

What to Do When You Get the Call An Overview of the Criminal Justice System in Nashville

by Jason Gichner and Tyler Yarbro

The criminal justice system in Nashville can be difficult to navigate for attorneys unfamiliar with the process. There is no reason, however, that attorneys cannot provide basic information that clients will find extremely valuable. When individuals are charged with a crime, especially those unfamiliar with the system, they call their attorney. It makes no difference if their attorney actually knows anything about criminal law; he or she is still getting the call. This article provides a basic lay of the land for those clients who find themselves facing Nashville's criminal justice system.

Citation & Arrest

A criminal charge is usually brought by way of citation or formal arrest by the police department.

• Citation

In most circumstances, individuals charged with minor offenses may be cited instead of being arrested.¹ This means the person is issued a citation by a police officer, which states the charge and the future court date. The benefit of a citation is that the person is not taken into custody and not required to post a bond. There is a common misconception that citations are the same as traffic tickets, with minor consequences. This is not the case. A citation should be treated no differently than a formal arrest. The punishment for a cited offense may entail jail time, loss of driving privileges, or permanent conviction on an individual's record.

• Arrest

Individuals formally arrested are taken into custody and brought to the Criminal Justice Center for booking. There, the charged individual appears before the Commissioner for a probable cause determination on the arrest, and if so, what amount of bond will be set.² An attorney may appear with his or her client before the Commissioner, though this rarely happens because the attorney is usually not aware of the arrest in time to appear. If possible, appearing at this hearing can prove a valuable service if the Commissioner has questions regarding probable cause or seeks additional information in setting the bond.³

Bond

Bond is the amount of money that must be pledged to secure release from custody following arrest. The Tennessee Constitution guarantees the right to bond in all criminal matters other than capital cases.⁴ There are several types of bonds in Davidson County:

• Pre-Trial Release

If a person does not have a criminal record and meets other specific conditions, he or she may be released through the Pre-Trial Release Program administered by the Davidson County Sheriff's Office.⁵ Pre-Trial Release is the only type of bond where an individual is not required to post any money or property. Individuals released "on pre-trial" are required to check in weekly by phone with an assigned counselor.

• Cash Bond

A person, or a third party acting on his or her behalf, can post the entire bond amount by paying cash or using a credit card. The benefit of posting the entire bond is that the money is returned at the conclusion of the case, provided the person makes all of the assigned court appearances.⁶

• Bonding Company

Using a bonding company is a practical option for individuals who cannot afford to post the entire bond amount. Generally, bonding companies will charge 10% of the total bond plus a bonding fee in order to sign for a person's release.⁷ The money paid to the bonding company is not refundable, regardless of whether the individual makes all court appearances.

• Property Bonds

In posting a property bond, an individual pledges a piece

Topic notes:

- Interested in receiving in-depth training on how to handle criminal law cases? Refer to "If You Can't Agree on What the Problem Is... Quality of Indigent Criminal Defense Services in Davidson County" by Bob Mendes in the April issue of the NBJ, archived on the NBA website.
- More information may be found in the Victim/Witness Handbook produced by the Tennessee District Attorneys General Conference, which is available at <http://www.tndagc.org/vwh.htm>.

of property in exchange for his assured appearance in court. Property bonds should be very carefully considered given the risks involved. If an individual is released on a property bond and fails to attend a court date, the property can be forfeited.⁸

General Sessions Court

Most criminal cases begin in General Sessions Court. Although it is not a court of record, General Sessions Courts may hear both misdemeanor and felony cases. Misdemeanor cases may resolve by disposition or bench trial in Sessions Court if both the defense and State agree. Jury trials, for either felonies or misdemeanors, may be heard only in Criminal Court.⁹

The General Sessions Court has a limited role in hearing felony cases. A General Sessions Judge may oversee a preliminary hearing to make a determination of probable cause on felony cases.¹⁰ If the Court does not find probable cause, the case is dismissed, although the District Attorney may still present the case to the Grand Jury for indictment. If the Court does find probable cause, the case is bound over to the Grand Jury for review of the finding.¹¹

Felony cases cannot resolve in General Sessions Court, but may be negotiated. If the parties reach a settlement on a felony matter, an agreement is drawn up called an information. This information bypasses the Grand Jury and goes directly to Criminal Court for plea before a Criminal Court judge.¹²

There are various dockets in General Sessions Court where cases are set depending on the circumstances.

• Citation Docket

When an individual is issued a citation, the first court date is on the Citation Docket, or the "one stop docket." This docket is crowded and somewhat overwhelming to those unfamiliar with it. It is where individuals are booked on their citations and have their first opportunity to settle their cases. If a resolution

is reached with the prosecutor, a Judge will take the plea and the matter will be resolved. If the parties cannot reach a settlement, the case is continued to a trial docket.

• Bond Docket

Similarly, an individual who has posted bond will have an initial appearance on a settlement bond docket. If a resolution is not reached, the case is reset to a trial docket. At the trial docket, the parties can agree to settle the matter or try the case to the bench. Either party may also request a preliminary hearing for a probable cause determination.

• Jail Dockets

Individuals who are unable to post bond will appear on a jail docket. Those charged with minor offenses will first appear on the Review Docket, typically the morning after their arrest. The Review Docket allows for expedited settlement of minor offenses, which can sometimes be useful to get out of jail quickly. Very often, however, a speedy resolution can be dangerous, resulting in a head-spinning waiver of rights and usually leading to a permanent conviction on a person's record. More serious offenses and cases that are not resolved on the Review Docket will be heard on a regular jail docket.

Settlements, trials, and preliminary hearings are handled in the same manner on the Jail Docket as the Bond Dockets. There are, however, important time concerns that apply to the Jail Docket. Persons in custody are entitled to have their preliminary hearing within ten days of arrest.¹³ If the prosecution cannot present the case within this period, the individual may move for dismissal. The charge may still be resubmitted to the Grand Jury, but the benefit of dismissal is the person walks out of jail that day.

Beyond General Sessions

Cases that do not resolve in General Sessions Court are subsequently reviewed by the Grand Jury. Most cases are then transferred to Criminal Court for further proceedings. Cases may also

start in Criminal Court when the District Attorney's Office obtains an indictment from the Grand Jury.¹⁴ A person who is indicted on a direct presentment by the D.A. will be arrested, can make the bond that has been set by the Grand Jury, and will have an initial appearance to receive a copy of the indictment and enter a "not guilty" plea on the arraignment date in Criminal Court.¹⁵

Criminal Court is significantly different than General Sessions Court in many ways. If you get the call from a client telling you he or she has an arraignment scheduled tomorrow in Criminal Court, it is best to quickly involve a lawyer with relevant expertise. If you get the call, however, asking how to post a bond, hopefully you can provide assistance. You will find that there are few clients who are more appreciative than those you help get out of jail. ■



Jason Gichner is an associate at Dodson Parker Behm & Capparella, PC in Nashville. Jason is a graduate of the Western Trial Advocacy Institute in Laramie, Wyoming, and the Clarence Darrow Capital Defense College in Chicago, Illinois. A former supervising attorney at the Office of the Metropolitan Nashville Public Defender, he concentrates his practice in criminal defense, general litigation, and entertainment law.



Tyler Chance Yarbrow is an associate at Dodson Parker Behm & Capparella, PC. A former public defender, her current practice involves criminal defense and civil litigation focusing on employment, personal injury, and business matters. She sits on the advisory board for the Davidson County Trial Courts' Community Corrections Program.

(Endnotes)

¹ TENN. CODE ANN. § 40-7-118.

² Tenn. R. Crim. P. 4.

³ See TENN. CODE ANN. § 40-11-118.

⁴ TENN. CONST. Art. 1, § 15; see also TENN. CODE ANN. § 40-11-102.

⁵ Metro Government of Nashville and Davidson County Code of Ordinances § 2.56.600.

⁶ TENN. CODE ANN. § 40-11-119.

⁷ *Id.* § 40-11-316.

⁸ *Id.* § 40-11-120.

⁹ *Id.* § 40-1-109.

¹⁰ *Id.* § 40-4-101(5).

¹¹ TENN. R. CRIM. P. 5.1.

¹² TENN. CODE ANN. § 40-3-103.

¹³ TENN. R. CRIM. P. 5.

¹⁴ TENN. CODE ANN. § 40-3-102.

¹⁵ TENN. R. CRIM. P. 10. 14