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NAMI Tennessee
2104A 25th Avenue South
Nashville, TN 37212
Telephone: (800) 467-3589 Fax: (615) 386-3686
Web address: tn.nami.org

Need Mental Health Services?

For a directory of mental health services in Tennessee:
http://www.state.tn.us/mental/reslinks.html

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WHAT TO DO

When You Are in Trouble with the Law

A Guide for Mental Health Consumers in Tennessee

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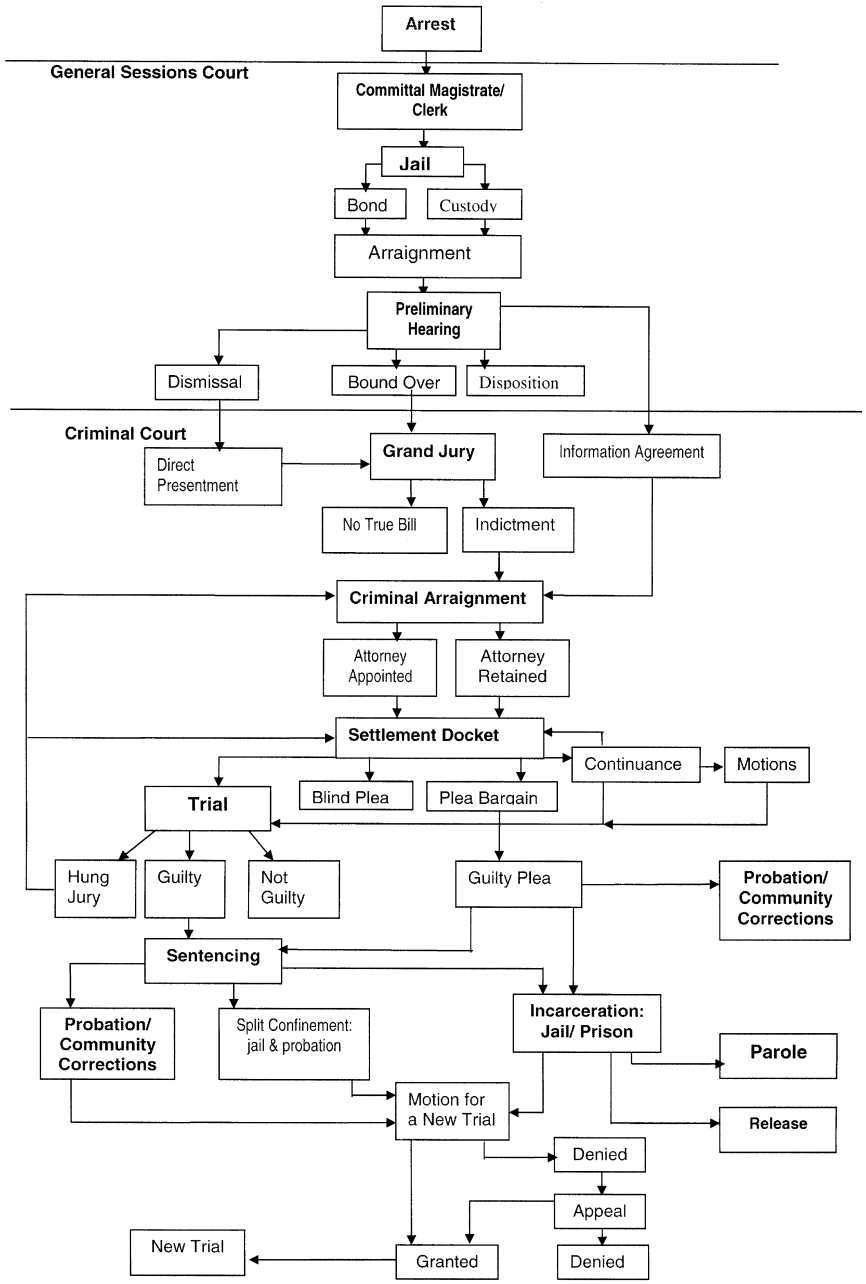
Tennessee Department of Mental Health and Developmental Disabilities
2004

Table of Contents

Introduction 3
Crisis Prevention
Crisis Planning 3
Law Enforcement
When the Police Come 4
Arrest 5
Arrest Warrants 6
Booking
Jail: Custody Before First Hearing 7
Bail Bond 8
General Sessions Court
Getting a Defense Attorney 10
How do you get a lawyer if you don't have money? 10
Can you fire a free lawyer? 11
Appearing in Court 11
Legal Process for Misdemeanors: First Court Hearing 12
Trial for Misdemeanor Charges 12
Legal Process for Felonies: First Court Hearing 13
Preliminary Hearing 13
Bound Over to the Grand Jury 14
Grand Jury 15
Criminal Court
Sealed Indictment 16
Direct Presentment 16
Arraignment 16
Preparing the Case 16
Settlement Docket or Settlement Day 17
Continuance 17
Trial 17
Chart: The Jury Trial Process 15
Appeals 18
Evaluations for People with Mental Illness
Forensic Evaluation 19
Mental Health Treatment 19
Sentences
Pre-Sentencing Investigation 21
Sentencing Hearing 21
Probation 21
Community Corrections 23
Split Confinement 23
Work Release 23
Jail 23
Prison 24
Parole 26
Conclusion 26
Acknowledgments 27
Helpful Websites 28
Chart: Criminal Justice System 30



This diagram shows general information. Systems vary between counties.

Introduction

Police, sheriffs, courts and jails are responsible to guard public safety and maintain justice. They are not set up to help people with mental illness. When you are in trouble with the law it can be confusing, frustrating and frightening. You need information on crisis prevention, arrest, bond, court, jail, and release. You need to know how to get help with mental health problems. You need to know who can help, how you can help, and what you cannot or should not do.

This document will guide you through the criminal justice process in Tennessee. There are suggestions in each WHAT TO DO section. Every effort has been made to give correct information, but this book only offers general advice. If you need to know more, contact a legal professional or one of the mental health agencies listed in this book.

Crisis Prevention

The best way to deal with the criminal justice system is not to get involved at all. Family members, friends and advocates sometimes reach a point where they are so worried about you or so concerned about their own safety that arrest and jail seem like the best choices. But jail is a terrible place for someone with mental illness. It is crowded, loud and filled with people who act out. Getting a good night's sleep in jail is not easy. Getting medications or treatment is slow and difficult. You may not get enough supervision to protect you.

The key is planning and communication. Developing a mental health crisis plan is the first step. The second step is to put the crisis plan into effect, to get help before a mental health crisis occurs. A mental health crisis is when you become a danger to yourself or someone else, or cause a public disturbance due to symptoms of mental illness.

Crisis Planning

A crisis plan helps you plan what help to get in case you cannot make choices on your own behalf. Planning is done when you are well and can make good choices.

- A crisis plan is developed by you. You must be involved in developing the plan for it to work well. You may choose to involve the following people in crisis planning:
  - Key family members
  - Close friends
  - AA or NA sponsor
  - Case manager

- Psychiatrist, therapist or nurse
- Probation or parole officer

- A crisis plan lays out:
  - Early warning signs: what you are like when a crisis is beginning,
  - What can be done by you and others to clear up the crisis before it starts,
  - What help to call if a crisis starts to happen,
  - Name and contract information for your psychiatrist and other mental health care providers,
  - Types of medications and other treatments have worked or not worked in the past, or medicine you cannot take,
  - How to take care of your responsibilities, home and possessions if you have to go to hospital or jail.
- You can get a crisis plan form at your local mental health agency. You can also talk to your lawyer about a "living will" or a "durable power of attorney for healthcare" to give a family member the ability to make decisions for you during crises.
- A crisis plan cannot be enforced in court if the people involved do not do what it says, but it will help everyone follow your wishes as much as possible.

Law Enforcement

There are two types of law enforcement officers that come to the scene of a crime. Larger cities have a police force while smaller towns and rural areas have sheriff's officers. Some cities have specially trained police officers who answer calls where the offender or the victim is reported to have mental illness.

When the Police Come

If the police have arrived, and even you are in handcuffs, there are still things you can do to improve your situation. Police can decide who to arrest, who to take to hospital and who to ignore.
Common reasons for arrest; the offender is:

- A danger to himself/herself or someone else;
- Has damaged property;
- Is suspected of carrying illegal drugs or weapons;
- Is drunk or stoned;
- Is trespassing;
- Is causing a public disturbance (disorderly conduct).

National Alliance for the Mentally Ill: (NAMI) www.NAMI.org

National Alliance for the Mentally Ill of Tennessee: http://tn.nami.org

National Association of Rights Protection and Advocacy: (NARPA)
National organization to advocate for civil rights of persons with mental illness www.narpa.org

Substance Abuse & Mental Health Services Administration (SAMHSA)
Information about mental health and substance abuse issues and services www.samhsa.gov

SAMHSA Center for Mental Health Services information site:
www.mentalhealth.org

Tennessee Dept. of Mental Health/Developmental Disabilities:
www.state.tn.us/mental

Tennessee Association of Mental Health Organizations:
Statewide organization of community mental health centers
www.tamho.org

Helpful Websites

Criminal Justice Information:

Directory of TN Sheriffs, Public Defenders & Judges: www.tbi.state.tn.us/CJ_directory

Tennessee Department of Correction: *Information about state prisons* www.state.tn.us/correction

Tennessee Criminal Law: *Information about legal issues in Tennessee* www.tncrimlaw.com

Tennessee Administrative Office of the Courts: *Information about the Tennessee court system* http://www.tsc.state.tn.us

Tennessee Board of Probation and Parole: www2.state.tn.us/bopp

Police:

Chattanooga	www.chattanooga.gov/police
Jackson	www.jacksontn.com/jackson/police.html
Knoxville	www.knoxvillepd.org
Memphis	www.memphispolice.org
Nashville	www.police.nashville.org

Mental Health Information:

The Bazelon Center for Mental Health Law: *Information about mental health law and rights of persons with mental illness* www.bazelon.org

The Consensus Project: *Information about bridging gaps between the mental health and criminal justice systems* www.consensusproject.org

The Institute of Mental Health Law: *Information about mental health legislation around the world* www.imhl.com

Mental Health Association of Middle Tennessee: www.ichope.com

National Mental Health Association: *Information about mental health issues* www.nmha.org

WHAT TO DO when the police come to the scene:

- If you are a client of a mental health agency, let the police know. They may not arrest you if they can get you to a treatment facility where you will stay safe and out of trouble.
- If you have telephone numbers of people who can help you (family, case manager, etc.), ask if they can be contacted.
- Carry a crisis plan in your wallet with name and phone number of your mental health agency and case manager, your diagnoses and medications.
- Remember, the police are just trying to do their jobs. They are not trying to harm you. Stay as calm as you can.

Arrest

When you are arrested, the police take you into legal custody. After arrest, the police can search you. If evidence of any other crime shows up, such as drugs or stolen goods, those crimes will be added to your charges.

WHAT TO DO when you are arrested:

- *Cooperate with the police.* If you cause problems while being arrested, “resisting arrest” may be added to your charges.
- If the police question you, ask for an attorney and do not give them information about the alleged crime. You have a right to remain silent.
- Ask the police to bring along your medications in the original bottle. This will help you get medication sooner and will let the jail staff know you need mental health treatment.
- If you have problems with the arresting officers, remember their names. You will need that information later to file a complaint.

You will be charged with a misdemeanor or a felony.

- A misdemeanor is a less serious crime that carries a sentence of no more than 11 months and 29 days (11/29). If you are found guilty of a misdemeanor you will serve time in a county jail, go on probation and/or pay a fine.
- A felony is a serious criminal charge that carries a sentence of a year or more. If you are found guilty of a felony you will serve time at a county jail, workhouse or state prison.
- Each type of charge, whether misdemeanor or felony, has a maximum sentence.

Even if you are not found guilty of the crime, you may spend quite a bit of time in jail while the courts decide what to do.

Arrest Warrants

An arrest warrant is a written order from a judge. Not every arrest involves a warrant. It may be that an officer observes a crime and arrests the offender on the spot. Warrants start the criminal process and are also used to bring you back to court if more charges are brought against you.

Warrants may be issued if you:

- Do not appear at a required court hearing;
- Do not pay a fine;
- Do not do community service ordered by the court;
- Do not do what is required for probation, parole or community corrections;
- Break the law in some other way.

If you do not clear up a warrant you may have to go to jail. How quickly the police follow up on a warrant depends on how serious the offense was. There may be police at your door that evening if you miss a court date or violate probation. For a fine, it may be a few weeks or longer. Even if the police do not come, a warrant does not go away. It is important to clear up a warrant because:

- If the police ever pick you up for any reason, the warrant will be held against you.
- Social Security checks up on warrants. You may get a letter stating that your check will be cut off because you are a "fugitive" from the law.
- It is stressful for you to have a warrant hanging over your head. Stress affects mental health.

How to clear up a warrant:

- Go to the court that issued the warrant, apologize and give an excuse if there is one;
- Agree to correct the rule that was broken and take the punishment.

If you go back to the court on your own, you may get in less trouble. If you have a good excuse and the warrant was issued only a day or two ago, you may not be in any more trouble. If there is no good excuse, you will be in more trouble than before the warrant was issued. That could mean:

- Paying more fines or higher bail;
- Getting a longer probation sentence;
- Going to jail or prison.

What can we do to de-criminalize mental illness?

People with mental illness do not belong in jail or prison because of mental illness. It makes a lot of trouble for people who are already having a hard time, and it is a waste of time and money. Many of the "crimes" that get people with mental illness into jail or prison would be viewed as "symptoms" if we had enough mental health services. Everyone who cares about mental health must work together to stop criminalization of mental illness and demand a real community mental health system, regardless of whether you or someone you care about has been arrested.

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This book was inspired by two documents:

- Take This Book: a defendant and family handbook provided by the Davidson County Office of the Public Defender; and
- How to Help: when a person with mental illness has been arrested, (2001) by Heather Barr of the Urban Justice Institute and Bob Corliss of NAMI-New York City.

- Call, or write to the mental health center and ask for an intake appointment. If you write a letter, ask for a written reply. If your jail or prison has release planners, ask for their help to make the call.

It is very hard to get set up in the community after release from prison. Landlords, even in public housing, may not rent to you. Few employers will hire people who have been convicted of felonies. If you have enough support in the community to make it through tough times, you are much more likely to stay out of prison in the future.

Parole

Parole is supervision of someone who has returned to the community after serving part of a felony sentence in state prison. Parolees must report to the parole officer and obey certain conditions. If you disobey any of the conditions, your parole officer can arrest you immediately. You will go to jail to wait for a hearing whether or not the rules were violated. If the court decides you violated parole, you will be sent back to jail or prison. Conditions of parole may include:

- Reporting regularly to the parole officer for a set length of time;
- Staying within a certain county or area;
- Staying away from certain people,
- Going through mental health and substance abuse treatment;
- Getting stable housing and work; and
- Not committing crimes.

WHAT TO DO when you are on parole

- Follow the conditions of parole;
- Ask questions if you do not understand the conditions;
- DO NOT USE ALCOHOL OR DRUGS;
- Call the parole officer as often as you are required to.

Conclusion

It can be confusing and frustrating to try to get help when you are in the criminal justice system. Your task will be easier if you find someone who can tell you what is happening and what you can do. You may receive some help from the defense attorney but if not, do not give up.

For information and support call your local office of the National Alliance for the Mentally Ill (NAMI) or the toll-free NAMI Tennessee help line at (800) 467-3589. NAMI is a self-help organization of family, friends and people with mental illness. You may also be able to get help through the Tennessee Mental Health Consumers Association or your local Mental Health Association.

WHAT TO DO if there is warrant out on you:

- Contact your defense attorney if you have one. The attorney may be able to help you clear up the warrant. Let the attorney know if there is a good excuse.
- Ask your defense attorney to make sure there really is a warrant. He or she will not have to tell them where you are, just that you plan to come and clear up the warrant.
- If it is a violation of probation or parole, call the probation or parole officer.
- Find out when and where you should appear. Make sure you get the right courthouse or office. Get directions or bus information and ask about where to go once you are in the courthouse.
- Go to court. Get to the courthouse a little early; go through security. Explain that you are there to clear up a warrant and ask where to go. If the lawyer cannot meet you, ask the court clerk for a lawyer who can “stand up” on the case when it is called. Explain the situation to the lawyer. Prepare for a long wait. It is helpful to have an friend or family member with you; or
- Go to the probation/ parole office. Let the officer know if there is some reason why you could not meet the conditions of parole such as hospitalization, confusion due to mental illness, poverty, etc. Bring documentation to prove what you say. This is another situation where it is helpful to have a friend or family member.

Booking

If you are taken into custody, the next step is “booking” where information is obtained for the court and a decision is made whether to keep you in jail until the first court appearance or release you with instructions to appear at a later date. Some districts in Tennessee have a “night court” where this decision is made, while others use the police station or the sheriff’s department. During the booking process you will spend a lot of time waiting in a noisy, uncomfortable place with not much food and no medical care.

WHAT TO DO when you are taken into custody:

- Call someone to help you. You will be given the chance to make one phone call. Call your family, a good friend or your family lawyer if you have one. A family member or friend may be able to pay the bond and get you out of jail.
- Ask your friend or family member to bring your medication in the original bottle. The jail staff may accept the medication, or may look at information on the bottle to order the medication for you.

Your visitors will not be able to give the medication to you directly.
- If you have a crisis plan, those helpful people would be on a list that you could keep in your wallet. If your area has a criminal justice/mental health liaison, that person can help you either stay out of jail, or get what you need in jail.
- Give true, clear information to the booking officer.
- Tell the booking officer that you are in mental health treatment. Give contact information for your case manager and doctor or therapist. Sign 'consent to release information" forms giving the officer permission to talk with your mental health providers;
- If you can, telephone your case manager and/or psychiatrist. Let them know what happened, where you are and what you need.
- Get in touch with your lawyer if you have one. The sooner the defense attorney gets word about the case, the better.

Jail: Custody Before the First Court Hearing

If you have been charged with a serious crime or there are other reasons you cannot be released until the first court date, you will be jailed.

WHAT TO DO when you are in jail:

- Let the jail staff know you are in mental health care. They may place you in one of the cells where inmates get more medical care.
- Sign a release of information form so the jail can contact your mental health providers to continue your care.
- Let the jail staff know if you are feeling suicidal or if you are bothered by voices or other symptoms of mental illness.
- If you have an alcohol or drug habit, tell the jail staff you need medical detox.,
- Find out the rules about visitors.
- Find out whether a visitor can bring your medications.
- Call a family member, friend or case manager. Let them know about visiting and medications. Ask your visitor to bring a list of your prescriptions from the doctor.
- Don't talk to other inmates or the jail staff about your case. Statements made to anyone may be used against you in court.

Bail Bond

If you are charged with a less serious crime, have enough support in the community, and are not considered to be at risk of running away, you may be released on bond. Bond is an amount of money paid in order to make sure you come back on the court date. Paying bond is called "posting bond." If the bond is too high the defense lawyer can file a

- If you are already on medication, the physician may continue it if the medication is on the prison drug list, or may change it. If there is a good reason, like you have tried everything and nothing else worked, the medication may stay the same even if it is not on the prison drug list.
- You have a right to refuse to take the medication. But if you become a serious threat to yourself emergency medications will be ordered through the Department of Corrections with or without your consent.
- At most prisons, mental health treatment is very much like it would be at a community mental health center. There is a clinic in the prison where you go for treatment.
- At special needs prisons, treatment is like it would be at a state mental health institute. Special needs prisons are for people with serious mental illness or mental retardation who need special services and would be safer if they were separated from other inmates.
- If there seems to be a drug or alcohol problem, you will be sent to the substance abuse counselor for drug education, treatment and group work. Substance abuse treatment in prisons is very much like it would be at a substance abuse treatment agency in the community.

WHAT TO DO when you are incarcerated:

- Encourage your family and friends to visit you, write and telephone. If you have support you will be more likely to go to treatment and rehabilitation, and to stay out of trouble while in prison. Make sure your visitors follow the prison rules.
- Ask the prison to examine you for mental health or substance abuse problems;
- Tell the prison medical staff what treatment and medication you have been receiving and how well it helped or did not help;
- Go to treatment and take medication as prescribed;
- Get your GED or to go to training while in prison. Having more skills will help after release;
- Advocate for release planning. Ask your family or friend to get in touch with the prison staff. The prison staff is busy and may not have the time to follow up on everything that needs to be done. Four months before your release date, your family or friend can help the staff plan where you will stay, what you will do, how you will get income and treatment. Ask your family or friend to apply for TennCare and contact community mental health providers to make sure they have arranged what you need.

Most jails do not have much mental health treatment.

- Larger jails have staff that assess for mental illness and prescribe medication.
- Small jails may have little or no treatment. If they do have treatment, usually it is only assessment and medication through a community mental health center. It takes awhile to get community treatment for inmates because waiting lists are long and the jail staff must find the time to take you to appointments.
- Some jails have a criminal justice/mental health liaison. This is a person who can help you get services and supports in jail and when you are released,
- Some jails have Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) groups and substance abuse counselors. The court may shorten the sentence if you go to substance abuse treatment while in jail.
- Larger jails may have special cells or a unit where people with medical or mental health needs are housed apart from other inmates. In those units you are less likely to be picked on by other inmates.

Prison

If your sentence is six years or more you will serve time in one of the state prisons. You may be incarcerated close to home, or may be sent somewhere else in the state. If you are serving less than six years you will go to jail.

- How much time you actually serve depends on the crime, you criminal record and behavior while locked up.
- If you do not break the rules and are involved in programs, you may shorten your time.
- The time you spend in jail can shorten the prison sentence if the judge decides to give credit for “time served.”
- If you get in trouble in prison, you may get a “disciplinary” which means extra time served over and above the sentence.

Prisons are required to have some mental health treatment. Every inmate who comes into a prison is examined for mental health, substance abuse or health problems. At any point, you, family or others, can ask for an examination to see if there is a need for mental health or substance abuse services.

- If there seems to be a mental health problem, you will be sent to the prison physician, psychologist or other counselor for testing, diagnosis and treatment.
- The physician may prescribe psychiatric medication to be given by the prison nurse.

motion asking that the amount be lowered. If you have more than one bond make sure the lawyer knows about those too so the motions can all be filed at once.

In deciding the amount of bond, the court will look at:

- The type of crime;
- Evidence against you;
- Criminal record;
- If you have failed to appear in court before;
- How long you have lived in the area;
- Family and friends in the area;
- Employment; and
- How long you have had that job.

How the bond is posted is up to you. There are several choices.

- **Cash Bonds:**
  You or someone else puts up the entire amount. The money will be returned if you give a receipt to the court at the end of the case.
- **Bonding Company:**
  Generally, bonding companies will charge 10% of the bond plus $25.00. So if the bond is $1,000.00, the bonding company will charge $125.00. This money is not refundable. Some bond companies will allow you to pay some of the fee weekly until it is all paid.
- **Property Bonds:**
  To post a property bond you must own land without a mortgage or lien on the property. The property title can be taken to the Criminal Court Clerk’s Office and they will allow you to make bond. If you do not show up in court, you lose the property.

OR:

Pre-Trial Release (only available in some counties):
This is the only type of bond where you are not required to post money or property. If you have no criminal record and several other conditions are met, a pre-trial counselor may be assigned. You will be released from jail and required to call once a week.

WHAT TO DO when you are released on bond:

- If you don’t have a lawyer and can’t afford to hire one, go to the public defenders’ office as soon as possible to ask for a defense attorney.
- Bonding companies call regularly to keep track of you. Make sure you return the call and keep in contact. Even if they don’t answer the phone, leave a voice mail message and keep calling.

- Make sure you go to all of your court appearances or the bonding company will come and find you.
- If you move or change telephone numbers while on bond, tell the bonding company or pre-trial release office.
- Make sure you obey the conditions of your bond. If you don't you may get a new charge and a harsher sentence.
- Show the bond conditions to your case manager, family member or friend. Ask for their help fulfilling the conditions.

General Sessions Court

General Sessions Court is the first court to which cases go in the criminal justice system. Misdemeanors go no further than General Sessions Court. Felonies will be looked at to see if they should be reduced to misdemeanors and if other preparations need to be made to get the case ready for Circuit or Criminal Court. For instance, the prosecutor or defense may need to gather more evidence, may need to subpoena witnesses, or may need to order a psychiatric evaluation.

Getting a Defense Attorney

You will need to get an attorney as soon as possible. You have a right to represent yourself in court, but it is much better to have an attorney. In court, many people are seen and most are not given much time. Your case will only get the attention it needs if you have an attorney.

- Your defense attorney is the only person in the court whose job it is to look out for your needs.
- You will not be able to talk to the judge, except maybe briefly in the courtroom and then only to answer questions.

Bottom line: If you have information that you think will help the case, always go through the defense attorney.

WHAT TO DO to get defense counsel:

- If you have a lawyer, contact him or her by telephone.
- If you are in jail and cannot afford to hire a lawyer, the court will assign a defense attorney at your first hearing. You have a right to an attorney.
- If you are released on bond, you will have to go to the public defenders' office and ask for a defense attorney.
- If you think your family or friends can help, ask them to contact your attorney to help supply details of the case.

Community Corrections

In Tennessee, people who do not qualify for probation may still be sentenced to community corrections to pay back the community for the crime. A community corrections probation officer will develop a sentencing plan for the judge. At the sentencing hearing the judge will give you a certain length of time during which the plan must be followed. The sentencing plan may include:

- Public service work;
- Paying money to the victim (restitution);
- Reporting to the probation officer every day;
- Going to mental health treatment and/or drug and alcohol treatment;
- Anything else the judge feels will keep you from breaking the law again.

You should discuss community corrections with the defense attorney before applying because the conditions are very strict. If you violate community corrections you will probably get a longer sentence.

Split Confinement

The judge may sentence you to some jail time and some time on probation. If you violate probation, you will be placed in jail for the rest of the sentence. This is called "putting the sentence into effect."

Work Release (only in some counties)

If you are employed, misdemeanor time may be served at a Work Release Center where you can go to work during the day.

- To get work release you will need to get a sentence that allows for 0% work release eligibility, meaning that you can apply immediately.
- If the sentence is less than 120 days, the application will go to the director of the work release program.
- If it is longer than 120 days, you must go before the Work Release Board.

The work release decision usually takes only a few days.

Jail

When you serve time for misdemeanors you are sent to a county jail or workhouse. The maximum sentence for a misdemeanor is 11 months and 29 days (11/29). A charge will carry a range of sentences with it. If you are incarcerated in jail for 11/29 at 75%, you serve that portion of the sentence. If you have done a more serious crime you will serve time in jail until you go to prison. The time served in jail counts toward the prison sentence.

judge may make several conditions. You may be required to:

- Report regularly to the probation officer;
- Ask permission from the probation officer before changing address, job, or traveling out of state;
- Go to mental health, alcohol or drug treatment;
- Get a G.E.D.;
- Keep a full-time job;
- Pay back money to the victims (called "restitution"); and
- Not commit any more crimes.

People on probation must pay $35.00 per month, or an amount set by the judge, to the probation officer. If you do not obey the rules of probation, a hearing will be held, the judge may "revoke" the probation and send you to jail to serve the whole sentence.

WHAT TO DO to prepare for probation, community corrections and parole:

- Talk to your defense attorney about getting sentenced to probation with a requirement of treatment.
- Make contact with the probation or parole officer before there is a problem. Probation and parole officers have high caseloads. Most do not know much about mental illness.
    - Call the probation office as often as you are supposed to until your probation sentence is complete. Leave a message if you do not reach your probation officer,
    - Introduce the probation officer to your family member, friend or advocate,
    - By making contact early:
        - The officer will be more likely to call them if there seems to be a problem;
        - The officer will listen to them if they need to advocate for you later.
    - Provide information on your mental illness and things that are hard for you to do because of mental illness (like remember appointments, get places on the bus, etc.)
    - Give information about your treatment providers, tell the officer what the programs offer, and sign authorization to release information forms, giving your treatment providers permission to talk with the officer.
    - Ask your family or friend to tell the officer what they can and cannot do for you. That way the officer will not call them for something they can't help with.
    - DO NOT USE ALCOHOL OR DRUGS. You will be drug-tested on a regular basis.

How do you get a lawyer if you don't have money?

Tennessee has two kinds of court-appointed lawyers, public defenders and court appointed counsel.

- Public defender: Works for people who cannot afford to pay.
- Appointed counsel: A lawyer in private practice who is assigned by the court to defend a person who cannot afford to pay. Some of these lawyers may spend all of their time doing criminal defense, or they may only take a few cases.

Caution: The lawyer is defending your legal rights. Most lawyers who defend poor people are very busy. You need to convince the attorney that this is a special case and to help put together a plan for keeping you stable and out of trouble. Sometimes you will find it difficult to work with the defense attorney because he or she:

- May not return your phone calls;
- May not appear to be listening to what you have to say;
- May interrupt you and seem rude;
- May not agree with what you think is best.

But your defense attorney does act in your best interest and is on your side.

Can you fire a free lawyer?

Yes and no. If you want a new lawyer, you can ask the judge to "relieve" the lawyer and appoint a different one. Keep in mind that this will take some time and prolong your case. To get a different lawyer you would have to:

- Tell the current lawyer you want a change of attorney and the reasons why.
- The lawyer must make the request of the judge at the next court date.
- Sometimes the judge will grant the request and sometimes not. The judge may think:
    - The lawyer is doing a good job; or
    - The case has gone too far to switch; or
    - You have made this request before and are not being reasonable.

Appearing in Court

Any court appearance can be confusing. If you do not appear, the judge may issue a warrant for your arrest. Then you will go to jail. If you do not behave well, you may be found in contempt of court, which may add another charge and more jail time.

WHAT TO DO when you appear in court:

- Ask for help understanding what is going on and how to behave.
- You must:
  - Appear in court at the correct date and time unless the defense attorney says not to;
  - Allow extra time to find the right building and court room;
  - Arrive early in case the lawyer needs to discuss the case;
  - If you can't appear for good reason or if late, tell your attorney and the bondsman;
  - Only speak in court if asked by the defense attorney or the judge;
  - Only answer the questions that are asked; no more, no less;
  - Address the judge as "your honor";
  - Speak politely, not in anger; and
  - Dress neatly and appropriately, no revealing or sloppy clothes. Make sure your pants are pulled up and your shirt covers your belly.

Legal Process for Misdemeanors: First Court Hearing

The misdemeanor process takes place in the General Sessions Court. You must go before a judge within 72 hours of arrest. At this first hearing the judge tells you what charges have been brought against you and makes a decision as to whether you can be released on bond or must go to jail. The judge decides whether there is probable cause to believe that the crime has been committed and that you committed the crime.

- If the judge decides there is not enough probable cause, the case will be dismissed;
- If the judge decides there is probable cause, a trial will be set in General Sessions Court.

Trial for Misdemeanor Charges

Most misdemeanor trials are "bench trials' where decisions are made by a judge and there is no jury. In some limited cases there may be a jury trial for a misdemeanor charge. You will need a lawyer. If you cannot afford a lawyer the court will appoint a defense attorney. You may be asked to testify (speak in court) by the defense attorney.
This is how a bench trial usually goes:

- The charges are read;
- The defense attorney responds to the charges and enters a plea;
- The district attorney gives an account of the crime and the events surrounding it;
- The prosecuting attorney (usually the district attorney or 'DA')

Sentences

Pre-Sentencing Investigation

The judge will order a pre-sentence investigation (PSI) if:

- You are to be sentenced because of a guilty or nolo contendere plea; or
- You are convicted (found guilty) at a trial.

A probation officer will gather information. The judge will decide what sentence to give you. The PSI report will include:

- A statement of the facts of the case;
- Your criminal record;
- Family background;
- Employment history;
- Maybe a mental health assessment; and
- Perhaps a statement from you.

Sentencing Hearing

This is a court hearing where the judge will look at the PSI report and hear other testimony. You and defense attorney should prepare carefully for the sentencing hearing by discussing what you will say and who else should testify on your behalf.

A sentence is what the judge requires you to do to make up for the crime. Sentences can mean:

- Paying a fine;
- Serving time on probation or community corrections;
- Serving time in a jail or prison; or
- Serving a "split sentence", some time behind bars and some on probation.

WHAT TO DO to prepare for the sentencing hearing:

- Tell the defense attorney about:
  - Treatment or training programs you have completed;
  - People who can vouch for you;
  - People who depend on you (sick or aging parents, dependent children, etc.).
- *Follow the advice of your attorney*.

Probation

Probation is a sentence. It is privilege, not a right. You must live by certain rules to stay out of jail. Time served on probation starts when you are released from jail. When you are placed on probation, the

- Diagnosis;
- Medications and other treatment;
- Whether you were stable when taking medications as prescribed;
- Reasons why you might not be in treatment any more.
  The defense attorney can ask the court to require you to comply with treatment as a condition of probation. If you are sentenced to jail or prison, the court can give treatment information to the correctional medical staff.

- If you have mental health treatment providers but you are not taking your medications or not going to treatment, and if you break the law, the court can order you to comply with treatment as a condition of probation or pre-trial release.
- If you seem to be at risk of harming yourself or others because of your mental illness, you may be evaluated for involuntary commitment by the crisis team serving the area. To be committed to a hospital against your will, two mental health professionals have to certify that:
  - You have a mental illness; and
  - You pose immediate, substantial likelihood of serious harm to yourself or others; and
  - You need care, training and/or treatment; and
  - All less drastic placements will not meet your needs.
- Most people are not committed for a long period of time, but you may get stabilized on medications and connected to services when you are released.

WHAT TO DO to get mental health treatment:

- If you are in jail, write a letter or do a sick call to ask for a mental health evaluation;
- Ask for a criminal justice/ mental health liaison. Not all jails have one. If there is a liaison in your jail, that person will be able to help you get assessment, treatment and will connect you to supports and services when you are released;
- Give the defense lawyer contact information for your mental health providers;
- Ask your mental health provider to send the agency's release form to your defense lawyer;
- If you are released on bond, ask your lawyer to set up an assessment at the mental health center if you are not in treatment.
- If you are released on bond, contact the Department of Human Services (DHS) and sign up for TennCare. It will be discontinued if you go to jail or prison.

presents evidence that you should be found guilty;
- The defense attorney presents evidence that the defendant should be found not guilty;
- Each attorney responds to the other's points;
- The judge makes a decision.

The judge may decide the case. This is called a "disposition." You may be found:

- Not guilty, acquitted of the crime and the case is closed;
- Guilty, and given a sentence such as:
  - A fine;
  - Community service;
  - Jail time;
  - Probation;
  - A combination of the above.

Legal Process for Felonies: First Court Hearing

As with misdemeanors, you must go before a judge within 72 hours of arrest. At the first hearing, the judge tells you what your charges are and makes a decision as to whether you can be released on bond or must go to jail. You do not testify at this hearing.

Preliminary Hearing

At this hearing, the judge will look at whether the case should be settled, reduce the bond, reduced to a misdemeanor or if the case should keep going to the next level. You will not be allowed to testify at the preliminary hearing. In serious cases, the state will demand a preliminary hearing and there will not be a chance to settle the case or get the bond reduced. In that case, the only things the judge will look at are if there is "probable cause" to believe:

- That the crime was committed; and
- That you committed the crime.

Decisions about "probable cause" can be made at several points in the legal process, but each time there must be stronger evidence for the process to continue. If the judge decides there is probable cause, the case will be sent, or "bound over" to the Grand Jury.
Possible next steps include:

- Plea bargain (or plea agreement): case settled. The district attorney agrees to reduce the charge, dismiss some or all charges, or recommend a sentence in return for a plea of guilty or nolo contendere (no contest);
- Case dismissed: This may or may not mean that the case is over. Cases can be dismissed for a number of reasons:
  - People who were told to come did not appear to testify. The

case may stop at this point. Otherwise there may be a "continuance" if the judge deems that the attorneys can get the people to come at a later date.
  - There is not enough evidence. The judge may decide that there isn't enough information to show that you committed the crime. The case may stop when it is dismissed or return to the grand jury when the prosecutors get more evidence.
  - The charges are "retired". This means that the charge will not be actively pursued, but it will be brought up again if you commit a new crime;

There are factors that make the charge more complicated. Two examples:

- A person who is mentally ill and a danger to self/others may be sent for involuntary commitment to a psychiatric hospital. After you are stabilized, you will return to court unless the charges have been dropped;
- The court may order an evaluation for competence to stand trial or for use of the "not guilty by reason of insanity (NGRI)" defense. At that point, a "forensic evaluation" will be court-ordered.
- Apart from NGRI cases, a forensic evaluation may be ordered if the attorney or the judge feel it is necessary.

At the end of the preliminary hearing, several things may happen:

- The judge may decide there is not enough "probable cause," either not enough evidence that a crime was committed or that you were the one that committed the crime. The charges will be dismissed.
- The case may be "bound over to the Grand Jury".
- There may be an "information agreement", a written contract between you and the district attorney that you will plead guilty to the charge in criminal court, and the DA will offer an agreed-on sentence. If there is an information agreement, the case will skip the Grand Jury and will go directly to Criminal or Circuit Court.

Bound Over to Grand Jury

If the case is "bound over" you may:

- Be released, either with or without bail and told to come back for another court hearing;
  - You must come back for the next court date or be sent back to jail. If that happens, the court will be more strict with the rest of the case;
- Go to, or stay in jail, waiting for the next hearing.

There are several things to think about:

Evaluations for People with Mental Illness

Forensic Evaluation

Forensic evaluation is not a short-cut to mental health treatment. It is the best-known type of court-ordered evaluation for mental illness. Judges and lawyers often go for a forensic evaluation when another type would be better. There are a few good reasons to order a forensic evaluation. They are as follows:

- To find out if your mental illness prevents you from being "competent to stand trial." The legal term, "competent", does not mean that you are making good decisions about your life. You are considered "competent to stand trial" if you:
  - Have the ability to cooperate with your attorney in you own defense;
  - Have an awareness and understanding of the court proceedings; and
  - Understand the consequences of the proceedings.
- To find out if you were "Not Guilty by Reason of Insanity" (NGRI). NGRI is difficult to prove. Two things have to be true:
  - You must be found to have a severe mental disease or defect at the time of the crime, AND
  - Because of severe mental disease or defect, you did not appreciate the "nature and wrongfulness" of the crime;
- If you are found Not Guilty By Reason of Insanity (NGRI) you will be evaluated for treatment in a state psychiatric institute for 60-90 days. After that time in the hospital, you may be:
  - Committed indefinitely to a state hospital;
  - Released to seek outpatient commitment; or
  - Released on "mandatory outpatient treatment" (MOT). That means you must comply with treatment or risk being arrested and sent back to jail.

There is a long waiting list for forensic evaluations, which means that you sit in jail until your turn comes up. Even then, it can take 30 – 90 days for the evaluation to be completed after it has started. Bottom line: forensic evaluation is only good for its intended purpose.

Mental Health Treatment

If the judge or the lawyers want to find out if you have a mental illness and get you into treatment, there are several things they can do:

- Get your written permission to allow the court to contact your mental health agency or psychiatrist. This written permission is called an "authorization to release information". With an authorization to release, the court can get information about:

The Jury Trial Process	What Is Happening	Court Action	Prosecutor Action	Defense Attorney Action
Jury Selection	A group of 12 people from the community are chosen to decide whether the defendant committed the crime.	Asks jurors about their ability to sit on a jury.	Asks questions. May strike someone from the jury.	Asks questions. May strike someone from the jury.
Reading of Indictment	The charges against the defendant are read by the court clerk			
Defendant Enters Plea	The defense attorney responds to the charges and enters a plea.			Responds to the charges with a plea of "not guilty"
Opening Statements	The prosecutor and the defense each tell their account of events		Makes a statement about what they can prove.	Makes a statement about what they can prove.
State's Proof	The prosecutor presents the state's case that the defendant should be found guilty.	Judge rules on defense objections	Puts on witnesses and presents evidence of guilt.	Cross-examines witnesses and objects to evidence
Motion for Acquittal	The defense attorney asks that the defendant be found not guilty because there is not enough evidence.	Judge rules on the motion and can acquit.		Asks that the defendant be acquitted.
Defense Proof	The defense attorney presents the reasons why the defendant should be found not guilty.	Judge rules on prosecutor objections	Cross-examines witnesses and objects to evidence	Puts on witnesses and presents evidence of innocence.
Prosecution's Rebuttal	The prosecutor gives reasons why the defense has not proven that the defendant is not guilty..		Puts on witnesses and presents evidence to rebut the defense proof.	Cross-examines witnesses and objects to evidence
Closing Argument	Each side says what they think they have proven during the trial.		Makes a statement of what was proven.	Makes a statement of what was proven.
Jury Instructions	All jurors must agree on whether the defendant is innocent or guilty. If even one disagrees, a mistrial is declared. Another trial is set.	Judge instructs jury to decide innocence or guilt.		
Deliberation	Jury meets privately to decide.			
Decision	Jury announces decision of not guilty, guilty or hung jury	Judge dismisses case, sets sentencing hearing or re-trial.	If the case is dismissed re-tried, will keep gathering evidence.	If defendant is convicted, can file an appeal to a higher court.

Appeals

Even after the judge has made a decision, it could be changed later if new information comes out or there were errors in your trial. If that happens, the defense attorney files a motion to appeal the decision and another hearing or trial is set. An appeal will only help if the judge did not follow the law or you were prevented from exercising your rights. Because the Court of Appeal just reviews existing evidence, you will not appear. Appeals can be filed on a number of things during the legal process, including:

- To challenge a conviction of guilty;
- To change or shorten a sentence;
- To get a new trial.

- It takes months or even years for a case to get through Circuit or Criminal Court;
- Meanwhile you may sit in jail;
- In jail you may not get treatment or the right medications;
- You may lose your housing or job during that time;
- If you are found guilty, the charge will go on the criminal record anyway;
- If you do not have a public defender the whole process will cost a lot of money.

WHAT TO DO when waiting for your case to go to the Grand Jury:

- Think about what might happen if the case goes to trial:
  - What might your sentence be if you are found guilty?
  - What would the long-term effect be on you and your family?
- Write down questions for the lawyer.
- If you are out on bond, **DO NOT BREAK THE LAW**. If you do, you will get arrested, you will get extra charges and the court will not be easy on you.
  - Do not drive without a license;
  - Do not get drunk or stoned;
  - Do not break any other law.

Grand Jury

This is a group of thirteen people that are chosen by the government to look at all of the current criminal cases. The Grand Jury only decides "probable cause":

- Was the crime committed?
- Is it likely that you committed the crime?

Three ways cases can get to the Grand Jury are:

- Information agreement;
- Bound over from a preliminary hearing; or
- Sealed indictment.

The grand jury just looks at the evidence presented by the prosecution. The only witnesses would be the police or witnesses for the prosecution. Neither you nor your defense lawyer appears. The case can only go to Criminal or Circuit Court after the Grand Jury returns a decision, which can take a long time. The decision may be:

- No true bill: There is not enough evidence for the case to go forward; or
- Indictment or true bill: There is probable cause to believe you are guilty.

Criminal or Circuit Court

Criminal or Circuit Court is where felonies are tried. Urban areas have a Criminal Court while in most other areas criminal cases are heard in Circuit Court. If the case goes to Criminal or Circuit Court, much of what happened in General Sessions Court is repeated.

Sealed Indictment

If you are charged with a serious crime and there is a reason to take the case straight to Criminal or Circuit Court, the charge may be placed in a "sealed indictment". In those cases all of the evidence is gathered and the case goes to the Grand Jury with no preliminary hearing. Sealed indictments are frequently used for drug cases.

Direct Presentment

Direct presentment is when the prosecutor goes directly to the Grand Jury through a sealed indictment. If a General Sessions judge dismisses a case, at the first hearing, the prosecutor may seek a direct presentment.

Arraignment

If you are indicted by the Grand Jury, you must appear before the Criminal or Circuit Court to hear the charges. At that point a public defender or court appointed attorney is assigned if you do not already have a lawyer.

Preparing the Case

It will take several weeks for the case to get from the arraignment to the settlement docket.

During that time, the defense attorney may do some of the following:

- Obtain a copy of the indictment from the court;
- Enter a plea of "not guilty" for you;
- File a "discovery motion" to get witness lists, statements and other information from the court;
- Get information about the case from you, file motions to get court evidence and talk to witnesses. The lawyer needs to know as much as possible about the case to prepare a good defense. Extra time spent getting the case ready may save you years in jail.
- Talk with you about:
  - The charges;
  - All possible defenses;
  - Strengths and weaknesses of the case;
  - What you will testify at the trial, or whether you will testify at all;
  - Chances of success if the case goes to trial;

  - Possible punishments for the crime with which you are charged.
- Talk to you and the district attorney to see if you can agree on a settlement.

WHAT TO DO to prepare for trial:

- Be completely honest with the defense attorney;
- Do not talk to anyone else about the case. Anything you say may be used against you in court;
- Try to do as your defense counsel tells you, even if it doesn't make sense at the time; and
- Do not be afraid to ask questions of your attorney. You have a right to know.

Settlement Docket or Settlement Day (only in some counties)

This is a court appearance where the defense and the prosecuting attorney try to settle the case to keep it from going to trial. You have a final chance to enter a plea agreement (or plea bargain), which is always a guilty plea, but carries a lighter sentence. For example, the DA may offer to recommend some time behind bars and some on parole. The defense attorney will have worked out the plea agreement with you and the DA before your case gets to the settlement docket. The defense lawyer can offer advice, but the decision of whether to accept a plea bargain must be made by you. If no settlement is reached, the case goes to trial.

Continuance

If the case is not ready for trial, it may get a "continuance" if:

- More evidence needs to be gathered; or
- People who are needed are not there, such as the victim or victim's family.

Once it is ready, the case will either go back to the settlement docket or on to trial.

Trial

The diagram on the next page shows the jury trial process. Your attorney will talk with you about:

- Whether you will testify. You can, but do not have to speak in your own defense at the trial;
- What questions the DA and the defense attorney might ask and how to answer;
- Which witnesses to call and what evidence to present.

You and your attorney must be ready for trial on the set date even though it might not be tried on that date. The defense may not know until court starts that the case will not be tried that day.