

The Criminal Justice Process

A. Initiation of a case

A criminal case may be initiated in one of four ways: warrantless arrest by police officer followed by submission of a statement of probable cause filed in District Court; application for statement of charges submitted by either a police officer or a private citizen to a District Court commissioner; charging document filed by the State's Attorney (limited to offenses within the jurisdiction of the District Court); and indictment by the grand jury. The overwhelming majority of criminal cases originate in the District Court, either on a statement of probable cause following warrantless arrest by a police officer, or on an application for statement of charges filed by a police officer or private citizen. Felony charges initially filed in District Court but outside the jurisdiction of that court for trial are generally transferred to Circuit Court upon indictment by the grand jury. Persons charged with criminal offenses through any of the procedures aforementioned are referred to as defendants.

B. Bail and arraignment

A defendant arrested without a warrant by police or on authority of a warrant issued by a District Court commissioner is entitled to be brought before a District Commissioner for bail determination within twenty-four hours of arrest. The primary purpose of bail is to ensure the defendant's appearance at trial. The amount of bail set by the commissioner will depend on the seriousness of the offense charged, defendant's prior criminal record if any, whether the defendant has ties to the community, and other factors deemed significant by the commissioner. Once bail has been set, the defendant can secure his release from confinement by posting bail at any time. Bail can generally be posted in one of three ways: by surety bond issued by a bail bondsman, by property bond, and by cash bond. Bail in most cases is posted by surety bond issued by a bail bondsman.

When a defendant appears for bail hearing before a District Court commissioner subsequent to arrest, the commissioner will explain to the defendant his right to counsel and his right to apply to the Office of the Public Defender for representation in the event he cannot afford private counsel. The case is then scheduled for trial soon after defendant's hearing before the commissioner. In cases in which a District Court commissioner elects to issue a criminal summons rather than arrest warrant upon receipt of an application for charges, the defendant will be mailed a notice to appear before a District Court judge for an initial appearance. The judge in an initial appearance hearing performs the same function as a commissioner in cases involving defendants arrested. In cases in which a criminal summons was issued in lieu of an arrest warrant, the case will be scheduled for trial after defendant's initial appearance before a District Court judge.

C. Trial in District Court

The District Court has jurisdiction to try all cases in which a defendant is charged with a misdemeanor offense, and in a limited number of cases in which a defendant is charged with a felony offense (including but not limited to felony theft and forgery). The District Court does not have authority to conduct jury trials; consequently, all trials that occur in District Court are judge trials. In a judge trial, the prosecutor seeks to persuade the presiding judge of the defendant's guilt by presenting evidence. The prosecutor is required to prove each and every charge by proof beyond a reasonable doubt. Prosecutors trying cases in District Court are required to adhere to the same rules of evidence and procedure as apply to felony jury trials. Any pre-trial issues such as defense arguments regarding admissibility of certain evidence are generally taken up the day the case is set for trial in District Court.

Defendants charged with certain offenses within the jurisdiction of the District Court may elect upon request to have their cases transferred to the Circuit Court for trial by jury. Cases eligible for such transfer are those in which the maximum penalty for any single offense charged exceeds ninety (90) days in jail. Defendants are not required to notify either prosecutors or the court in advance of their desire to be tried by jury. As a result, State's witnesses summoned to appear for trial in District Court may be required to appear again later when the case is rescheduled for jury trial in Circuit Court.

D. Trial in Circuit Court.

Most trials in Circuit Court involve juries; however, defendants having cases in Circuit Court can waive their right to trial by jury and elect to have a judge trial. A judge trial in Circuit Court occurs in the same fashion as a judge trial in District Court.

Before a jury trial can commence in Circuit Court, the prosecutor and defendant (usually represented by an attorney) must participate in the selection of the jury. Criminal jury trials in Maryland require the selection of twelve jurors, together with one or more alternate jurors as deemed necessary by the trial judge. Prosecutors and defendants can challenge any prospective juror for cause based upon indication that the juror cannot render a fair and impartial verdict, and can also exercise a limited number of "peremptory" challenges (i.e., challenges without cause).

Jury verdicts in Maryland criminal cases must be unanimous. If a trial jury cannot by unanimous vote find a defendant guilty or not guilty, the trial judge will declare a mistrial. Following the declaration of a mistrial, the State is free to retry the case before a different jury on a later date if it chooses to do so.

Pre-trial proceedings often occur in criminal cases tried in Circuit Court. Unlike District Court, these proceedings are generally scheduled several weeks in advance of the trial date.

E. Sentencing

After a defendant has been convicted following either trial or guilty plea, the presiding judge is required to impose sentence. Sentencing proceedings in District Court generally occur the same day as trial, while sentencing proceedings in Circuit Court often occur several weeks after trial. Victims are entitled to present impact information to the court for consideration at sentencing. (See the more detailed discussion of this topic in the victims' rights section of this site.)

The prosecutor's role at the sentencing hearing is limited to that of recommending sentence to the presiding judge. The presiding judge is generally free to accept or disregard the prosecutor's sentencing recommendation. The defendant is entitled to present mitigating information to the presiding judge, and is also entitled to make a sentencing recommendation.

F. Appeal

A defendant not satisfied with the outcome of his case may have the right to appeal such decision. Defendants convicted in District Court proceedings are entitled automatically upon request to have a new trial in Circuit Court. Trials in Circuit Court following appeals from District Court must proceed as new cases: the prosecutor in such cases is required to re-present the same evidence originally presented in District Court. Although defendant's trial in District Court was a judge trial, defendant may elect to have his case on appeal to Circuit Court heard by jury.

Defendants convicted following trial in Circuit Court are entitled automatically upon request to an appeal on the record. The "record" consists of a transcription of all testimony by all witnesses heard by the judge or jury, together with all exhibits offered into evidence. A defendant appealing a conviction in Circuit Court can argue all or any of the following: insufficiency of evidence to support conviction; improper jury instructions; improper pre-trial rulings on admissibility of evidence; improper trial rulings on admissibility of evidence; and other problems in the conduct of trial. For all issues except insufficiency of the evidence, the appeals court will grant a new trial if it finds merit in defendant's arguments. If the appeals court finds that the evidence was insufficient as a matter of law to support the conviction, constitutional principles regarding double jeopardy prohibit the State from retrying the case.

F. Post-conviction petitions.

Defendants who have exhausted their appeal remedies without success can also file petitions seeking post-conviction relief. For a number of reasons, post-conviction petitions are generally filed only in cases in which a defendant was convicted in Circuit Court. Such petitions usually allege ineffective assistance of counsel.

There is no time limit for the filing of a post-conviction petition other than the requirement that defendant still be serving some type of sentence at the time the petition is filed. In practical terms, this means that a post-conviction petition can be (and often is) filed years after defendant's initial conviction and sentencing.

If a defendant files a post-conviction petition, the court will schedule a hearing. The defendant has the burden of establishing any defects alleged at such hearing. If the defect alleged involves inadequate assistance of counsel, defendant must establish that counsel's representation was inadequate and that it likely had an impact on the outcome of the trial. If the court after hearing determines that defendant has met his burden in a post-conviction hearing, the court is required to order a new trial.