and an inconvenience for those called to jury service. A jury is selected and then the trial begins. This usually involves the reading of the charge by the county attorney, statement of the defendant's plea, opening statements by the attorneys, presentation of the State's case, Defendant's case and then any rebuttal and closing arguments. The Court then reads the jury instructions (the law they will need to know to make a decision), and then deliberations begin. When the jury has reached a unanimous decision, the verdict is returned. If the defendant is found guilty, a sentencing hearing is set. If found not guilty, the defendant faces no further consequences as a result of the charge.

Sentencing. Iowa has a sentencing scheme with a great deal of discretion for the judges to impose a sentence that will best serve to rehabilitate the defendant, deter others from committed such crimes and protect the community. Each sentence should be designed for that particular defendant and crime. The Court will take many factors into account, primarily, what the defendant did, whether there is a victim, whether there was personal injury or property damage, and the defendant's criminal history, history of services, attitude and level of cooperation. Victim restitution will be ordered if applicable to that case. Victims also have the right to address the Court to describe how the defendant's actions impacted their lives. Especially if there was no trial, this is the victim's only "day in court" and the only opportunity to ever speak to the Court directly about how they feel. This can have a significant impact on the Court's sentence.

The range of penalties is set by the legislature, usually by the classification of the offense, such as serious misdemeanor or class D felony. There are many specific penalties for violating particular laws. For instance, a particular sex offense may be a D felony, but there are additional requirements for electronic monitoring, registration and employment and residency restrictions. There may also be enhancements that lengthen a sentence or impose additional requirements for that offender. For instance, a second sex offense carries a longer term of incarceration. Some sentences can be suspended, which means they don't have to be served as long as the defendant completes probation. Others may receive a deferred judgment, which puts a person on probation for a period of time, and if the defendant completes that, then a conviction will not be entered for the offense. Some offenses do not allow for a suspension or deferment. Iowa's sentencing structure is very complicated, so if you have questions about the range of penalties for a particular defendant and charge, do not hesitate to contact the county attorney.

Appeal and PCR. A defendant may appeal any sentence imposed by the Court (except a deferred judgment). All appeals are made to the Supreme Court, with most directed for decision to the Court of Appeals, and if further hearing is granted, back to the Supreme Court. Appeals focus on errors made at the trial or sentencing, and sometimes on pre-trial errors. If the appellate court finds no reversible error, the conviction and sentence will stand; however, if there was a reversible error, the sentence or the conviction will be set aside and the case returned to the District Court level for a correction of the sentence or a new trial.

Once the appeal process is final, the defendant may pursue post conviction relief (PCR) proceedings. PCRs are civil suits and are a challenge to issues not raised on appeal – generally ineffective assistance of trial counsel, or other errors of the Court or the prosecutor. The decision in the PCR can also be appealed.

Service of Incarceration. If a jail sentence is imposed, the defendant may not go to jail immediately. An accommodation may be granted to permit the defendant to resolve work or personal issues. The defendant

may also be granted work release privileges, which will permit release to perform normal work duties. A sentence may be shortened by the Sheriff's request for early release based on good behavior.

If a prison sentence is imposed, the defendant will be taken into custody immediately and transferred by the Sheriff to the prison system. Credit for good time is liberal (1.2 days for every day served), and most offenders are eligible for parole immediately. Those parole standards are not applicable to offenders sentenced to life without parole or convicted of an offense that requires service of a minimum portion of the sentence before being eligible for parole (usually 1/3 to 70% of the sentence). Once in prison, the Board of Parole is exclusively responsible for determining a release date for the offender; however, the sentencing Court may bring an offender back for reconsideration of the sentence, and the governor may issue pardons, clemency or commute a life sentence to a term of years.

Probation. Many jail and prison sentences are suspended and the offender placed on probation. Many conditions can be imposed on an offender as part of probation. If the term of probation is successfully completed, the offender will never have to serve the suspended portion of the sentence. Violating probation could result in revocation of probation (requiring service of the suspended portion of the sentence or imposition of a different sentence) or a finding of contempt, punishable by jail time or financial consequences.

NON-INDICTABLE OFFENSES

Non-indictable offenses are all simple misdemeanors, including traffic violations and municipal infractions. The County Attorney's Office only prosecutes violations of State law and County ordinance. Any violation of a city ordinance is prosecuted by that city's City Attorney, and questions about those cases should be directed to the correct prosecutor. However, all simple misdemeanors are processed similarly, and progress without the formality of an indictable offense. In the prosecution of a simple misdemeanor, there is no preliminary hearing, trial information or arraignment, but otherwise the stages are the same, with the range of sentencing options being much less severe: up to 30 days in jail and a fine between \$65 and \$625.