

OVERVIEW OF A VERMONT CRIMINAL CASE

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INCIDENT

- POLICE OBSERVATION
- CITIZEN'S COMPLAINT
- 911 CALL



INVESTIGATION

- EVIDENCE GATHERED
- WITNESSES/VICTIM INTERVIEWED
- STATEMENTS TAKEN
- PHOTOGRAPHS TAKEN
- CRIME LAB ANALYSIS
- INTERVIEW OF SUSPECT





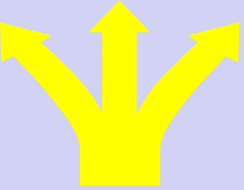
ARREST/CITATION

- ACCUSATION BASED UPON “PROBABLE CAUSE” (A REASONABLE PERSON LOOKING AT THE EVIDENCE WOULD SAY THE SUSPECT PROBABLY COMMITTED THE OFFENSE)
- SUSPECT LODGED (HELD IN JAIL UNTIL THE NEXT BUSINESS DAY THEN BROUGHT TO COURT AT 1PM --SUSPECT CAN GET OUT OF JAIL IF BAIL POSTED) **OR**
- SUSPECT ISSUED CITATION (A DIRECTIVE TO APPEAR IN COURT AT A SPECIFIED DATE AND TIME – EACH COUNTY HAS ITS OWN SCHEDULE DATES AND TIMES)
- SOMETIMES SUSPECT “FLASH CITED” (ISSUED DIRECTIVE TO SHOW UP AT COURT THAT DAY OR THE NEXT DAY)

CHARGING DECISION



- POLICE PAPERWORK TO STATE'S ATTORNEY
- PROSECUTOR'S OPTIONS: DECLINE CHARGES; HOLD FOR MORE INFORMATION; DECIDE TO BRING CHARGES
- CHARGING DOCUMENT IS CALLED AN "INFORMATION"-- A STATEMENT FILED BY THE STATE'S ATTORNEY OR DEPUTY ON THEIR OATH OF OFFICE
- INFORMATION MUST BE ACCOMPANIED BY SWORN LAW ENFORCEMENT AFFIDAVIT
- CHARGES BROUGHT DO NOT HAVE TO BE SAME AS WHAT THE SUSPECT WAS ARRESTED OR CITED FOR
- PROSECUTORS **DO NOT** NEED TO PRESENT STATE CHARGES TO A GRAND JURY



ARRAIGNMENT

- IMMEDIATELY BEFORE ARRAIGNMENT COURT MUST FIND “PROBABLE CAUSE” FOR THE CHARGES--IF COURT DOES NOT FIND PROBABLE CAUSE CASE IS DISMISSED
- DEFENDANT (THE PERSON CHARGED) RECEIVES THE INFORMATION AND SUPPORTING PAPERWORK)
- DEFENDANT MAY APPLY FOR PUBLIC DEFENDER
- DEFENDANT ADVISED OF RIGHTS
- DEFENDANT ENTERS PLEA OR IS ALLOWED 24 HOURS BEFORE MAKING PLEA DECISION
- PLEAS: GUILTY; NO CONTEST (DOES NOT CONTEST THAT THE STATE COULD PROVE GUILT); NOT GUILTY
- IF GUILTY OR NO CONTEST GO TO SENTENCING PAGE UNLESS PRESENTENCE REPORT ORDERED (“PSI”)
- IF NOT GUILTY, COURT ISSUES RELEASE CONDITIONS AND OR BAIL TO MONITOR BEHAVIOR WHILE CASE IS PENDING (EX: NO CONTACT WITH COMPLAINANT/VICTIM)
- VICTIM MAY ATTEND ARRAIGNMENT AND MUST BE ADVISED OF OUTCOME OF HEARING IF NOT IN ATTENDANCE

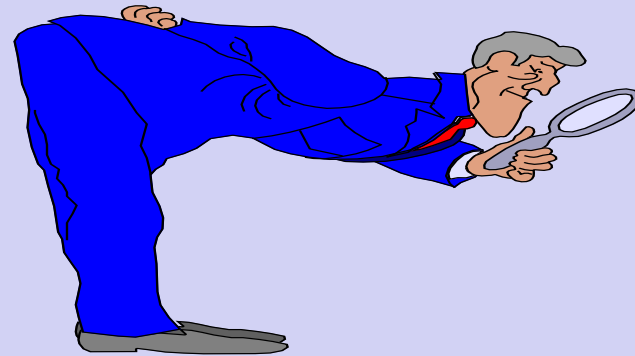
COMPETENCY



- AT ARRAIGNMENT, ANY PARTY OR THE COURT MAY QUESTION THE DEFENDANT'S COMPETENCY TO STAND TRIAL
- COMPETENCY LOOKS AT THE PRESENT SITUATION AND INQUIRES IF THE DEFENDANT REASONABLY UNDERSTANDS THE CHARGES, THE PROCEEDINGS, AND HAS THE ABILITY TO CONSULT WITH COUNSEL
- IF COMPETENCY IS QUESTIONED, THE COURT WILL ORDER A COMPETENCY EXAMINATION BY A PYSCHIATRIST
- A CASE AGAINST AN INCOMPETENT DEFENDANT MAY NOT PROCEED TO TRIAL
- IF A COURT FINDS A DEFENDANT INCOMPETENT THE COURT SCHEDULES A HOSPITALIZATION HEARING TO DETERMINE THE APPROPRIATE, YET "LEAST RESTRICTIVE ENVIRONMENT" FOR TREATING THE DEFENDANT
- COURT CAN ISSUE AN ORDER OF HOSPITALIZATION OR AN ONH – AN ORDER OF NON HOSPITALIZATION – WITH THE COMMISSIONER OF MENTAL HEALTH OVERSEEING CONDITIONS PLACED ON THE DEFENDANT
- COMPETENCY IS A FLUID CONCEPT – A PERSON MAY BE INCOMPETENT AT THE START OF A COURT PROCESS BUT THROUGH TREATMENT LATER BECOME COMPETENT
- THE CRIMINAL CASE IS SUSPENDED FOR SO LONG AS THE PERSON IS DEEMED INCOMPETENT BUT CAN RESUME IF COMPETENCY IS RESTORED
- INDIVIDUALS WHO ARE INCOMPETENT DUE TO MENTAL RETARDATION AND WHO ARE ACCUSED OF SEXUAL OFFENSES ARE SUBJECT TO SPECIAL SUPERVISION UNDER "ACT 248"

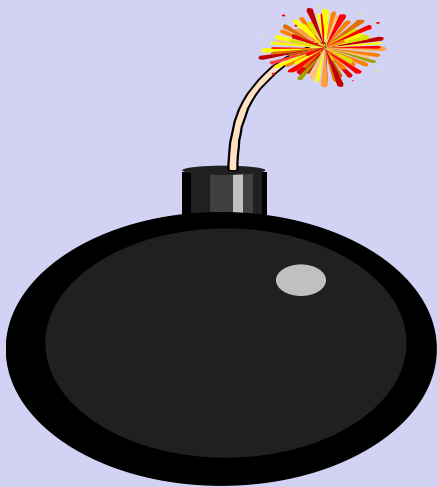
DISCOVERY

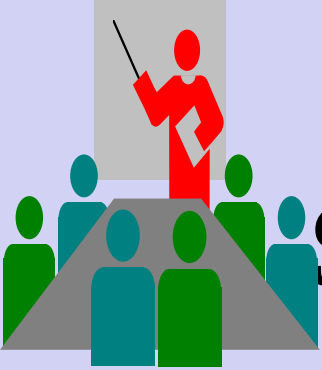
- OPPORTUNITY FOR DEFENDANT/DEFENSE COUNSEL TO LEARN ABOUT THE STATE'S CASE
- STATE **MUST** GIVE DEFENDANT LIST OF WITNESSES AND ADDRESSES AND DOCUMENTS IN STATE'S POSSESSION
- NOTE: VICTIM'S ADDRESS NEED NOT BE DISCLOSED
- WITNESSES MAY BE DEPOSED --TAPED INTERVIEW UNDER OATH
- DEPOSITION ARE ALLOWED IN ALL FELONY CASES (EXCEPT CERTAIN SEXUAL OFFENSES) BUT ONLY IN MISDEMEANORS BY AGREEMENT OF PARTIES OR COURT ORDER
- FELONY IS A CASE PUNISHABLE BY MORE THAN 2 YRS IN JAIL --IF POSSIBLE PUNISHMENT IS 2 YRS OR LESS IT IS A MISDEMEANOR



MOTIONS

- DEFENSE EFFORTS TO KEEP OUT EVIDENCE
- SUPPRESS ILLEGALLY OBTAINED STATEMENTS/EVIDENCE
- DISMISS CASE AS LACKING SUFFICIENT EVIDENCE TO SUPPORT CHARGE
- VICTIM MAY NEED TO TESTIFY AT MOTION HEARING (CAN USUALLY BE AVOIDED IF VICTIM HAS SIGNED A SWORN STATEMENT)





STATUS CONFERENCE

- ALL MISDEMEANOR CASES ARE BROUGHT BACK TO COURT APPROX. 6 WKS AFTER ARRAIGNMENT FOR CALENDAR CALL TO ADVISE COURT OF CASE STATUS
- IF CASE DOES NOT SETTLE THEN IT IS SET FOR JURY SELECTION AT A LATER DATE
- FELONY CASES ARE SCHEDULED INDIVIDUALLY FOR STATUS CONFERENCES TO ADVISE THE COURT OF THE PROGRESS OF THE CASE
- VICTIM IS NOTIFIED OF HEARING DATE AND HAS A RIGHT TO ATTEND AND SHOULD BE ADVISED OF HEARING OUTCOME

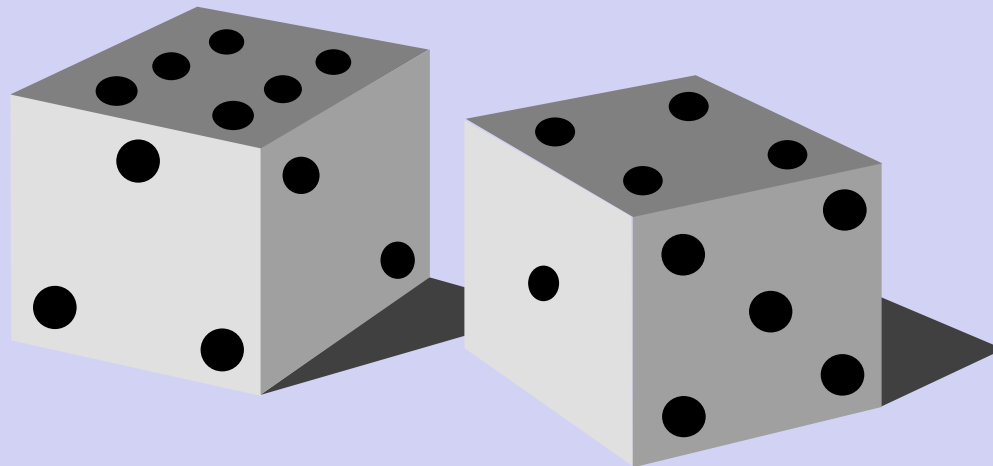
PLEA DISCUSSIONS

- THROUGHOUT THE PROCESS THE PARTIES MAY TALK ABOUT FINDING A WAY TO RESOLVE THE CASE BY MUTUAL AGREEMENT: “PLEA OR NEGOTIATED AGREEMENT”
- VICTIMS MUST BE CONSULTED FOR INPUT INTO PLEA AGREEMENT
- IN MAJOR CASES, ORDINARILY VICTIM IS CONSULTED BEFORE PLEA OFFER EXTENDED TO DEFENSE
- IF PARTIES REACH AN AGREEMENT CASE IS SET FOR CHANGE OF PLEA (“COP”) HEARING AND SENTENCING
- IF NO AGREEMENT--CASE IS SET FOR JURY SELECTION AND TRIAL

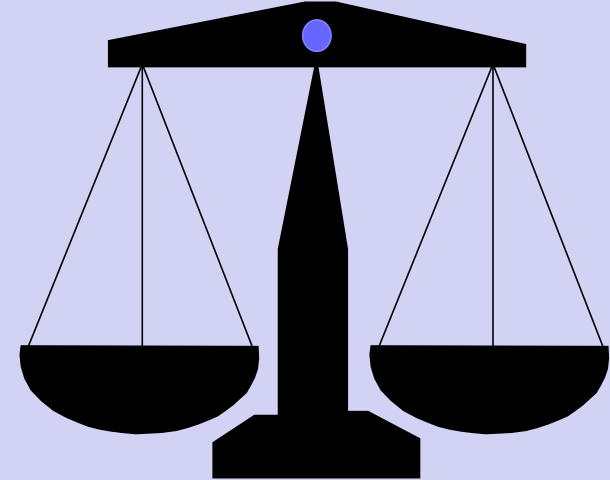


JURY DRAW/SELECTION

- ATTORNEYS QUESTION PANEL OF COUNTY CITIZENS TO ARRIVE AT 12 PERSON JURY USUALLY WITH TWO ALTERNATES
- QUESTIONING DESIGNED TO SELECT FAIR AND IMPARTIAL JURORS WHO WILL DECIDE CASE BASED ON THE EVIDENCE
- VICTIM USUALLY NOT PRESENT FOR JURY SELECTION



JURY TRIAL

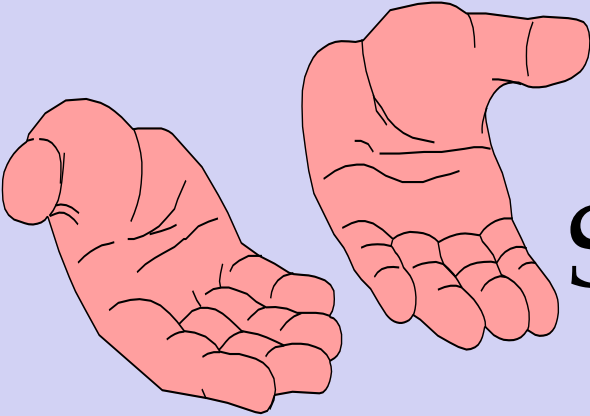


- TRIAL BEGINS WITH OPENING STATEMENTS
- STATE GOES FIRST AND PRESENTS ITS EVIDENCE
- DEFENDANT MAY PUT ON A DEFENSE BUT NEED NOT DO SO
- STATE GOES LAST TO REBUT DEFENSE CASE
- STATE MUST PROVE CASE “BEYOND A REASONABLE DOUBT” --THE HIGHEST STANDARD IN THE LAW
- CLOSING ARGUMENTS TO JURY
- JURY IS READ THE LAW BY THE JUDGE
- JURY DELIBERATION – THE DECISION MUST BE UNANIMOUS
- JURY VERDICT: GUILTY/NOT GUILTY/HUNG (UNABLE TO AGREE)
- IF NOT GUILTY VERDICT, DEFENDANT IS FREE
- VICTIM MAY NOT BE PRESENT IN COURT UNTIL AFTER HE/SHE TESTIFIES

INSANITY



- IN ADDITION TO A GUILTY OR NOT GUILTY VERDICT, A JURY MAY RETURN A VERDICT OF “NOT GUILTY BY REASON OF INSANITY”
- NGRI IS ONLY AVAILABLE IF A DEFENDANT HAS GIVEN PRIOR NOTICE OF INTENTION TO RELY ON AN INSANITY DEFENSE
- UNLESS THE STATE AGREES THAT A DEFENDANT IS INSANE, IT IS FOR THE JURY TO MAKE THAT DECISION NOT THE JUDGE
- A DEFENDANT IS CONSIDERED INSANE (NOT LEGALLY RESPONSIBLE) IF THE DEFENDANT LACKS SUBSTANTIAL CAPACITY TO UNDERSTAND THE CRIMINAL NATURE OF HIS/HER ACTIVITY OR LACKS SUBSTANTIAL CAPACITY TO CONFORM HIS/HER CONDUCT TO REQUIREMENTS OF THE LAW
- IF A DEFENDANT IS DEEMED LEGALLY INSANE THEN THE COURT SCHEDULES A HOSPITALIZATION HEARING TO DETERMINE LEAST RESTRICTIVE ENVIRONMENT TO PLACE DEFENDANT UNTIL DEFENDANT NO LONGER POSES A DANGER OR HARM TO SELF OR OTHERS
- COURT CAN ISSUE AN ORDER OF HOSPITALIZATION OR NON-HOSPITALIZATION

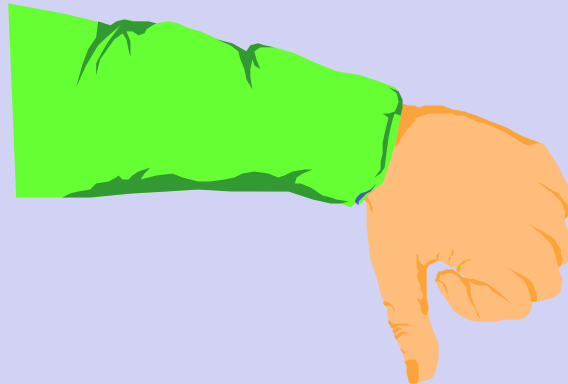


SENTENCING

- IF A GUILTY VERDICT, OR A DEFENDANT HAS CHANGED PLEA AFTER REACHING PLEA AGREEMENT, COURT IMPOSES SENTENCE
- VICTIM HAS RIGHT TO BE PRESENT AND HEARD REGARDING SENTENCE
- IF A PLEA AGREEMENT, COURT CAN ACCEPT THE AGREEMENT AND SENTENCE ACCORDING TO ITS TERMS OR REJECT AGREEMENT AND ALLOW DEFENDANT TO WITHDRAW PLEA
- IF A GUILTY VERDICT, COURT MAY IMPOSE ANY LAWFUL SENTENCE ALLOWED BY STATUTE
- EVERY OFFENSE HAS A STATUTORY RANGE OF ALLOWABLE PENALTIES
- SENTENCING OPTIONS: INCARCERATION; PROBATION (SUSPENDED JAIL SENTENCE; FINE; SPECIAL CONDITIONS (EX: COUNSELING; NO ALCOHOL ETC))
- COURT MAY ORDER PRESENTENCE INVESTIGATION ("PSI") A REPORT BY PROBATION TO HELP GUIDE THE COURT IN DETERMINING APPROPRIATE SENTENCE

VIOLATION OF PROBATION

- IF STATE ALLEGES OFFENDER VIOLATED PROBATION--HEARING HELD TO PROVE THE VIOLATION
- HEARING IN FRONT OF JUDGE ALONE NOT JURY
- STANDARD IS “PREPONDERANCE OF THE EVIDENCE” -- MORE LIKELY THAN NOT-- NOT BEYOND A REASONALBE DOUBT
- IF COURT FINDS A VIOLATION, CAN SENTENCE OFFENDER TO UNDERLYING TERM OR CAN SENTENCE TO A PORTION OF THE TERM AND MAY MODIFY THE PROBATION CONDITIONS



APPEALS



- A PERSON CONVICTED BY JURY HAS A RIGHT TO APPEAL TO VERMONT SUPREME COURT TO ATTEMPT TO OVERTURN CONVICTION
- SENTENCING IN MISDEMEANORS USUALLY STAYED/STOPPED WHEN CASE APPEALED
- IN FELONIES COURT MAY CHOOSE TO STAY SENTENCE OR MAY IMPOSE SENTENCE
- IF SUPREME COURT AFFIRMS CONVICTION SENTENCE IS IMPOSED
- IF CASE REVERSED USUALLY IT IS SET FOR A NEW TRIAL

PAROLE/FURLOUGH

- INDIVIDUALS WHO ARE SENTENCED TO JAIL TERMS HAVE A RIGHT TO BE CONSIDERED FOR PAROLE BEFORE THEY SERVE THEIR FULL TIME
- VICTIMS MAY BE HEARD AT PAROLE HEARINGS
- HEARINGS ARE IN FRONT OF PAROLE BOARD NOT THE COURT
- FURLOUGH – A MECHANISM TO RELEASE OFFENDERS BACK TO THE COMMUNITY



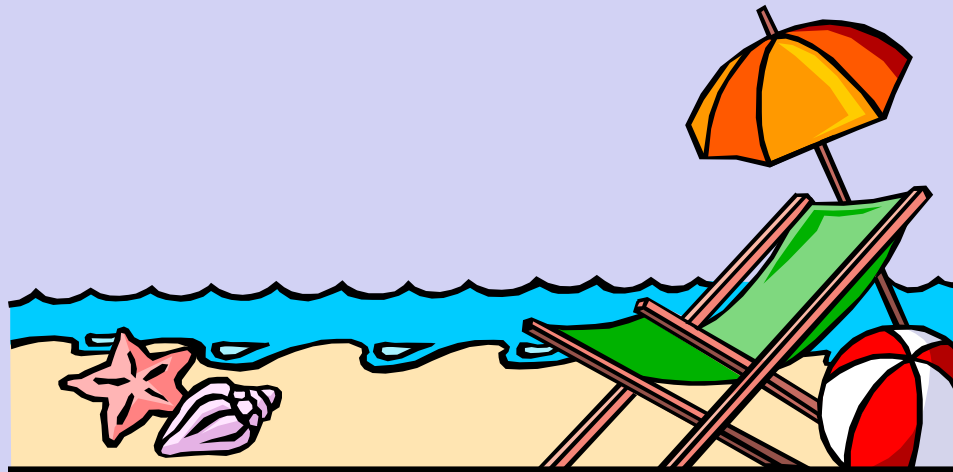
POST CONVICTION RELIEF

- IF VERMONT SUPREME COURT UPHOLDS CONVICTION--OFFENDER MAY ASK THE SUPERIOR COURT – CIVIL DIVISION TO REVIEW CASE FOR POSSIBLE CONSTITUTIONAL DEFECTS LIKE INEFFECTIVE ASSISTANCE OF DEFENSE COUNSEL
- SENTENCE USUALLY REMAINS IMPOSED WHILE PCR CASE IS PENDING
- CIVIL DIVISION MAY, BUT RARELY DOES, OVERTURN THE CONVICTION



DISCHARGE FROM PROBATION

- UPON SATISFACTORY COMPLETION OF PROBATION TERMS, PROBATION OFFICER PETITIONS THE COURT FOR DISCHARGE FROM PROBATION
- STATE GETS NOTICE OF PETITION AND CAN BE HEARD
- VICTIM SHOULD BE CONSULTED



TERMS



- LODGEE: A PERSON HELD IN JAIL UNTIL COURT THE NEXT BUSINESS DAY
- CITATION; DIRECTIVE TO APPEAR IN COURT
- ARRAIGNMENT: FIRST APPEARANCE FOR DEFENDANT AT COURT
- DISCOVERY: THE PROCESS OF DEFENDANT REVIEWING THE STATE'S EVIDENCE
- DEPOSITION: INTERVIEW OF WITNESS UNDER OATH
- MOTION: LEGAL FILING ASKING THE COURT FOR SOME RELIEF
- JURY SELECTION: THE PROCESS OF PICKING CITIZENS TO SIT ON THE JURY
- VOIRE DIRE: THE PROCESS OF QUESTIONING THE POSSIBLE JURORS
- SUPPRESSION: ASKING THE COURT TO BAR THE STATE FROM USING CERTAIN EVIDENCE
- DISMISSAL: THE TERMINATION OF CASE
- CHANGE OF PLEA: WHERE A DEFENDANT WHO HAD PLEAD NOT GUILTY AGREES TO PLEAD GUILTY OR NO CONTEST
- ALLOCUTION: THE RIGHT OF A DEFENDANT TO SPEAK TO THE JUDGE BEFORE SENTENCING
- PROBATION: A SUSPENDED JAIL SENTENCE HELD IN ABEYANCE AS LONG AS OFFENDER COMPLIES WITH CONDITIONS
- IMPOSED TERM: JAIL TIME
- DEFERRED SENTENCE: A PROBATIONARY PERIOD THAT RESULTS IN NO CRIMINAL RECORD IF OFFENDER COMPLIES WITH TERMS
- PSI; COURT ORDERED EVALUATION OF DEFENDANT BEFORE SENTENCING
- ARREST WARRANT: ISSUED BY COURT TO APPREHEND DEFENDANT WHO HAS FAILED TO APPEAR AT COURT
- JUDICIAL SUMMONS: A FORMAL COURT NOTICE TO APPEAR AS DIRECTED