

# Materials Provided by Scott A. Hamblin

## **BASIC CRIMINAL PROCEDURE**

Criminal procedure begins with an understanding of the applicable constitutional provisions, court rules and statutes which create the framework in which we operate as practitioners. Any lawyer considering representing an individual in any criminal case or traffic matter should be familiar with the followings rules and statutes (or at least know where to look).

Missouri Court Rules, Rules of Criminal Procedure, Rules 19 through 36.  
 Missouri Court Rules, Rule 37 & 38, Ordinance Violations and Violations Bureaus  
 Chapters 540 through 552, RSMo (Criminal procedure)  
 Chapter 556 through 600, RSMo (Crime and Punishment)  
 Local Court Rules

U.S. Constitutional Amendment	Missouri Constitution, Article I	Subject
4 & 14	§15	Search & Seizure
5 & 14	§10	Due Process
5 & 14	§2	Equal Protection
5 & 14	§5	Self-Incrimination
6 & 14	§18a	Counsel Confrontation Speedy trial Impartial Jury
7 & 14	§21	Cruel/Unusual Punishment

Always read the rules and statutes (the Legislature has a tendency to revise statutes). Most statutory changes are effective August 28 of the year following the end of the legislative session, unless enacted pursuant to an emergency clause.

### *Classification of Offenses*

Criminal offenses are classified as: (1) infractions, (2) misdemeanors, and (3) felonies. Identifying the classification of the offense is important for every practitioner regardless of experience. The classification will generally dictate the risk for the client, the amount of work involved for the lawyer, and consequently, determining the fee and expense associated in handling a specific case.

Classification of Offense	Category of Offense	Imprisonment	Fine
Infraction	N/A	No imprisonment	Up to \$200
Misdemeanor	Class A misdemeanors Class B misdemeanors Class C misdemeanors	Up to one year; Up to six months; Up to fifteen days;	Up to \$1,000 Up to \$500 Up to \$300
Felony	Class A felonies	Minimum ten years and not to	N/A

	Class B felonies	exceed thirty years, or life; Minimum five years and not to exceed fifteen years;	N/A
	Class C felonies	Up to seven years;	Up to \$5,000
	Class D felonies	Up to four years.	Up to \$5,000

See §§557.016, 558.011, 560.011, RSMo.

***Arrest***

A prospective client is calling for legal assistance because he or she has been arrested. An arrest by a law enforcement officer usually signals the beginning of the criminal case. A person may have been arrested because of an outstanding arrest warrant or the law because a law enforcement officer had probable cause to effectuate the arrest. Sometimes, law enforcement may issue a citation or ticket summoning a person to appear in court without formally placing an individual under arrest. Missouri law also provides for a citizens arrest, although these circumstances seem rare.

Arrest warrants are generally issued either because a person was indicted by a grand jury, or a person initially failed to appear in court in response to a summons.

The more common method of arrest is arrest by a law enforcement officer based upon probable cause. Probable cause exists when a law enforcement officer observes or has reasonable grounds to believe that a person has violated a law of this state, including an infraction or ordinance. §544.216, RSMo. An arrest does not occur until “actual restraint of the person is made or a person submits to the custody of the officer.” §544.180, RSMo. A person is seized with the meaning of the Fourth Amendment if a reasonable person would have believed that he or she was not free to leave.” *United States v. Mendenhall*, 466 U.S. 544 (1980). The officer must inform the defendant by what authority he acts, and show the warrant if required.” *Id.*

*Investigatory Stop/Detention*

A person is not under arrest merely because he or she is detained by the police. A consensual or investigatory encounter by law enforcement is not an arrest. Circumstances may exist where an officer does not have probable cause to make an arrest, but may have reasonable suspicion to believe a person may be engaged in criminal activity. An officer may detain a person to investigate criminal activity, and the officer has the right to make inquires as to the person’s activities. *State v. Rankin*, 477 S.W.2d 72 (Mo. 1972). Reasonable suspicion exists when facts and circumstances, in light of the officer’s training and/or experience, lead the officer to reasonably suspect some sort of criminal activity. *U.S. v. Cortez*, 449 U.S. 411 (1981).

Missouri law allows law enforcement officers to conduct a “pat down” search of individuals for “officer safety” to search for weapons. *Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Reynolds*, 753 S.W.2d 1 (Mo. App. E.D. 1988) Often times, law enforcement will use this “tool” as a means to detect other items which law enforcement claim to have

knowledge are contraband based upon their training and experience, such as pipes, bong, plastic baggies, etc. In connection with traffic stops, law enforcement officers may ask individuals to step from the vehicle, and may also search the compartment of an individual's car. *U.S. v. Ross*, 456 U.S. 798 (1982);

The principal difference between a detention/stop and an arrest are the factual circumstances of which the officer is aware. Bare suspicion or intuition is not enough for an arrest. Sufficient facts must exist for an officer to believe that a person has committed or is committing an offense before the officer may arrest the person.

### Summons

Law enforcement will sometimes issue a summons to an individual. A summons is a written request for a person to appear in court on a certain date. A summons shall be issued for misdemeanor, infraction, ordinance and traffic violations according to the Missouri Court Rules. A court may issue an arrest warrant in those situations where the court determines that a person will not appear on the summons. Rules 21.03 and 37.43. A summons may also be issued in felony cases except where the corporation is a defendant which then requires the issuance of a summons. Rule 22.03.

### Citizen's Arrest

Missouri law also allows a private person to make an arrest. A person can make an arrest when a felony was committed and there exists reasonable grounds to believe the suspect committed the offense. However, the use of force a person may use is limited by statute. §563.051, RSMo.

### ***Post Arrest Rights***

Too many individuals fail to exercise their constitutional rights upon arrest. Law enforcement will generally do everything in their power to secure a confession following arrest, or conduct searches following an arrest. In many cases, law enforcement would have a much weaker case, but for the confessions or subtle admissions of our client. Generally, nothing good comes from allowing a client to speak to law enforcement.

One of the chief complaints of clients is that law enforcement never advised them of their rights. Remember, law enforcement officers are only required to advise suspects of their rights under the decision of *Miranda v. Arizona*, 384 U.S. 436 (1966) when the client is in custody and subject to interrogation.

### ***Types of Charging Documents***

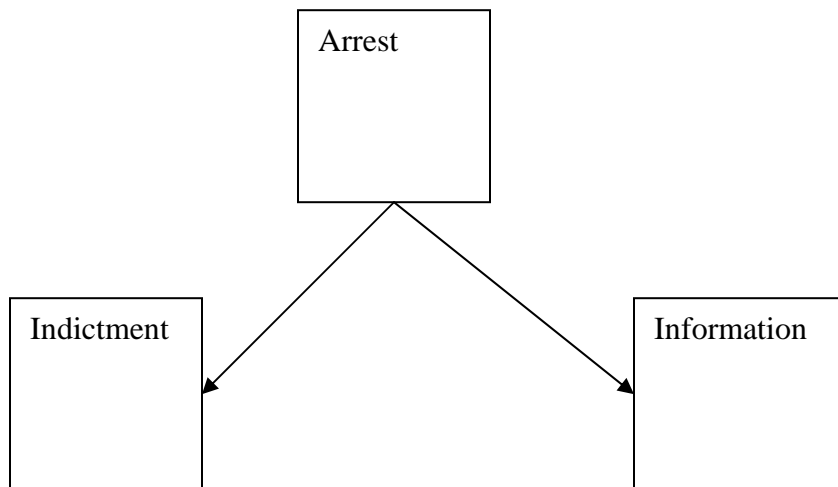
The prosecuting attorney's office will often times initiate a criminal charge by filing an information or an indictment.

### *Information*

An information charges the commission of a misdemeanor or a felony based upon the prosecutor's information and belief. The information is supported by a statement of probable cause. A probable cause statement is prepared by information obtained by law enforcement. You always want to obtain a copy of not only the charging document, but the probable cause statement. The probable cause statement will give the first hint at law enforcements basis for arrest because discovery is generally not obtainable from the prosecutor until after the entry of appearance has been filed.

### *Indictment*

An Indictment is another type of charging document returned by grand juries. Grand juries are created upon order of the presiding judge of the circuit court. Prospective grand jurors are compiled from a list of names. At least twelve people are selected to serve on the grand jury. The duty of the grand jury is to make inquiry and return indictments for all classifications of criminal offenses. At least nine jurors must vote together to return a "true bill." If less than nine agree than an indictment is not a true bill.



### ***Jurisdiction in Criminal Cases***

#### *Associate Circuit Courts*

Associate circuit judges may hear and determine all misdemeanor and infraction cases. §541.015, RSMo

#### *Circuit Courts*

Circuit courts have original jurisdiction in all cases involving felonies, misdemeanors, and infractions. §541.020, RSMo

### *Venue*

Offenses shall be heard in the county where the offense occurred, or if the offense occurred in more than one county, then in any county where an element of the offense occurred. §541.033 RSMo

### ***Initial Client Meeting***

Lawyers have different methods for handling phone calls from prospective criminal clients. I prefer to have my legal assistant take down some basis information such as the prospective client's name, contact number, address, the type of offense for which the person was arrested, and the person's court date. I prefer to meet with my clients in person at the office. Other attorneys screen the clients with which they meet by phone rather than speaking with them in person. Every situation is going to be a little different and the circumstances will sometime dictate how the initial phone call is handled, for example:

A prospective client is calling to speak to the lawyer because detectives have been calling to schedule an appointment to meet with the client. The first set of questions should include whether defendant has spoken to the detective, and what has been said. Also, from where is the prospective client calling? Is the client at home, a friend's house or at the police station. You may wish to advise the client of his right to remain silent. You may wish to advise the client that he has a right to refuse to answer any questions without the presence of a lawyer. It is imperative to get the client into the office as soon as possible.

The purpose of the initial meeting is to learn as much about the circumstances of arrest as possible.

**PRACTICE TIP:** Let your client do most of the talking. This is your first opportunity to learn as much as possible about the circumstances of the case.

This initial meeting will also give you an opportunity to begin to identify issues in the case. Are you dealing with a misdemeanor or felony? Are there any potential constitutional violations? Are there any witnesses, and if so, please make sure to obtain, names addresses, and phone numbers.

### ***Fee Agreements***

I always suggest a written fee agreement once the decision has been made to accept representation in a case. The purpose of the fee agreement is eliminate confusion and misunderstandings. My fee agreements typically outline the scope of my

representation, i.e. representation for the misdemeanor offense of domestic assault 3<sup>rd</sup> degree pending in the Circuit Court of Cole County, Missouri. My fee agreements also set out my fee, address issues of expenses, and always give me a way to withdraw from the case.

## **ENTERING YOUR APPEARANCE**

Lawyers may enter an appearance by filing a written pleading known as an “Entry of Appearance.” Some courts will also allow lawyers to enter an appearance orally provided a written entry of appearance is subsequently filed with the court. The significance of the entry of appearance is that entry provides notice to the court and prosecutor’s office that you are entering as the attorney of record on behalf of your client. Always check the local court rule before filing the entry of appearance. Some local court rules may allow the filing of an entry of appearance, waiver of arraignment and plea of not guilty without the necessity of a court appearance. Saving a trip to the courthouse is helpful if you have multiple court appearances in different courts at the same time, or if this is the only case for which you must appear in court.

**PRATICE TIP:** Some judges may not allow you to withdraw as counsel after filing your entry of appearance depending on the circumstances. Make sure you understand the nature of the case for which you have entered your appearance, and make sure you obtain enough money to satisfy the scope of your representation.