



Initial Appearances:

Everything you always wanted to know
but were afraid to ask

Checklist for this session:

- What an initial appearance entails
- What your duties as defense counsel are at the initial appearance
- Factors that determine bail
- Representing your clients at an initial appearance

How your client gets into court...

- Warrantless arrest
 - An officer said that there was probable cause that your client committed a crime
- Arrest warrant
 - The DA filed a complaint charging your client and issued a warrant with the complaint
- Bench warrant
 - Your client missed a court date, the judge issued a warrant for the miss, and your client was arrested on this warrant
- Summons
 - The DA filed a complaint charging your client and mailed/served a copy on your client

Initial Appearance: Wis. Stats. § 907.01

(1) “Any person who is arrested shall be taken within a reasonable time before a judge in the county in which the offense was alleged to have been committed.”

(2) “When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith.”

Determining probable cause in warrantless arrests

- *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). A determination of probable cause made within 48 hours of a warrantless arrest generally meets the promptness requirement; if a hearing is held more than 48 hours following an arrest the burden shifts to the government to demonstrate an emergency or extraordinary circumstances.

Wis. Stats. § 970.02: The basics of an initial appearance

- Your client receives a copy of the complaint
- The judge/commissioner informs your client of the charges and maximum possible penalties
- The judge/commissioner tells your client that he/she has the right to counsel
- The judge/commissioner sets bail

Your duties in court at the initial appearance:

- Raise any issues with the complaint and move to dismiss it
- Raise competency, if needed
- File a motion to substitute the judge, if your client wants this
- Enter a not guilty plea, if your county takes a plea at the initial appearance
- Argue bail
- Demand a speedy trial, within 60 days of demand, if your client is likely to remain in custody and wants this [§ 970.02(3)]

Preparing for Court: Interviewing your client

- Basic info: name, DOB, address, family in the area and their contact numbers, education level, and employment history
- Prior court contacts: check CCAP for prior cases and missed court appearances; ask about any prior juvenile cases
- Any holds: probation/parole hold, municipal warrants/commitments
- Citizenship status: was your client born in the US? If not, does he/she have some kind of legal status?

Preparing for Court: Reviewing the complaint

- Read the complaint out loud with your client whenever possible
- Look up any statute numbers that you don't know to make sure that the elements and listed penalty are correct
- Check the body of the complaint for sufficient facts and inferences to show that your client probably committed the offense(s) charged
- Make sure that the complaint is signed

Preparing for Court: Reviewing the complaint

- Common problems in complaints:
 - Penalties for attempts [See 939.32]
 - OWI complaints that don't list all of the minimum and maximum penalties (jail, fine, license revocation)
 - Whether there is sufficient information that a domestic relationship exists for the domestic abuse assessment and the crime is one of domestic abuse [See 968.075(1)]
 - Whether there is sufficient information that your client is a habitual criminality repeater [See 939.62]
 - 3 misdemeanor convictions or 1 felony in last 5 years, tolling the time that client was serving a sentence

Moving to dismiss the complaint in court:

- Make your appearance with the client
- As soon as you can during the hearing, tell the judge/commissioner that you are moving to dismiss the complaint and state the reasons why
- Do not wait until the end of the hearing to do this!

Preparing for Court:

Is your client competent?

- Wis. Stats. § 971.13(1): “No person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.”
- Your client might not be competent because of a mental health diagnosis or a cognitive disability like mental retardation.
- You must raise competency if you believe that your client is not competent.

Factors to Consider

- Does your client receive SSI benefits for a mental health issue or a cognitive disability?
- If prescribed psychotropic medications, does your client take them as prescribed?
- Is your client able to answer your questions in a clear, coherent way?
- Does your client seem easily distracted, sensitive to noises, or appear to be looking at something that doesn't exist?
- Does your client seem paranoid, have delusional thoughts, or have an unusual affect?

Raising Competency

- Step 1:
 - After stating your client's appearance, tell the judge/commissioner that you have reason to doubt your client's ability to understand the nature of the proceedings and/or assist in his/her own defense
 - DO NOT tell the court the specific reasons that are causing you to doubt competency
 - This violates client confidentiality!

Raising Competency

- Step 2:
 - The judge/commissioner will determine whether the complaint states probable cause
 - If it does, the judge/commissioner will suspend the court proceedings and order a competency evaluation

Raising Competency

- Step 3:
 - The judge/commissioner will order an inpatient or an outpatient competency evaluation [See § 971.14(2)]
 - Be prepared to argue for an outpatient evaluation if your client has a limited and/or non-assaultive record and other factors that indicate stability
 - Inpatient evaluations must be done within 15 days (although a 15-day extension is possible)
 - Outpatient evaluations must be done within 30 days

Preparing for Court: Is substitution good for your client?

- Talk to your client about who the assigned judge on the case will be
- Ask your client if he/she does not want this judge
- Talk with your client about what you know about the current judge
- If you know who the new judge will be if your client requests a substitution, talk with your client about that judge

Substitution of Judge

- The rules:
 - One substitution per case
 - Request for substitution must be in writing
 - File your written motion with the clerk before your case is called
 - You must make the request before entering a not guilty plea on your client's behalf at the initial appearance, or you waive your client's right
 - [See § 971.20]

Arguing Bail: Getting your client out of custody

- **Wis. Stats. § 969.01:** “a defendant arrested for a criminal offense is eligible for release under reasonable conditions designed to assure his or her appearance in court, protect members of the community from serious bodily harm, or prevent the intimidation of witnesses. **Bail may be imposed at or after the initial appearance only upon a finding by the court that there is a reasonable basis to believe that bail is necessary to assure appearance in court.** In determining whether any conditions of release are appropriate, the judge shall first consider the likelihood of the defendant appearing for trial if released on his or her own recognizance.”

Arguing Bail: Important Factors

- The charges against your client are limited in number, are not serious, and are not assaultive
- Your client has a limited prior record
- Your client does not have a history of missed court appearances, or has a limited/dated history of misses
- If there was a warrant, your client turned himself/herself in
- Why your client is unable to pay a high cash bail
- How your client has strong family support, a strong work history, and/or other strong ties to the community

Arguing Bail: Getting your client out of custody

- Your goals:
 - Getting your client out of custody on a signature / personal recognizance bond,
 - Or keeping the cash bond to an amount that your client can pay,
 - Ensuring that the court doesn't impose any unreasonable bond conditions
 - No contact v. no violent contact v. supervised contact

Evidence Based Decision Making (EBDM) Reports

- Some counties have systems in place where intake workers meet with arrested clients, obtain information, and generate reports with bail recommendations
 - i.e. Milwaukee uses the PRAXIS
- The reports recommend bail amounts based on:
 - Nature of current charge(s) and number of past case filings
 - Any history of missed court appearances
 - Length of time at current residence and job
 - Whether the client was arrested while out on bond

Non-Monetary Bail Conditions

- Orders prohibiting contact, weapons, alcohol, drugs, driving, and any other behavior involved in the case
- Pretrial monitoring services that can be ordered in addition to a PR or cash bond:
 - Check-ins over the phone or through office appointments (i.e. Day Reporting Center)
 - Drug testing and breathalyzers
 - Referrals to treatment programs
 - GPS monitoring with specific curfew
 - SCRAM bracelet to monitor alcohol use

After Court

- Talk with your client about the bond conditions
- If applicable, explain that no contact orders can be modified **only** by the judge
- Explain the importance of making all future court dates
- Explain that any violation in bond conditions can result in a bail jumping charge for every violation
 - Max. Penalty for Misdemeanor Bail Jumping = 9 months jail, \$10,000, or both

Final Considerations:

- Every county does this process a little differently!
- Many counties hold initial appearances by video, [See Ch. 885]
- Observing court in your home county will help you learn the local practices
- Don't be afraid to ask me or the staff PDs in your county if you have any questions

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