

**CRIMINAL ISSUES**  
**GENERAL SESSIONS COURT**

**BASIC OVERVIEW**

**AUGUST 21, 2014**  
**TENNESSEE JUDICIAL ACADEMY**  
**2014**

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**CRIMINAL ISSUES IN GENERAL SESSIONS COURT  
BASIC OVERVIEW  
JUDGE DWIGHT E. STOKES**

**I. The Impact of a Judge** —“To the world you may be one person, but to one person you may be the world.”

In the book, Dreams and Shadows: The Future of the Middle East, by Robin Wright, she tells a story about the Egyptian justice system and the creation of the Arab Center for the Independence of the Judiciary and the Legal Profession. She describes a student in Egypt who fought for the independence of the judiciary. After being imprisoned wrongfully, the student was ultimately set free due to the courage of one independent judge. Wright states in her book, “The student concluded that the government could do whatever it wanted—oppress, detain, torture, whatever—but if the judiciary was independent, then freedom had a chance in Egypt. Without these independent judges, there was no hope of protecting human rights.”

The lesson is that if we as judges do our jobs then in any one case, we can serve as one person’s protection against the power of the government. We serve as protection for an individual against an over-reaching or abusive officer, a mistaken judgment of a magistrate issuing a warrant, a lazy or inept probation officer, or simply as a protection in an imperfect system.

A judge has the opportunity to see that due process actually occurs, that a defendant has representation of counsel, that the accused has an opportunity to be heard and to confront witnesses against him, and basically the position and authority to uphold all the provisions of our constitution.

**II. Charging Instrument—Criminal Warrant**

The Tennessee Court of Criminal Appeals in a 2011 Opinion emphasized that the criminal warrant must reasonably apprise the defendant of the offense against which he is being called upon to defend.

In State v. Word, 36 TAM 37-43 (Tenn. Cr. App. 07-18-11), the Court of Criminal Appeals emphasized that the charging instrument was deficient because it did not contain the elements of the offense and failed to apprise the defendant of the action he was required to defend. The Court of Criminal Appeals noted that the warrant and the citation supporting the warrant alleged that the defendant had violated different code sections, but neither instrument recited the facts underlying the offense. The court also noted that the citation merely stated the legal conclusion that the defendant violated the underage consumption statute.

The Court of Criminal Appeals concluded that a lawful accusation is a condition precedent to jurisdiction and that the judgment obtained in absence of an indictment alleging each essential element of the offense was a nullity. The court found that there was no lawful charging instrument and the court did not even have jurisdiction to entertain the defendant’s plea. The defendant’s conviction was held to be void.

### **III. Docket Call— An Important Part of the Entire Process**

- A. Call the docket (list of cases for the day) at the time court is scheduled to begin. Timeliness goes a long way to earning the respect of attorneys and all participants in the court system. (Other options can work.)
- B. Call the docket yourself. Establish that you are in control of the courtroom.
- C. Insist that there be total silence in the court at the time of the docket call so that people can pay attention and that all participants, including attorneys, law enforcement officers, and all others are paying attention without noise or distractions. You only have one opportunity to make the initial impression and that is at the very beginning of the court session.
- D. Be reasonable in the issuance of a *capias* for failure to appear. Be reasonable if a person does call in and advise the clerk or an attorney that he or she is running late to court. It is quite possible for cars to break down, for accidents to occur on the roadway, and for other matters to cause reasonable delays. If a person does arrive late, go ahead and lift the *capias* and handle the case that day if at all possible. It is always better to not overreact.

Life is not tidy, particularly for those who might live on the margins and close to poverty or in poverty. Cars break down, rides fail to appear on time. Have consistent and reasonable standards for late-arriving officers (and other state witnesses) and late-arriving defendants.

**IV. Advisement of Constitutional and Statutory Rights** — It is essential for the General Sessions Judge in a criminal case to make the rights of the defendant extremely clear as a prerequisite to a valid plea and conviction.

A great way to start off a criminal court day in General Sessions Court (after calling the cases on the docket) is to clearly advise all defendants of their constitutional rights. Attached is an outline that I use to go over rights. This is an excellent opportunity to set the tone for the entire criminal day by insisting on absolute quiet in the courtroom, going over each right very clearly with all defendants, and establishing that you as the judge are clearly in control and that you have a high degree of respect for the rights of defendants (and of victims). You can establish this by a respectful and solemn explanation of constitutional rights.

**V. Establish clearly in your court that you expect public defenders and appointed counsel to do their jobs.**

- A. Clearly indicate high expectations that you have for public defenders and appointed counsel in representation of their clients.
- B. Give an opportunity for adequate discussions by the public defender with their respective clients and with the district attorney's office.
- C. Have an unapologetic mind-set that you expect the public defender and any and all appointed counsel to do their jobs professionally and competently.

- D. Seek the best interests of justice by insisting on excellent representation by defense counsel for their clients.
- E. Stand clearly for the proposition that defendants have the right to effective assistance of counsel in a system in Tennessee which is too often grossly deficient in providing effective representation.
- F. Take the time and opportunity to personally see and understand how the system is working day to day in your county.

In Rishton v. State, 37 TAM 29-27 (Tenn. Cr. App. 05-21-12), the defendant maintained that the court's appointment of the district public defender to represent him at a preliminary hearing at the last minute, and without any preparation at all, amounted to a mere formality and was totally insufficient to satisfy his right to counsel as guaranteed by the state and federal constitutions. The defendant asserted that the appointment of counsel under these circumstances constituted a "constructive complete denial of counsel at a critical stage of the proceedings."

The Court of Criminal Appeals found that the facts of the case did not sustain the defendant's claim that he was denied the effective assistance of counsel.

Even though the defendant's claim was that his last minute appointment of the district public defender denied him effective representation at the preliminary hearing, the court noted that the General Sessions Court had appointed the district public defender to represent the defendant, that the public defender was present for the defendant's preliminary hearing and advised the defendant to waive the hearing, and that subsequently the criminal court after indictment had appointed the public defender to represent the defendant, resulting in the public defender's office filing appropriate motions and taking other actions on behalf of the defendant. The court found that the defense counsel's performance at trial was not shown to be deficient.

The troublesome aspect of this case is that it is too easy for General Sessions Judges and trial judges and appellate courts to turn a blind eye to the multiple times and situations in which defendants are effectively denied assistance of counsel by the very short time that a defendant has to consult with the appointed attorney.

I have a high respect for public defenders and people who take appointed cases, but it is extremely clear that public defender offices are overworked and that many times there is just insufficient time for proper inquiries to be made by the public defenders into the facts and in order to interview witnesses. Many rights are lost from the time of an arrest to the point of the trial.

## **VI. Establish High Expectations for the District Attorney in Your Courtroom**

- A. Make it clear that the District Attorney is to talk to victims who come to court. All victims should have an opportunity to at least meet with the District Attorney.
- B. Go over victims' rights in court every single criminal day. Give an opportunity for bailiffs to hand out a victims' rights card to all victims who appear in court.
- C. Explore the possibility of having a victim/witness coordinator in General Sessions Court.

D. Be victim-friendly in General Sessions Court by being highly respectful toward victims and their rights but not in a coddling manner. It is simply very important for victims to understand their rights as well as for defendants to understand their rights.

**VII. Monitoring Plea Agreements**— Closely monitor plea agreements in regard to fairness toward the state and society as a whole and in regard to fairness toward the defendant. Have expectations for District Attorneys to make plea agreements which fit the crime and the attendant circumstances, including seriousness of crime and prior criminal record.

Highly respect the District Attorneys in their role and the Defense Counsel in their role without abrogating your responsibility to review and monitor plea agreements.

**VIII. Opportunity to Discuss Cases**— Give a reasonable opportunity for defense counsel and the Attorney General’s office to discuss resolution of cases now that you have most or all of the participants present at the court. District Attorneys and Public Defenders and appointed counsel can all be overworked, and General Sessions Courts are entry level courts which calls for flexibility in how we as judges approach our dockets.

Expect attorneys to be on time to court and/or that they at least give prior advance notice of being involved in other courts on the same day. Practicing attorneys deserve and need some flexibility as long as they are lawyers who have shown that they are respectful toward the court and handle their cases in a timely and professional manner.

**IX. Officers Up All Night** — Give consideration for officers who have been required to work the late shift on the previous night or nights. Having officers sign up on a list with the clerk to verify that they have been up all night and would appreciate having their cases handled as promptly as possible is a good approach. There is no guarantee that their cases will be heard early, but courtesy toward officers goes a long way in how officers view the entire judicial system.

**X. Pleas of Guilty/Plea Agreements**

A. Be thorough in going over rights of defendants and making sure they understand their rights.

B. Judges garner greater respect by all citizens when they demonstrate concern and appreciation for the constitutional and statutory rights of defendants and of the rights of victims.

**XI. Be Respectful Toward All Parties in Your Court System.**

A. Attorneys

B. Defendants

C. Victims

D. Witnesses

E. Law Enforcement Officers

F. Probation Officers

- G. Families of Defendants and Victims
- H. Service Providers
- I. The Public as a Whole

The public and all participants in the court system quickly learn about judges who are bullies and/or who are impressed with their own power. People may act like they're impressed if you come across as heavy handed and belittle defendants or their lawyers, but very few are actually impressed by a judge who demeans others. Be slow to take offense by statements of defendants and/or their lawyers as the whole system creates great stress upon the participants in the criminal justice system.

## **XII. Domestic Violence Cases**

- A. Be a strong believer in the importance of dealing with domestic violence cases diligently, soberly, and respectfully. Domestic violence is prevalent in our society with horrible consequences to the victims and children.
- B. Understand domestic violence, be adequately trained on issues of domestic violence, and believe in the reality of domestic violence.
- C. Consider having a policy of resetting a case if a victim is not present on the first occasion. Victims can be scared and intimidated and even prevented from coming to court.
- D. Expect victims to have great reluctance in testifying against the perpetrator and understand why this is likely to occur. Battered and manipulated victims have their lives stolen from them. Victims are physically, mentally, emotionally and financially tied to their batterers.
- E. Explain how “absolute” that absolute restraining orders are in the system. Make it clear that an absolute restraining order means absolutely no contact by the defendant with the victim including no texting, emailing, “face-booking”, use of social media or use of third parties. No contact means absolutely no contact.
- F. Use batterers’ intervention programs rather than anger management programs as responses to real domestic violence. The batterers’ intervention programs are generally programs which last from 24-45 weeks. Use certified programs only.
- G. Understand the “excited utterance” exception to the hearsay rule. Statements made at the scene of the crime by victims truly under the influence of a startling event can often be the most meaningful evidence available.
- H. Make it clear to law enforcement officers that pictures and videos of the scene and of the victims and perpetrators goes a long way in helping the court to understand what went on on the day or night of the alleged abuse.
- I. Understand that programs such as Safe Space or other victims’ programs have a place in the criminal justice system if used in a proper manner.
- J. Risk assessments can be effective for court systems to use in calculating actual risks to the victims.

K. Understand that judges can retain their full neutrality in a case and still set up a system which is responsive to victims and the pursuit of truth and justice for victims and defendants.

L. Consider a system which has a review for domestic violence cases to see how a convicted defendant is progressing while on probation and to prevent future violence.

M. Use death panel reviews when there is a fatality within the system, but take all necessary precautions and steps to try to avoid fatalities in the criminal justice system.

### **XIII. DUI Cases**

A. Recognize that one of society's greatest problems is the offense of driving under the influence of drugs and alcohol.

B. Uphold the law and the constitutional protections of defendants in DUI cases.

C. Keep up with the law in regard to search and seizure and vehicle stops in DUI cases.

D. Upon convictions or pleas to DUI, take up the defendant's license on the day they plead in court, at least in the absence of any other agreements by and between the defense counsel and the state.

### **XIV. Sentencing of Defendants**

A. Sentencing usually takes place on the day of the conviction in General Sessions Court. Judges should be open to having a separate sentencing date when necessary or preferable.

B. Set separate sentencing dates when that is in the best interest of achieving justice in the case. This will allow time to get a pre-sentence report in close cases, will give the court an opportunity to be informed about the health issues of defendants, the employment issues of defendants, allow the court to consider special circumstances, and allow character witnesses or letters to be obtained pertaining to sentencing issues.

C. Be reasonable in sentencing and not fearful of using probation in appropriate cases. It is important to ask yourself why jail is necessary or what a jail term would accomplish in a particular case. Make the state justify any requests for consecutive sentencing or any plea agreement where consecutive sentencing is involved. There can be good reasons for consecutive sentencing in certain cases but this should not be taken lightly, nor should the judge abrogate responsibility to the DA or attorneys. The judge is the person who needs to be satisfied that consecutive sentencing is appropriate.

### **XV. Be Innovative**

A. Judges have potential resources or options available to them.

B. For instance, on the date of a hearing, it may become apparent that a certain necessary witness is not present and that justice would be served by giving an opportunity for the witness to be present. On the other hand, there can be witnesses present that have missed work on that particular day and a continuance will be a hardship on them to return. A

ready solution is to begin the hearing, and hear from the witnesses who are present in court, then to continue the case for a short period of time to allow for the other witness or witnesses to be present. The judge can use discretion in using techniques like this to serve the best interests of justice.

C. Use your best judgment and discretion to accomplish justice in cases by looking for reasonable solutions such as when DVD's or CD's don't play on court equipment.

D. Maintain flexibility in an effort to accomplish justice.

#### **XVI. Bail and Bond Issues**

A. Train magistrates and judicial commissioners in regard to bond issues and your expectations, and consider regular meetings to address issues with the magistrates. Magistrates and judicial commissioners operate under the guidance and supervision of General Sessions Judges.

B. Do not have set bond schedules for magistrates to always adhere to, but discuss the importance of following guidelines and being consistent in arriving at fair and reasonable bonds under statutory and constitutional guidelines.

C. Utilize the factor of violence as a key factor in the setting of high bonds.

D. Failure to appear on previous occasions is a key factor in the setting of bonds.

E. Consider requiring bonding companies to address how the bond is being made in key cases or very serious cases or high profile cases. In other words, when a bond is set, you can require prior court approval as to exactly how the bond is being paid. Experience has shown that sometimes a bonding company will cut corners in an effort to be able to secure the bond which may not be a risk you are willing to take. In other words, if the court sets a \$100,000 bond and the bonding company is willing to take \$1,000 on the front end and take the rest in payments, that may differ from the type of risk that you wanted the defendant to be exposed to (and increase their possibility or probability of fleeing).

#### **XVII. Judicial Oversight of Magistrates and Judicial Commissioners**

A. Regular training of magistrates

B. Understanding of probable cause by magistrates

C. Importance of consideration of the elements of the crime

D. Always listing the statute the defendant is alleged to have violated

E. The importance of always having proper signatures of the affiants and magistrates.

F. Confidential information regarding victims on sealed forms.

G. Forms for factors considered by magistrates in determination of bond

H. Understanding of magistrate regarding specific issues such as domestic violence

**XVIII. Oversight of Probation Officers by General Sessions Judge**

- A. Regular training for probation officers with involvement of General Sessions Judge
- B. Meeting regularly with probation officers
- C. Reviewing judicial expectations and standards for probation officers
- D. A probation officer is a reflection of you as the judge and the system of justice
- E. Emphasize the opportunity of the probation officer to make a real difference in the lives of the people being supervised.
- F. Probation officers being vested in defendant and giving defendant an opportunity to succeed

**XIX. Relationship of Judges to Clerks**

- A. The clerks reflect on judges and how they deal with the public
- B. The importance of the clerks being respectful and understanding their role as a servant for the public
- C. Importance of judges getting along with their clerks
- D. Regular communication on issues
- E. Resolving any problems which arise
- F. Responsibility in making sure punishments and orders are accurately set out on warrant
- G. Regular meetings of judges and clerks

**XX. Defendant's right to appeal**

- A. Clear communication by judges of defendant's appellate rights
- B. Decide the case and do not worry about what happens in the Circuit Court on appeal.

**XXI. Ethical Issues and Standards**

- A. Set your standards high from the very beginning and do not compromise your ethical standards.
- B. Emphasis on no ex parte communications with any party
- C. Accept no gifts or benefits of any kind
- D. Avoid impropriety and the appearance of impropriety

**XXII. The World of General Sessions Judges**

- A. Relationships
- B. Ethical dilemmas
- C. Pressures

### **XXIII. Final Thoughts**

- A. Apply the applicable standards of proof. Understand what “beyond a reasonable doubt” and “probable cause” mean.
- B. Maintain your absolutes—no ex parte communications— no special privileges for anybody including friends and acquaintances.
- C. Traffic court is place for the world to come tumbling down. Be consistent for all people coming before the court.
- D. Make sure your secretary or administrative assistant screens contacts, phone calls, mail and any and all communications.
- E. Give public defenders and appointed counsel an opportunity to do their jobs effectively.
- F. Understand that the district attorney has a job to do which includes a proper exercise of prosecutorial discretion even if the prosecutor’s discretion differs from what you would do.
- G. Be very careful using summary contempt powers or with bringing charges of contempt. The Board of Judicial Conduct is overwhelmed with complaints regarding contempt charges and judicial demeanor issues.
- H. Don’t take everything as a personal affront to your power.
- I. Understand the rules of evidence and make clear rulings and findings regarding objections.
- J. When making decisions, take a moment to collect your thoughts including making a brief outline of your decision and opinion. Each side can benefit from your clear reasoning and findings, and generally each side will appreciate your stating your opinion clearly.

When appropriate, the court can include comments regarding the good performance of attorneys, the fact that all parties are decent people before the court, and giving an explanation of the burden of proof.

- K. Develop local rules for the General Sessions Court if your court system does not have any, and/or tweak the rules as you need to from time to time.

### **XXIV. Forms for General Sessions Judges— See attached.**

## **CRIMINAL CASE**

### **ADVISEMENT OF RIGHTS**

- 1. Right to plead not guilty.**
- 2. State has burden of proof to prove guilty beyond a reasonable doubt and to a moral certainty.**
- 3. Right to counsel.**
- 4. Right to appointed counsel if unable to afford attorney.**
- 5. Right to preliminary hearing on issue of probable cause.**
- 6. Right to have case considered by grand jury -- issue of probable cause (true bill -- indictment, presentment)**
- 7. Right to trial by jury -- twelve persons -- unanimous.**
- 8. Right to confront and cross-exam all witnesses against you.**
- 9. Right to present witnesses on own behalf.**
- 10. Right to subpoena witnesses -- compulsory process.**
- 11. Right to testify in own defense but cannot be required to /not be compelled to incriminate self.**

12. **Misdemeanor cases** -- can waive preliminary hearing, grand jury proceeding and jury trial and proceed to trial in sessions court if found guilty, **right to appeal to circuit court.**  
-- if have trial in **circuit court** entitled to appeal to court of criminal appeals.
13. **Misdemeanor cases:**  
**Class A:** up to 11 months, 29 days  
**Class B:** up to 6 months  
**Class C:** up to 30 days
14. **If want to plead guilty:**  
-- must do so **freely**  
**voluntarily**  
**knowledgeably**  
**understanding rights**  
-- not being forced to do so  
-- **be placed under oath, must be truthful with answers to questions.**
15. **Any conviction can be used against you.**  
**(NOTE: DUI ENHANCEMENT FACTORS)**
16. **If placed on probation, must comply with all conditions of probation or be subjected to penalties, including jail, for violation of probation.**
17. **Obtain testimony or statement of facts expected to be proven by state.**
18. **Stipulation of facts.**
19. **Finding of guilt/disposition.**

## CRIMINAL CASE

### ADVISEMENT OF RIGHTS

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2. State has burden of proof to prove guilty beyond a reasonable doubt and to a moral certainty.
3. Right to counsel.
4. Right to appointed counsel if unable to afford attorney.
5. Right to preliminary hearing on issue of probable cause.
6. Right to have case considered by grand jury -- issue of probable cause (true bill -- indictment, presentment)
7. Right to trial by jury -- twelve persons -- unanimous.
8. Right to confront and cross-exam all witnesses against you.
9. Right to present witnesses on own behalf.
10. Right to subpoena witnesses -- compulsory process.
11. Right to testify in own defense but cannot be required to /not be compelled to incriminate self.
12. Misdemeanor cases -- can waive preliminary hearing, grand jury proceeding and jury trial and proceed to trial in sessions court if found guilty, right to appeal to circuit court.  
-- if have trial in circuit court entitled to appeal to court of criminal appeals.
13. Misdemeanor cases:  
Class A: up to 11 months, 29 days  
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14. If want to plead guilty:
  - must do so freely  
voluntarily  
knowledgeably  
understanding rights
  - not being forced to do so
  - be placed under oath, must be truthful with answers to questions.
15. Any conviction can be used against you.  
(NOTE: DUI ENHANCEMENT FACTORS)
16. If placed on probation, must comply with all conditions of probation or be subjected to penalties, including jail, for violation of probation.
17. Obtain testimony or statement of facts expected to be proven by state.
18. Stipulation of facts.
19. Finding of guilt/disposition.

ARRAIGNMENT/1ST APPEARANCE

1. Explain process

Today we are here on what we call arraignment day/or 1st appearance day -- we are going to go through the docket and do the following:

- A. Advise you of the charges against you/read if want to
- B. Make sure you have bond set
- C. Set a court date for your trial or preliminary hearing
- D. Have you fill out a form for an appointed attorney if you are requesting a court appointed attorney -- and ruling on this issue before you leave -- everyone with a court appointed attorney needs to see him/her immediately and get prepared

2. Swear in all & go through process

- A. Go over all rights
  - i. attorney appointed -- fill out form
  - ii. preliminary hearing
  - iii. grand jury
  - iv. trial by jury
  - v. confront/cross exam
  - vi. right to remain silent/not incriminate self
  - vii. burden on state
  - viii. subpoena power
  - ix. appeal
- B. Understand all rights -- any questions
- C. Will go over individually

3. Accept pleas (as appropriate for single cases only)

NEED:

- |                      |                                |
|----------------------|--------------------------------|
| 1. JUDGE             | 5. OFFICER SCHEDULES           |
| 2. CLERK             | 6. PLEA FORMS/RIGHTS           |
| 3. COUNTY PROSECUTOR | 7. ATTORNEY APPOINTMENT FORMS  |
| 4. TAPE RECORDER     | 8. WAIVER OF ARRAIGNMENT FORMS |

**ARRAIGNMENTS (set 10 days - 2 weeks after arrest)**

**Purposes:**

- A. Set & coordinate trial date with officer's calendar
- B. Initial reading of rights & advisement of charges
- C. Appointment of attorney if requested/fill out form
- D. Take some pleas where appropriate
- E. Attorney can waive arraignment -- set date coordinate with attorney schedule & officer schedule
- F. Address bond issue where necessary

IN THE GENERAL SESSIONS COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE

VS.

NO. \_\_\_\_\_

WAIVER OF ARRAIGNMENT AND FIRST APPEARANCE

Comes the defendant by and through counsel and waives formal arraignment and first appearance, with the following understanding and agreement:

1. The defendant waives reading of the warrant and acknowledges understanding of the charges against him/her.
2. The defendant acknowledges understanding of the following rights:
  1. The right to plead not guilty.
  2. If not represented by an attorney; that he has a right to be represented by an attorney at every stage of the proceeding against him, and if necessary, one will be appointed to represent him;
  3. The right to a jury trial;
  4. The right to confront and cross-examine the witnesses against him;
  5. The right not to be compelled to incriminate himself;
  6. The right to indictment or presentment by the Grand Jury;
  7. The right to compulsory process to secure attendance of witnesses in his behalf;
  8. The right to appellate review if convicted by trial.
3. The defendant understands that he must appear for preliminary hearing or trial on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, at \_\_\_\_\_ am/pm. This date is agreed upon and shall be the hearing date absent good cause in the discretion of the judge hearing the case.
4. Counsel acknowledges that he is retained counsel in this cause.  
This the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
DEFENDANT

ADDRESS \_\_\_\_\_

\_\_\_\_\_  
TELEPHONE \_\_\_\_\_

\_\_\_\_\_  
ATTORNEY

BPR# \_\_\_\_\_

TELEPHONE # \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CRIMINAL DUI/MISDEMEANOR DOCKET

1. Greeting
2. Brief or emergency matters
3. Docket sounding
  - A. Explain purpose (find out what is for trial, what is resolved, motions to be argued, represented by counsel, etc.)
  - B. Go through docket - Mark on docket -
    - T -- TRIAL
    - PH -- PRELIMINARY HEARING
    - P/G -- PLEA OF GUILT
    - D -- NEED FURTHER DISCUSSION
    - W -- WAIVER TO GRAND JURY
    - C -- CAPIAS
4. Give opportunity for discussions - Attorney general/defendants or attorney
5. Take announcements
  - A. go through criminal defendant's rights for all who plan to plea
    - i. all names on record who are receiving rights
    - ii. go over rights form
    - iii. free & voluntary plea acknowledgement
  - B. Individual pleas
    - i. understood rights
    - ii. sign forms
    - iii. acknowledge free and voluntary
    - iv. go over enhancement policy/all convictions in future can be used against them
    - v. plea of guilt to stipulated facts
    - vi. finding of guilt
    - vii. sentence
6. Take up contested cases - trials and preliminary hearings
  - A. Swearing in
  - B. Call for the "rule"
  - C. Opening statement
  - D. Proof of state/proof of defendant

- E. Closing argument
- F. Finding of guilty/not guilty
- G. Sentence
- H. Probation office

- 7. Take up all cases or reset to designated time
- 8. Sign appropriate documents for clerk

NEED:

- 1. JUDGE
- 2. CLERK
- 3. DA'S OFFICE
- 4. PD'S OFFICE
- 5. PROBATION OFFICER
- 6. BAILIFF
- 7. WARRANTS
- 8. DOCKET
- 9. PLEA FORMS
- 10. TAPING EQUIPMENT

## FELONY DOCKET

1. Greeting
2. Brief or emergency matters
3. Docket sounding
  - A. Explain purpose (find out what is for trial, what is resolved, motions to be argued, represented by counsel, etc.)
  - B. Go through docket - Mark on docket -
    - T -- TRIAL
    - PH -- PRELIMINARY HEARING
    - P/G -- PLEA OF GUILT
    - D -- NEED FURTHER DISCUSSION
    - W -- WAIVER TO GRAND JURY
    - C -- CAPIAS
4. Give opportunity for discussions - Attorney general/defendants or attorney
5. Take announcements
  - A. go through criminal defendant's rights for all who plan to plea
    - i. all names on record who are receiving rights
    - ii. go over rights form
    - iii. free & voluntary plea acknowledgement
  - B. Individual pleas
    - i. understood rights
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  - A. Swearing in
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- E. Closing argument
- F. Finding of guilty/not guilty
- G. Sentence
- H. Probation office

7. Take up all cases or reset to designated time

8. Sign appropriate documents for clerk  
NEED:

- 1. JUDGE
- 2. CLERK
- 3. DA'S OFFICE
- 4. PD'S OFFICE
- 5. PROBATION OFFICER
- 6. BAILIFF
- 7. WARRANTS
- 8. DOCKET
- 9. PLEA FORMS
- 10. TAPING EQUIPMENT

GENERAL SESSIONS JUDGES

JEFF D. RADER - PART I

DWIGHT E. STOKES - PART II

OUTLINE FOR TAKING PLEAS

Swear in everyone who is going to enter a plea.

Advise all defendants of their Constitutional rights:

Advise that Court decides whether to accept the plea but if Court rejects plea, would stand on their plea of Not Guilty and fact that offered to plead guilty could not be used against them. )

- A. Right to plead not guilty - never compelled to incriminate self/right to remain silent.
- B. Right to preliminary hearing on issue of probable cause.
- C. Right to go through grand jury process on issue of probable cause.
- D. Right to jury trial.
- E. Burden of proof is on the State - Standard of proof is beyond a reasonable doubt and to a moral certainty. Burden never shifts.
- F. Defendant is presumed innocent and presumption stays with defendant until jury is satisfied that State has carried its burden of proof.
- G. Jury verdict must be unanimous - all 12 must agree before defendant can be found guilty; conversely, all 12 must agree before jury can find defendant not guilty. If all 12 cannot agree, is a hung jury, defendant may be tried again. Jury will decide issue of guilt and amount of any fine imposed; Judge will impose sentence after another hearing.
- H. Right to confront witnesses - cross examine through their attorney.
- I. Right to call witnesses on own behalf. Can subpoena witnesses if won't come voluntarily. Don't have to call witnesses but if do, their testimony will considered along with all evidence in the case.

J. Defendant has no burden of proof or any burden whatsoever. Can stand on plea of not guilty and make State prove guilt.

K. Right not to testify. If does not testify, jury will be instructed that can draw no inference from defendant's failure to testify as defendant has absolute right not to testify. Has the right to testify and if do, testimony will be considered as any other witness.

L. If defendant pleads guilty to these charges or is found guilty by a jury, and is later charged and convicted of another crime, this conviction can be used to increase penalty in later charges. Good record helps you and bad record hurts you.

M. Automatic, absolute right to appeal conviction by jury verdict to Tennessee Court of Criminal Appeals. Appellate Court can Affirm; Reverse; Modify Sentence; Send Back for New Sentencing Hearing; or Dismiss entirely if not sufficient evidence to sustain conviction.

N. Possible appeals to Tennessee Supreme Court or United State Supreme Court.

O. Tell them that you can't pass on their plea agreement or accept their plea of guilty unless they give up their right to a jury trial and these other rights just explained to them. But, if they do waive right to a jury trial and plead guilty, all of these Constitutional rights are gone unless they have reserved a particular issue for appeal by agreement.

NEXT TAKE EACH INDIVIDUAL DEFENDANT'S CASE.

A. Ask defendant if he understands his Constitutional Rights and does he have any questions about them. Advise defendant that Court doesn't have to accept the agreement; that if Court rejects, fact that tried to plead guilty can't be used against him. If open plea, there will be a sentencing hearing and defendant can appeal sentence imposed by court.

B. Ask for attorneys to announce the plea agreement.

(ALWAYS READ SPECIFIC DATA REPORT/DEFENDANT'S CRIMINAL RECORD AND MENTION ON THE RECORD THAT YOU HAVE READ AND CONSIDERED IT)

C. Ask defendant if agreement as announced was what he

was told it would be and if he understands it.

D. Advise of range of penalties, including fines, and that this conviction can enhance future penalties.

(DOMESTIC VIOLENCE CASES: ADVISE OF POSSIBLE FEDERAL FIREARM VIOLATIONS.)

E. Ask if satisfied with his attorney; provided background information about himself to attorney; talk to witnesses; investigated case; consulted with him; have any complaints.

F. Ask if any promises, threats, coercion of any kind made to get defendant to change his plea.

G. Ask defendant if he freely and voluntarily waives his right to trial by jury, appeals and all other rights explained.

H. Ask if defendant pleads guilty to the offense and agrees to the plea agreement as announced. (Explain Alford or Nolo Contendere if necessary.)

I. Ask State to announce the stipulated facts.

J. Ask defendant and his attorney if they agree that the State's version of the facts is what they would have expected to face at trial.

K. Ask defendant and attorney if they have anything else they want to say or questions they want to ask before accepting plea and pronouncing judgment.

L. If you approve the plea agreement after hearing the facts, find defendant guilty, enter judgment of conviction, impose sentence and write judgment in docket book.

M. Refer case to probation office for Pre-Sentence Investigation if any sentencing matter is reserved AND set case for sentencing on a date certain.

MISCELLANEOUS CONSIDERATIONS

A. Open Plea with no sentence recommendation: advise defendant he may appeal the sentence imposed by the Court.

B. Plea by Information: Advise defendant about right to Grand Jury investigation and indictment. MUST SIGN

**SEVIER COUNTY CRIMINAL DEFENDANTS, VICTIMS  
WITNESSES AND ALL PARTICIPANTS IN THE  
CRIMINAL JUSTICE SYSTEM**

*We hope this handout will assist you by providing information  
about our system of justice.*

**Jeff D. Rader**  
General Sessions Judge  
Part I

**Dwight E. Stokes**  
General Sessions Judge  
Part II

**What should I wear, and how should I act in court?**

We have a **DRESS CODE** in General Sessions Court reads as follows:

1. No tank tops or halter tops are permitted.
2. No shorts. All dresses, skirts and like clothing must be of an appropriate length.
3. Tee shirts or other types of clothing with profane language, illegal substances or offensive logos shall not be worn.
4. Shoes or sandals will be worn at all times.
5. Hats, caps, etc. will not be worn in the Courtroom.
6. With the exception of law enforcement officers, no firearms or other weapons will be allowed in the Courtroom. All officers appearing in the Courtroom on cases shall have their badges visible.

It is also important to be **respectful** of all people involved in Court—judges, clerks, attorneys, other participants. There is no smoking allowed, nor are foods or drinks allowed. Children may accompany parents but if they cry or become loud, they should be removed from the Courtroom.

**What is an arraignment or 1<sup>st</sup> appearance?**

The arraignment is generally your first appearance in Court on the citation or charge.

The judge will inform you of the charge and read it to you. No testimony is taken or evidence presented at the arraignment. Your constitutional rights will be read to you and you will be given an opportunity to request an appointed counsel in writing. You will also be given your mandatory Court date including time and location. Please note that cases are set in Gatlinburg, Pigeon Forge and Sevierville and you must be present at the prescribed location on time or a *capias* will be issued for your arrest. Cases will not be continued for your failure to have an attorney present.

**What are my constitutional rights?**

All persons accused of any crime or traffic offense that might result in a jail sentence have the following rights:

1. To have a lawyer present with you at all hearings;
2. To have a lawyer appointed at public expense if you cannot afford to hire one to represent you;
3. To represent yourself without a lawyer;
4. To a public and speedy trial;
5. To confront and cross examine any witnesses who testify against you;
6. To call witnesses to testify on your behalf, and have the Court compel their attendance;
7. To testify or not testify yourself, if you choose not to, no one can make you testify;
8. To appeal to Circuit Court if you are convicted after a not guilty plea, by appealing within ten (10) days of conviction.

**If I am financially unable to hire a lawyer, how do I qualify for a public defender?**

At the arraignment, indicate to the Judge that you are unable financially to hire a lawyer. The Judge will request that you complete a financial affidavit and will call you up again at the end of the arraignment docket. At that point, the Judge will review your affidavit and determine, according to the appropriate financial

guidelines, your eligibility for a public defender. The clerk will give you a card with the address and phone number of the public defender. You must contact the public defender immediately for an appointment and be at all meetings as requested by the lawyer.

**NOTE:** On your hearing date, you must be present and prepared for a trial or hearing. No continuance will be granted..

### **If I plead guilty what will happen?**

If you plead guilty it means you admit your guilt to the charge and the elements to prove the charge. By pleading guilty you waive your constitutional rights and in most cases you will be sentenced right then. However, you may speak on your behalf at sentencing.

**PLEASE NOTE:** You can only plead guilty to a misdemeanor charge in General Sessions Court. A felony charge must be heard in Circuit Court.

### **What happens if I plead not guilty?**

A "not guilty" plea denies the charge and none of your constitutional rights are waived unless you expressly wish to do so. You are presumed innocent and the prosecution must prove your guilt beyond a reasonable doubt at a trial.

### **What are the penalties for a DUI conviction?**

**First Offense** penalties include minimum jail term of forty-eight(48) hours (7 days if blood/alcohol content is .20 or greater), three hundred fifty (\$350.00) dollars minimum fine, up to one thousand five hundred (\$1,500.00) dollars, loss of driver's license for one year, public service work, DUI school, and possible other requirements.

**Second Offense** carries a fine of not less than six hundred (\$600.00) dollars nor more than three thousand five hundred (\$3,500.00) dollars, jail term eleven (11) months and twenty-nine (29) days, and loss of driver's license for two (2) years, plus other conditions.

**Third Offense** carries a fine of not less than one thousand one hundred (\$1,100.00) dollars nor more than ten thousand (\$10,000.00) dollars, jail term for not less than one hundred twenty (120) days nor more than eleven (11) months twenty-nine(29) days, and loss of driver's license for a period of not less than three (3) years nor more than ten (10) years, plus other conditions.

**Fourth Offense** carries a fine of not less than three thousand (\$3,000.00) dollars nor more than fifteen thousand (\$15,000.00) dollars, jail term not less than one hundred and fifty (150) consecutive days, to be served day for day, nor more than the maximum punishment authorized for the appropriate range of a class E felony, loss of driver's license for a period of five (5) years, plus other conditions.

### **Victims of Crime**

Victims have very important rights including:

1. The right to consult with the District Attorney General regarding the case.
2. The right to notice of all Court dates.
3. The right to be involved in regard to sentencing issues, including issues of restitution.

**IF YOU HAVE OTHER QUESTIONS, PLEASE CALL  
GENERAL SESSIONS CLERK'S OFFICE  
865.453.6116**

**SEVIER COUNTY GENERAL SESSIONS COURT**

**RISK ASSESSMENT**

Domestic violence cases pose serious potential risks for true victims of violent or abusive acts. The conduct of abusers can and often does become worse as time goes on. There are several risk factors which need to be addressed including the following areas. Your truthfulness is important to your safety, that of your family and the community.

1. Has the physical violence increased in frequency over the past year? \_\_\_\_ Yes  
\_\_\_\_ No
2. Has the physical violence increased in severity over the past year and/or has a weapon or threat from a weapon ever been used? \_\_\_\_ Yes \_\_\_\_ No
3. Does he ever try to choke you? \_\_\_\_ Yes \_\_\_\_ No
4. Is there a gun in the house? \_\_\_\_ Yes \_\_\_\_ No
5. Has he ever forced you to have sex when you did not wish to do so? \_\_\_\_ Yes  
\_\_\_\_ No
6. Does he use drugs? By drugs, I mean "uppers" or amphetamines, speed, angel dust, cocaine, "crack", street drugs or mixtures. \_\_\_\_ Yes \_\_\_\_ No
7. Does he threaten to kill you and/or do you believe he is capable of killing you?  
\_\_\_\_ Yes \_\_\_\_ No
8. Is he drunk every day or almost every day? (In terms of quantity of alcohol.)  
\_\_\_\_ Yes \_\_\_\_ No
9. Does he control most or all your daily activities? For instance; does he tell you who you can be friends with, how much money you can take with you shopping, or when you can take the car? (If he tries, but you do not let him, check here: \_\_\_\_ ) \_\_\_\_ Yes \_\_\_\_ No
10. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here \_\_\_\_ ) \_\_\_\_ Yes \_\_\_\_ No
11. Is he violently and constantly jealous of you? (For instance, does he say "If I can't have you, no one can.") \_\_\_\_ Yes \_\_\_\_ No
12. Have you ever threatened or tried to commit suicide? \_\_\_\_ Yes \_\_\_\_ No
13. Has he ever threatened or tried to commit suicide? \_\_\_\_ Yes \_\_\_\_ No
14. Is he violent toward your children? \_\_\_\_ Yes \_\_\_\_ No
15. Is he violent outside of the home? \_\_\_\_ Yes \_\_\_\_ No

\_\_\_\_ Total "Yes" Answers

Please describe "yes" answers in greater detail as desired or necessary. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**GENERAL SESSIONS COURT SEVIER COUNTY, TENNESSEE**

Docket No. \_\_\_\_\_

**STATE OF TENNESSEE vs.**

**DEFENDANT** \_\_\_\_\_

Address \_\_\_\_\_  
D.O.B. \_\_\_\_\_ DL# \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_  
HT \_\_\_\_\_ WT \_\_\_\_\_ Hair \_\_\_\_\_ Eyes \_\_\_\_\_ Work \_\_\_\_\_

**VICTIM** \_\_\_\_\_

Relationship \_\_\_\_\_  
Address \_\_\_\_\_  
D.O.B. \_\_\_\_\_ Sex \_\_\_\_\_ Race \_\_\_\_\_ Work \_\_\_\_\_

**ORDER GRANTING BAIL FOR DOMESTIC ABUSE**

Pursuant to Tennessee Code Annotated, Section 40-11-150, the Court has reviewed the facts of the arrest and detention of the defendant and has determined that the defendant: \_\_\_\_\_ 1. Is a threat to the alleged victim or other family or household member. \_\_\_\_\_ 2. Is a threat to the public safety. \_\_\_\_\_ 3. Is reasonably likely to appear in court.

Pursuant to the above findings, the Defendant's release or bail is conditioned on the following and it is ORDERED that:

- \_\_\_\_\_ 1. The defendant is enjoined from threatening to commit or committing specified offenses against the alleged Victim or other family or household member.
- \_\_\_\_\_ 2. The defendant is prohibited from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim directly or indirectly.
- \_\_\_\_\_ 3. The defendant is directed to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be.
- \_\_\_\_\_ 4. The defendant is prohibited from using or possessing a firearm or other weapon specified by the court as follows: \_\_\_\_\_
- \_\_\_\_\_ 5. The defendant is prohibited from possessing or consuming alcohol or controlled substances.
- \_\_\_\_\_ 6. Any other order required to protect the safety of the alleged victim and to ensure the appearance of the defendant in court as determined by this court as follows: \_\_\_\_\_

BAIL IS SET AT: \_\_\_\_\_ TWELVE (12) HOURS EXPIRES \_\_\_\_\_ : \_\_\_\_\_ .M.

IT IS FURTHER ORDERED that a copy of this order be given to the defendant, the victim, and all appropriate law enforcement agencies.

I acknowledge these conditions:

\_\_\_\_\_  
Judge Date Defendant Date

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DEFENDANT

**DOMESTIC VIOLENCE JUDICIAL REVIEW HEARING**

JUDGE:  
VICTIM COORDINATOR:  
PROSECUTOR:  
WITNESS COORDINATOR  
DEFENSE COUNSEL:  
OFFICER:  
PROBATION:

**STATUS:**

- \_\_\_\_ (1) Probation report.
- \_\_\_\_ (2) BIP report/domestic violence program report.
- \_\_\_\_ (3) Is defendant attending BIP regularly? \_\_\_\_\_
- \_\_\_\_ (4) Is defendant reporting to probation and making progress on requirements? \_\_\_\_\_  
Comments: \_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_ (5) Other reports (A&D, etc..) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONCLUSION/ORDER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE

IN THE GENERAL SESSIONS COURT FOR SEVIER COUNTY, TENNESSEE

PAYMENT OF COSTS - IMPORTANT NOTICE

YOU HAVE BEEN ORDERED TO PAY THE FOLLOWING:

<b>LITIGATION TAX</b>	\$ _____
<b>COURT COSTS</b>	\$ _____
<b>FINE</b>	\$ _____
<b>TOTAL</b>	\$ _____

YOUR NEXT APPEARANCE DATE IS \_\_\_\_\_ AT \_\_\_\_\_ A.M./P.M. YOU MUST BE PRESENT ON THAT DATE UNLESS YOU HAVE PAID THE ABOVE AMOUNT(S) IN FULL.

IN THE EVENT YOU PAY THE ABOVE AMOUNT(S) IN FULL, YOU WILL RECEIVE A RECEIPT PAID IN FULL AND YOUR REVIEW WILL BE REMOVED FROM THE DOCKET.

IF YOU DO NOT PAY IN FULL PRIOR TO YOUR REVIEW DATE, YOU MUST APPEAR. FAILURE TO DO SO WILL RESULT IN A **CAPIAS** BEING ISSUED FOR YOUR ARREST. YOUR CHARGE IS CONTINUED UNTIL YOU PAY OFF THE COSTS IN FULL AS YOU HAVE BEEN ORDERED BY THE COURT TO DO.

YOU MUST PAY IN FULL IN ORDER TO AVOID ATTENDING COURT ON THE ABOVE-STATED DATE.

YOU MUST MAKE ANY REQUESTS FOR AN EXTENSION OF TIME TO PAY IN PERSON THROUGH THE GENERAL SESSIONS CLERK'S OFFICE EITHER BEFORE YOUR REVIEW DATE OR ON THE REVIEW DATE.

\_\_\_\_\_  
SIGNED

\_\_\_\_\_  
DATE

COPY TO DEFENDANT



GENERAL SESSIONS COURT OF SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE VS. \_\_\_\_\_

CASE # \_\_\_\_\_

**BAIL HEARING**

**Questions based on TCA 40-11-118**

1. **RESIDENCE**

Where do you live? \_\_\_\_\_

With whom do you live? \_\_\_\_\_

How long have you lived at that residence? \_\_\_\_\_

Have you ever lived or worked outside the State of TN? \_\_\_\_\_

2. **EMPLOYMENT**

Are you currently employed? \_\_\_\_\_

Where are you employed? \_\_\_\_\_

How long have you worked there? \_\_\_\_\_

Who is your supervisor or manager? \_\_\_\_\_

Where else have you worked in the past 5 years? \_\_\_\_\_

If not employed, how long has it been since you last worked? \_\_\_\_\_

3. **FAMILY TIES IN AREA**

Do you have any family in this area? \_\_\_\_\_ Who are they? \_\_\_\_\_

4. **CRIMINAL RECORD**

What is your criminal history or record? Of what crimes have you been convicted, either misdemeanors or felonies? \_\_\_\_\_  
\_\_\_\_\_

5. **MARRIAGE/CHILDREN**

Are you married? \_\_\_\_\_

Do you have children? \_\_\_\_\_ Where are they located? \_\_\_\_\_

**SUBSTITUTE JUDGE CONSENT FORM**

**NOTICE: WITHOUT THE CONSENT OF ALL LITIGANTS OR THEIR ATTORNEYS, THE SUBSTITUTE JUDGE SHALL NOT PRESIDE ON THIS CASE.**

**Part A: (to be completed by absent judge)**

1. Date(s) of Absence(s): \_\_\_\_\_
2. Reason(s) for Absence(s): *Judge must give specific reason(s)*

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\_\_\_\_\_  
Signature of Absent Judge \_\_\_\_\_  
Date

**Part B: (to be completed by the parties)**

The substitute judge appointed to hear your case has not been elected by the citizens or appointed by the governor. You are not required to accept the service of a substitute judge. Without the consent of all parties the substitute judge shall not preside and the cause will be scheduled for another date. Consent must be granted by the parties who are present but may be granted by the attorney of record of any party who is not present at the beginning of the proceeding. By signing this form, you consent to the use of the below-named substitute judge in this proceeding.

_____ Client's Signature	_____ Client's Signature
_____ Client's Signature	_____ Client's Signature
_____ Signature of the Attorney of Record	_____ Signature of the Attorney of Record

If there were no parties present at the beginning, the substitute judge will write "not present" across the above signature lines.

**Part C: (to be completed by the substitute judge)**

Oath: I, \_\_\_\_\_, do solemnly swear that I will support the Constitution of the United States and the State of Tennessee, and will administer justice without respect of persons, and do equal rights to the poor and to the rich, and that I will faithfully and impartially discharge all of the duties incumbent upon me as a judge to the best of my abilities.

\_\_\_\_\_  
Signature of Judge \_\_\_\_\_  
Date

**Part D: (to be completed by the clerk of the court)**

I, \_\_\_\_\_, clerk of the above court, certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Honorable \_\_\_\_\_ appointed the Honorable \_\_\_\_\_ to preside on the above case. I further certify that the substitute judge subscribed to the statutory oath of office before entering upon the duties of that office and that oath has been filed with the records of my office.

\_\_\_\_\_  
Clerk

**IN THE GENERAL SESSIONS COURT FOR SEVIER COUNTY, TENNESSEE**

**STATE OF TENNESSEE**

**VS.**

**NO.:** \_\_\_\_\_

\_\_\_\_\_  
**Defendant**

**PAYMENT PLAN FOR COSTS/FINES/FEES/ RESTITUTION**

This case came before the Court on \_\_\_\_\_, at which time the defendant entered into this plan for payment of costs/fines/fees/restitution. The Court accepted and approved the payment plan, which is specifically based on the defendant's financial capabilities, employment and income as announced by the defendant.

Accordingly, the defendant is ordered to perform as follows:

1. Full payment of \_\_\_\_\_ on or by \_\_\_\_\_.
2. Payments shall be made in the minimum amount of \_\_\_\_\_ per \_\_\_\_\_ (monthly, weekly, bi-weekly).
3. Other arrangements or stipulations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
4. If payment is not made in full by the date specified above, the defendant shall be required to appear in court on the assigned review date to show cause why the same has not been timely paid. Failure to appear in court will result in issuance of a capias or warrant for the arrest of the defendant.

This the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
GENERAL SESSIONS JUDGE

\_\_\_\_\_  
District Attorney

\_\_\_\_\_  
Defense Attorney

\_\_\_\_\_  
Defendant

**CERTIFICATE OF SERVICE**

A copy of this order has been forwarded to the victim entitled to restitution, as follows:

(name and address):

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
DATE:

**TRAFFIC DOCKET**

\_\_\_\_\_  
NAME

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
OFFENSE

\_\_\_\_\_  
TELEPHONE

DO YOU HAVE A COMMERCIAL DRIVER'S LICENSE? \_\_\_\_ Yes \_\_\_\_ No

PRIOR RECORD: Prior traffic offenses: (Include offense and date of previous offenses)

OFFENSES

DATES

OTHER RECORD:

OFFENSES

DATES

REQUEST (If no prior record within last 3 years)

Traffic School \_\_\_\_\_ (if no prior record within last 3 years)

Deferral \_\_\_\_\_ (if no previous record whatsoever of traffic offense or  
none in last five years)

The foregoing is true based on my own personal knowledge.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

IN THE GENERAL SESSIONS COURT FOR SEVIER COUNTY, TENNESSEE

STATE OF TENNESSEE  
Plaintiff

VS.

NO: \_\_\_\_\_

\_\_\_\_\_  
Defendant

PLEA AGREEMENT

Comes the State of Tennessee, by and through the District Attorney General's Office, and the defendant and announce a proposed plea agreement to the Court. The Assistant District Attorney hereby represents that after consideration of the pertinent facts and law that the following is proposed by the State with agreement of the defendant as a just resolution of the case.

The plea agreement is as follows: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Defense Counsel

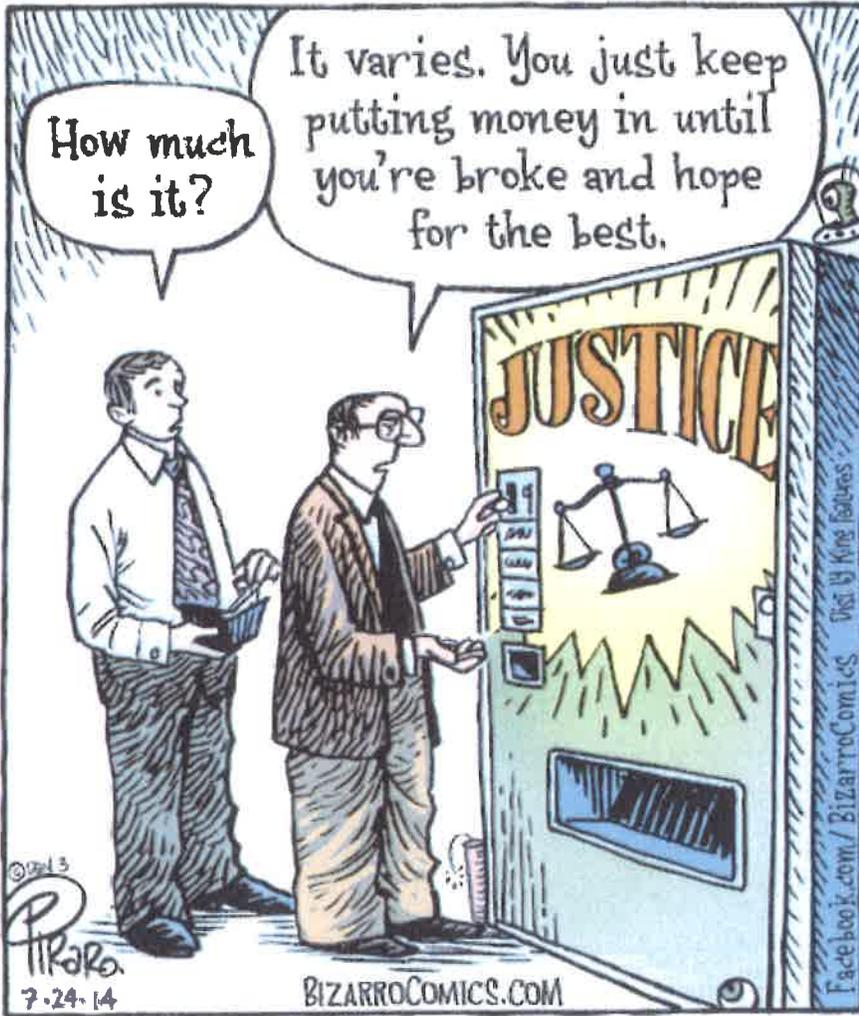
\_\_\_\_\_  
District Attorney

\_\_\_\_\_  
Defendant

**NOTE:** The District Attorney further represents to the Court that consideration has been given to the feelings and concerns of the victim(s) in this cause.

\_\_\_\_\_ VICTIM DESIRES TO ADDRESS THE COURT.

\_\_\_\_\_ VICTIM DOES NOT DESIRE TO ADDRESS THE COURT OR IS UNAVAILABLE.



FRANK & ERNEST

BOB THAVES



## VEHICLE SEIZURE: REASONABLENESS -- A BRIEF SUMMARY

1. Both the state and federal constitutions protect individuals from unreasonable searches and seizures; the general rule is that a warrantless search or seizure is presumed unreasonable and any evidence discovered subject to suppression. U.S. Constitution Amend. IV; Tenn. Const. Art. I, § 7;  
Coolidge v. New Hampshire, 403 U.S. 443, 454-55 (1971);  
State v. Bridges, 963 S.W.2d 487,490 (Tenn. 1997)
2. Neither the United States Constitution or Tennessee Constitution, however, limits all contact between citizens and law enforcement and both are designed, instead, “to prevent arbitrary and oppressive interference with the privacy and personal security of individuals.”  
INS v. Delgado, 466 U.S. 210, 215 (1984)  
United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)
3. Our courts have recognized three types of police-citizen interactions: (1) a full scale arrest, which must be supported by probable cause; (2) a brief investigatory stop, which must be supported by reasonable suspicion; and (3) a brief police-citizen encounter, which requires no objective justification.  
Florida v. Bostick, 501 U.S. 429, 434 (1991)  
Brown v. Illinois, 422 U.S. 590 (1975)  
Terry v. Ohio, 392 U.S. 1 (1968)  
**PRACTICE POINT:** Look closely at reason for encounter/confrontation and judge case according to type of encounter.
4. “Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a “seizure” has occurred.”  
Terry, 392 U.S. at 19 n.16
5. In State v. Pulley, 863 S.W.2d 30 (Tenn. 1993), our supreme court ruled that “the reasonableness of seizures less intrusive than a full-scale arrest is judged by weighing the gravity of the public concern, the degree to which the seizure advances that concern, and the severity of the intrusion into individual privacy.”
6. Our determination of the reasonableness of a stop of a vehicle depends on whether the officer had either probable cause or an “articulable and reasonable suspicion” that the vehicle or its occupants were subject to seizure for violation of the law.  
Delaware v. Prouse, 440 U.S. 648, 663 (1979)  
State v. Coleman, 791 S.W.2d 504, 505 (Tenn.Crim.App. 1989)
7. Probable cause has been generally defined as a reasonable ground for suspicion, supported by circumstances indicative of an illegal act.  
Lea v. State, 181 Tenn. 378, 380-01, 181 S.W.2d 351, 352 (1944)

8. While probable cause is not necessary for an investigative stop, it is a requirement that the officer's reasonable suspicion be supported by "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."  
Terry, 392 U.S. at 21;  
Pulley, 863 S.W.2d at 30;  
Coleman, 792 S.W.2d at 505  
State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992  
(Applying Terry doctrine in context of vehicular stop).
9. In determining whether reasonable suspicion exists, an important factor in the analysis is that reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.  
Pulley, 863 S.W.2d at 32  
Alabama v. White, 496 U.S. 325, 330 (1990)
10. Courts considering the issue of reasonable suspicion must look to totality of the circumstances. Those circumstances include the personal observations of the police officer, information obtained from other officers or agencies, information obtained from citizens, and the pattern of operation of certain offenders.  
Watkins, 827 S.W.2d 293 (Tenn. 1992) (citing United States v. Cortez, 449 U.S. 411, 417-18 (1981)). See also State v. Binette, 33 S.W.3d 215 (Tenn. 2000).
11. Objective standards apply rather than the subjective beliefs of the officer making the stop.  
State v. Norwood, 938 S.W.2d 23, 25 (Tenn.Crim.App. 1996).

**NOTE:** This summary of cases was included in a recent opinion of Presiding Judge Gary R. Wade of the Tennessee Court of Criminal Appeals in State v. Boxx, 29 TAM 39-28 (8/18/04).

## CONSENT TO SEARCH - - BRIEF SUMMARY

1. The analysis of any warrantless search must begin with the proposition that such searches are per se unreasonable under the Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution. This principle against warrantless searches is subject only to a few specifically established and well-delineated exceptions.  
Katz v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967)  
State v. Tyler, 598 S.W.2d 798, 801 (Tenn. Crim. App. 1980)
2. Before the fruits of a warrantless search are admissible as evidence, the state must establish by a preponderance of the evidence that the search falls into one of the narrowly drawn exceptions to the warrant requirement.  
State v. Shaw, 603 S.W.2d 741, 742 (Tenn. Crim. App. 1980)
3. A warrant is not needed when there is a consent that is “unequivocal, specific, intelligently given, and uncontaminated by duress or coercion.”  
State v. Brown, 836 S.W.2d 530, 547 (Tenn. 1992)
4. Thus, the question becomes whether the consent to the search was given voluntarily.  
State v. Jackson, 889 S.W.2d 219, 221 (Tenn. Crim. App. 1993)

## SUMMARY OF MIRANDA RIGHTS

### MIRANDA RIGHTS - - WHETHER DEFENDANT’S STATEMENTS ARE ADMISSIBLE

1. Statements made during the course of a custodial police interrogation are inadmissible at trial unless the state establishes that the defendant was advised of his right to remain silent and his right to counsel and that the defendant then waived those rights.  
Miranda v. Arizona, 384 U.S. 436, 471-75, 16 L. Ed.2d 694 (1966);  
Dickerson v. United States, 530 U.S. 428, 444, 147 L. Ed.2d 405 (2000)  
Stansbury v. California, 511 U.S. 318, 322, 128 L. Ed.2d 293 (1994)
2. A defendant’s rights to counsel and against self-incrimination may be waived as long as the waiver is made voluntarily, knowingly, and intelligently.  
Miranda, 384 U.S. at 478;  
State v. Middlebrooks, 840 S.W.2d 317, 326 (Tenn. 1992)
3. In order to effect a waiver, the accused must be adequately apprised of his right to remain silent and the consequence of deciding to abandon the right.  
Stephenson, 878 S.W.2d at 544-45

4. In determining whether a confession was voluntary and knowing, the totality of the circumstances must be examined.  
State v. Bush, 942 S.W.2d 489, 500 (Tenn. 1997)
5. In *Miranda*, the United States Supreme Court limited its holding to a “custodial interrogation.” The Court defined the phrase “custodial interrogation” as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.”  
Miranda, 384 U.S. at 478-79.
6. A person is “in custody” within the meaning of *Miranda* if there has been “a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”  
California v. Beheler, 463 U.S. 1121, 1125 (1983)
7. The Court has refused to extend the holding in *Miranda* to non-custodial interrogations.  
Oregon v. Mathiason, 429 U.S. 492, 50 L. Ed.2d 714 (1977)  
(Holding that an accused’s confession was admissible because there was no indication that the questioning took place in a context where his freedom to depart was restricted in any way);  
Beheler, 463 U.S. at 1124-25 (noting that the ultimate inquiry is simply whether there is a “formal arrest or restraint on freedom of movement” of the degree associated with a formal arrest.
8. In determining whether a reasonable person would consider himself or herself in custody, our supreme court considers a variety of factors, including the following:  
The time and location of the interrogation; the duration and character of the questioning; the officer’s tone of voice and general demeanor; the suspect’s method of transportation to the place of questioning; the number of police officers present; any limitation on movement or other form of restraint imposed on the suspect during the interrogation; any interactions between the officer and the suspect, including the words spoken by the officer to the suspect, and the suspect’s verbal or nonverbal responses; the extent to which the suspect is confronted with the law enforcement officer’s suspicions of guilt or evidence of guilt, and finally, the extent to which the suspect is made aware that he or she is free to refrain from answering questions or to end the interview at will.  
State v. Walton, 41 S.W.3d 75, 82-83 (Tenn. 2001)  
State v. Anderson, 937 S.W.2d 851, 855 (Tenn. 1996)

## KEY SEARCH AND SEIZURE PRINCIPLES UNDER TENNESSEE LAW

### 1. SECURE IN HOME AND POSSESSIONS

“The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and general warrants, whereby an officer may be commanded to search suspected places without evidence of the crime committed, or to seize any person or persons not named, whose offenses are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.

Tennessee Constitution, Article 1, §7.

2. CURTILAGE, the area around the home to which the activity of home life extends, is entitled to the same protections as one’s home under Tennessee law.

State v. Prier, 725 S.W.2d 667 (Tenn. 1987)

3. EVIDENCE obtained through illegal search and seizure is inadmissible under state and federal law.

Mapp v. Ohio, 367 U.S. 643 (1966)

### 4. INEVITABLE DISCOVERY DOCTRINE

Even if the exclusionary rule applies, if the state can prove that the evidence would have inevitably been discovered pursuant to proper and predictable investigatory procedures, the court may still admit the evidence.

State v. Coury, 657 S.W.2d 777 (Tenn.Cr.App. 1983)

### 5. STANDING

The general rule in Tennessee is that a defendant must show his/her own personal rights have been infringed upon by an illegal search and seizure in order to have standing to contest the admission of the evidence.

Daniels v. State, 550 S.W.2d 958 (Tenn.Cr.App. 1976)

To determine standing of a criminal accused, the following factors are considered to determine if someone has a “legitimate expectation of privacy in the premises searched”:

1. Ownership of the property;
2. Whether the defendant has a possessory interest in the thing seized;
3. Whether the defendant has a possessory interest in the place searched;
4. Whether he has a right to exclude others from that place;
5. Whether he has exhibited a subjective expectation that the place would remain free of governmental invasion;
6. Whether he took normal precautions to maintain his privacy; and
7. Whether he was legitimately on the premises.

6. SEARCH WARRANTS- - KEY CASES TO REVIEW
  1. State v. Jacumin, 778 S.W.2d 430 (Tenn. 1989).
  2. Aguilar v. Texas, 378 U.S. 108 (1964).
  3. Spinelli v. U.S., 398 U.S. 410 (1969).

### EXCELLENT RESOURCES

1. Trial Handbook for Tennessee Lawyers  
(2005 Ed., by Robert Burch, Thomson/West, call 1-800-328-4880),  
See Chapter 28, "Illegally Obtained Evidence", §§ 28:1 - 28:11
2. Trial Manual 5 for the Defense of Criminal Cases (Vols. 1-3)  
See Vol. 2, Chapter 15, "Motions to Suppress Illegally Obtained Evidence."

# ANALYSIS OF HEARSAY ADMISSIBILITY UNDER CRAWFORD/MACLIN

CRAWFORD V. WASHINGTON  
541 U.S.36 (2004)

STATE V. MACLIN  
31 TAM 5-2 (Tenn.1/18/06)  
No. W2003-03123-R11-CD

ISSUE: Is the hearsay evidence which is being offered into evidence against the accused admissible under the Confrontation Clause of the United States Constitution (6<sup>th</sup> Amendment) and under Tennessee Constitution, Article 1, Section 9?

RULE: Testimonial statements may not be offered into evidence unless two requirements are satisfied: (1) Declarant/witness must be unavailable; (2) Defendant must have had prior opportunity to cross-examine the Declarant/witness.

THRESHOLD QUESTION: Whether the challenged statement (hearsay evidence) is testimonial or non-testimonial.

Tennessee adopts case by case approach to determine whether statement is testimonial or non-testimonial, evaluating factual circumstances of each case.

To evaluate this, you look at eight factors:

- (1.) Whether declarant was victim or observer;
- (2.) Whether contact was initiated by declarant or by law enforcement officials;
- (3.) Degree of formality attending circumstances in which statement was made;
- (4.) Whether statement was given in response to questioning, whether questioning was structured, and scope of such questioning;
- (5.) Whether statement was recorded (either in writing or by electronic means);
- (6.) Declarant's purpose in making statement;
- (7.) Officer's purpose in speaking with declarant; and
- (8.) Whether objective declarant under circumstances would believe that statement would be used at trial.

The list is not exhaustive and other factors can be considered.

Tennessee says per Maclin the proper approach is that which is favored by a majority of courts that consider both testimonial hearsay analysis and excited utterance analysis and that considers the totality of circumstances in order to determine whether a particular excited utterance should be deemed testimonial.

## CONCLUSION:

- (1.) If testimonial, statement is inadmissible unless (a) witness is unavailable and (b) defendant had prior opportunity for cross-examination.
- (2.) If non-testimonial, then admissibility is covered by Ohio v. Roberts, 448 U.S.56 (1980). Under Roberts, an out of court statement by unavailable witness is admissible if it falls within firmly rooted exception to hearsay rule or contains such particularized guarantees of trustworthiness that adversarial testing of statement through cross-examination would add little to whether or not evidence is reliable.

**HEARSAY ADMISSIBILITY ANALYSIS**  
**UNDER CRAWFORD/MACLIN**

**ISSUE:** Under Crawford/Maclin analysis, is hearsay evidence admissible against the accused pursuant to the mandates of the Confrontation Clause of the Tennessee and United States Constitutions?

**THRESHOLD QUESTION**

Is the hearsay testimonial or  
non-testimonial?

**8 FACTORS TO CONSIDER**

- (1.) Whether declarant was victim or observer;
  - (2.) Whether contact was initiated by declarant or by law enforcement officials;
  - (3.) Degree of formality attending circumstances in which statement was made;
  - (4.) Whether statement was given in response to questioning, whether questioning was structured, and scope of such questioning;
  - (5.) Whether statement was recorded (either in writing or by electronic means);
  - (6.) Declarant's purpose in making statement;
  - (7.) Officer's purpose in speaking with declarant; and
  - (8.) Whether objective declarant under circumstances would believe that statement would be used at trial.
- (The list is not exhaustive and other similar factors can be considered.)

**IF TESTIMONIAL:**

To be admissible two tests must be satisfied:

- (1) witness is unavailable
- (2) defendant had opportunity to cross-examine witness

**IF NON-TESTIMONIAL**

Admissible if evidence falls under a firmly- rooted exception to hearsay rule or has particularized guarantees of trustworthiness.

**ANALYSIS**  
**MACLIN FACTS**

1. Is the hearsay testimonial or non-testimonial?

**FACTORS TO BE SCRUTINIZED**

1. Victim initiated contact
2. Danger has subsided
3. Extraordinary detail by victim in narrative
4. Declarant would reasonably expect statement to be used prosecutorially including use at trial
5. Victim was a witness giving testimony and therefore it is testimonial

**HELD: TESTIMONIAL**

**SINCE WAS TESTIMONIAL: LOOK TO CRAWFORD - CASE**

1. Was witness unavailable? Yes, witness is dead.
2. Did defendant have opportunity to cross-examine the witness? No

**CONCLUSION:**

It would be a violation of defendant's confrontation rights under Crawford and therefore evidence is inadmissible. (AND is not harmless error)

**ANALYSIS**  
**ANDERSON FACTS**

1. Is the hearsay testimonial or non-testimonial?

**FACTORS TO SCRUTINIZE**

1. Officer is in preliminary investigational mode
2. Informal nature of flag-down by bystander witness
3. General questions by officer - not an interrogation
4. Witness not anticipate statements would be used in a prosecutorial manner.
5. Officers were trying to determine "what was going on," not develop a case for trial
6. Totality of circumstances - declarants not acting as witnesses attempting to give testimony

**HELD: NON-TESTIMONIAL**

**SINCE HEARSAY IS NON-TESTIMONIAL: - LOOK TO ROBERTS CASE**

1. Firmly-rooted hearsay exception?  
Yes - it is excited utterance
  - a. startling event
  - b. statements relate to startling event
  - c. statements made while declarant under stress of event
2. Guarantees of trustworthiness? Yes

**CONCLUSION:**

Trial court did not abuse discretion in allowing excited utterance into evidence.

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