

## FREQUENTLY ASKED QUESTIONS

I FEEL THAT A CRIME HAS BEEN COMMITTED. HOW DO I PRESS CHARGES? CAN I REPORT A CRIME DIRECTLY TO THE PROSECUTOR'S OFFICE?

Crimes are investigated by the police, not the prosecutor. Crimes should be reported to the police department or other law enforcement agency, which has jurisdiction where the crime occurred. Complaints should be called into the 9-1-1 system. The dispatchers will be able to determine what police department or agency needs to respond.

Once the initial investigation has been completed, and the investigating officer believes a crime may have occurred, the police agency's report will be filed with the prosecuting attorney's office. The prosecutor or assistant prosecutor reviewing the report may send the case back to the police agency for further investigation, deny the issuance of a criminal complaint or warrant, or issue a criminal complaint and warrant. The reviewing prosecutor decides what charge(s) if any will be issued and when the charges should be issued.

HOW DO I PRESS COUNTER-CHARGES AGAINST SOMEONE?

This request generally arises from assault cases. Regardless of whether you have already been charged, if you believe that a crime has been committed against you, you must go to the police agency that did the initial investigation to file a complaint and request an investigation. Your case will be reviewed on its own merits.

I AM A VICTIM, AND I WANT TO DROP THE CHARGE (S). CAN I?

Many people believe that a victim has the power to "press charges" against the wrongdoer, or to later, "drop the charges." All crimes are offenses against the community, not just the individual victim. Criminal complaints are prosecuted on behalf of "The People of the State of Michigan," not the person or people who called the police or those who were personally harmed by the defendant's conduct. ONLY the Prosecuting Attorney can issue or dismiss charges. This is important because it takes the responsibility for prosecuting the wrongdoer off the victim's shoulder and puts it on the Prosecuting Attorney, where it legally belongs. It also means that the defendant cannot "pressure" the victim into dropping the charges.

Although the decision whether to prosecute or not to prosecute is ultimately up to the prosecutor, the victim's opinion is important, and the prosecutor will take those wishes into account when making decisions regarding the case. A variety of factors are taken into account when deciding whether to honor a victim's request not to proceed with a prosecution. This includes the nature and extent of the defendant's prior criminal history, the severity of the alleged crime, whether the defendant has other pending charges, and the future danger the defendant poses to the community (including the victim).

I READ IN THE NEWSPAPER OR HEAR ON THE RADIO OR TELEVISION THAT AT CASE HAS BEEN PLEA-BARGAINED. WHAT IS A PLEA BARGAIN AND WHY IS IT DONE?

A plea bargain is a negotiated settlement of a criminal case where both sides give and take. Usually this involves the defendant giving up his/her Constitutional rights such as the right to a jury trial, and the right to make the prosecution prove his/her guilt beyond a reasonable doubt. In return, an agreement that limits the charges and/or possible punishments that could be imposed is put in place. The prosecution obtains a conviction without the expense of going to trial and having to prove the defendant's guilt.

Plea agreements are reached for various reasons. They often vary from case to case. The criminal justice system (and the entire court system) would not function without plea-bargaining. With the number of cases, the courts would have to be in session virtually around the clock seven days a week.

For instance, statistics for a year in Sanilac County showed that there were over 1600 criminal cases handled by the Prosecuting Attorney's Office. That number does not take into account all of the other work done by the office, including juvenile hearings and civil work on behalf of the county. Only three attorneys are assigned to handle the criminal cases.

What if plea-bargaining was not allowed? Let's assume that one half of these people would have pled guilty anyway (more likely it would be less than one half). Now we are down to about 800 cases for trial. With three prosecutors handling cases, that would be 267 cases for each attorney to conduct a trial.

By the time you take into account holidays and weekends, there are only about 250 workdays per year. That would mean each prosecutor would have to be involved in an actual trial almost twice each working day. It also does not take into account all the other work that each trial involves, such as charging decisions, search warrants, arraignments, pretrial conferences, motions, preliminary examinations, other hearings, trial preparation and sentencing. Many trials take more than one day. The courts are also handling much other activity, including civil cases.

Without plea bargaining, we would have to add several more courtrooms, judges, court staff, prosecutors, court appointed attorneys, and bailiffs to handle the caseload. This could easily amount to millions of dollars or more per year in addition to current costs. Who would pay these added expenses? Of course, you, the taxpayer, through your property taxes and income tax would have to fund the courtrooms and personnel needed if plea bargaining did not occur.

In addition to financial considerations, some cases present their own unique problems. These include witnesses (especially victims of criminal sexual conduct) who do not want to go through a public trial, witnesses who have left the area and cannot be found, witnesses who change their testimony to protect the defendant, or evidence that is suppressed for Constitutional reasons.

Whatever the case may be, in a majority of cases, the plea bargain results in virtually the same sentence for the defendant that would be imposed if the defendant were convicted of the original charge. Defendants in Michigan are generally subject to concurrent sentencing, which means that the sentence runs together with any other sentence, rather than one sentence after another, known as consecutive.

This means that if a defendant were convicted of four charges that carry a maximum penalty of ten years, the most the defendant could receive is ten years, not forty years. In that case, pleading guilty to one or two of the charges in return for the dismissal of the other charges would result in basically the same sentence.

Also, a defendant who pleads guilty gives up the automatic right to appeal their conviction and sentence. They may only appeal if the Court of Appeal gives them permission to do so. After a trial, a defendant has an automatic right to appeal. In this process, they may try to pick apart everything that occurred at trial by alleging many different types of errors with the hope that their conviction will be set for a new trial or dismissed altogether.

What is being said here doesn't mean that we take a casual approach to plea-bargaining. Each case is evaluated on its merits; the strength of the facts and the outcome sought. The bottom line is that we want to provide for the safety of the public and see that justice is served as best as possible.

I WANT A RESTRAINING ORDER TO KEEP SOMEONE AWAY FROM ME. WILL THE PROSECUTING ATTORNEY DO THIS FOR ME?

A restraining order of this type is called a Personal Protection Order (PPO). The prosecutor's office can help with the filing of a PPO with the courts, but individuals represent themselves in these matters. We do assist in the enforcement of a PPO.

The Prosecuting Attorney may be able to request that the Judge adds a "no contact" condition to the defendant's bond if the defendant has been arrested and you are the victim of the crime.

AS THE VICTIM OF THE CRIME, HOW DO I GET MY PROPERTY BACK?

If your property was damaged or it was stolen, and then recovered by the police, it can sometimes be returned to you before the case is done. In most cases, we need to keep the property secured in police custody until the case is finished. Ultimately, the decision whether evidence is released must be made by one of the attorneys in the prosecutor's office. Contact the police agency handling your case if you want or need your property back. The police agency then will contact the prosecutor's office to see if the return of the property is possible.

THE DEFENDANT IS NOT PAYING COURT-ORDERED RESTITUTION. WHO CAN HELP ME?

Please call the probation department handling your case. It may be the Circuit Court probation department or the District Court probation department depending on whether the defendant was convicted of a felony or a misdemeanor. When you call, ask for the probation officer assigned to your case. It is best if you have the name of the defendant handy when you call.

The probation officer can help you get your money if restitution was a condition of the defendant's probation and if the defendant is still on probation.

If the probation has expired and your restitution has not been paid in full, you can still recover from the defendant. The criminal case restitution order entered by the Judge is a court order that does not expire when the probation ends. The restitution order is like having a judgement in a civil suit, except you do not have to start a civil suit. You can enforce the restitution order like any civil judgement through measures such as garnishment of wages, attachment of property, execution, etc. Please see a private attorney if you need assistance.

DON'T VICTIMS HAVE RIGHTS TOO? WILL THE PROSECUTING ATTORNEY HELP ME AS A VICTIM?

Just as the defendant in a criminal case has rights, so do victims of crime. They are somewhat different than the defendant's rights, but they do provide the victim an opportunity to be involved in the criminal case.

The Michigan Constitution, as well as statutes, gives many victims of crime certain rights. The prosecutor's office provides a staff person(s) to help enforce the rights of the victim.

WHAT IF SOMEONE THREATENS ME?

Concerns about your well being and safety after being victimized or witness a crime are normal concerns. If you have any fears or receive any threats concerning your involvement in a case, you should immediately contact the law enforcement agency that investigated your case. In an emergency situation, call 9-1-1. You need to do so as soon as possible so that the threats can be documented and appropriate action taken. There are laws to protect you against people who attempt to bribe, intimidate, threaten or harass you.

WHAT IF THE DEFENSE ATTORNEY CONTACTS ME?

If you choose to do so, always request proper identification and an explanation of the purpose of the interview. If you have concerns about talking with a defense attorney or their investigator, you are encouraged to contact the assistant prosecutor handling your case. It is possible that the assistant prosecutor may be able to be with you at the time of the interview.

I HAVE RECEIVED A SUBPOENA FROM THE PROSECUTOR'S OFFICE TO APPEAR AS A WITNESS IN A CRIMINAL CASE. DO I GET PAID FOR BEING THERE? WHAT IF I

CANNOT BE THERE ON THE DATE AND THIME SHOWN ON THE SUBPOENA? WHAT IF I DON'T SHOW UP?

A witness is entitled to a witness fee of \$6.00 per half day (\$12.00 for the entire day) plus \$.36 per mile. I know this isn't much, but this is the amount set by the Michigan Legislature. Neither the Judge nor I can change the amount. The Prosecutor's Office vouchers all witness fees through the county's financial board, which must approve all expenditures. Therefore, you may not receive payment immediately - in fact it may take up to four or five weeks before you get your check.

If you cannot attend court at the date and time stated on your subpoena, please call the prosecutor's office immediately and ask to speak to the attorney's secretary who is handling your case. Unless you are excused, you **MUST** attend.

If you fail to appear at the date and time listed in the subpoena after being served with it, the Judge could hold you in contempt of court. The Judge could then impose a fine or jail sentence for your failure to appear. Don't let that happen to you!

HOW DO I GET OUT OF JURY DUTY?

Jury duty is one of the most important roles that a person can play in our criminal justice system. All too often, people want to get out of serving as a juror. It is paradoxical that often the people who complain the loudest about the criminal justice system being too easy on criminals and too many plea bargains being given, are the first people who want to be excused from jury duty.

There are very few circumstances that allow a judge to excuse a person from jury duty. If you have been summoned to serve as a juror, and believe that you have a valid reason to be excused, you will need to contact the court office as soon as possible to let them know your situation. Only the judge can excuse you from service.

**DO NOT FAIL TO SHOW UP** unless you have been excused.

I FEEL I HAVE BEEN THE VICTIM OF CONSUMER FRAUD. WHO CAN HELP ME?

Most cases of consumer fraud are handled through the Consumer Protection Division of the Michigan Attorney General's Office in Lansing. Their telephone number is 877-765-8388. They may be able to help or they may refer you to another agency that can help you.

I WANT A DIVORCE, I ALSO NEED CHILD SUPPORT. CAN THE PROSECUTOR'S OFFICE HELP ME?

We cannot provide legal advice or assistance in the filing of a divorce action. You would need to contact a private attorney for assistance. You can also handle your divorce without an attorney.

The Prosecutor's Office can help to obtain a child support order if there is not a divorce action pending.

I HAVE BEEN CHARGED WITH A CRIME. HOW DO I GET A COURT APPOINTED ATTORNEY?

The Prosecutor's Office does not decide whether a person can obtain a court appointed attorney. You must ask the Judge who is handling your case. The Judge will decide if you are indigent (i.e., cannot afford to hire an attorney) based on such things as your income, assets and financial obligations, as well as the seriousness of your charge(s). On some misdemeanor cases, the Judge may order that you appear at the pretrial conference on your own. If the case is not resolved at that time, the Judge may then appoint an attorney to represent you. However, just because you may receive a court appointed attorney does not mean it is "free." The Judge may still order you to repay the County for your attorney's bill.

I DON'T LIKE MY COURT APPOINTED ATTORNEY. CAN I TALK TO ONE OF THE PROSECUTORS ABOUT MY CASE?

NO. Attorneys are governed by Michigan's Rules of Professional Conduct, which prevent them from speaking directly to anyone who is represented by an attorney on the same matter. As long as an attorney represents you, the prosecutor's office can only speak to that attorney. Your attorney should answer any questions that you have about your case. If you continue to be dissatisfied with your court appointed attorney, you will have to contact the Judge who is handling your case.

I HAVE A COMPLAINT AGAINST YOUR OFFICE. HOW DO I CONTACT YOU, AND WILL YOU RESPOND? WHAT IF I HAVE A QUESTION THAT IS NOT ANSWERED HERE?

You can call the Prosecutor's Office and request to schedule an appointment to see Mr. Young. The office number is 810-648-3402. Or, if you wish, you can send your question by mail to James V. Young at this address: Courthouse - 60 West Sanilac Ave, Room 314, Sandusky, MI 48471.

Some questions may not be able to be answered. The Prosecutor's Office is not a "free legal clinic" or a clearinghouse giving free legal advice. We cannot give legal advice on private legal issues. We strive to provide the best service possible. Even so, we sometimes make mistakes. I would like to hear from you if you feel we have not performed satisfactorily.