

# OUR CRIMINAL JUSTICE SYSTEM

AN OVERVIEW OF LAW & JUSTICE  
IN THE  
16<sup>TH</sup> JUDICIAL DISTRICT



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# **OUR CRIMINAL JUSTICE SYSTEM**

An overview of Law & Justice in the 16th Judicial District

## **I. INTRODUCTION**

As your District Attorney, I know that it is important for citizens to understand and have confidence in our criminal justice system. Providing information about the workings of the criminal justice system is an important function of the District Attorney's Office and is vital in fostering confidence in the criminal justice system. This brochure provides the residents of Iberia, St. Martin and St. Mary parishes with an overview of their criminal justice system.

## **II. BEGINNING OF THE CRIMINAL INVESTIGATIVE PROCESS**

### **What event triggers the beginning of a criminal investigation?**

The report of an action or event which violates the criminal laws (a complaint) triggers the beginning of a criminal investigation. This complaint is communicated or reported to a law enforcement agency by telephone, in person, in writing or may be reported to a Justice of the Peace. This process is known as filing a criminal complaint.

A crime is that conduct which violates the penal statutes or the constitution of the State of Louisiana. Under

Louisiana Constitution, Article 5, Section 19, criminal culpability begins at the age of seventeen (17) years. That is, persons seventeen (17) years or older who violate the penal statutes of the State of Louisiana are subject to being charged as adults. Under certain limited circumstances, explained hereafter, juveniles of the ages of fourteen (14), fifteen (15), and sixteen (16) years may also be tried as adults for criminal acts.

### **What happens when a criminal complaint is made?**

When a complaint is made directly to a law enforcement agency, a dispatcher with that agency will normally notify a patrol officer or deputy to answer the complaint. The deputy or officer will then go to the location of the person making the complaint to obtain basic information which will be used to determine what course of action will be taken by the law enforcement agency.

Actions that may be taken by the officer or deputy may include:

- 1) Arresting a person or persons whom the officer has a legal basis to arrest.
- 2) Requesting his/her law enforcement agency to send additional officers, including detectives and other specialized officers, to help investigate the complaint.

3) Requesting other agencies, such as the Crime Lab or the Coroner's office, to assist in the investigation.

4) Requesting the person or persons making the complaint to provide information for a report or to continue the investigation process.

5) Explaining to the parties involved that the complaint is not criminal in nature and should be handled by someone other than a law enforcement agency.

### **What happens if a complaint is made to a Justice of the Peace?**

Under Louisiana law, if a person believes a criminal act has taken place, a complaint may be made directly to a Justice of the Peace. The Justice of the Peace may conduct an investigation, including obtaining information from the complaining person in a sworn affidavit and taking statements from witnesses. The process can result in an arrest warrant being issued by the Justice of the Peace directed to all law enforcement agencies to arrest the person named in the warrant.

### **What is the role of the local police and sheriff's departments when the initial complaint is received and an investigation initiated?**

Our local police and sheriff departments have specialized divisions. Those specialized divisions include:

1) The **Traffic or Criminal Patrol** division handles crimes arising out of traffic violations. Officers assigned to this division patrol our neighborhoods and communities to detect and deter criminal activity. In addition to traffic law enforcement, this division may also conduct investigations into stolen vehicles, the transporting of illegal drugs, DWI's and other serious driving violations.

2) The **Detectives** division handles investigations where the criminal activity is considered a felony grade offense (one where the accused may receive a hard labor sentence). Detectives receive specialized training to assist them in conducting their investigations.

3) The **Narcotics** division is charged with the responsibility of investigating cases where a person is found in possession of drugs; whether on his person, in his vehicle, house or other areas which are under his control. The Narcotics division also conducts investigations designed to find those persons selling drugs through the use of undercover operations as well as surveillance type investigations.

4) The **Juvenile** division is designed to handle criminal activity involving children sixteen years of age or younger. Special laws and procedures are used when dealing with juvenile offenders.

5) The **Elderly Crimes** division may be incorporated into other divisions. There are now specific laws dealing with crimes against the elderly. This is an evolving area of investigation.

**What are the general duties of officers and deputies working within these divisions?**

- 1) Interrogation or questioning of witnesses.
- 2) Investigation and search of crime scene for evidence.
- 3) Application for the issuance of a search warrant to look for evidence.
- 4) Working with crime lab technicians to locate and preserve evidence as part of investigation.
- 5) Application for and presentation of affidavit to local judge for issuance of arrest warrant.
- 6) Making an arrest on a suspect without a warrant if there is a legal basis to make such an arrest.
- 7) Advising a suspect or person arrested of legal rights.
- 8) Obtaining a legal and admissible statement from the suspect or arrested person to be used as part of the criminal process.

9) Working with the local coroner to assure that he can perform his duties.

10) Providing a thorough and complete investigative file to the District Attorney or City Prosecutor once the investigation is complete.

11) Providing information and notification to the victims of a crime of their constitutional rights as victims.

12) Providing testimony at a trial or other proceeding involving the accused.

### **III. ROLE AND DUTIES OF THE CORONER**

#### **What role does the coroner play in the investigative process?**

The elected coroner of each parish shall conduct an investigation concerning the manner, and cause of, any death in the parish when informed that the death has resulted from violence, accident, or under suspicious circumstances.

The coroner may conduct an investigation concerning the medical aspects of any case that may involve medical evidence and in which there is a reasonable probability that a criminal statute has been violated.

The coroner may use expert assistants or investigators to conduct his investigation or in the performance of an autopsy.

#### **IV. ROLE OF THE ACADIANA CRIMINALISTICS LABORATORY**

##### **What role does the Acadiana Crime Lab play in criminal investigations?**

The Acadiana Crime Lab is located in New Iberia and serves eight parishes in the Acadiana area. The chemists and technicians employed by the crime lab conduct scientific tests, examinations, and analysis of evidence in criminal investigations. The crime lab has specialized employees known as forensic scientists who assist law enforcement in gathering, preserving, and examining evidence. The results of the examinations and tests are documented in reports and certain conclusions are drawn by these experts with regard to the evidence analyzed.

The forensic scientist will examine evidence to determine:

- 1) Whether the evidence submitted may be a controlled dangerous substance or drug which is illegal to possess or sell.
- 2) Whether DNA, hair, blood or other bodily fluids can be identified with a victim or criminal suspect.
- 3) Whether a particular gun may have been used in the commission of a crime; or whether a bullet was fired from a particular gun.

4) Whether blood drawn from a suspect contains alcohol or other controlled substances at a level which is illegal under the DWI statute.

5) Whether a particular type of tool may have been used to break into a house, building, vehicle or other structure.

6) Whether a criminal suspect's DNA is located at a crime scene or on a particular piece of evidence.

7) The distance and angle (trajectory) at which a particular firearm may have been from its target at the time it was fired.

8) What a blood splatter pattern at a crime scene indicates with regard to distance and other investigation information.

9) Whether shoe prints, tire marks, or tool marks located at the crime scene match evidence obtained during an investigation.

The crime lab is an essential part of the investigatory process and handles thousand of pieces of evidence each year.

## **V. ARREST OF A CRIMINAL DEFENDANT**

**What happens during the course of an investigation if there is sufficient evidence to make an arrest?**

An arrest of a suspect may be made by a law enforcement officer or by a private citizen under certain circumstances. The arrest may take place with or without an arrest warrant.

An arrest warrant may be issued by a Judge or Magistrate when he/she has probable cause to believe that an offense was committed and the person against whom the complaint was made committed the offense. The person making the complaint before the Judge must do so, under oath, in a written affidavit. An arrest warrant must be in writing, identifying the date when issued, the parish or city where issued, the offense charged, and the name of person to be arrested. The warrant must be signed by the Judge.

An arrest warrant shall be executed only by a peace officer. The peace officer need not have the warrant in his actual possession and any peace officer where the person is found may execute the warrant. An arrest warrant remains in effect until executed and the arrest may be made on any day and at any time of the day or night and at any place.

An arrest without a warrant may be made by a peace officer when:

- 1) The person to be arrested has committed an offense in his presence.
- 2) The person to be arrested has committed a felony, although not in the presence of the officer.

3) The peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer.

4) The peace officer has received positive and reliable information that another peace officer from this state holds an arrest warrant, or a peace officer of another state or the United States holds an arrest warrant for a felony offense.

Generally, when a person is arrested, with or without a warrant, the person arrested must be advised of his impending arrest, together with the cause of his arrest, unless such notification would imperil the arrest.

### **When may a summons be issued to a person in lieu of arrest?**

A summons (traffic ticket in most instances) is an order in writing issued and signed by a magistrate or peace officer stating the offense charged, name of the offender, and commanding the person to appear before the court designated in the summons at the time and place stated in the summons.

A summons is used only in misdemeanor crimes (those punishable by parish jail) or where the crime is theft or possessing stolen property where the value is over \$100 but less than \$500.

## **What happens when a person has been arrested?**

It is the duty of every peace officer making an arrest, or having an arrested person in his custody, to promptly bring the person arrested to the nearest jail or police station and cause him to be booked.

The booking process entails entering the arrestee's name, the date and time of the arrest and booking, and the charges on which the person was arrested in the jail book.

## **VI. RIGHTS OF A CRIMINAL DEFENDANT**

### **What are the rights of the defendant when an arrest is affected?**

Under the Louisiana Constitution Article I, Section 13, when a person has been arrested for the commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self-incrimination, his right to assistance of counsel and, if indigent, his right to court appointed counsel.

### **What are the rights of the defendant when he is arrested and maintained in custody?**

A person arrested without a warrant and held in custody is entitled, within 48 hours of his arrest, to have a magistrate determine whether there was probable cause for his arrest. This probable cause determination may be made by the magistrate out of the presence of the

defendant and may be made upon sworn affidavit or other written evidence.

Within 72 hours, excluding Saturdays, Sundays and legal holidays, an arrested person held in custody shall be brought before a magistrate for the appointment of counsel. The court may set bail or review a prior determination of the amount of bail at this hearing.

**Is an arrested person entitled to bail, how is the amount of bail determined, and what types of bail forms are available under Louisiana law?**

Article 330 of the Louisiana Code of Criminal Procedure provides that a person is entitled to bail before conviction unless he is charged with a crime of violence, or with a crime of production, possession with intent to distribute or distribution of a controlled dangerous substance and a judge determines by clear and convincing evidence that the defendant may flee or poses an imminent danger to the community. Article 331 provides that a person charged with a capital offense (an offense for which the possible penalty is death or life imprisonment) is not entitled to bail when the proof is evident and presumption great that he is guilty of the offense.

After conviction, a person is not entitled to bail if the maximum sentence which may be imposed is imprisonment exceeding five years.

In setting the bail amount the judge considers factors designed to insure the presence of the defendant at trial and the safety of the community. The factors are:

- 1) Seriousness of the offense, including whether the crime is a one of violence or involves a controlled dangerous substance.
- 2) The weight of evidence against the defendant.
- 3) The previous criminal record of the defendant.
- 4) The ability of the defendant to give bail.
- 5) The nature and seriousness of the danger to any other person or the community that would be posed by the defendant's release.
- 6) The defendant's voluntary participation in a pretrial drug testing program.
- 7) The absence or presence of any controlled dangerous substance in the defendant's blood at the time of arrest.
- 8) Whether the defendant is currently out on bond on a previous felony arrest for which he is awaiting institution of prosecution, arraignment, trial or sentencing.
- 9) Any other circumstances affecting the probability of defendant's appearance.
- 10) The type or form of bond.

There are three types or forms of bail:

- 1) Bail through surety, either commercial surety or property bonds.
- 2) Bail through cash deposits.
- 3) Bail without surety or personal bail without the necessity of furnishing a surety.

## **VII. RIGHTS OF VICTIMS OF CRIME**

### **What are the rights of a victim of a criminal act?**

In October 1998, the citizens of Louisiana voted for a constitutional amendment to ensure that the victims of crime, as defined by law, have constitutional rights when it comes to the criminal justice system.

Under Article I, Section 25, of the Louisiana Constitution any person who is a victim of a crime shall be treated with fairness, dignity and respect and shall be informed of the rights under this section. Those rights include the following:

- 1) The right to reasonable notice and to be present and heard at all critical stages of the pre-conviction and post conviction proceedings.
- 2) The right to be informed of the release from custody or escape of the accused or the offender.
- 3) The right to confer with the prosecution prior to final disposition of the case.

4) The right to refuse to be interviewed by the accused or a representative of the accused.

5) The right to review and comment upon the presentence report prior to imposition of the sentence.

6) The right to seek restitution.

7) The right to a reasonably prompt conclusion of the case.

The Louisiana Legislature enacted statutes, effective in January, 2000, to allow for the enforcement of the above described rights.

### **VIII. ROLE AND DUTIES OF THE DISTRICT ATTORNEY IN THE CRIMINAL JUSTICE PROCESS**

#### **What happens after the investigation is completed by the law enforcement agency?**

Once an investigation is completed by a law enforcement agency, the results are turned over to the District Attorney or City Prosecutor. Only misdemeanor crimes (those punishable by city or parish jail) are handled by city prosecutors. All other crimes, including misdemeanors and felonies, are handled by the District Attorney.

## **What are the powers and duties of the District Attorney?**

The Louisiana Code of Criminal Procedure Article 61 states, in part:

The District Attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines who, when and how he shall prosecute.

## **What procedure does the District Attorney follow in determining who, when and how he shall prosecute?**

### **Screening Process**

Prosecutors review each investigative file turned in by a law enforcement agency to determine if formal charges will be made by filing a Bill of Information or through the Grand Jury Process.

The screening process includes the following:

- 1) Reading and analyzing the information provided by the law enforcement agency, including but not limited to witness statements, crime lab reports, investigative officer's report, photographic evidence and reports from the coroner.
- 2) Requesting the investigative agency to provide additional information.

3) Interviewing witnesses and talking to investigative officers.

4) Reviewing which criminal statute(s) apply to the facts of the case.

### **What happens after the District Attorney has completed the screening process?**

The District Attorney has several options after completing this process, including:

1) Determining that no criminal charges will be brought against an accused.

2) Filing formal charges in a Bill of Information.

3) Determining that the case will be investigated by a Grand Jury.

## **IX. THE GRAND JURY PROCEDURE**

Under Louisiana Law, a grand jury must investigate cases dealing with capital murder and cases where the possible punishment is death or life imprisonment.

### **How does the Grand Jury process work?**

#### **Impaneling a Grand Jury**

A grand jury shall be impaneled twice a year.

## **Method of Impaneling a Grand Jury**

The grand jury shall consist of twelve persons plus a first and second alternate for a total of fourteen persons.

The Sheriff shall draw indiscriminately and by lot from an envelope to select the fourteen members of the grand jury.

The court (judge) shall cause a random selection to be made of one person from the impaneled grand jury to serve as foreperson of the grand jury.

## **Meeting of Grand Jury**

The grand jury shall meet as directed by the court or on its own initiative at the direction of at least nine of its members.

## **Persons present during a Grand Jury session**

Only the following persons may be present at the sessions of the grand jury.

- 1) The district attorney and assistant district attorneys.
- 2) The attorney general and assistant attorneys general.
- 3) The witness under examination.

4) A person sworn to record the proceedings of and the testimony given before the grand jury.

5) An interpreter, if necessary, sworn to translate the testimony of a witness who is unable to speak the English language.

6) An attorney for a target (person being investigated) may be present during the testimony of the target. The attorney shall be prohibited from objecting, addressing or arguing before the grand jury.

### **Who can be present while the grand jury is deliberating?**

No person other than a grand juror shall be present while the grand jury is deliberating and voting.

### **What action may a grand jury take after hearing evidence in a case?**

A grand jury shall have power to act, concerning a matter, in one of the following ways:

1) By returning a true bill. This requires at least nine of the twelve grand jurors to vote in favor of formally charging someone with a crime.

2) By returning not a true bill. This requires at least nine of the twelve grand jurors to vote that a person should not be formally charge with a crime.

3) By premitting entirely the matter investigated. This requires nine of the twelve grand jurors to determine there is not enough evidence presented to determine if a person should or should not be charged with a crime.

## **X. INSTITUTING CRIMINAL PROSECUTIONS**

**What happens when the District Attorney formally charges a person by Bill of Information or the Grand Jury returns a True Bill indictment formally charging a person with a crime?**

### **Arraignment of the Defendant**

Once the defendant is formally charged, he/she is notified to appear in court to determine how he/she will answer to the charges. This process is called the arraignment which consists of the reading of the indictment or bill of information to the defendant in open court and the defendant entering a plea to the charges.

**What type of plea may a defendant enter at his arraignment?**

There are four kinds of pleas to the indictment or bill of information at the arraignment.

- 1) Guilty
- 2) Not Guilty

3) Not Guilty and not guilty by reason of insanity,  
or

4) Nolo Contendere (no contest)

## **What happens when a defendant enters a Not Guilty plea at arraignment?**

After a defendant pleads not guilty at arraignment, the District Attorney requests the court to set several court dates to handle the following procedures:

1) Trial date

2) Status Conference Date

This conference is designed to allow the attorneys to review different aspects of the case, discuss the evidence, and potential resolution of the case prior to the trial date.

3) Pretrial Motion Date

Pretrial Motions may consist of the following:

**Motion for Discovery** - This allows the defendant to obtain information which the District Attorney possesses for use as evidence in the trial, such as documents, photographs, copies of the defendant's statements and other information to allow a defendant to present a defense.

**Motion for Bill of Particulars** - This requires the District Attorney to provide specific information about

dates, times, places, specific provisions of a statute being used in a case and other information designed to tell the defendant about the exact nature of the charges against him.

**Motion to Suppress** - This is a motion filed by a defendant which attempts to prevent certain evidence obtained during an investigation from being admitted at trial. Evidence which a defendant would attempt to exclude may include physical evidence linking the defendant to the crime, an identification of defendant by a victim or witness, or a confession by the defendant.

**Motion in Limine** - This is a motion which may be filed by either the defendant or by the District Attorney and is designed to limit the use of certain evidence at the trial.

**Motion for Change of Venue** - This motion may be filed by either the defendant or by the District Attorney and is designed to move the location of where the trial is to take place to another parish. A change of Venue shall be granted when the judge determines that by reason of prejudice existing in the public's mind, undue influence or that for any other reason a fair and impartial trial cannot be obtained in the parish where the prosecution is pending.

Note: A change of venue is granted in most instances as a result of the notoriety of the case or because there is too much pretrial publicity.

**Motion to Determine the Defendant's Mental Capacity to Proceed** -

A defendant's mental capacity to proceed may be raised at any time by the defense, the district attorney, or the court. Mental incapacity to proceed exists when, as a result of mental disease or defect, a defendant presently lacks the capacity to understand the proceedings against him or to assist in his defense.

The court shall order a mental examination of a defendant when it has reasonable grounds to doubt the defendant's mental capacity to proceed.

The proceedings against the defendant are stayed until a sanity commission (Coroner, physician, psychiatrist, and psychologist) has examined the defendant and the court, based on the sanity commission report, determines the defendant has the mental capacity to proceed.

Note: This motion is not the same as pleading not guilty by reason of insanity, which addresses the insanity of the defendant at the time of the commission of the offense and requires the defendant to show he was unable to understand the difference between right and wrong at the time he committed the crime.

**Motion to Recuse the Judge** - This motion may be filed by either the defendant, the District Attorney or on a judge's own motion and is designed to remove a judge from hearing a particular case. The law sets out specific grounds for a recusal, including the general ground that the judge would be unable to conduct a fair and impartial trial.

**Motion for a Speedy Trial** - This motion may be filed by either the defendant or the District Attorney. This motion requires a case to be tried within a certain time period depending on whether the defendant is being held in custody or is out of jail on bail.

Note: There are other motions which may be filed by both the state and defendant. This list is simply designed to show those motions most frequently filed in criminal cases on a local level.

#### 4) Pretrial Conference Date

At this conference, the District Attorney, defense attorney, the defendant, and the trial judge (The victim may also be present) have a hearing to determine several things.

A) Whether all pretrial motions have been heard and disposed of

B) Are there any matters pending that would prevent the case from going to trial?

C) Whether the defendant wishes to enter a plea of guilty in accordance with a plea agreement extended by the District Attorney, discussed between the defendant and his defense attorney, and accepted by the trial court.

## 5) Plea Date

A defendant may change his plea entered at arraignment from not guilty to guilty prior to the commencement of his trial. Often after the defendant has obtained information provided by the District Attorney through the discovery process, had his motions heard by the trial court, and conducted his own investigation through his attorney, he will decide that it is in his best interest to plead guilty rather than go to trial.

At a plea hearing, the judge will discuss with the District Attorney, defense counsel, and the defendant the plea agreement entered into by the parties. This plea agreement process is commonly referred to as plea bargaining.

A plea agreement is simply a contract entered into by the District Attorney and the defendant which involves the defendant's admission of guilt to a crime and the provisions by which he will be sentenced after his plea is accepted by the judge. The judge will accept the defendant's guilty plea only after being satisfied that the defendant understands his constitutional rights, that he is waiving those rights, that he understands the ramifications of waiving those rights, that the defendant further understands the crime for which he is charged and the nature of the plea agreement, and finally that there is a factual basis (evidence) to support the plea of guilty. A judge will accept a plea agreement when satisfied that the interests of justice are served and the plea leads to a fair resolution of the case for the State, the defendant, and the criminal justice system.

Plea agreements are entered into for some of the following reasons.

- 1) The victim of the crime and the District Attorney after reviewing the case believe it is in the best interest of the victim.
- 2) The strength or weakness of the evidence in the case warrants a plea.
- 3) The criminal history of the defendant indicates no prior criminal violations.
- 4) The criminal history of the defendant indicates he has previously violated the law.
- 5) The plea agreement provides for the victim of a crime to receive restitution for damages or expenses incurred as a result of the criminal actions of the defendant.
- 6) The plea agreement allows the victim to testify or tell the judge what type of punishment a defendant deserves and how the crime has impacted the lives of the victim.
- 7) The plea agreement provides for a punishment which would be imposed even if there was a trial.

## **XI. Trial Procedure**

### **What happens when the defendant elects to proceed to trial?**

Criminal trials may be either jury trials or judge (bench) trials.

Misdemeanor criminal offenses which can result in punishment in the parish or city jail for less than six (6) months and a fine of less than one thousand dollars (\$1,000.00) are always tried before a judge, and defendants are not entitled to a jury trial.

In felony criminal cases, defendants may elect to have a jury trial or a judge trial. There are two categories of felonies: Relative Felonies and Major Felonies.

1) Relative felonies are those crimes which may be punishable by either parish jail or hard labor. In these cases six (6) jurors are selected to hear the criminal charges.

2) Major felonies are those crimes which are necessarily punishable at hard labor. In these cases twelve (12) jurors are selected to hear the criminal charges.

### **What is the normal order of trial?**

In accordance with the Louisiana Code of Criminal Procedure, the normal order of trial shall be as follows.

## 1) The selection and swearing of the jury

The process of selecting a jury is known as voir dire. This process allows the judge, the District Attorney and the defense attorney to ask questions of potential jurors for the purpose of determining whether the prospective jurors are able to be fair and impartial as judges of the facts of the particular case being tried. This question and answer part of the process focuses on the ability of the potential jurors to follow the law, their feelings on the type of case being heard, and other information used to pick a fair and impartial jury.

Jurors may be excused from jury duty for cause or peremptorily for reasons under the law. In selecting a twelve (12) person jury, the District Attorney and the defendant each have twelve peremptory challenges they can use during the voir dire process. In selecting a six (6) person jury, each side is allotted six challenges. There are no restrictions on challenges for cause if potential jurors do not meet the legal requirements of being fair and impartial.

## 2) Reading of the Bill of Information or Indictment

After the jury is selected, the Clerk of Court reads the Bill of Information or Grand Jury Indictment charging the defendant with a criminal offense.

3) The reading of the defendant's plea at his arraignment

#### 4) Opening Statements

Under the law the District Attorney must give an opening statement which shall explain the nature of the charge against the defendant and set forth, in general terms, the nature of the evidence by which the state expects to prove the charge.

A defendant is not required to give an opening statement, but may do so if he chooses.

#### 5) Presentation of the Evidence

The presentation of evidence by the state, and the defendant if he chooses (remember the defendant is not required to present any evidence to prove he is innocent). If the defendant does present evidence then the District Attorney has the opportunity, if he chooses, to present rebuttal evidence to counter that presented by the defense.

#### 6) Closing Arguments

Once all of the evidence is presented, both the District Attorney and the defendant through his attorney argue before the jury what they believe the evidence at the trial has proven. The District Attorney argues first, followed by the defense attorney, and the District Attorney has an

opportunity for rebuttal close because the burden of proof lies with the District Attorney to prove the defendant's guilt beyond all reasonable doubt.

## 7) Trial Court's Instructions to the Jury

The trial judge after closing arguments instructs the jury on the law which must be applied to the facts and evidence of that particular case. The instructions include a definition of the fact that the defendant is presumed innocent until such time as the District Attorney proves the defendant's guilt beyond a reasonable doubt. The trial judge also defines the law relating to the crimes with which the defendant is charged.

## 8) Jury Deliberation

The deliberations of the jury take place in secret outside the presence of any person other than the jurors, after the judge has completed his instructions.

When a jury consists of twelve (12) persons, a vote of ten (10) out of twelve (12) jurors is required to render a verdict in the case. However, in a capital murder case, a unanimous vote by the twelve (12) person jury is required for a verdict to be returned.

When a jury consists of six (6) jurors, all six (6) jurors must concur to render a verdict in the case.

## 9) Jury Verdict

The announcement of the jury's verdict follows their deliberation and is read in open court in the presence of the judge, District Attorney, defendant and defense counsel. Following the announcement of the verdict, the District Attorney or the defendant can request a polling of the jurors to determine how they voted to make sure the correct number of jurors voted for the verdict which has been returned. The polling can take place verbally by asking a juror about his verdict or by written document by each juror.

## **XII. Sentencing and Post Conviction Procedure**

After a criminal defendant is convicted, either by jury verdict or by plea of guilty, the presiding judge must impose sentence.

### **When may a defendant be sentenced?**

A defendant convicted of a felony shall not be sentenced until at least three (3) days has elapsed between conviction and sentence. If a defendant files a motion for new trial, he cannot be sentenced until at least twenty-four (24) hours after the motion is overruled. A defendant who expressly waives the delay between conviction and sentencing may have his sentence imposed immediately.

## **How does the Judge find out the defendant's background before he imposes a sentence?**

The judge may order the Department of Corrections to prepare a pre-sentence investigative report. In making this report, the probation officer shall inquire into the circumstances attending the commission of the crime, the defendant's history of juvenile delinquency or criminal activity, his family situation and background, economic and employment status, education and personal habits.

## **How does the judge determine what the victim of a crime thinks is the appropriate sentence to be imposed?**

Under the new constitutional amendment and newly enacted victim laws, a victim is entitled to be notified when a defendant is to be sentenced, and the victim is entitled to be heard by the court prior to sentencing. The victim can also fill out a victim impact statement to inform the judge what impact the crime has had on the victim. This includes the victim's thoughts about what sentence is appropriate.

## **What guidelines do the judges have available to them when determining what sentence is appropriate for a specific case?**

The Code of Criminal Procedure provides three factors to be considered by the judge when imposing a sentence of imprisonment.

## **Article 894.1**

1) When a defendant has been convicted of a felony or misdemeanor, the court should impose a sentence of imprisonment if any of the following occurs:

(A) There is an undue risk that during the period of a suspended sentence or probation the defendant will commit another crime.

(B) The defendant is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment to an institution.

(C) A lesser sentence will deprecate the seriousness of the defendant's crime.

The Code of Criminal Procedure also provides the court with what are considered aggravating circumstances in deciding what sentence to impose:

1) The offender's conduct during the commission of the offense manifested deliberate cruelty to the victim.

2) The offender knew or should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

- 3) The offender offered or has been offered or has given or received anything of value for the commission of the offense.
- 4) The offender used his or her position or status to facilitate the commission of the offense.
- 5) The offender knowingly created a risk of death or great bodily harm to more than one person.
- 6) The offender used threats of or actual violence in the commission of the offense.
- 7) Subsequent to the offense, the offender used or caused others to use violence, force, or threats with the intent to influence the institution, conduct, or outcome of the criminal proceedings.
- 8) The offender committed the offense in order to facilitate or conceal the commission of another offense.
- 9) The offense resulted in a significant permanent injury or significant economic loss to the victim or his family.
- 10) The offender used a dangerous weapon in the commission of the offense.
- 11) The offense involved multiple victims or incidents for which separate sentences have not been imposed.

12) The offender was persistently involved in similar offenses not already considered as criminal history or as a part of a multiple offender adjudication.

13) The offender was a leader or his violation was in concert with one or more other persons with respect to whom the offender occupied a position of organizer, a supervisory position, or any other position of management.

14) The offense was a major economic offense.

15) The offense was a controlled dangerous substance offense and the offender obtained substantial income or resources from ongoing drug activities.

16) The offense was a controlled dangerous substance offense in which the offender involved juveniles in the trafficking or distribution of drugs.

17) The offender committed the offense in furtherance of a terrorist action.

18) The offender foreseeably endangered human life by discharging a firearm during the commission of an offense which has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and which, by its very nature, involves a substantial risk that physical force may be used in the course of committing the offense.

19) The offender used a firearm or other dangerous weapon while committing or attempting to commit an offense which has, as an element, the use, attempted use, or threatened use of physical force against the person or property of another, and which, by its very nature, involves a substantial risk that physical force may be used in the course of committing the offense.

20) The offender used a firearm or other dangerous weapon while committing or attempting to commit a controlled dangerous substance offense.

21) Any other relevant aggravating circumstances.

The Code of Criminal Procedure also provides the court with what are considered mitigating circumstances in deciding what sentence to impose:

22) The defendant's criminal conduct neither caused nor threatened serious harm.

23) The defendant did not contemplate that his criminal conduct would cause or threaten serious harm.

24) The defendant acted under strong provocation.

25) There were substantial grounds tending to excuse or justify the defendant's criminal conduct, though failing to establish a defense.

26) The victim of the defendant's criminal conduct induced or facilitated its commission.

27) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained.

28) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the instant crime.

29) The defendant's criminal conduct was the result of circumstances unlikely to recur.

30) The defendant is particularly likely to respond affirmatively to probationary treatment.

31) The imprisonment of the defendant would entail excessive hardship to himself or his dependents.

32) The defendant has voluntarily participated in a pretrial drug testing program.

33) Any other relevant mitigating circumstances.

## **What types of punishment are available to a judge when imposing a sentence?**

Judges have the discretion to impose various types of punishment unless a particular crime has a specific provision requiring a mandatory minimum sentence, does not allow for a suspended sentence, or does not allow for a particular type of punishment.

Depending upon the specific crime charged and the provisions dealing with types and ranges of punishment, a judge has available several types of punishment including:

- ✘ Hard Labor Sentence
- ✘ Parish Jail Sentence
- ✘ Monetary Fine
- ✘ Community Service
- ✘ Half-Way House Incarceration
- ✘ Home Incarceration
- ✘ Supervised Probation

## **What process is available to a person convicted of a crime to have the conviction reviewed?**

Capital Murder convictions where the death penalty is imposed may be appealed directly to the Louisiana Supreme Court.

A defendant convicted of a crime which was triable by a jury is entitled to appeal to an appellate court. The Sixteenth Judicial District is situated within two appellate divisions. Cases appealed from Iberia and St. Martin parishes are appealed to the Third Circuit Court of Appeal in Lake Charles. St. Mary Parish cases are appealed to the First Circuit Court of Appeal which is located in Baton Rouge.

### **XIII. Juvenile Justice Process**

The Juvenile Justice System in the 16<sup>th</sup> Judicial District operates basically under the same procedure as that outlined for adults. The District Attorney's goal is to address violations in a fair and equitable manner according to the law, and hopefully provide a means of prevention and determent of future criminal activity.

Since these matters involve children, the difference in the procedures is contained in the Louisiana Children's Code which is utilized in conjunction with Louisiana's Criminal Code, Code of Criminal Procedure, and Code of Evidence. Of major significance, all judicial proceedings in Juvenile matters are held in chambers (not open to public attendance) and are, with some exceptions, confidential. For these reasons, the general public is not completely aware of the work of the District Attorney, the Courts, and law enforcement in this area.

## **Important definitions to know in the juvenile justice process.**

In order to understand the Juvenile Justice System, it is important to know the following terms as defined by the Children's Code:

- 1) **CHILD** - Any person who has not attained the age of Twenty-one (21) years, including emancipated minors, and who has committed a delinquent act before reaching their Seventeenth (17<sup>th</sup>) birthday.
  
- 2) **DELINQUENT CHILD** - A child who commits a Delinquent Act.
  
- 3) **DELINQUENT ACT** - An act committed by a person Ten (10) years or older which would be defined as a crime if committed by an adult. (Children under the age of Ten (10) are exempt from criminal responsibility)
  
- 4) **ADJUDICATION HEARING** - A trial in Juvenile Proceedings.
  
- 5) **DISPOSITIONAL HEARING** - A hearing conducted by the Court following adjudication to determine an appropriate sentence

## **What are the rights in juvenile proceedings?**

All rights guaranteed by the United States Constitution and the Constitution of the State of Louisiana are afforded all children. The only exception is the right to a jury trial. All Juvenile proceedings are conducted as "bench trials" wherein the judge is the trier of fact, determiner of sufficiency of the evidence, and determines the appropriate sentence.

## **What are the rights of victims in juvenile proceedings?**

The same rights afforded victims of crimes in adult criminal matters are applicable to Juvenile Delinquency proceedings.

## **When may juvenile proceedings be transferred from Juvenile Court to District Court for criminal prosecution?**

The Children's Code provides that the District Attorney may seek a transfer of a Delinquency case from Juvenile Court and the child tried as an adult only if the following exists:

1) the accused child was 14 years or older at the time AND the accusation is for one of the following crimes: First Degree Murder, Second Degree Murder, Aggravated Kidnapping, Aggravated Rape, Aggravated Battery when committed by the discharge of a firearm, Armed Robbery when committed with a firearm,

Aggravated Oral Sexual Battery, and/or Forcible Rape when the victim is at least 2 years or younger than the accused (A Transfer Hearing is held in Juvenile Court); OR,

2) the accused was 15 years old or older at the time of the commission of First Degree Murder, Second Degree Murder, Aggravated Rape or Aggravated Kidnapping and other crimes specified by law, AND (A) a Grand Jury Indictment is returned; OR (B) a Continued Custody Hearing is held and Probable Cause is found on one or more of the offenses.

### **What are the alternative resources which are utilized in the juvenile justice process?**

The administration of our Juvenile System has in the past and continues to be based upon the best interests and welfare of the child as such would serve the interest and welfare of our community and society. In this system, the District Attorney, in conjunction with the District Judges and law enforcement agencies utilizes the following programs to address the issues and problems facing our families, schools and community:

1) **FINS COMMITTEE** (Families in Need of Services)

This committee is assigned the duties and responsibilities of dealing with truancy and ungovernable children. Referrals are received through the school system, law enforcement agencies, and from parents.

2) **FAMILY DRUG COURT**

These proceedings are Court proceedings designed to deal with substance abuse (alcohol and drugs) within the family unit.

3) **TEEN COURT**

An informal program designed for children to deal with problems with their peers.

4) **INFORMAL ADJUSTMENT AGREEMENTS**

An In- office contractual probation agreement between a child, his parents, and the District Attorney's office designed to assist all parties in coping with everyday issues. These agreements are usually for a period of six months. Teenage first offenders in most traffic violations are offered this Program.

#### **XIV. Drug Court Treatment Programs**

It is no secret that a large percentage of crime is related to substance abuse and addiction. More than half (1/2) of the felony trial docket consists of crimes involving the use, possession of, or sale of controlled dangerous substances. Additionally, many other felonies (forgeries, burglaries, thefts, and other misappropriations of property) are committed by persons under the influence of drugs or alcohol, or for the purpose of acquiring money to buy illicit substances. Statistics reveal that in the 16<sup>th</sup> Judicial District approximately seventy-five (75%) percent of all persons arrested and booked into jail test positive for Cocaine or Marijuana, or both.

The 16<sup>th</sup> Judicial District Drug Court Treatment Programs have been created as proactive alternatives to incarceration for non-violent offenders who are committing crimes because of their addiction to drugs and/or alcohol.

### **What is the theory behind the Drug Court Treatment Program concept?**

The theory behind the Drug Court Treatment Program concept is that participants have committed nonviolent criminal activity as a result of their addiction to drugs, alcohol, or both. Therefore, it is concluded that if you treat the addiction and provide these individuals with the means and the tools to cope with their substance abuse, then the resulting criminal activities will cease.

### **What is Addiction?**

Addiction is defined as compulsive drug seeking and use, even in the face of negative consequences. Substance abuse and addiction have enormous implications on public health issues. Drug abuse provides severe negative consequences for addicts. It causes poor academic performance and comprehension problems. Drug abuse, particularly intravenous drug use, results in the increased transmission of infectious diseases like HIV/AIDS, hepatitis, and tuberculosis. Additionally, there is often violence associated with the illicit drug trade.

## **Who is eligible to participate in the 16<sup>th</sup> Judicial District Drug Court Treatment Program?**

Persons who have been arrested for non-violent misdemeanor or felony grade criminal offenses, and who have no previous convictions for crimes of violence or sex offenses may be eligible for the program. Additionally, the prospective participant must be classified as either a first or second felony offender (including the instant offense). The prospective participant must be otherwise eligible for probation and must be willing to voluntarily enter the program and admit that he/she has a substance abuse problem. These questions are answered in a preliminary assessment completed by the Drug Court Probation Officer.

In the secondary assessment, trained and licensed substance abuse counselors meet with the prospective participant and determine: 1) if the person has an addiction and substance abuse problem which needs to be addressed; 2) if the person's criminal activity is related to the addiction and substance abuse problem; and 3) whether the person has no other mental health disorders which may not be appropriately addressed through the substance abuse counseling provided by the Drug Court Treatment Program.

After the probation officer and the treatment staff report their conclusions about whether a prospective participant is eligible for the program, the District Attorney's Office makes the final determination about whether an individual is allowed to participate in the Drug Court program. That is, the District Attorney's Office is charged

with the responsibility of "gate-keeping" with regard to who enters and who does not enter the program. As part of the "gate-keeping" function, the District Attorney's Office gathers information from various sources, including law enforcement, to assist in making the final determination.

### **What is expected of Drug Court participants?**

The following is a list of some of the requirements of the participants in the 16<sup>th</sup> Judicial District Drug Court Treatment Programs:

- 1) Participants must have transportation to and from an outpatient treatment center, four days a week for the first eight to twelve weeks (phase I), three days a week (phase II), two days a week (phase III), one day a week for the remainder of the Drug Court Program. Treatment is three (3) hours a day.
- 2) Participants must have transportation to the parish Courthouse once a week during phase I, once every two weeks during phase II, once every three weeks during phase III, and every three to four months in the aftercare aspect of the program.
- 3) Participants must submit to random drug screens as directed by the counselors, the probation officer, and/or the judge.
- 4) Participants must pay probation fees of \$50.00

per month to defray the costs of supervision, and all fines and fees ordered by the judge including: Drug Court fees, court costs, investigation fees, LCLE, etc.

5) Participants must complete a GED, Vo-tech, or college program.

6) Participants must obtain a steady job within a couple of weeks of entering the Drug Court Program and maintain gainful employment throughout the term of their probation.

7) Participants must make restitution to victim, if necessary.

8) Participants must refrain from all criminal conduct.

9) Participants must attend AA/NA meetings as instructed by treatment staff.

10) Participants must pay for the cost of drug screen urinalysis to the outpatient treatment center once a week.

11) Participants must meet with the probation officer at least once a month.

12) Participants must attend all meetings scheduled by treatment staff, the probation officer, or the judge.

13) Participants may not consume alcoholic beverages or go into bars.

A person entering the 16<sup>th</sup> Judicial District Drug Court Treatment Program enters a plea of guilty to the crime for which he/she is charged and has signed an agreement acknowledging and agreeing to follow the requirements stated above.

## **XV. Conclusion**

Our criminal justice system allows the citizenry to participate in virtually all stages of the process. The people of Iberia, St. Martin, and St. Mary parishes often participate in the criminal justice process by serving on a jury when summoned, testifying as witnesses to criminal acts when subpoenaed to court, becoming involved in community policing and neighborhood watch programs, attending criminal proceedings as audience members (courtroom proceedings are open forums to the public), and by learning about the rights of both criminal defendants and the victims of crime. The Office of the 16<sup>th</sup> Judicial District Attorney is always open and accessible to the citizens to assist them in understanding and participating in the fair and efficient administration of justice.

**XVI. Contact for more Information**

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