CRIMINAL PROCEDURE IN FELONY CASES

I. Law Enforcement Has Some Reason to Believe A Felony Offense Has Been Committed.

II. The investigatory phase:

A. For some reason, an allegation of criminal activity has come to the attention of law enforcement. This can happen in a number of ways, and include:

1. Officer witnesses crime being committed. Example:

a. A law enforcement officer (hereinafter referred to as a "LEO") pulls you over for a routine traffic violation.

(1) You get caught speeding.

(2) Officer sees you running from a bank and the alarm is going off at the bank.

b. LEO observes fruits or instrumentalities of a crime which are out in plain view.

(1) The officers sees a "marijuana roach" in your ashtray, after a lawful stop.

(2) Officer is executing a search warrant and finds evidence linking you to a crime.

c. Officer smells an odor associated with illegal activity.

(1) LEO smells the aroma of marijuana coming from your car.

(2) LOE smells the odor of alcohol coming from your person or car.

d. This usually results in an immediate arrest of the person who the LEO thinks committed the crime in question.

2. Victim or Witness contacts law enforcement.

a. Neighbor sees that you have marijuana growing in a field behind your house and calls LEO to inform them that a crime is being committed.

b. Victim of a crime contacts law enforcement and reports the crime.

3. Tip is called in to law enforcement.

a. Someone calls crime stoppers and reports a crime.

b. A tip differs from a Victim or witness report, as it is usually a third party calling in, who may not have been involved in the crime, but has become aware of the same.

B. Some LEO is assigned to the investigate the case.

1. Often times this is the same LEO who initially witnessed the crime. Example:

a. You get pulled over for speeding, LEO says he notices the aroma of marijuana coming from your vehicle. He searches the vehicle and finds several pounds of marijuana hidden in it. This is likely the only officer that will be assigned to this investigation.

2. Sometimes a Detective or Detectives is/are assigned to the case.

a. This usually happens in:

(1) Crimes of violence: homicides, aggravated batteries.

(2) Sex Crimes: Rape, Indecent liberties with a child, etc.

(3) This almost always happens in cases where the person who committed the crime is unknown to law enforcement.

C. The LEO is charged to perform a full and complete investigation into the criminal allegations. This can include:

1. Crime scene investigations and gathering of evidence.

2. Interviewing witnesses.

3. Doing background investigations of persons associated with the criminal activity, can include victim, witnesses, friends of victim, suspect and others.

4. May require lab work to be conducted in any case that requires forensic testing. This evidence will all be reviewed by the Detective(s) in charge of the investigation. This usually includes things like:

   a. DNA testing

   b. Drug testing

   c. Autopsy

   d. Firearms examination

   e. Fingerprint analysis

   f. Questioned document analysis

D. The investigating Detective or other LEO, gathers up all of the evidence which is associated with the case, and writes up a report.

III. The Charging Decision Phase:

A. Once the LEO assigned to the case has completed his investigation, and written his report, he will meet with the prosecuting authority, that would have a duty to prosecute the case. That may be:

   1. The United States Attorney's Office, is the crime is a federal offense.

   2. The local County Attorney or District Attorney.

      a. A County Attorney in counties that have a small population. They represent the County in all matters, civil and criminal.

      b. A District Attorney in the more populated counties. Such as: Sedgwick County; Reno County, Shawnee County; Saline County; Johnson County, Wyandotte County, etc.

         (1) District Attorney is assigned to the Judicial District, and represents the State of Kansas in all criminal proceedings in that county.

         (2) In Wichita, Sedgwick County, Kansas, we are in the 18th Judicial District, and Marc Bennett is the present District Attorney.

B. During that meeting the investigating LEO will lay out the case to the prosecutor. The prosecutor has several options:

1. He can tell the officer that there are problems with the case and tht he needs to do further investigation before a crime is charged.

2. The prosecutor can decline prosecution in the case. This usually happens when:

   a. There is a problem with the investigation, such as:

      (1) A lack of evidence, necessary to convict the accused.

      (2) A questionable search was conducted, which might be the subject of a successful suppression motion by the accused.

      (3) Evidence has been contaminated during the investigation, or for other reasons.

      (4) There is a defense to the crime, such as self defense, defense of another, etc.

   b. A felony crime may have been committed, but the DA has a policy against prosecuting such offenses in his District. Example:

      (1) Someone is arrested with drug paraphernalia in their possession which contains a small amount of residue on it. That crime can be charges as a felony (assuming the controlled substance is something other than a 1st or 2nd time marijuana case) for possession of a controlled substance. However, the D.A.'s office in several jurisdictions have a policy that if the evidence is just "dust on a mirror" or "residue on something used to smoke the drug" or "trace amounts in a syringe," they will not charge the offense as a felony, and may refer the case to municipal court for prosecution as a misdemeanor, or charge the same as misdemeanor possession of drug paraphernalia.

3. The prosecutor makes the decision to prosecute the case.

   a. The prosecutor is who determines what charges, if any, are supported by the evidence. The issue at this time is, whether or not there is

"probable cause to believe" that a crime has been committed and that the accused is the person who committed it.

IV. Filing of Criminal Charges Phase:

A. A "charging instrument" is prepared.

1. Must be sufficient to comply with the "notice" requirements of the due process clause of the 14th Amendment.

2. Can be an "Information/Complaint."

a. This is the most common procedure followed in Kansas District Courts.

b. Must be in writing and sufficiently describe the crime alleged, so that the accused will understand what it is he is charged with. In Kansas this is governed by K.S.A. 22-3201.

c. The complaint, information or indictment shall be a plain and concise written statement of the essential facts constituting the crime charged, which complaint, information or indictment, drawn in the language of the statute, shall be deemed sufficient. K.S.A. § 22-3201(b)

d. When relevant, the complaint, information or indictment shall also allege facts sufficient to constitute a crime or specific crime subcategory in the crime seriousness scale. K.S.A. § 22-3201©

e. An information shall be signed by the county attorney, the attorney general or any legally appointed assistant or deputy of either. K.S.A. 22-3201(b)

3. Can be an indictment, handed down by a grand jury.

a. This is the usual practice in Federal Courts.

b. Once the prosecutor makes the decision to prosecute a case, he can then present the case to a grand jury, who will hear the evidence, and then determine the charges to be filed.

c. A grand jury can also be convened during the investigatory phase of the case.

(1) Sometimes law enforcement, and or the prosecutor, may want to gather additional information before charging a case. If that is the case, a grand jury is a tool that they can use to gather additional information.

(2) A grand jury has the power to issue subpoena's to witnesses to appear before it, and to bring evidence relevant to the crime with them.

(3) This is often times used where a witness may not have been willing to discuss the matter with the LEO assigned to the case.

(4) Grand jury proceedings are secret, and what goes on inside the grand jury room may not be subject to disclosure, during the normal "discovery process" discussed at length below.

d. An indictment shall be signed by the presiding juror of the grand jury. K.S.A. § 22-3201

e. Must be in writing and sufficiently describe the crime alleged, so that the accused will understand what it is he is charged with. In Kansas this is governed by K.S.A. 22-3201.

V. Determination that the Charges are Supported by Probable Cause:

A. If the prosecutor has elected to have a grand jury make the "probable cause" determination, by presenting the case to them, a true bill of indictment is prepared and submitted to the Court, and the Court is not required to make an independent probable cause finding before signing off on the indictment. In this regard, see K.S.A. § 22-3001 through § 22-3016, which govern when the State of Kansas can use a Grand Jury to return an indictment.

B. If the prosecutor has decided to proceed by filing a "Complaint/Information," there are some additional requirements:

1. An Affidavit of Probable Cause for Arrest must be prepared and sworn to, under oath and the penalties of perjury.

a. It must contain sufficient factual allegations, which if true, would be sufficient to lead the judge to whom it is presented to believe that there is "probable cause," to believe that a felony has been committed and that the defendant committed that offense.

b. Affidavits of probable cause are not open to the public, and can only be obtained from the Clerk of the District Court by counsel for the accused.

(1) There is an exception to this rule, where the press or other interested party, can file a Motion with the Court to be able to obtain a copy of this Affidavit.

(2) The Court must give all parties notice of the hearing on this Motion, and an opportunity to be heard on the same before the Affidavit can be released.

(3) Often times the Affidavit of Probable cause will not be released to third parties (such as the press) by the Court, to avoid "contamination of the jury pool." This is often times the case in "high profile" cases.

C. If the either the Court, after review of the affidavit, determines that "probable cause" does exist, or a Grand Jury makes that determination, charges will be filed.

D. The Judge is then required to determine what type of Notice of the filing of the charges should be given to the accused.

1. Proceeding by way of a warrant.

a. The judge can issue a warrant for the arrest of the accused.

(1) This occurs most often when the accused is already in custody, but can even if the accused is not in custody.

(2) The warrant will have a "bond" set on it, so that once the person is arrested, they can post bond and be released from jail.

(3) However, in some cases, no bond is set when the warrant is issued for a number of reasons:

(A) The accused is being held on a detainer from some other jurisdiction or law enforcement agency. Examples:

(i) The accused is not a U.S. Citizen, and the Bureau of Immigration and Customs

Enforcement (ICE) has lodged a detainer, asking that the agency currently having custody of the accused not release him without notice to ICE, and giving them a 72 hour window to either pick-up the accused for deportation proceedings, or allow his release by the local law enforcement agency.

(ii) The accused has previously been convicted of a crime, and was either on probation, parole or supervised release at the time of the commission of the present offense.

(B) The Court determines from the Affidavit of Probable Cause that the crime is of sufficient seriousness that the accused is a "danger to the community," and should not be released on bond.

(C) The accused is charged with a crime, which if convicted of the same, would be facing a long sentence. If so, the Court may determine that the accused is a "flight risk."

2. Proceeding by way of a summons:

a. If the Court determines that the accused is not a "risk of flight," and not a "danger to the community," the judge may determine that proceeding by way of a summons is the appropriate way to give the accused notice of the charges against him.

b. A summons will set forth the charges against the accused.

c. It will set a date, time and place for the accused's initial appearance before the Court.

d. This decision, whether to proceed by way of a summons or a warrant, is one reason why an accused would want to have an attorney hired to represent him/her long before the charges are actually filed. Hiring an attorney before this can:

(1) Make the difference between whether a warrant is issued for the arrest of the accused, or the Court decides to proceed by way of a summons.

(2) An attorney can negotiate both the charge against the accused, and the bond the accused may have to post to be released from custody, with the prosecuting attorney, resulting in either a reduction of the charges the accused will be facing or a reduction in the amount of the bond the accused will be required to post.

(3) Hiring an attorney shows that accused intends to appear in court, as directed, and take care of the charges against him/her. This gives the attorney additional evidence that the accused is not a risk of flight, nor a danger to the community.

(4) In some jurisdictions, it may give your attorney early access to the evidence against you.

VI. The Initial Appearance

A. This is the next step in the criminal process. The things that will happen at this stage of the proceedings are:

1. The accused is advised by the Court of the charges which have been filed against him/her, and the potential penalties for each crime charged. Normally this is accomplished by the Judge reading the charges to the accused, and telling him/her what the minimum and maximum penalties are, as set by the Kansas Statutes and the Kansas Sentencing Guidelines.

2. The procedure in Federal Court is much the same.

NOTE: If the accused has already hired a lawyer, to represent them in this proceeding, the lawyer can inform the Court that it is not necessary for the Court to inform his/her client of the charges against him and the potential penalties, if the accused is found guilty, if the attorney has previously explained all of this to his client. This avoids the embarrassment of standing there in front of a judge, in a packed court room, while he reads everything into the record concerning the charges against you.

3. Once the Judge is satisfied that the accused understands what it is that he has been charged with and what the penalties are, the Judge will then make a determination about whether the accused is entitled to court appointed counsel.

a. If a person is free on bond or appearing by way of a summons, sometime prior to the Judge conducting the initial appearance, a bailiff or other Court official, will inquire whether or not anyone present in Court today, is requesting Court appointed counsel.

(1) Anyone indicating that they will be requesting Court appointed counsel, is given a form to fill out, which is an "Affidavit of Indigency."

(2) This document is generally given to persons in custody prior to their initial appearance.

b. If the Judge determines that the accused cannot hire his/her own attorney to represent him/her, then the Court will appoint counsel at this time. This could be:

(1) A member of the Public Defender's staff, either Federal or State depending upon the jurisdiction in which the accused is being prosecuted.

(2) If the Public Defender's Office has a conflict with representing the accused, then some other attorney will be appointed to represent the accused. This often times happens in cases where there is more than one person charged.

(3) The accused does not get to pick who is attorney will be, if he is requesting Court appointed counsel, that decision is up to the Court.

c. If the Court determines that a person is not eligible for Court appointed counsel, the Court will NOT appoint counsel to represent the accused. It will then be up to the accused to find and hire his own lawyer before the next stage of the proceedings.

d. If the accused is found to be partially indigent, the Court can appoint counsel, but order the accused to pay for at least part of his defense.

e. Anyone charged with a felony, applying for a Court appointed lawyer (in State Court), must pay a $100.00 application fee, if that fee is not paid at the time that the Application for Court Appointed Counsel is submitted to the Judge, it will still be required, and must be paid by the accused before the case is closed.

f. A court appointed lawyer is not necessarily a free lawyer.

(1) If the accused is acquitted of ALL of the charges against them, then the State of Kansas must bear the costs of paying the Court Appointed lawyer, and cannot look to the accused for payment of this obligation.

(2) If the accused is convicted of ANY of the charges against him/her then and in that event, the Court will add the amount of the attorney fees to the Court costs in the case, and order that the accused pay the same.

(3) However, the amount of money paid by the State to an accused's lawyer if generally far less than it would cost to retain private counsel.

4. The Judge will then take up the issue of bond, if one has not been previously set, or if there is no agreement as to what that bond should be.

5. If a bond has been previously set, and it is too high for the accused to post, or there are conditions on the bond which the accused wants to request a change on, the Court can also take those issue up at the time of the initial appearance.

a. Under the Eighth Amendment the Judge cannot set an "excessive bail."

b. However, the amount of the bond must be sufficient to insure the presence of the accused in court, as needed to finish the case, and sufficient to protect the community. This is commonly referred to as the "risk of flight" and "danger to the community" standards.

c. This is the first opportunity that someone in custody has to speak to a Judge about their bond.

6. The last item which the Court is required to do at the initial appearance, if the case was not filed because of a Grand jury Indictment (see above), is to set the case for a preliminary hearing.

VII. The Preliminary Hearing Phase:

A. Prior to the Preliminary Hearing in any case, defense counsel will likely request discovery from the prosecuting attorney.

1. This is largely controlled by statute.

   a. In State Court, K.S.A. § 22-3212 and K.S.A. § 22-3213, generally require that the State of Kansas must give most of the evidence upon which it is relying to counsel for the accused. It is best if this is accomplished prior to the preliminary hearing.

   b. In Federal Court, it is extremely rare that the accused is entitled to a Preliminary Hearing, because prior to filing the charges, or shortly after charges have been filed, the case is usually presented to a grand jury.

      (1) In the United States District Court for the District of Kansas, there is a standing order for pre-trial scheduling and discovery.

      (2) This is largely controlled by the Federal Rules of Criminal Procedure.

B. In State Court, a Preliminary Hearing is governed by statute, K.S.A. § 22-2902.

1. The state and every person charged with a felony shall have a right to a preliminary examination before a magistrate, unless such charge has been issued as a result of an indictment by a grand jury.

2. The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within 14 days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown. K.S.A. § 22-2902(2)

3. No accused person can be required to enter a plea until after there has been a preliminary hearing in the case, or the preliminary hearing has been waived by both the State of Kansas and the defense.

4. The defendant shall be personally present and except for witnesses who are children less than 13 years of age, the witnesses shall be examined in the defendant's presence K.S.A. § 22-2902(3)

5. Except for witnesses who are children less than 13 years of age, the defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf. K.S.A. § 22-2902(3)

6. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant. K.S.A. § 22-2902(3)

C. A preliminary hearing can be waived if both the State and the defense request to do so.

D. This is the accused's first opportunity to confront the witnesses against him.

1. Often times the government's witnesses in a case, may refuse to talk to the defense attorney or an investigator who is working the case on behalf of the defense counsel. No witness is compelled to answer such questions unless it is in open Court, after being called as a witness, or, if a deposition is taken.

2. This may be the only opportunity that the defense has, prior to trial, to interview some of the government's witnesses.

3. This gives the accused the opportunity to determine the accuracy of the police reports in the case.

4. This may also allow defense counsel to obtain evidence which might be useful later on during the pre-trial motion phase of the case.

E. There are advantages and disadvantages to either conducting or waiving a preliminary hearing. These vary greatly from case to case and the accused should seek the assistance of counsel, in determining whether to waive his right to a preliminary hearing, or to proceed with the hearing.

VIII. Arraignment

A. This is also governed by Statute, K.S.A. § 22-3205 and § 22-3206 are the applicable statutes.

1. Must be conducted in open Court.

2. The charging instrument (Complaint, Information or Indictment) must be given to the accused.

3. The accused must be present in Court if it is a felony charge.

4. If the accused has not previously been processed and fingerprinted as required by K.S.A. § 21-2501 and § 21-2501a, this must be done immediately after the arraignment.

5. The accused is required for the first time to answer the charges against him.

   a. This is done by entering one of the following pleas:

      (1) Not guilty - a plea of not guilty requires that the matter be set for trial, either to a Judge or a jury. It forces the government to prove each and every element of the crime(s) charged, beyond a reasonable doubt. It also brings into focus a number of trial rights which the accused has. (Discussed later in greater detail.)

      (2) Guilty - a plea of guilty means that the defendant is waiving or giving up his right to a trial, and all of the rights associated with a trial. A plea of not guilty denies and puts in issue every material fact alleged in the charge. K.S.A. § 22-3209(3).

      (3) *Nolo Contendere* or No Contest - Is not considered to be an admission of guilt, but informs the Court that the accused is not going to contest the charges. There are special rules set forth for the entry of a guilty plea or a nolo contendere plea, which are set forth in K.S.A. § 22-3210.

      (4) An *Alford* plea - this is a unique plea, where the accused does not admit guilt, but is instead informing the Court that there have been plea negotiations between the accused and the government, and based upon those plea negotiations, and in order to take advantage of them, the accused wishes to enter a guilty plea. The Judge does not have to accept an *Alford* plea.

      (5) Stand Mute. In some cases an attorney may advise his client to "stand mute," in other words to remain silent, when asked by the Court to enter a plea. This is done in Kansas cases where the attorney wants to preserve some issue which may have arisen prior to the arraignment in your case. Under current Kansas Law, by entering even a NOT GUILTY plea, you waive or give up your right to complain about certain matters, later on, if they occurred prior to your arraignment.

Always discuss the type of plea you are going to enter at an arraignment with your lawyer.

NOTE: In a misdemeanor case, the initial appearance and arraignment usually occur the first time that you appear before a Judge. If you have not been able to retain an attorney yet to represent you, you should request a continuance of this hearing so that you have an opportunity to either retain counsel, or request Court Appointed Counsel.

6. The accused is also required to advise the Court if he is requesting that his trial be to a Judge or a Jury. In Kansas and Federal Courts, all trials of felony cases must be to a jury, unless the accused and the prosecuting attorney agree to waive or give up this right. K.S.A. § 22-3403

7. If a plea of not guilty is entered, or if the accused person stands mute, the Court will set a trial date, at the arraignment, and may also set other dates at that time, such as:

   a. When pretrial motions are to be filed by.

   b. When responses to those motions are due.

   c. A hearing date and time for determination of any motions filed.

   d. The date by which requested Jury Instructions should be submitted to the court.

8. Presence of the Defendant is required for the following:

   a. Felonies: at the arraignment, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by law. In prosecutions for crimes not punishable by death or life without the possibility of parole, the defendant's voluntary absence after the trial has been commenced in such person's presence shall not prevent continuing the trial to and including the return of the verdict. A corporation may appear by counsel for all purposes. K.S.A. § 22-3405(a)

   b. For "traffic infraction, cigarette or tobacco infraction and misdemeanor cases," the accused does not have to be present, but if he is not, his attorney must be present. K.S.A. § 22-3405

IX. Pre-Trial Motions and Notices:

A. The next phase of any case is the filing of pre-trial motions and notices. This is generally controlled by statute, K.S.A. § 22-3208, *et seq.*

1. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion. K.S.A. § 22-3208(2).

2. Defenses and objections based on defects in the institution of the prosecution or in the complaint, information or indictment other than that it fails to show jurisdiction in the court or to charge a crime may be raised only by motion before trial. K.S.A. § 22-3208(3)

3. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. K.S.A. § 22-3208(3)

4. Lack of jurisdiction or the failure of the complaint, information or indictment to charge a crime shall be noticed by the court at any time during the pendency of the proceeding. K.S.A. § 22-3208(3)

5. A motion to dismiss shall be made at any time prior to arraignment or within 21 days after the plea is entered. K.S.A. § 22-3208(4)

6. If the court grants a motion based on a defect in the institution of the prosecution or in the complaint, information or indictment, it may also order that the defendant be held in custody or that the defendant's appearance bond be continued for a specified time not exceeding one day pending the filing of a new complaint, information or indictment. K.S.A. § 22-3208(6)

B. It is not possible to list here all of the pre-trial Motions which can be filed in a felony case, however, such Motions can dramatically effect the presentation of evidence at the time of trial. Some of these Motion are subject to special rules.

1. Motions to Suppress a Confession or Admission.

a. Prior to the preliminary examination or trial a defendant may move to suppress as evidence any confession or admission given by him on the ground that it is not admissible as evidence. K.S.A. § 22-3215(1)

b. The motion shall be in writing and shall allege the grounds upon which it is claimed that the confession or admission is not admissible as evidence. K.S.A. § 22-3215(2)

c. If the motion alleges grounds which, if proved, would show the confession or admission not to be admissible the court shall conduct a hearing into the merits of the motion.K.S.A. § 22-3215(3)

d. The burden of proving that a confession or admission is admissible shall be on the prosecution.K.S.A. § 22-3215(4)

e. The motion shall be made before preliminary examination or trial, unless opportunity therefor did not exist or the defendant was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the preliminary examination or the trial. K.S.A. § 22-3215(6)

2. Motions to Suppress Illegally Seized Evidence.

a. Prior to the trial a defendant aggrieved by an unlawful search and seizure may move for the return of property and to suppress as evidence anything so obtained. K.S.A. § 22-3216(1)

b. The motion shall be in writing and state facts showing wherein the search and seizure were unlawful. K.S.A. § 22-3216(2)

c. The judge shall receive evidence on any issue of fact necessary to determine the motion and the burden of proving that the search and seizure were lawful shall be on the prosecution. K.S.A. § 22-3216(2)

d. If the motion is granted then at the final conclusion of the case, the court shall order the suppressed evidence restored to the party entitled thereto, unless it is otherwise subject to lawful detention. K.S.A. § 22-3216(2)

e. The motion shall be made before trial, in the court having jurisdiction to try the case, unless opportunity therefor did not exist or the defendant was not aware of the ground for the motion, but the court in its discretion may entertain the motion at the trial. K.S.A. § 22-3216(3)

3. Notice of Plea of Alibi

a. Must file a written notice of an intent to rely upon alibi defense to the prosecution. K.S.A. § 22-3218(1)

b. The notice must state, "where defendant contends he was at the time of the crime, and shall have endorsed thereon the names of witnesses he proposes to use in support of such contention." K.S.A. § 22-3218(1)

c. Within seven days after receipt of the names of defendant's proposed alibi witnesses, or within such other time as is ordered by the court, the prosecuting attorney shall file and serve upon the defendant or his counsel the names of the witnesses known to the prosecuting attorney which the state proposes to offer in rebuttal to discredit the defendant's alibi at the trial of the case. K.S.A. § 22-3218(2)

d. In the event the time and place of the crime are not specifically stated in the complaint, indictment or information, on application of defendant that the time and place be definitely stated in order to enable him to offer evidence in support of a contention that he was not present, and upon due notice thereof, the court shall direct the prosecuting attorney either to amend the complaint or information by stating the time and place of the crime, or to file a bill of particulars to the indictment or information stating the time and place of the crime; and thereafter defendant shall give the notice above provided if he proposes to offer evidence to the effect that he was at some other place at the time of the crime charged. K.S.A. § 22-3218(3).

e. Unless the defendant gives the notice as above provided he shall not be permitted to offer evidence to the effect that he was at some other place at the time of the crime charged. K.S.A. § 22-3218(4).

4. Defense of "Lack of Mental State," Notice Required

a. Evidence of mental disease or defect excluding criminal responsibility is not admissible upon a trial unless the defendant serves upon the prosecuting attorney and files with the court a written notice of such defendant's intention to assert the defense that the defendant, as a result of mental disease or defect lacked the mental state required as an element of the offense charged. K.S.A. § 22-3219(1)

b. Such notice must be served and filed before trial and not more than 30 days after entry of the plea of not guilty to the information or

indictment. For good cause shown the court may permit notice at a later date. K.S.A. § 22-3219(1)

c. A defendant who files a notice of intention to assert the defense that the defendant, as a result of mental disease or defect lacked the mental state required as an element of the offense charged thereby submits and consents to abide by such further orders as the court may make requiring the mental examination of the defendant and designating the place of examination and the physician or licensed psychologist by whom such examination shall be made. K.S.A. § 22-3219(2)

d. In any case in which the defense has offered substantial evidence of a mental disease or defect excluding the mental state required as an element of the offense charged, and the jury returns a verdict of "not guilty," the jury shall also answer a special question in the following form: "Do you find the defendant not guilty solely because the defendant, at the time of the alleged crime, was suffering from a mental disease or defect which rendered the defendant incapable of possessing the required criminal intent?" K.S.A. § 22-3221

5. Competency to Stand Trial.

a. At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial.K.S.A. § 22-3302(1)

b. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant. K.S.A. § 22-3302(2)

c. The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. K.S.A. § 22-3302(3)

d. If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. K.S.A. § 22-3302(4)

e. If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. § 22-3303, and amendments thereto. K.S.A. § 22-3302(5).

6. Motion for a Continuance: The accused and/or his attorney may request a continuance of a hearing date, motion filing deadlines, or trial. K.S.A. § 22-3406 guarantees the accused a "reasonable time to prepare for trial."

7. Motion to Discharge the Jury Panel. The Jury Panel is the goup of people from which the jurors who will hear the case are selected. In Kansas this is generally done by placing names of eligible jurors, taken from Kansas Driver's Licenses or Kansas I.D. Cards, and Voter Registration forms. The names must be selected at random, and if they are not selected at radom, may be gounds to discharge the panel. K.S.A. § 22-3407.

X. Trial

A. Right to a Speedy Trial:

1. All persons charged with crime shall be tried without unnecessary delay. Continuances may be granted to either party for good cause shown. K.S.A. § 22-3401

2. If any person charged with a crime and held in jail solely by reason thereof shall not be brought to trial within 150 days after such person's arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged, unless the delay shall happen as a result of the application or fault of the defendant or a continuance shall be ordered by the court under subsection (e).K.S.A. § 22-3402(a)

3. If any person charged with a crime and held to answer on an appearance bond shall not be brought to trial within 180 days after arraignment on the charge, such person shall be entitled to be discharged from further liability to be tried for the crime charged, unless the delay shall happen as a result of the application or fault of the defendant, or a continuance shall be ordered by the court under subsection (e). K.S.A. § 22-3402(b)

4. If a defendant, or defendant's attorney in consultation with the defendant, requests a delay and such delay is granted, the delay shall be charged to the defendant regardless of the reasons for making the request, unless there is prosecutorial misconduct related to such delay. K.S.A. § 22-3402(g)

B. Other Trial Rights:

1. The right to be presumed innocent.

2. The right to a speedy trial before a judge or jury.

3. The right to be represented by an attorney during the trial.

4. The right to require the State of Kansas to prove, beyond a reasonable doubt, all of the charges against the accused before he/she could be found guilty.

5. The right to confront witnesses against the accused in open Court, and have them cross-examined by their attorney.

6. The right to compel the attendance of witnesses and to call these witnesses to testify on behalf of the accused, by use of the subpoena power, if necessary.

7. The right to compel production of documentary and physical evidence, by use of the subpoena power, if necessary.

8. The right to testify on my own behalf.

9. The right to not testify.

10. The right, if convicted of any offenses, to ask the court for a new trial.

11. The right to appeal my conviction to the Kansas Appellate courts.

12. The right to an attorney to help me with my appeal.

C. Order of Trial Events (K.S.A. § 22-3414)

1. Voir Dire - picking the jury

   a. Challenge of jurors for cause

   b. Peremptory Challenges. K.S.A. § 22-3410

2. Opening statement by the government

3. Opening statement by the defense

4. Presentation of the Government's evidence, sometimes referred to as their "case in chief"

5. Presentation of defense evidence, if any.

6. If the Defendant does present evidence, the State then has the opportunity to submit "rebuttal evidence."

7. If the State offers "rebuttal evidence" then the defense is allowed to put on evidence to rebut the government's rebuttal evidence.

8. Jury instruction conference, where it is determined what instructions the Court will give to the Jury regarding the law necessary for the jury to determine the whether the government has met its burden of proof. Occurs outside the presence of the jury.

10. Judge reads the jury instructions to the jury.

11. State gives the first half of its closing argument.

12. Defense presents it's closing argument.

13. Jury Deliberations.

14. Verdict

    a. Not guilty - Defendant is free from further attendance on these charges, and can never be retried on the same or lesser included charges again.

    b. Guilty - the Court will set a sentencing date, and order that a pre-sentence investigation report be prepared and submitted to the Judge and both attorneys, prior to the sentencing date.

15. If the Defendant was free on bond, prior to trial, the court can either:

    a. Continue the bond in full force and effect, as previously posted.

    b. Continue the bond, but modify the conditions of the bond.

    c. Revoke the bond and order that the accused remain in custody, pending his/her sentencing in the case.

16. For all felony conviction cases in Kansas, and in Federal Court, the Court is required to do a Pre-Sentence Investigation Report. You may hear this referred to as a "PSI" and State Court and a "PSR" in Federal Court.

a. You will fill out various forms to submit to the Pre-Sentence Investigator, if convicted in State Court you will do this the same day that you are convicted. In Federal Court the forms are more voluminous and complex. For this reason, you will get to take those forms home with you. In either event, do not attempt to fill these forms out alone. Seek the guidance of your attorney.

b. Pre-Sentence Investigation Interview. The accused will be required to meet with the Pre-Sentence Investigator assigned to his case. During this interview, you may be asked questions about the offense you were convicted of, and any prior convictions that you might have. In many jurisdictions, you are allowed to have your attorney present for this interview. In Federal Court you have a right to have your attorney present, in some State Courts the Pre-Sentence Investigator may or may not allow your attorney to be present. Regardless of whether your attorney will be present when this interview occurs, you need to speak to him about this interview before you attend the interview, and follow his advise.

17. Sentencing & Post Trial Motions:

a. Motion for Judgment of Acquittal: This is governed by statute and rules in both State and Federal Courts. In Kansas, K.S.A. § 22-3419 controls, and the Motion must be filed within seven days of the after the jury is discharged. NOTE: This Motion can be made orally when the government rests its case, or when the defense rests its case.

b. Notice to Victims: Prosecutor must notify the victims or victims' family members of the following:

(1) Inform the victim or the victim's family before any dismissal or declining of prosecuting charges;

(2) inform the victim or the victim's family of the nature of any proposed plea agreement; and

(3) inform and give notice to the victim or the victim's family of the rights established in subsection (b).

(4) Subsection (b) provides that, the victim of a crime or the victim's family have the right to be present at any hearing where a plea agreement is reviewed or accepted and the parties may submit written

arguments to the court prior to the date of the hearing. This includes notice of the sentencing hearing date and time. K.S.A. § 22-3436.

c. Motion for a New Trial: Governed by statute and must be filed within 14 days after the verdict is accepted by the Court. K.S.A. § 22-3501

d. Motion in Arrest of Judgment: Governed by statute and must be filed within 14 days after the verdict is accepted by the Court. K.S.A. § 22-3502

e. Motion for a Departure, asks the Court to depart from the presumptive sentence established by the Kansas Sentencing Guidelines Act. See Kansas Sentencing Drug Offense and Non-Drug Offense Grids. Must be filed prior to sentencing, and is generally filed between the date the Pre-Sentence Investigation Report is completed and submitted to the Judge and Attorneys, and the date of sentencing.

(1) A Motion for Downward Departure: filed by the defense asking for a lower sentence than what the Kansas Sentencing Guidelines call for. It can be:

(A) Motion for a Downward Durational Departure, asking the Court to impose less time than what the guidelines call for;

(B) Motion for a Downward Dispositional Departure, asking the Court to place the accused on probation, rather than sending them to prison.

(2) A Motion for an Departure: filed by the government asking that the accused prison time be longer than what the guidelines call for, or if the accused's crime of conviction is one that carries a presumption that they should be placed on probation, asking that the Court sentence the person to serve time in the custody of the Kansas Department of Corrections.

THIS CONCLUDES THIS SECTION -
APPEALS ARE TAKEN UP SEPARATELY
SEE DISCLAIMER ON NEXT PAGE

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