

“I’ll never forget the afternoon when my son called and said, “I’m going to jail”. My heart stopped. I had no idea what to do, where to go, or how to talk with him.” (Madison Parent)

Addiction can cause our loved ones to do things they normally would not do. Crime is common. It can range from petty theft and vandalism to an accidental car accident to more serious problems such as breaking and entering or murder. Criminal charges can have long-term effects, from jail and prison time to having trouble getting a job.

Individuals, who are arrested, are prosecuted in the Dane County Circuit Court; Dane County Courthouse; 215 S Hamilton St.; Madison. Web site: <http://www.countyofdane.com/court/>; Telephone: 608-266-4311. There is a list of **Frequently Asked Questions** on the website that may answer many of your questions.

CHARGES

You can be 17 years old in Wisconsin and be charged as an adult.

Criminal charges might include:

- Possession of controlled substances, or more serious charges of possession with intent to deliver or manufacture or delivery of controlled substance.
- Theft: many addicts commit theft in order to buy drugs and may be charged with a variety of crimes such as retail theft, identity theft (for using another person’s credit or debit card) or forgery.
- Homicide: in cases where an individual delivers narcotics to an individual who dies as a result of an overdose. They may be charged whether they sold the drugs to the victim or used shared resources to purchase drugs for both of them.

The arresting officer forwards his/her police report to the District Attorney’s office, recommending certain charges. These are the charges that the defendant is booked into jail on. However, the District Attorney (DA) makes the final decision about which charges will actually be filed with the court. These final charges may be different from the initial charges based on what the District Attorney thinks can be proven in court given the available evidence.

Can a parent/where can a parent find out what the charges are? The Clerk of Courts Record Center keeps copies of cases and files. Website: <http://www.countyofdane.com/court/court/records.aspx>. Telephone: 608-266-4311. Telephone requests for records are not accepted. Records can be requested via the following methods: fax, email, regular mail, or in-person.

A brief description of cases and index of records is contained in the WI Circuit Court Access database at this website: <http://wcca.wicourts.gov/index.xsl>.

In Jail. There are three jail locations in Dane County. See other information on our web site under "Jail". Information regarding phone calls, visitation, property, money for inmates and mail can be found on the Dane County Sheriff's Department website at: http://www.danesheriff.com/jail_general.aspx

REMEMBER: If an opiate addict is held in jail even for a short time, his/her tolerance to narcotics goes down, and the likelihood of an overdose upon release is greater. It is important for them to know that they will not tolerate the same dose as they could before, even if they are in jail as few as three days.

Attorney. It is advisable for anyone charged with a crime to be represented by an attorney.

Private attorney: A defendant may hire an attorney. Select one who specializes in criminal defense and is recommended by others.

Public defender: If the individual qualifies under State Public Defender guidelines, s/he may have an attorney appointed at state expense. A small fee will be required and is reduced if paid within 60 days of the appointment. In Dane County, the State Public Defender is located at 17 South Fairchild Street, Madison. Website: <http://www.wisspd.org/> Telephone: 266-9150.

Some people who earn a little too much for the public defender, but are at or below 150% of the federal poverty guidelines, may qualify for appointment of counsel at county expense through the Dane County Criminal Defense Project. To apply, you must first be rejected by the State Public Defender and take that paperwork to the Clerk of Court, Room 1000, Dane County Courthouse, 215 South Hamilton Street, Madison. The individual will be screened for income eligibility. A small fee is charged if counsel is appointed.

For help with legal assistance, see the Court System's Self-Help Center Legal Assistance page at <http://www.wicourts.gov/services/public/selfhelp/assist.htm>

CRIMINAL PROCEDURE

The first court appearance in a criminal case is the **Initial Appearance**. At the Initial Appearance the defendant will be given a copy of the criminal complaint, informed of her/his right to an attorney, bail will be determined and conditions of release will be set.

Persons charged with misdemeanor crimes may post bail and be released and return to the Courthouse at a later date for the initial appearance. Persons charged with felony crimes **MUST WAIT** in jail for an initial appearance before a commissioner. Hearings are held Monday through Friday at 1:30 pm (<http://www.countyofdane.com/da/arraignment.aspx>)

If the defendant is not in jail, s/he will receive a date within a few weeks to appear for this hearing. If held in jail, the hearing will occur within a couple of business days. If the DA does not have the criminal complaint ready within this time period, a bail hearing will be held. A "not guilty plea" is generally entered at the initial appearance, regardless of the facts of the case or the circumstances of the arrest.

Bail. Bail is set based upon the court commissioner's assessment of the defendant's motivation to make future court appearances. Past missed court appearances, violation of a prior condition of release, minimal ties to the Dane County area, and serious charges may lead to a high cash bail being required. Wisconsin **DOES NOT** have a "10% rule" for posting bail. The amount set by the court is the amount that must be posted for the defendant to be released.



Credit cards may be used to post cash bail. However, there is a non-refundable 5% fee when using a credit card to post bail. If a defendant misses a court appearance, the cash bail may be forfeited to the county after the person who posted is notified and has an opportunity for a hearing. Even if there are no missed court appearances, the cash bond may be used to pay court costs and restitution without the consent of the person posting. The remaining balance is refunded to the poster.

In cases where there are no negative bail factors, the defendant may be released on a **signature bond**, which is a promise to pay a sum of money if future court appearances are missed. Either type of bail/bond may require compliance with set conditions such as absolute sobriety, curfew, compliance with a Bail Monitoring Program or avoiding certain people or areas.

Violation of bail conditions may lead to the issuance of new criminal charges.

In lieu of cash bail, or for a reduced cash bail, or as a further condition of bail, individuals may enter the **Bail Monitoring Program (BMP)**. This is for individuals who have been legally charged with a crime(s) and are pending trial. They are not convicted. Anyone, with any level or seriousness of charges, can be on Bail Monitoring (includes misdemeanor and felony cases). If the client's bail is being reduced to lower cash or a signature bond, the client first must be interviewed and assessed by ATIP. If it is a condition of bond, clients are informed to report within 24 hours of his/her release. Their character and connections to the community are verified. ATIP staff must accept them, before they are released from jail. They are under court ordered bail conditions to comply with the rules. Failure to comply with BMP rules and bail conditions can result in their termination from BMP, reinstatement of cash bail, and return to the Dane County Jail. BMP can also impose additional rules as a condition of release.

Felony Cases. In a felony case, the second hearing will be the **preliminary hearing**, which must be held within 10 days if the defendant is held on cash bail over \$500. At the preliminary hearing, the prosecutor must present evidence that the defendant probably committed a felony, or the defendant may waive the preliminary hearing. A second judge is usually assigned to the case after the preliminary hearing.

Following the preliminary hearing, the alleged felon has an arraignment, then a final conference and perhaps a status conference, before a trial date occurs. It is typical for this process to take several months. Eventually the defendant, in consultation with the defense attorney, decides whether to enter into a plea agreement or have a trial. A **plea agreement** results in the defendant receiving certain concessions, such as dismissal or reduction of some charges or a promise that the prosecutor will recommend a particular sentence; the defendant waives his/her right to a trial and pleads guilty to the agreed upon charges. The vast majority of cases are resolved through a plea agreement. A judge is never bound to follow a plea agreement. But, in most cases, the judge will resolve the case as requested by the parties.

When a trial is held, a jury usually will decide whether the defendant is guilty or not guilty. If the person is convicted, the judge will then decide the sentence. However a defendant can waive the right to a trial by jury. In such cases, the judge decides whether the defendant is guilty or not guilty.

Misdemeanor Cases. If a defendant has felony and misdemeanor charges, the case follows the track of the felony charges. If there are only misdemeanors, there is no preliminary hearing or arraignment. The case is randomly assigned to a trial judge. The case is sent to that Judge's office to be scheduled. The Judge's office schedules the case for a final conference and sends notice for that court date through the



mail. At, or prior to the final conference, the prosecutor and defense attorney may engage in plea negotiations to try to settle the case by a plea agreement. If the case is not settled at the final conference, the case will likely be scheduled for a trial.

If there is a **victim** in any type of criminal case, s/he has the right to be present at all court appearances and to speak in court. Services to the victim may be provided by the Victim Support staff in the District Attorney's office, who may be reached at 266-4211.

No defendant, parent or attorney may speak directly to the judge except in court. If mail is sent to the judge, copies must be sent by the writer to the assigned district attorney and to defense counsel. To find contact information for these people, look up the court case on Wisconsin Circuit Court Access at <http://www.countyofdane.com/court/>.

Sentencing. Once the defendant is found guilty by plea or trial, s/he is convicted of a crime and is sentenced by the judge. Sometimes the Assistant District Attorney and defense attorney agree to recommend the same sentence, one that might be a compromise between what each side believes the defendant should receive. In such cases the judge is very likely to, but is not required to, impose a sentence similar to the one jointly recommended. In other cases, sentence will be argued: the prosecutor and defense attorney will each tell the judge what they believe the sentence should be, and the judge will consider these arguments before imposing the sentence the judge believes to be appropriate. In some serious cases, the judge will order the Department of Corrections to prepare a Pre-sentence Investigation Report (PSI) to be considered by the court at the time of sentencing. Parents may be interviewed by the Probation Agent preparing the PSI about the son or daughter's family history. A parent can send a letter to be considered by the judge prior to sentencing the defendant, but it is best to send it to the defense attorney and let the attorney decide whether to share it with the prosecutor and judge.

Sentence. A sentence may include prison time, jail time and/or a fine. In some cases a sentence to jail or prison is imposed and then stayed (postponed) by the court and the defendant is placed on probation. If probation is successfully completed, the jail or prison time is permanently stayed. But if the defendant's probation is revoked, he or she automatically receives the jail or prison sentence that was stayed without returning to court. This is called an "imposed and stayed sentence". In other cases, sentence is withheld and a defendant is placed on probation. In those cases if probation is revoked, the defendant must return to court to be sentenced, usually by the same judge who imposed the probation. This is called a "withheld sentence". Almost all defendants will have to pay court costs and fees. If there is a victim who has incurred losses or damages as a result of the crime, the defendant may be ordered to pay restitution to the victim.

Prison or Jail. Prisons are run by the state Department of Corrections, are located in communities around the state, and contain prisoners from all over the state. Jails are located within the county of conviction, are run by the county sheriff, and generally only house inmates convicted in that county. A prison sentence must be for at least one year. A jail sentence for one crime cannot be for more than one year; although a judge occasionally sentences a defendant to consecutive (one after the other) jail sentences for different crimes with the total of all sentences being more than a year.

If a defendant is sentenced for several crimes and the sentences are concurrent, they run at the same time. For example, a defendant who receives concurrent sentences of 5 years and 10 years will serve just 10 years. If the sentences are consecutive, they would total fifteen years. A person sentenced to



jail generally gets "good time" and will only have to serve 75% of the sentence. Thus a jail sentence of 4 months can be completed in three months. However every day of the confinement portion of a prison sentence must be served. A sentence of 3 years initial confinement and 3 years extended supervision would result in the defendant spending three years in the prison system, followed by three years on extended supervision: monitoring in the community by the state Department of Corrections that is similar to probation.

Probation. Many defendants are put on probation, which means they will be supervised by a Probation Agent working for the state Department of Corrections. There are generally many conditions that a person on probation must follow. Some may be set by the judge at the time of the sentencing hearing. Others may be set by the Probation Agent. Some examples of conditions that may be a part of probation are: no contact with certain persons, curfew, AODA treatment, not to use or possess drug paraphernalia, not to be in bars or liquor stores, maintain full-time employment, obtain a high school diploma or GED, etc.

If a probationer violates rules of probation, misses meetings with his Probation Agent, has urine tests that are positive for drugs or alcohol, or commits other infractions, the agent may order the probationer jailed while the alleged violations are investigated. If the violations are serious, revocation of probation may be initiated by the Agent. This is a legal process that includes the right to have a hearing with an Administrative Law Judge before probation is revoked. Often the Agent may offer the defendant an alternative to revocation. For example, if the probationer has repeated violations of using drugs or alcohol, the Agent may offer to allow the probationer to enter residential AODA treatment instead of having probation revoked. If the defendant fails to successfully complete the Alternative to Revocation (ATR), the Agent would proceed with revocation of the probation and a sentence to jail or prison.

