

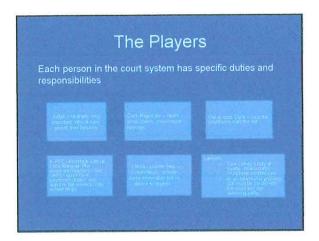
Courts

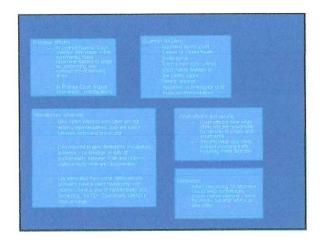
Courts Trial Courts Appellate Courts Determine if law was correctly applied by trial court Trial Find facts Jan a Judge = tact finder Apply law Given these facts what should be the outsone? Generally cannot contradict the factual findings of the trial court May determine new law Appellate Court decisions are case law!

Examples of Trial Courts State Level (Mass.) Federal Level District Court Federal District Court ("D. Mass.") Probate & Family Court Juvenile Court Housing Court Land Court

Appellate Courts State Level (Mass.) • Appeals Court • Appeals Court • Appeals Courts for each Circuit (Mass = 1st Circuit) • U.S. Supreme Court

Sources of Law used by Courts Constitution -U.S. Const. & Massachusetts "Dedaration 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)





Civil vs. Criminal Proceedings



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 explaint on 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 cour 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 prosecution or before the submission of 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 active of the Commonwealth.
- Venue
 Fach court has decorablic 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 of 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 21/2 years, or by a fine of not more than \$5,000, or by both such fine and imprisonment.

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

MGI c 218 5 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)
 Moror Vehicle Homicide (negligent not O
- Motor VE
 OUI-SBI
- Heroin PWI/Dist 1st Offense only.
- School Zone Violatio
- · A&B elder disabled
- Larceny, BSE, BSE MV
 malicious destruction of personal property
- indecent assault and battery on a child under fourteen years of age
- insimilation of a witness of pirof
 escape or altempt 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 siled in Woburn), but the court also sits in Loyel.
- Criminal cases: Has original jurisdiction over all crimes. Exclusive
 original jurisdiction over 1: 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 a., ABDIN;
- Larger civil actions (ever \$25,000
- · 209A Restraining orders, but issues very few
- Also has appellate jurisdiction over certain administrative proceedings

Probate and Family Court

- · Divorce
 - Gustudy, visits, child support, alimony, division of properly 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 TORAL Child Reginning Assistance took the place of CHINS - focus is on holistic child family contend to estimate liess arthurs and that the old CHINS (rockess

- Delinquency (criminal cases –defendants under 18 until 2013) 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

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

- 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

Initial Victim 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

Investigation

- Potentially interview suspect (if investigation,

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

Post-sentencing

- - Of entire case, or certain charges
 Of Sentence
- Probation Surrenders (If a defendant is on probation, the probation officer will establish
- Notification to Victims when a defendant is being released from custody.

Bail

- · The presumption is personal recognizance

- 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?

- Bail can be reconsidered by a judge or magistrate during arraignment in court.

Changes affecting the bail procedure under the 2014 Massachusetts DV Law

One more word about bail...

- 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
 - or a violation of an order pursuant to section 18, 34B or 34C of chapter 209 (DRPO), section 32 of chapter 209 (DRPO), section 3, 4 or 5 of chapter 209 A or section 15 or 20 of chapter one (IRPO).
 - or arrested and charged with a misdemeanor or felony involving abuse as defined in section to of said chapter 209A;
 - or while an order of profection issued under said chapter 209A was in effect against such person.
 - other stuff e.g., repeal 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 recognizanc
 - released on conditions of release
 - datamad

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.

retrial detention may be ordered only if the judge, finds that the Commonwealth has established by clear and convincing evidence that in a conditions of release will reasonably assure the sofety 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

- and Juvenile Court covering plaintiff's home.
- · Juvenile Court has jurisdiction over cases where

Standard for Harassment **Prevention Order**

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
Station

"Enforcement" under 209A?

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

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

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