

CITY COUNCIL REPORT

DATE: December 8, 2016

TO: Mayor and Councilmembers

FROM: Jessica Cortes, Court Administrator

CC: Josh Copley, Shane Dille, Barbara Goodrich and Leadership Team

SUBJECT: Court Processing of Domestic Violence Cases

The Flagstaff Municipal Court adheres to the Criminal Caseflow Policy and Procedure that was adopted June 1, 2013, on processing criminal misdemeanor offenses including domestic violence cases. For the purposes of this City Council Report the procedures have been copied from the aforementioned document and are included herein.

In addition to the Court's processing of cases, the City Attorney's Office has the authority to offer diversion programs and have a practice of doing so, on first offense domestic violence cases. The Arizona Revised Statute giving the authority is ARS §9-500.22. Prosecution diversion programs.

Penalties for a domestic violence offense will vary depending upon the underlying offense. Individuals convicted of domestic violence at the misdemeanor level may be sentenced to time at the county jail. The amount of jail time a person potentially faces depends upon the severity of the offense. If convicted of a class one misdemeanor, a defendant could face up to six months in jail. First time offenders usually are not given jail time other than time served at the arrest, but the law does not preclude it. Those convicted of domestic violence are normally placed on probation so the court can monitor their completion of the mandated domestic violence offender treatment program. The probation officer may petition the court to revoke probation should the defendant fail to comply with counseling or other court ordered sanctions. Jail or additional sanctions may be imposed should a defendant's probation be revoked. Fines are often part of a sentence, but typically the court suspends a portion of the fine if counseling is completed. The court may also ask an individual convicted of domestic violence to do community restitution, and attend anger management, substance abuse counseling or other behavioral counseling in addition to the mandated domestic violence offender treatment program. It is also not uncommon for the court to order an accused or convicted person to stay away from the victim in the case. While these are the general guidelines for the handling of domestic violence cases, sentencing recommendations may be made by the prosecuting attorney through a plea agreement

with the defendant or after conviction at trial may be made directly to the court at a sentencing hearing.

ARS §9-500.22. Prosecution diversion programs.

A. The chief prosecuting officer of a city or town may establish a diversion program that provides for the dismissal of a criminal complaint on successful completion of the program's requirements. Diversion shall not be available to persons accused of a crime involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

B. The prosecutor has sole discretion to decide whether to divert prosecution of an offender when the diversion occurs before a guilty plea or trial. The diversion program may be structured to require a guilty plea before entry into the program.

Criminal Caseflow Policy and Procedure

Initial Appearance: *An initial appearance is a defendant's first appearance before a judicial officer, at which time the defendant shall be informed of the charges against him/her, his/her rights, conditions of release will be determined for a defendant in custody, and the next court date(s) will be set.*

General Process:

At a defendant's initial appearance, the judicial officer shall confirm the defendant's name and address, list the charges against the defendant, and explain their right to remain silent and to retain counsel, and inquire as to the defendant's ties to the community. If the defendant is charged with an offense that carries imprisonment as a potential penalty, then the judicial officer shall explain the right to have court appointed counsel if the defendant cannot afford an attorney, and ask the defendant if he/she is interested in this option. If the defendant qualifies as indigent, then an attorney will be appointed. If the crime alleged had a victim, then he/she has a right to be heard at all proceedings.

Based upon the type of offense(s) charged, the defendant's responses regarding community ties, and any previous history of failure to appear, the judicial officer will decide if there is probable cause to keep the defendant in custody, and determine release conditions. A defendant may be released on his/her own recognizance, only after posting bail/bond, and/or under certain conditions/restrictions.

A defendant in custody may sign a waiver and make a video-telephone appearance. The procedure remains the same. This method does not necessitate transporting persons to and from jail.

(16 A.A.R.S. Rules of Crim. Proc., Rules 1.4(b), 4.2, 7.2(a), 7.4(a); A.R.S. §§13-4421, -3967.)

A defendant retains the right to be personally present at all court dates involving him/her, and must receive notice or be informed as to court dates and changes. Failure

to appear at a scheduled court date is considered a voluntary waiver of that right, and if the defendant promised to appear, may result in the judicial officer issuing a warrant for the defendant's arrest. Proceedings may continue in the absence of the defendant, including the conviction of the defendant on the charges at the appropriate court date. (Ariz. Const. art. II, § 24; 16A A.R.S. Rules of Crim. Proc., Rule 9.1. See also §§13-3904 and §22-319.)

Bail/Bond:

All persons charged with a misdemeanor shall be bailable. Bail may not be excessive.

When arrest occurs in a county other than the one that issued the warrant, and the person is bailable by right, the arresting officer shall take the detainee before a judicial officer in the county where the arrest was made in order to admit him/her to bail.

Municipal courts are specifically authorized to list traffic offenses and set and collect bail amounts for such offenses. Consideration should be given to the amount of "cash only" bond set by the court. This should be determined by local issues and custom. (Ariz. Const. art. II, §§ 15, 22; A.R.S. §§ 22-112, -314, -424(B), 13 -3961, 3962, -3963, -3964, -3966.)

Arraignment: *With some exceptions, an arraignment will be held before the trial court within ten days of the filing of a complaint, in order for the defendant to enter a plea of guilty, not guilty, or no contest to the charge(s). In the course of the arraignment, the judge should inform the defendant of his/her constitutional rights, and what rights would be surrendered by a plea of guilty or no contest. If the plea is not guilty, the court should, as appropriate, set future court dates, decide conditions of release, advise the defendant of the right (if any) to a jury trial, and advise the defendant of the potential consequences of his/her absence from future court dates. If the plea is guilty or no contest, then the court may choose to sentence the defendant at that time if appropriate.*

General Process:

Generally, an arraignment is expected to occur within the ten day time limit, unless special circumstances make that time limit impossible. In limited jurisdiction courts, there are provisions for a defendant to file a not guilty plea without an arraignment by having the defendant's attorney notify the court in writing, or by mailing in a not guilty plea, and receiving a court date by return mail. Also, a defendant may, at the time of his/her initial appearance, waive an arraignment. In the absence of any such arrangements, the defendant is expected to appear either personally or by video telephone at the arraignment. If a properly noticed defendant fails to appear for his/her arraignment, the judge may issue a warrant for his/her arrest. (16A A.R.S. Rules of Crim. Proc., Rules 14.1, 14.2)

It is the responsibility of the judge at an arraignment to discuss with the defendant the constitutional rights that the defendant possesses, and that those rights would be vanquished by a plea of guilty or no contest. The maximum potential penalties for the charge(s) should also be stated. The judge must further determine that a defendant

choosing to enter such a plea is doing so voluntarily and intelligently. When a not guilty plea is entered, the court must make sure the defendant is aware of future court proceedings, including his/her rights, and the fact that an absence from a court proceeding might result in a trial *in absentia*, a possible conviction and/or a warrant for his/her arrest. If the plea entered is guilty or no contest, the court may examine witnesses to ascertain the seriousness of the offense committed, and impose orders on the defendant accordingly. The judge may sentence the defendant, unless there is a victim in the case to be heard from, or other reason(s) to sentence the defendant at a later time.

(A.R.S. §§22-315, -316, and -317; 16A A.R.S. Rules of Crim. Proc., Rules 14.3, 17.1, 17.2, 17.3.)

Under certain circumstances, a defendant may: 1) combine the initial appearance and arraignment; 2) enter into a plea agreement; 3) make a telephonic plea; or 4) make a video or video-telephone appearance at his/her arraignment.

1) A defendant may appear before the judge for both the initial appearance and arraignment simultaneously. Otherwise, the arraignment shall be scheduled in the court within ten days of the initial appearance.

2) A defendant pleading guilty or no contest may do so by telephone if the defendant is an out-of-state resident living more than 100 miles from the court or has a medical condition preventing an appearance. The plea is then expected to be in writing, appropriately certified by a law enforcement officer in the state of an out-of-state resident, and must contain statements showing that the defendant is voluntarily and intelligently giving up his/her constitutional rights by making the plea, and will accept the court's judgment. The judge shall ensure that the defendant does understand his/her rights and that he/she is relinquishing them.

3) Following the initial appearance, a judge may inform a defendant in custody of the option of having a video or video-telephone arraignment instead of making a personal appearance. This arrangement might allow the defendant's arraignment to occur a few days earlier than it otherwise would, and it makes transportation of the defendant to and from jail unnecessary. A defendant who opts to make a video-telephone appearance must sign a waiver showing that he/she is giving up the right to a personal appearance in court.

(1) 16A A.R.S. Rules of Crim. Proc., Rule 14.1(e); 2) 16A A.R.S. Rules of Crim. Proc., Rule 5.8(a); 3) 16A A.R.S. Rules of Crim. Proc., Rule 17.1(a); 4) 16A A.R.S. Rules of Crim. Proc., Rule 14.2.)

Pretrial: *Prior to trial, a court may order a pretrial conference for the purpose of having the defendant or defendant's counsel and the prosecuting attorney come to an agreement in exchange for the defendant's plea of guilty, thereby avoiding a trial.*

General Process:

When a defendant enters a plea of not guilty, it is not necessarily to be assumed that the matter will go to trial. Pretrial conferences allow the prosecution and defendant (or counsel) to discuss the case, along with any extenuating circumstances, and come to an agreement. Often, one charge may be dropped in exchange for a plea of guilty to

another charge(s), or the prosecutor might ask the judge for a lighter sentence if the defendant will plead guilty. If the two parties do come to an agreement, then the judge can dispose of the matter at the time, and a trial is avoided. It is important throughout this process that the judge ensures defendants understand their constitutional rights and what rights they will be giving up if they plead guilty. The prosecutor should ensure that the defendants realize that he/she is not their attorney. (16A A.R.S. Rules of Crim. Proc., Rule 16.5.)

Motions:

Any party seeking relief may submit in writing a motion to the court for that relief. The submission must be timely with the specific requirements for the type of relief requested, and a judge may set the matter for a hearing for further inquiry.

There are a variety of motions that a party in a proceeding might choose to file, such as change of judge or change of venue. Motions may occur before, during, or after trial. Each type of motion seeks a certain relief for a party, and each has its own deadline(s) for filing. Certain requests may not be made if the filing deadline is not met, so it is important for a party or his/her counsel to be aware of the relevant time limits. If the judge receiving the motion feels that it is necessary to gather more information before ruling on the motion, the judge may set a hearing for oral arguments on the motion. (A.R.S. §22-505 (small claims actions). See generally: 17 A.R.S., Rules of Crim. Proc., Rule 35.1; 16 A.R.S., Rules of Civ. Proc., Rules 7.1, and 12(b); Limited Jurisdiction Benchbook 11-1 – 11-2.)

Trial: *Certain rules govern the nature, timing, postponement, and scheduling of criminal court cases. These rules must be followed in order to comply with the law.*

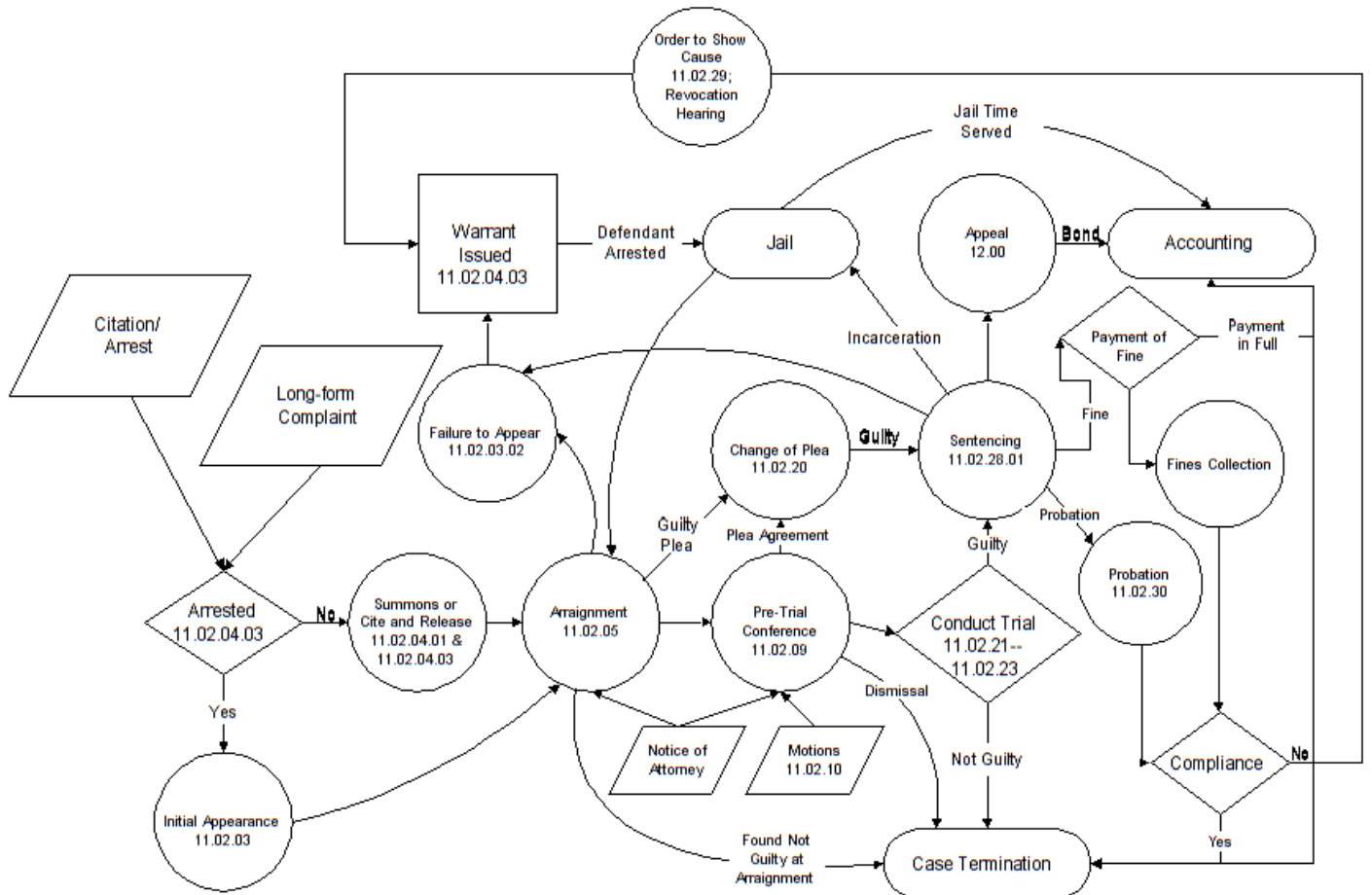
General Process:

A criminal trial, like all cases, must be open to the public, and occur without unnecessary delay, as prescribed in the Arizona Constitution. Further, the defendant should be at the trial before it begins, as part of his/her right to be at all parts of the proceedings. As part of the requirement for justice without unnecessary delay, there are time limits that a prosecutor must bring a case to trial in: for all persons, within one-hundred and fifty days of the summons or arrest; for those in custody, within one-hundred and twenty days of the defendant's initial appearance on the matter, or within ninety days of the arraignment, whichever is lesser; for those released from custody, it is the same choice as for those in custody, except the time period to go by is the greater one. If a prisoner writes a letter to the court requesting final disposition of his/her matter, then the time limits for the prosecutor to bring the case to trial are: within ninety days for any prisoner within the state of Arizona, and within one-hundred and eighty days for any prisoner not in the state.

If good cause can be shown to delay a trial from its scheduled date, then the court may grant either party a reasonable postponement. Other provisions permit for extending time until trial under extraordinary circumstances, with the process including the judge making findings on the matter and transmitting them to the Chief Justice of the Arizona Supreme Court.

When scheduling cases a court must recognize a certain priority in the ordering: criminal cases have priority over civil ones, and trials for defendants in custody or whose liberty presents unusual risks come before other criminal cases. The prosecutor should advise the court as to where the cases to be presented fall in the hierarchy.

(Ariz. Const. art. II, § 11; A.R.S. §§22-318, -319, 16A A.R.S. Rules of Crim. Proc., Rules 8.1, 8.2, 8.3.)



PROCESS MISDEMEANOR CRIMINAL CASES