CRIMINAL
CASE
PROCEDURES

AN EXPLANATION OF THE JUVENILE CRIMINAL JUSTICE SYSTEM FOR VICTIMS AND WITNESSES OF CRIME

FROM THE OFFICE OF:
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INTRODUCTION

This pamphlet is intended to explain what happens in juvenile criminal cases. As a crime victim or witness to a crime, remember that you have rights and that we in the Prosecuting Attorney's Office want to help you in any possible way.

STEP 1 - INVESTIGATION

After a crime is committed, the police will investigate. If they find a suspect, they will give the case to the Prosecuting Attorney who determines if the suspect can be charged with a crime. If a charge is filed, the suspect is either arrested or summoned to appear in court.

STEP 2 - FIRST APPEARANCE HEARING

If the suspect has been arrested and is in detention, a first appearance hearing will be held on the next court date. The judge informs the juvenile of his or her rights under the law. If the juvenile does not have an attorney, the judge will appoint one. The judge will then determine if the suspect should be held in detention or released until s/he can be brought to trial.

Most suspects will be released on their personal recognizance (called P.R.) with certain conditions, i.e., their promise to appear in court when ordered to do so. The juvenile will be held in detention for his/her court hearing if there is sufficient reason to do so.

No Contact Order

If the respondent (juvenile) is released from detention, the judge may order the respondent not to have any contact with the victim or witness.

If you want to make sure there is a no contact order in your case, please call our office.

Violation of a no contact order is a criminal offense. If you know of a violation of a no contact order, please call law enforcement.

STEP 3 - ARRAIGNMENT

When criminal charges are filed against a juvenile who has not been arrested by the police, a notice is mailed to the respondent and his or her parents informing them when they are to appear in court for arraignment.

At the arraignment, the respondent is formally advised of the charges against him or her and pleads guilty or not guilty. If the respondent pleads guilty, the judge will set a date for sentencing. If the respondent pleads not guilty, an omnibus hearing date will be set. A trial date may also be set.

STEP 4 - PRETRIAL HEARINGS

After arraignment are pretrial hearings. The most common are omnibus and 3.5 hearings. Ordinarily, you do not have to attend these hearings.

Omnibus Hearing

At the omnibus hearing, both the defense lawyer and prosecutor are required to exchange witness lists and tell each other what evidence they have. It is also used to take care of any legal matters before trial.

3.5 and 3.6 hearings

A 3.5 hearing is to decide if the prosecutor can use any statements made by the respondent. The prosecutor must prove that the respondent was advised of his/her rights and that the statement was made voluntarily.

A 3.6 hearing, also known as a suppression hearing, is to decide if the prosecutor can use certain evidence during trial.

Many times a 3.5 hearing is held at time of trial while 3.6 are separate hearings held previous to trial and may preclude trial, depending on their outcome.

Change of Plea Hearing

The respondent may plead guilty at any pretrial hearings. The respondent may ask to plead guilty to a lesser charge. However, it is our policy to "plea bargain" or reduce charges only in rare situations such as the discovery of new evidence or where facts and circumstances warrant this. Your opinion as a victim or witness is valued regarding this.

STEP 5 - TRIAL

If a trial is scheduled, you will receive a subpoena in the mail informing you when and where you will need to appear. The deputy prosecutor may arrange for an interview prior to trial to explain the

procedure, discuss your testimony, and answer any questions you may have. Of course, if you have any questions, please call the victim/witness coordinator or deputy prosecutor.

You may also be contacted by the respondent's attorney before the trial. You are free to discuss the case with him or her. You have the right to have a prosecutor or your own lawyer with you when you talk to the respondent's lawyer.

We will try to schedule your testimony so that you will not have to wait to testify. However, the schedule of a trial is unpredictable so there may be a wait. If you have to wait, you can do so outside in the hallway and a victim/witness advocate can sit with you.

Juvenile offenders are not tried by jury. The trial is heard by a Juvenile Court Commissioner or Superior Court Judge.

How Does a Witness Testify?

When your name is called, you will be asked to step forward, take an oath to tell the truth, and be seated on the witness stand.

The deputy prosecutor will first ask you questions concerning any relevant knowledge you possess about the case. This is called direct examination.

Following the prosecutor's questions, the defense attorney will ask you questions. You should remain seated until excused from the stand by the judge. The deputy prosecutor will let you know if you must stay in court or if you may be excused to leave.

Witnesses may watch the proceeding unless excluded by the judge. Witnesses should not discuss their testimony amongst themselves.

If you are called as a witness, some important points to remember are:

1. **The oath**: Upon taking the witness stand, you will be asked to raise your right hand and an oath of truth will be administered. You will have the choice of either swearing to or affirming this oath.
2. **Be prepared:** Do not try to memorize what you are going to say, but refresh your memory as to your testimony. Tell the truth and be fair.

Questions involving distance and time are very difficult to answer. If you do make an estimate, be sure everyone knows you are estimating.

3. **Think before you speak:** Make sure you understand the question. Ask to have it repeated if necessary. Give your answer thoughtful consideration. If either attorney objects to the question, do not answer until the judge has ruled on the objection.
4. **Speak clearly and distinctly:** Speak clearly and loud enough so the judge and others involved in the trial can easily hear you.
5. **Remain calm:** Keep calm and be courteous, even if the lawyer questioning you appears discourteous. A witness who loses his or her temper often loses credibility.
6. **Be short and to the point:** Answer the questions directly and simply. Do not volunteer information not actually asked for. If asked, a witness must tell of any previous criminal convictions he or she may have had.
7. **Be yourself:** You do not have to speak in "legal" terms. Speak as if you are talking to a friend. You will be more convincing if you appear relaxed and are yourself.
8. **Witness fees:** You are entitled to witness fees and mileage reimbursement. After you testify, the victim/witness advocate will have you sign the witness ledger. If, for some reason, you appear for court and do not testify, please contact the deputy prosecutor or victim/witness coordinator to sign the witness ledger before leaving. Witness fees will be mailed to you by the Benton County Superior Court Clerk within approximately six weeks from the date of trial.

The respondent in a criminal trial is not **required** to testify or present evidence of any kind or even to offer a defense. Under law, the prosecution must prove every element of the crime beyond a reasonable doubt.

In establishing guilt beyond a reasonable doubt, the prosecution may use only legally admissible evidence. This prevents the use of hearsay testimony or evidence that was improperly obtained. The difference between "knowing" something and

"proving" something is one of the most frustrating parts of the criminal justice system. We may know that a person is guilty of a crime, but unless we can prove it by legally admissible evidence, the respondent will be found not guilty.

STEP 6 - DISPOSITION (SENTENCING)

One of the rights victims have is the opportunity to address the Court expressing their feelings regarding the crime. This can be done either by letter or by attending the disposition in person. You are not required to do either. Please let us know if you would like to address the Court and we will arrange for that.

Before the judge orders disposition on a respondent who has pled guilty or been found guilty, he will take into consideration the recommendation of the prosecuting attorney and defense attorney. There may also be a recommendation by a Juvenile Court Probation Counselor.

The judge has limited discretion in regard to disposition and is required to sentence the respondent within a "standard range" set out by the legislature. This is based on the seriousness of the crime and the respondent's criminal record. In order to sentence below or above that range, the judge must list in writing the mitigating or aggravating reasons that justify a sentence outside the "standard range."

Following the disposition you will receive a copy of the disposition order in the mail.

DEFERRED DISPOSITION

The respondent may ask for a deferred disposition. A respondent is eligible for deferred disposition except in the following situations: the charge is a sex or violent offense, the juvenile's criminal history includes any felony, the juvenile has had a prior deferred disposition, or the juvenile has had more than two adjudications.

A deferred disposition requires no trial. The Court will impose a sentence within the standard range for the crime except that no detention time will typically be ordered. The respondent must then comply with all the terms of community supervision the Court imposes or the judge may revoke the deferred disposition and may impose any sen-

tence authorized by law. If the conditions are met, the case will be dismissed after the period set forth in the deferred disposition, usually one year. Payment of restitution shall also be a condition of the community supervision.

The Court will schedule a separate hearing to decide whether deferred disposition is appropriate for the case. As a victim, you have the right to address the Court about whether deferred disposition should be granted. This can be done by letter and/or attending the hearing in person. You are not required to do either. You may also request restitution at the hearing or by providing a claim in writing prior to the hearing.

RESTITUTION

If the juvenile is found guilty of the crime, the Court may order the juvenile to pay restitution to you for any damage or loss incurred as a result of the crime. We will send you a restitution estimate form. After you fill out the form, please send it to our office. We will then ask that the Court order that amount as restitution. If the juvenile objects, a restitution hearing may be held to determine the amount of restitution.

Once restitution has been ordered by the judge, the case is then given to the juvenile's probation officer who monitors the restitution payments. Payments are collected and disbursed by the Superior Court Clerk. Juvenile Court has jurisdiction for collection purposes until such restitution is paid, or for a period of ten years from the date of the restitution order, not to exceed the respondent's twenty-eighth birthday.

Collecting restitution can be a very difficult and long process. As you can imagine, many juveniles who commit crimes are reluctant to pay restitution. Many times we have to bring juveniles back to court and order detention for failure to pay restitution and other fines and fees. However, our office will not know if these monies are not being paid unless the Clerk or Juvenile Court tells us. If you do not receive restitution payments, please call Juvenile Court. The good news is that we collect about $30,000 in restitution each year.

The parents of a juvenile may be held civilly liable for restitution up to $5,000.00. This may be pursued through small claims court or a private

attorney. This is a civil action initiated by you and is separate from the criminal matter. In Benton County the small claims are filed through District Court. You may contact Benton County District Court directly for claim information.

AFTERWARD

Property held by the police as evidence in your case will be released to you as soon as possible, however, it varies from case to case. Where we can, we photograph the articles involved and use the pictures at the trial. In these circumstances, you can pick up your property at once. Other times, however, it may be necessary to hold on to the evidence through resolution of the case and possibly the appeal process. If you have questions regarding the release of your property, please contact our office. Be assured that if there is any way to speed up the return of your property without jeopardizing the prosecution, we will do it.

TIME SCHEDULE

Every case is different, and no absolute time schedule fits. All parties work for a speedy trial, and the trial will generally be held within 60 days of the date of arraignment. Sentencing is normally held within 21 days after a finding of guilt by trial or by plea.

AN IMPORTANT SERVICE

The victim/witness department of the Prosecutor's Office will make every effort to keep you informed of the status of the case in which you are a victim or a witness. We will send you the appropriate restitution claim forms as well as inform you of court dates. We will accompany you to court if you wish and be available to answer your questions. Please feel free to call our office at 735-3591 if you have any questions.

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