



Navigating the Massachusetts Court System

Courts

Courts

Trial Courts

- **Hold trials**
Jury Trial / "Bench" Trial
- **Find facts**
Jury or Judge = fact finder
- **Apply law**
Given these facts, what should be the outcome?

Appellate Courts

- Determine if law was correctly applied by trial court
- Generally cannot contradict the factual findings of the trial court
- May determine new law
(Appellate Court decisions are case law)

Examples of Trial Courts

State Level (Mass.)

- District Court
- Superior Court
- Probate & Family Court
- Juvenile Court
- Housing Court
- Land Court

Federal Level

- Federal District Court ("D. Mass.")
- Bankruptcy Court

Appellate Courts

State Level (Mass.)

- Appeals Court
- Supreme Judicial Court

Federal Level

- Appeals Courts for each Circuit (Mass = 1st Circuit)
- U.S. Supreme Court



Sources of Law used by Courts

- **Constitution** – U.S. Const. & Massachusetts "Declaration of Rights"
- **Statutes** – passed by legislature, signed (at the state level) by Governor
- **Case Law** – decisions of appellate courts
- **Rules of Court**
- **Regulations** (e.g., Code of Mass. Regs "CMR")
- **Guidelines** (e.g., child support, domestic violence)

The Players

Each person in the court system has specific duties and responsibilities

- Judge** - neutrally and impartially preside over legal proceedings
- Clerk** - manages the court's records, oversees hearings
- Jury** - select. Clerk summons the jury, reads the verdict
- J.P.C. / Assistant Judge** - preside over the court's proceedings, also support for lawyers, may reduce fines
- Witness** - provide testimony, provide information on the advice to objects
- Lawyer** - Give clients a duty of loyalty, confidentiality, must keep confidences in an adversarial process. Do not be confused with the court and the opposing party.

Prosecution

- By both professional (attorney) and lay (citizens) in the courtroom, make representations to judge re. prosecuting, with prosecutive responsibility
- In People Court include prosecutor, investigators

Defendant / Attorney

- Appointed by the Court, Lawyer or mental health professional
- From a pool of judges, government lawyers or the public, rates charged, retained
- Appointed to represent or to advise non-indigent

Non-attorney advocates

- Like victim/witness advocates, are not within a profession, but are key to between victim and prosecutor
- Discussed to give defendants, prosecutive agencies - the process, or lack of, compatibility between victim and victim - behavior, "We are" advocates
- Lay advocates from some jurisdictions (prosecutors have a duty regarding victims) - have a duty to follow up and provide to SA/DV court system, LMA (1) have privilege

Court officers and clerks

- Court officers hear and file bills, and they coordinate processing of papers and judgments
- They may hear out-of-court matters, including traffic, juvenile, mental health

Mediators

- When requesting for attorney fees, and mediators should receive approval, need for work, but also apply to new cases

Civil vs. Criminal Proceedings

Civil vs. Criminal

- | Civil | Criminal |
|--|---|
| <ul style="list-style-type: none"> Plaintiff vs. Defendant | <ul style="list-style-type: none"> State (or Commonwealth) vs. Defendant |
| <ul style="list-style-type: none"> Resolve controversy between parties (party can be a corporation or "class") | <ul style="list-style-type: none"> Address the wrong done to the whole |
| <ul style="list-style-type: none"> Generally, result is money damages | <ul style="list-style-type: none"> Results generally fines, probation, incarceration |
| <ul style="list-style-type: none"> Examples: Slip-and-fall → Pedestrian vs. Bldg Owner, Contract, Divorce, Restraining orders | <ul style="list-style-type: none"> Victim is not a party |

Victim's role in criminal case

- Victims are WITNESSES, not parties. Parties have the right to determine the strategy, settlement, etc.
- Witnesses can be compelled to attend and testify (There are some specific exceptions: "privileges")
- It is the prosecutor's job to pursue charges, not the victim's.
- Crime is "against society" -- isn't just about this defendant and this victim
- Victimless prosecution takes from the victim the opportunity to let perpetrator off the hook
- On the other hand, not victim empowerment

SO...
what are the victim's rights in the criminal process?

MGL c.258B

§ 3 Rights afforded victims, witnesses or family members

This section includes – among other rights – the right:

...(a) to be informed by the prosecutor about the victim's rights in the criminal process. At the beginning of the criminal justice process, the prosecutor shall provide an explanation to the victim of how a case progresses through the criminal justice system, what the victim's role is in the process, what the system may expect from the victim, why the system requires this, and, if the victim requests, the prosecutor shall periodically apprise the victim of significant developments in the case

...(c) to be notified by the prosecutor, in a timely manner, when a court proceeding to which they have been summoned will not go on as scheduled

MGL c.258B

- (e) to be informed by the prosecutor of financial assistance and other social services available to victims, including information relative to applying for such assistance or services
- (g) to confer with the prosecutor before the commencement of the trial, before any hearing on motions by the defense to obtain psychiatric or other confidential records, and before the filing of a nolle prosequi or other act by the commonwealth terminating the prosecution or before the submission of the commonwealth's proposed sentence recommendation to the court.
- The prosecutor shall inform the court of the victim's position, if known, regarding the prosecutor's sentence recommendation
- The right of the victim to confer with the prosecutor does not include the authority to direct the prosecution of the case

Jurisdiction of Courts

Jurisdiction & Venue

- Subject Matter Jurisdiction
Each court has power to make decisions over certain types of cases
- Personal Jurisdiction
Massachusetts courts have limits regarding how much power they have over people who are not residents of the Commonwealth
- Venue
Each court has geographic boundaries

District Courts

- Most local, accessible
- Hear **Misdemeanors** and "concurrent" **Felonies**
- May only sentence to the county HOC
- Trials are by Jury of Six
- 209As
- Civil commitment – § 12 - danger to self or others
- Evictions
- Traffic tickets
- Small claims (generally under \$7000)

Misdemeanor v. Felony

MGL c. 274 s. 1

A crime **punishable** by death or imprisonment in the state prison is a felony.

All other crimes are misdemeanors.

An example

Assault and battery: *Whoever commits an ... assault and battery upon another shall be punished **by imprisonment for not more than 2 1/2 years in a house of correction** or by a fine of not more than \$1,000.*

MISDEMEANOR

An example – part 2

ABDW: *Whoever commits an assault and battery upon another by means of a dangerous weapon **shall be punished by imprisonment in the state prison for not more than 10 years or in the house of correction for not more than 2 1/2 years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.***

FELONY

District Courts have power (subject matter jurisdiction) over only certain felonies

MGL c. 218 § 26

All felonies punishable by imprisonment in the state prison for not more than five years ("5-year felonies")

Other specifically enumerated felonies:

- Kidnapping (New DV Law 2014)
- Motor Vehicle Homicide (negligent – not OUI)
- OUI-SBI
- Heroin PW/Dist – 1st Offense only
- School Zone Violations
- A&B on a CO
- A&B elder/disabled
- Larceny, B&E, B&E MV
- malicious destruction of personal property
- indecent assault and battery on a child under fourteen years of age
- intimidation of a witness or juror
- escape or attempt to escape from any penal institution
- forgery

Superior Court

- One per county, although sittings may exist in multiple courthouses – E.g., County seat is Cambridge (NOTE: since 2007, the Court has been sited in Woburn), but the court also sits in Lowell
- Criminal cases: Has original jurisdiction over all crimes. Exclusive original jurisdiction over 1st degree murder cases. May sentence to state prison ("DOC") (but can also sentence to the HOC in cases where there is an HOC alternative – see e.g., ABDW)
- Larger civil actions (over \$25,000)
- 209A Restraining orders, but issues very few
- Also has appellate jurisdiction over certain administrative proceedings

Probate and Family Court

- **Divorce**
 - Custody, visits, child support, alimony, division of property and debt
- **Paternity**
 - Custody, visits, child support
- **Guardianship of minors**
- **Guardianship of mentally ill**
- **Restraining orders – 209A**
- **Domestic Relations Protective Orders under c. 208 and c. 209C**
- **One PFC per county with satellite sessions**

Juvenile Court

- **Care and Protection**
- **Termination of parental rights "TPR"**
- **Child in Need of Services "CHINS"**
 - (stubborn child; truant) – in 2012 "CRA-CRIS: Requiring Assistance" took the place of CHINS – focus is on holistic, child-family centered treatment, less adversarial than the old CHINS process
- **Delinquency** (criminal cases – defendants under 18 – until 2013 it was under 17)
- **Guardianship** (often end run around TPR)
- **More than one per county**

Chronology of a Criminal Case

How it Starts

- Generally by a police department
 - under arrest
 - investigation only
- Could come from a hospital, a victim service agency, the Victim

If under arrest . . .

- **Arraignment:** The initial court date where the charges are officially read to a defendant, he/she is assigned a lawyer, bail and/or conditions are established
- (More on Bail later)

Team is Assigned

- Assistant District Attorney – duty is to prosecute the case
- MDAO Victim Witness Advocate – acts as a liaison between the Victim and the ADA, assists the Victim with services and all rights under the Victim Bill of Rights
- Sometimes: Police Detective – does the follow up investigation

Initial Victim Contact

- Phone vs in Person
- Usually four things are done:
 - Explain to the victim who everyone is and the process for the contact
 - Obtain the facts of the case, history between the parties (if Detective is present)
 - Talk to the Victim about his/her wishes about participating in a prosecution, what he/she would like to see happen
 - Explain what will happen next

Investigation

- Interview witnesses
- Potentially interview suspect (if investigation, not if it was an arrest)
- Obtain records: Phone, bank, hotel, work, medical, etc.
- Physical Evidence is processed at the lab, if necessary

Prosecution Decisions

- Which Court will it be prosecuted in: District Court vs Superior Court?
- What charges are going to be pursued?

If District Court:

- Case either gets charged in the court if it was just an investigation OR
- Case remains in the District Court in which it was already charged.
- May add or dismiss certain charges depending on the investigation.

If Superior Court:

- **Grand Jury:** This is a secret proceeding. There is no Judge, defense attorney, or the defendant present during the testimony. However, it is recorded, and the defense will get a copy of the transcript.
- The Grand Jury decides whether there is Probable Cause for the indictments. Much lower standard than Beyond a Reasonable Doubt.
- If Grand Jury votes a "true bill", then there will be a new arraignment in Superior Court, and the district court case will be dismissed.

Next Steps In Both Courts

- **Pre-trial "Paper Dates"**
 - Discovery: Motions to obtain records, reports, from either side
 - Motions to suppress evidence, dismiss the case
 - Motions for a victim's psychiatric or mental health records

Possible Resolution

- **Disposition Short of Trial**
 - Called a Change of Plea.
 - The Victim has a right to be heard, make a Victim Impact Statement – can be verbally, in writing, or through the ADA.

Otherwise,

- **Trial**
 - The majority of the time, the victim will have to testify
 - Other witnesses would testify
 - The standard is Beyond a Reasonable Doubt. Very high standard.
 - Defendant could be found guilty or not guilty. If a defendant is found not guilty, then this is the end of the process.

• Sentencing

- If a defendant is found guilty after a trial, then a sentencing hearing is held.
- The Victim has a right to be heard, make a Victim Impact Statement.

Post-sentencing

- Appeals
 - Of entire case, or certain charges
 - Of Sentence
- Motions for New Trials
- Probation Surrenders (If a defendant is on probation, the probation officer will establish contact with the victim)
- Parole Hearings
- Notification to Victims when a defendant is being released from custody.

Bail

- There is a statutory RIGHT to bail
- The presumption is personal recognizance
By statute, M.G.L. c. 276, § 60, any person who is held in custody for a criminal offense with or without a removal order shall, on offense completion, be entitled to return to the community on their own recognizance, unless the person authorized to admit to bail determines, in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the person as required.
- Bail is about whether or not the defendant is *likely to reappear* before the court.
Arrest, Crim. J. 14 Mass. 603 (1983)
- If there is a concern regarding safety and the defendant is charged with one of a list of certain crimes ("predicate offenses"), the Commonwealth may move for a Dangerousness Hearing under MGL c. 276 § 58A.

Who sets bail?

- When someone is arrested and court is not in session, they are entitled to have a clerk magistrate consider the issue of bail.
- If a defendant is arrested for a violation of a restraining order, (s)he is supposed to be held without bail until arraignment.
- Bail can be reconsidered by a judge or magistrate during arraignment in court.

Changes affecting the bail procedure under the 2014 Massachusetts DV Law

There are new laws surrounding when a defendant accused of a crime of domestic violence (VRO, domestic assault, domestic assault and battery, or strangulation) can be released from custody (either from the police station post-arrest or from the court after arraignment).

• Arrest (6 Hour Rule)

Where a person is arrested and accused of a crime of domestic violence when court is not in session, no bail can be set until 6 hours after the time of arrest.

• Arraignment (3 Hour Rule)

In crimes of domestic violence, the arraignment cannot proceed until at least 3 hours after the complaint is issued and signed by the clerk. Only the ADA handling the case can waive the 3 hour rule.

One more word about bail...

- Once bail is set in the district court, the defendant may ask the Superior Court to review that bail.
- The Superior Court may decide to raise or lower the bail or keep it the same.
- Your victims should be aware that the District Court is not always the last word on bail! Victims should sign up for bail notification with the VWA so they are alerted if the defendant makes bail (because s/he became able to pay the bail or because it was lowered). The defendant does not have to ask to review the bail right away, s/he can do that at any time.

§ 58A Dangerousness Hearing

- The Commonwealth may move, based on dangerousness, for an order of pretrial detention or release on conditions for:
 - a felony offense that has as an element of the offense the use, attempted use or threatened use of physical force against the person of another
 - any other felony that, by its nature, involves a substantial risk that physical force against the person of another may result, including the crimes of burglary and arson whether or not a person has been placed at risk thereof,
 - or a violation of an order pursuant to section 19, 34B or 34C of chapter 209 (DRPO), section 32 of chapter 209 (DRPO), section 3, 4 or 5 of chapter 209A or section 15 or 20 of chapter 209C (DRPO),
 - or arrested and charged with a misdemeanor or felony involving abuse as defined in section 1 of said chapter 209A;
 - or while an order of protection issued under said chapter 209A was in effect against such person
 - other stuff – e.g., repeat offense OUIs (3+), certain min. mand., drug and gun crimes

§ 58A Dangerousness Hearing

- If an individual has been charged with a predicate offense, a hearing may be held to determine whether the individual should, pending trial, be:
 - released on personal recognizance
 - OR
 - released on conditions of release
 - OR
 - detained

The hearing shall be held immediately upon the person's first appearance before the court unless that person, or the attorney for the commonwealth, seeks a continuance.

Pretrial detention may be ordered only if the judge finds that the Commonwealth has established by clear and convincing evidence that no conditions of release will reasonably assure the safety of any other person or the community.

§ 58A Dangerousness Hearing

• An individual detained under § 58A "shall be brought to a trial as soon as reasonably possible, but *in absence of good cause*, the person so held shall not be detained for a period exceeding 120 days.

• As with cash bail, an individual ordered detained by a judge in the District Court may petition the Superior Court for review of that order.

Changes under the 2014 DV Law

- Judges MUST consider hearsay in police reports or victim and witness statements (previously, Judges could consider but not *required* to)
- Before being permitted to summon the alleged victim or a member of the victim's family to court, the defendant must show a good faith basis for a reasonable belief that such evidence would support a denial of the commonwealth's motion for dangerousness.
- If a finding of dangerousness is made, the period for which the defendant will be held without bail increases from 90 days to 120 days.

Restraining Orders

209A Restraining orders

- Can obtain relief without notice and opportunity to be heard - "*ex parte*"
 - * emergency orders – through PD
 - * must attend next sitting of the court to extend
 - * 10-day hearings
 - * extensions for 1 year / permanent orders
- Not criminal case but violation is a crime
- Custody and support available in District Court, but Probate Court decision on either trumps Dct order

209A Restraining orders

- Visits cannot be ordered in District Court unless parties agree to it
- Except for visits in Probate Court, plaintiff may not be ordered to do anything - RO's limit the defendant's liberty, NOT the plaintiff's

Harassment Prevention Orders

- MGL c. 258E
- Relief available in Superior Court, BMC, District and Juvenile Court covering plaintiff's home.
- Juvenile Court has jurisdiction over cases where both parties are under 17 yoa
- No relationship requirement as with 209A

Standard for Harassment Prevention Order

Three or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property

OR

An act that: (A) by force, threat or duress causes another to involuntarily engage in sexual relations

or (B) constitutes one of a number of enumerated crimes - e.g. :
Indecent assault and battery
A&B on disabled person
Rape
Assault w/ intent to rape
Stalking
Criminal Harassment

"Enforcement" under 209A?

Criminal violations of Probate and Family Court orders are enforced pursuant to § 7 of 209A - a criminal charge: *violation of RO*

"Criminal Violations"

Vacate / stay away, refrain from abuse, no contact - are enforceable criminally

Other provisions (e.g., visits, support) are enforceable through the contempt process