



The Vermont Victim Advocacy Project, Inc.

# Victim's Guide to Vermont's Criminal Justice System

*Published by the Vermont Victim Advocacy Project, Inc.*

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## PREFACE

This Victim's Guide to Vermont's Criminal Justice System has been prepared by the Vermont Victim Advocacy Project to provide people who have suffered from a crime in Vermont with information about how Vermont's criminal justice system works. This Guide is not intended to provide legal advice and is not a comprehensive guide to Vermont's criminal justice system.

Your State's Attorney Victim Advocate is able to provide you with information about the process, inform you about events, and help support you during your involvement with the criminal justice system.

For legal advice, you should contact a private attorney, or an attorney with the Vermont Victim Advocacy Project. The State's Attorney/Attorney General can answer questions about the criminal justice process, but cannot give you legal advice. Others may be able to help you understand the process, no one except an attorney is able to give you legal advice.

## ABOUT THE AUTHOR

David Frey is a survivor of crime and has been a Vermont attorney since 2001. He worked in a private law practice until 2004 when he became Counsel for the State of Vermont Restitution Unit where he worked to ensure that crime victims received timely restitution. Attorney Frey left the Restitution Unit in 2007 and founded the Vermont Victim Advocacy Project in order to continue providing legal guidance to crime victims.

Attorney Frey is a member of the Vermont and American Bar Associations, the Central Vermont Chapter of the Inns of Court, and the National Alliance of Victims Rights Attorneys.

## Special Thanks

The Vermont Victim Advocacy Project would like to extend special thanks to the following people for their participation in the preparation of this Guide:

Will Porter, Orange County State's Attorney  
Ann Rouse, Orange County Victim Advocate



## INTRODUCTION

If you have had the misfortune of becoming a victim of crime, you are not alone! In 2005, there were 14,832 crimes reported in Vermont. Hopefully, this is your first time dealing with the criminal justice system and it will also be your last experience as a crime victim. This Victim's Guide has been prepared to help you understand Vermont's criminal justice system and to help prepare you for some of the events that may take place after you became a victim of crime.

<b>VERMONT STATEWIDE CRIME STATISTICS JANUARY - DECEMBER, 2005</b>	
<b>CRIME INDEX</b>	<b>ACTUAL CRIMES</b>
Homicide	7
Forcible Rape	166
Robbery	72
Aggravated Assault	467
Burglary	3,037
Larceny	10,366
Auto Theft	635
Arson	82
<b>TOTAL CRIME INDEX</b>	<b>14,832</b>

[http://www.dps.state.vt.us/cjs/crime\\_05/statewide.htm](http://www.dps.state.vt.us/cjs/crime_05/statewide.htm)

## VICTIM ADVOCATES

As part of the Vermont's Victim Assistance Program, each County and the Attorney General's office has at least one Victim Advocate that works for the prosecuting attorneys. These Victim Advocates are there for you as a crime victim. Their job is to help guide and support you through your involvement with the criminal justice system. 13 V.S.A. §5304 requires that the Victim Advocates shall provide victims of crimes the following services:

- (1) Information. Victims shall be informed as to the level of protection available, procedures to be followed in order to receive applicable witness fees, the right to seek restitution as an element of the final disposition of the case, and the right to appear at sentencing in accordance with section 7006 of this title.
- (2) Notification. Victims, other than victims of acts of delinquency, shall be notified in a timely manner when a court proceeding involving their case is scheduled to take place and when a court proceeding to which they have been summoned will not take place as scheduled. Victims shall also be notified as to the final disposition of the case, and shall be notified of their right to request notification of a person's release or escape under section 5305 of this title.



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(3) Services. Victims shall be entitled to:

- (A) receive short-term counseling and support from the victim advocate and referrals for further services;
- (B) assistance in obtaining financial assistance and minimizing loss of pay or other benefits resulting from involvement in the criminal justice process;
- (C) assistance in documenting and preparing requests for restitution and insurance reimbursement;
- (D) assistance in obtaining protection through local law enforcement agencies from harm and threats of harm arising out of their cooperation with the court system;
- (E) assistance in the return of property from law enforcement agencies;
- (F) assistance and support in dealing with law enforcement agencies;
- (G) transportation as needed to court proceedings.

Although Victim Advocates are not attorneys and cannot give you legal advice, Vermont is fortunate to have very experienced and caring advocates that have been thoroughly trained about the criminal justice process and will be glad to help you understand what is happening and when it is happening. The Victim Advocate will also give you a very important form to fill out – the Victim Impact Statement. The Impact Statement is a great way for you to tell the prosecuting attorney and the court what the defendant's criminal acts meant to you.

The Victim Impact Statement is also the way you can let the prosecuting attorney and court know how much money the crime cost you. This part is particularly important because many criminal cases are resolved unexpectedly. Occasionally, when a defendant is in court for a routine hearing, the prosecutor and defense will reach a plea agreement and present the agreement to the court for approval. If you have not completed the financial losses section of the impact statement, the prosecutor will not know about your losses and will not have the opportunity to make sure the defendant has to pay you back as part of the plea agreement.

### SEXUAL ASSAULT PROGRAM

If you believe you have been sexually assaulted, Vermont has a program that will pay for a medical examination. You can find the contact information for the Vermont Center for Crime Victim Services at the end of this Guide.

### VICTIM COMPENSATION

If you have had the misfortune of being a victim of violence, Vermont, like all States, has a victim compensation program. The program is run by the Vermont Center for Crime Victim Services and uses money provided by the U. S. Government to compensate victims of violent crime for some of their expenses. Vermont's victim compensation program can pay a maximum of \$10,000.00 toward your expenses for medical and counseling services, crime scene cleanup, and other financial losses.

In order to receive compensation, a law enforcement officer or State's Attorney must certify to the victim compensation program that a violent crime took place – usually by



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providing the compensation program with a copy of the affidavit of probable cause. You can find the contact information for the Vermont Center for Crime Victim Services at the end of this Guide.

If your request for compensation has been denied, the Vermont Victim Advocacy Project may be able to help. Feel free to contact us – our contact information is located at the end of this Guide.



## WHAT VICTIMS NEED TO KNOW ABOUT DEFENDANTS' RIGHTS

As citizens of the United States and Vermont, our Constitutions and laws combine to give us all a number of important protections from false accusations and from being put in jail for crimes we did not commit. These protections include our right to a fair trial, our right to be presumed innocent until we have been proven guilty, our right against self-incrimination, our right to have an attorney, our right to question the witnesses against us (including our accuser), our right to have witnesses testify for us, our right not to have someone tell the court or jury about something we did that is not related to what we have been accused of doing, and so on.

As a victim, it is important to understand that the criminal who victimized you also has all those same rights and protections that you and I do.

### Innocent Until Proven Guilty

The right to be presumed innocent is a very important right granted to us by Fifth, Sixth, and Fifteenth Amendments to the U. S. Constitution. Without this protection, all of the rights we have become meaningless. If everyone assumes that we are guilty, there can be no fair trial, there is no reason to have an attorney, there is no reason to protect us against self-incrimination, there is no reason to be able to question our accusers, and there is no reason to have witnesses testify on our behalf. For this reason, we do not call anyone who has been accused but not found guilty a "criminal", she or he is a "defendant". If we are wrongly accused, we need do nothing to prove our innocence – we are assumed to be innocent and it is up to the State to prove we are guilty.

### The Burden of Proof

Even if you absolutely know that the defendant did exactly what she or he is accused of doing, the accusations must still be proved "beyond a reasonable doubt" in a court of law, and it is the prosecutor's job to prove it to the court/jury. This is called the "burden of proof" and it means that the State, which is represented by the prosecutor (usually a State's Attorney), must show the court/jury that everything necessary to convict the defendant happened. For example, burglary is identified as a crime by our Vermont Statutes. Title 13, Chapter 23, Section 1201(a), states:

A person is guilty of burglary if [she/he] enters any building or structure knowing that [she/he] is not licensed or privileged to do so, with the intent to commit a felony, petit larceny, simple assault or unlawful mischief.

That means that the in order for a person to be convicted of burglary, the State must prove that:

1. The defendant entered the building,
2. The defendant knew she/he had no right to enter the building, and
3. The defendant intended to commit:
  - a. a felony,
  - b. petit larceny,
  - c. simple assault, or



### d. unlawful mischief.

Using our burglary example, elements 1, 2, and 3 must be proved to the court/jury beyond a reasonable doubt. So, if you have a video of the defendant entering the building or even if four hundred-seventeen people watched while the defendant entered the building, the State must still prove that the defendant entered the building (a) knowing that she or he had no right to enter and (b) that the defendant intended to commit one of the crimes listed in section 2.

So if the State cannot prove that the defendant knew she or he had no right to enter the building, even though there are four hundred-seventeen witnesses and even if the defendant admits to committing a felony inside the building, the defendant will be found not-guilty of burglary. The felony committed inside the building is still a crime, but without proving the second element of the crime of burglary (the defendant knew she/he had no right to enter) – the defendant cannot be found guilty of burglary.

### Right Against Self-incrimination

Another of our very important rights as citizens is our right, essentially, to not tell on ourselves. The right is guaranteed by the Fifth Amendment (that's why you hear folks saying "I plead the Fifth") – that means the person is invoking her or his Constitutional right against self-incrimination.

The Fifth Amendment to the U. S. Constitution states:

"No person...shall be compelled in any criminal case to be a witness against himself..."

Article 10 of Vermont's Constitution states:

"...in all prosecutions for criminal offenses...[no person shall] be compelled to give evidence against oneself..."

Although the wording is different, the meaning is the same: you don't have to admit to anything. That means that, unless the defendant wants to admit to the crime, the State must prove the defendant committed the crime. The police and State's Attorney cannot confront the defendant and force her or him to confess because the defendant has the right not to confess.

History has shown us that without this protection, a person accused of committing a crime is vulnerable to unfair influences, such as torture, in order to coerce false confessions.

### Victim's Role

In order to help prove all of the facts necessary to convict a defendant, the victim will almost certainly be required to testify in court. In addition, if the defendant is charged with committing a felony then the victim will be required to testify at a deposition, as well as in court. Because the State's Attorney must prove each element of the crime, you (the victim) are probably the only one who can appear in court and tell what happened. Even though you may have given a



statement to the police, only your testimony in court will count toward proving that the defendant committed the crime.

### State's Attorney's Role

The State's Attorney is responsible for prosecuting criminal cases. The State's Attorney represents the citizens of the State of Vermont. While you are a citizen, the State's Attorney is not your attorney and cannot give you legal advice. You can compare a State's Attorney to a police officer. A police officer's job is to protect the citizens of the State and you are one of those citizens. However, if a police officer see you (one of the citizens the police officer has sworn to protect) commit a crime, you will be arrested or given a citation. Police officers, like State's Attorneys, serve all of the citizens – not one particular citizen.



## **PHASES OF THE CRIMINAL JUSTICE PROCESS**

There are essentially four different phases of the criminal justice process that will have an effect on you: everything that takes place before the trial (pre-trial), the trial itself (which includes the court hearings that usually take place before the trial), post-trial (after conviction), and re-entry (when the offender is released from supervision and returned to the community). Re-entry and post-trial can be simultaneous and in some cases re-entry may never happen.

Although Vermont's Attorney General prosecutes some crimes, most criminal cases are prosecuted by State's Attorneys. This Guide will discuss the prosecuting attorney as the State's Attorney.



## PRE-TRIAL

The pre-trial phase of the criminal justice process includes everything after the crime took place and until the criminal trial begins or the Prosecutor makes a decision to not prosecute the case.

## REPORT

Once a crime takes place, a victim, an observer, or another interested party may report the crime to a law enforcement agency (such as the local police, county sheriff, state police). In some cases, law enforcement officers may accept reports without knowing the name of the reporting person.

Crimes in Vermont are considered to be crimes against the State. This is important to you as a crime victim because you have no control over the process. In some States, if you, as the victim, decided that the person who committed the crime should not be prosecuted, the person could not be prosecuted without your participation; this is not the case in Vermont. The Prosecutor is the sole person who makes that decision, although the Prosecutor will take your thoughts and concerns into consideration.

## INVESTIGATION

Law enforcement officers will normally conduct an investigation into the crime. In this investigation, they will interview people and gather non-testimonial evidence. Non-testimonial evidence includes fingerprints, documents, fibers from clothing, hairs, etc.

After the law enforcement agency has completed its investigation, the law enforcement agency will report what has been discovered by filing an Affidavit of Probable Cause with the Prosecutor. The Affidavit of Probable Cause describes the crime that took place and the reasons the law enforcement officer believes that the suspect is the individual who committed the crime.

## PROSECUTOR'S DECISION

Once she or he has all of the information currently available, the Prosecutor must make a decision whether or not to prosecute the case. Many factors influence the Prosecutor's decision and the Prosecutor could decide not to prosecute the case in which you were a victim. There are many reasons why a Prosecutor will decide to not prosecute a case, for example a lack of evidence. There are many reasons, other than that Prosecutor does not believe that the crime took place, for the Prosecutor to not proceed with a case.

The Vermont laws governing crime and punishment are in Title 13 of the Vermont Statutes Annotated (13 V.S.A.). All Town Clerk's have a complete set of the Vermont Statutes Annotated which are available for you to read and copy in the Town Clerk's office (the Town Clerk may charge for copies). For example, if the defendant was charged with violating "13 V.S.A. §2022" – or "Section 2022 of Title 13", you can learn that the charge is for passing bad checks and what the penalty is by looking in the book titled Chapter 13 – Crimes and Criminal Procedure:

A person who issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee, shall be imprisoned for not more than one year or fined not more than \$1,000.00 or both. The court



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shall order restitution in the amount of the check or order, together with a service charge not to exceed \$5.00, if it is established that the defendant has the ability to pay.

### CRIMINAL CHARGES

Depending upon the nature of the crime, the prosecutor will prepare a document called an "Information", that identifies the law that was broken and briefly describes the crime. If the defendant is in the State's custody, there might be an arraignment or, under certain circumstances, there might be a grand jury that will listen to the evidence and decide if a charge should be filed.

### SUMMONS/WARRANT

Depending upon the nature of the crime and the identity of the defendant, the court may issue a summons or a warrant. A summons will order the defendant to appear in court at a particular time on a particular date for an arraignment hearing. A warrant will direct a law enforcement officer to arrest and detain (hold in jail) the defendant and bring her or him to the court for the arraignment hearing.

### ARRAIGNMENT

At the arraignment, the court reviews the affidavit of probable cause, the defendant enters a plea (not guilty, no contest, or guilty), and listens to the prosecutor's and defense's arguments about if, and under what conditions, the defendant should be released before trial. The judge can decide to keep the defendant in jail or release the defendant and impose any number of conditions, such as posting bail, regular reporting to a law enforcement agency, no contact with witnesses and victims, no consumption of alcohol, and that no other criminal charges be filed.

A defendant will almost always enter a plea of not guilty. A "not guilty" plea allows the prosecutor and defense to share evidence and see if an agreement can be reached without a trial (plea agreement). A plea of not-guilty will not influence the Judge or the Prosecutor; it is merely a precautionary step that the defense will almost always take.

Please keep in mind that even though you may know beyond any doubt that the defendant is absolutely guilty, our system of justice requires that the State prove, beyond a reasonable doubt, that the defendant committed the crime and your testimony may be part of that proof. In order to make sure that innocent people are not put in jail, our Constitution and our justice system have set-up a number of ways to prevent this from happening. Unfortunately, all of these protections intended to prevent sending innocent people to jail can be very frustrating to the crime victim.

### PRETRIAL - STATUS CONFERENCES

There can be numerous pre-trial conferences with some amounting to small trials themselves. Because the State must share all of its information, there will be conferences about what evidence and witnesses will be used at trial and what the witnesses can and cannot be asked about. There are also status conferences where the Judge will merely ask the attorneys when the case will be ready for trial or if the Prosecutor and the Defense have reached a plea agreement.



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It is not usually necessary for a victim to be present at pre-trial conferences; however, if the Prosecutor and Defense reach an agreement at the pre-trial conference, the case may be resolved at that conference. Your Victim Advocate will usually be able to tell you if it is likely that something substantial will happen at a pre-trial conference, but remember that just about anything can happen. If you want to know everything about the case, and if you can afford the time to attend every pre-trial conference, you will generally be welcomed in the court. There are times when special legal issues about evidence are argued about before the Judge and you may not be able to be there during these conferences.

### PRETRIAL - DISCOVERY

The State must always provide the defense with any evidence that could tend to show that the defendant is innocent – this is called “exculpatory evidence”.

After a defendant has been charged with violating a criminal law, there will almost certainly be questions about what evidence will be allowed (admitted) in a criminal case. Please keep in mind that although there may be evidence that appears to be very important, it still may not be admitted in the trial.

### PRETRIAL - MOTIONS IN LIMINE

It is fairly common for the defense to file one or more motions in limine (which is a request to limit) in order to ask the Judge to not allow certain things to be said during the trial or to not allow certain items of evidence to be shown during the trial. Many times, the things that the Judge decides should not be allowed seem, and may be, very important to you as the victim, but for reasons of assuring fairness, the Court will not allow the evidence to be admitted.

### PRETRIAL - PLEA BARGAINING/AGREEMENTS

Almost all criminal charges are resolved without a trial. Some cases are dismissed for various reasons; however, most – probably 95% of cases are resolved through plea arrangements. A plea agreement is generally a written agreement in which the defendant agrees to enter a plea of guilty and waive her or his rights to a trial and appeal and also recommends a sentence to the court. The Judge does not need to approve the plea agreement and may, for example, inform the parties that the Judge will require the defendant to spend more time in jail or require the defendant to undergo more intensive counseling before the Judge will accept the plea.

Unfortunately, plea agreements may not always appear to be the best result for a crime victim; however, they are usually beneficial and are frequently used by prosecutors in order to assure that the defendant is held accountable for some crime rather than risking the case being dismissed for a technicality, or worse, the defendant being found not guilty because some evidence is not available or legally sufficient to convict the defendant.

### PRETRIAL - ALTERNATIVE JUSTICE

There are a number of alternative justice options available to resolve criminal cases.



### Drug Court

People who have been charged with minor drug related crimes may be eligible for acceptance as a participant in drug court. The drug court will require the participant to enter into a contract with the drug court and meet regularly with the drug court panel. So far, Vermont 's drug courts appear to be very successful for all involved.

### Diversion

The diversion program is usually used for youthful first-time offenders (called a "participant") and allows the participant an opportunity to make up for her or his criminal act by entering into a contract and doing whatever the contract requires. The contract may require the participant to pay back any financial damage the participant caused, perform community service, etc. If the participant does everything the contract required, she or he will be released from the diversion program and her or his criminal record will be erased forever (expunged).

### PRETRIAL – APPEALS

The prosecution or defense may appeal a judge's decision before the case has come to trial or before a trial is finished (interlocutory appeal). Usually, an interlocutory appeal comes about because the prosecution or defense believe that the judge has incorrectly decided that evidence can or cannot be used in the trial.



## TRIAL

Vermont criminal trials are held in district courts; there is one district court in each County. There are two types of criminal trials: jury and bench. A jury trial is one in which the jury decides the factual issues and a bench trial is one in which there is no jury and the judge decides the factual issues. There is always a judge for trials and the judge always decides the legal issues.

Factual issues are whether someone's testimony or the evidence presented is believable and supports one side or the other's position.

Our criminal justice system, indeed our entire legal system, is an adversary system. In an adversary system, both sides of the issue (in a criminal trial, it is the prosecution and the defense) have an opportunity to present evidence to support what they are trying to convince the judge or jury happened. The decision about what happened is left to the trier of fact (the jury in a jury trial and the judge in a bench trial).

## JURY TRIAL

Here is a general outline of the steps in a jury trial:

1. Residents of the County are randomly selected from state drivers' license records, voter registration rolls, and are summoned on a daily basis to the district court as potential jurors,
2. A blind draw selects a pool of people from that group,
3. The judge, prosecution, and defense question (*voir dire*) the jurors about their backgrounds and beliefs that may be important to the trial,
4. The attorneys are permitted a limited number of "peremptory" challenges to various jurors and an unlimited number of challenges for good cause (the number of peremptory challenges is set by the court's rules; in Vermont criminal cases, there are six),
5. After twelve acceptable jurors are selected (or fewer, if the prosecutor and defense agree), the judge administers an oath to the jury and reads basic instructions about the trial process, specific issues relating to this particular case, etc.,
6. The prosecution gives an opening statement to outline her or his case and evidence to the jury,
7. The defense may give a similar opening statement, or wait until later in the trial,
8. The prosecution calls witnesses, after which the defense may cross-examine the witnesses,
9. The prosecution rests, or closes the State's case,
10. The defense may call witnesses and the prosecutor may cross-examine the defense witnesses,
11. The defense rests,
12. The prosecution may present "rebuttal" witnesses/evidence to challenge evidence presented by the defense during the defense phase of the trial,
13. The prosecution rests,
14. The prosecution presents a closing argument to the jury,
15. The defense presents a closing argument to the jury,
16. The judge gives the jury detailed legal instructions about the charged crimes, the deliberation process, etc., and

17. The jury deliberates (considers the evidence) and returns a verdict.

## BENCH TRIAL

Here is a general outline of the steps in a non-jury (or bench) trial:

1. The prosecution calls witnesses, after which the defense may cross-examine the witnesses,
2. The prosecution rests, or closes the State's case,
3. The defense may call witnesses and the prosecution may cross-examine the defense witnesses,
4. The defense rests,
5. The prosecution may present "rebuttal" witnesses and evidence to challenge evidence presented by the defense during the defense phase of the trial,
6. The prosecution rests,
7. The prosecution presents a closing argument to the judge,
8. The defense presents a closing argument to the judge, and
9. The judge returns a verdict.

## PROSECUTION

The prosecution starts the trial by explaining the case to the court and jury (the opening statement) and by presenting testimonial evidence and non-testimonial evidence.

Testimonial evidence is where a witness tells the court what he or she knows (to testify or to give testimony). In limited circumstances, a witness may also testify about what someone else said (hearsay).

Non-testimonial evidence is tangible evidence, such as the alleged weapon, DNA evidence, fibers from clothing, or documents. Most times, a witness will need to testify to assure the court that the non-testimonial evidence is really what the attorney says it is. For example, a law enforcement officer may need to testify that the weapon being shown to the court is the same weapon the law enforcement officer took from the defendant.

## DEFENSE

The defense may challenge any evidence presented by the prosecution. The defense is allowed to "cross-examine" witnesses, that is when the defense questions the witness about their testimony. Non-testimonial evidence may also be challenged by the defense.

## JUDGE AND JURY

In a jury trial, the jury decides questions of fact (guilt or innocence) and the judge decides questions of law. In a trial before a judge only (called a bench trial), the judge decides both fact and law questions.

Questions of fact are those about the believability of the evidence. For example, "Did he really say that?", "Did she really do that?"

The judge will always make the decision about questions of law. For example, a question of law could be whether or not evidence is allowed to be presented in the case (whether or not it is admissible).

## ACQUITTAL

After listening to all of the evidence, if the jury in a jury trial or the judge in a bench trial decides that there is not enough evidence to convict the defendant of the crimes she or he has been charged with, the defendant will be found not guilty (acquitted) and that is the end of the criminal justice process in this case. The defendant cannot be charged again with the same crime (this is called "double jeopardy" and is not allowed by the Fifth Amendment of the U. S. Constitution).

Although unlikely, if additional evidence becomes available in the future (such as a new witness is found), the defendant may be charged with crimes that were not included in the original case. For example, if someone was charged with and acquitted of possession of stolen property (which is merely having stolen property in your possession) and a witness is found that will testify that the defendant actually stole the property, the defendant could later be charged with theft.

Even though the defendant is acquitted, you as the victim may still have an opportunity to pursue justice through the civil courts (as in the famous O. J. Simpson case) where there might not be enough evidence to convict the defendant of a crime but there is enough evidence to sue the defendant in civil court. You should consult with an attorney of your own selection in order to determine if a civil suit is an option for you.

## INSANITY

The insanity defense is raised by the defense in order to try to prevent a conviction and obtain a verdict of "not guilty by reason of insanity". In short, the defense will raise the insanity defense when there is a possibility that the defendant was not capable of understanding what she or he was doing at the time the crime was committed. The idea is that if someone is not able to understand the difference between right and wrong, she or he should not be punished for doing wrong. A psychologist or psychiatrist will need to examine the defendant and then testify in court that she or he does not believe the defendant understood that a crime was being committed. The prosecutor will also have an opportunity to have the State's expert (another psychologist or psychologist) testify to challenge the defense's argument.

## JUDGMENT OF GUILTY

If the jury (or judge in a bench trial) is satisfied that there is enough evidence to believe that the defendant committed a crime, the defendant is found "guilty" and is subject to the criminal penalties provided in law for committing such crimes.

## SENTENCING ALTERNATIVES

The judge has a number of options to impose penalties upon an offender. The key factors the judge will consider are the nature and circumstances of the crime, the history and character of the offender, the need for treatment, and the risk to self, others and the community at large presented by the offender. With that in mind, the judge may sentence the offender to incarceration (jail), a deferred sentence, probation, or supervised community sentence.

## JUDGMENT AND SENTENCE - INCARCERATION

Incarceration (or being sentenced to jail) is an option in all crimes in Vermont. Depending upon the crime and the offender, the judge may decide the sentence immediately or order a pre-sentence investigation.

It is at the sentencing hearing that a victim has an opportunity to speak about the effects of the offender's crime and what the victim would like to see happen to the offender. A victim is not required to speak and may write her or his thoughts for someone else to read to the court.

### Pre-sentence investigation

A pre-sentence investigation (PSI) is carried out by a probation officer who works for the Department of Corrections. The probation officer will research as much as is possible about the offender by checking records and talking with the offender's family and friends. Once the investigation is complete, the probation officer will prepare a pre-sentence investigation report and provide copies of the report to the court, the prosecutor, and the defense. The victim is not allowed to see the report.

The PSI contains details of the probation officer's investigation, as well as the probation officer's recommendation for the offender's sentence.

If a PSI was ordered, there will be a sentencing hearing at which the defendant has a chance to challenge the information and sentencing recommendation in the PSI and present evidence before the judge decides what the sentence will be.

After hearing all of the relevant evidence and victim statements, the judge will decide on the offender's sentence.

## JUDGMENT AND SENTENCE – DEFERRED SENTENCE

Usually, the judge will only order a deferred sentence if the crime is not a particularly bad one and it seems that the crime was an isolated event. A deferred sentence places the offender on probation for a period of time and, if the offender does not violate the probationary conditions, at the end of her or his probation, the conviction is erased forever (expunged).

## JUDGMENT AND SENTENCE - PROBATION

The judge can also decide that it is not in anyone's best interest for the offender to go to jail and may sentence the offender to probation. A sentence of probation is usually ordered as "three to five years, all suspended" with various conditions of probation.

Probation is a form of supervision by the Department of Corrections and sentences of probation usually have a number conditions. Violating any one of the conditions of probation is grounds for the offender to serve the underlying sentence (three to five years in the example above) in jail.

## JUDGMENT AND SENTENCE – SUPERVISED COMMUNITY SENTENCE

A supervised community sentence is similar to a sentence of probation with a couple of exceptions. The sentence has a period of time (such as 1 to 2 years) and if the offender has not violated any of the probation conditions during that time, the parole board will



review the offender's case. The parole board can continue the offender on supervised community sentence, grant the offender parole, or release the offender from supervision altogether.

#### **JUDGMENT AND SENTENCE – RESTITUTION**

Restitution is reimbursement by an offender for the financial losses caused by her or his crimes. Vermont has an extraordinary program that will advance up to \$10,000 of the restitution ordered by the district court to individual victims before the offender pays, so that the victims are not forced to wait for reimbursement.

Restitution may be determined by the defendant's agreement that she or he is responsible for a particular amount of damages, at the sentencing hearing, or at a separate restitution hearing.

#### **JUDGMENT AND SENTENCE – EARLY RELEASE**

It is an unfortunate fact that no one serves the sentence imposed (with rare exceptions). Because of overcrowded jails, the Department of Corrections simply cannot keep everyone in jail for as long as the court ordered. In addition, the Department of Corrections uses "good time" to encourage positive behavior by offenders. Good time is time deducted from the court's sentence by the Department of Corrections because of positive behavior by the offender while in jail.



## POST-TRIAL

### APPEALS

Even after an offender has been convicted and sentenced, she or he still has a number of opportunities to challenge the criminal conviction through the courts. Offenders have a right to appeal their conviction to a number of different courts for a number of different reasons. Depending upon the nature of the crime, the identity of the offender, and the strength of the offender's reasons for the appeal, the judge may allow the offender to wait for the appeal to be decided by the Vermont Supreme Court before requiring the offender to go to jail.

If restitution was ordered as part of the offender's sentence and the offender files an appeal, the advance payment from the restitution fund will be delayed until the appeal is resolved.

#### Appeal to the Vermont Supreme Court

The first opportunity is to ask the Vermont Supreme Court to overturn the conviction because the court made a mistake. The offender will file an appeal with the Vermont Supreme Court which tells the Supreme Court what mistakes the defendant thinks the trial court made. If the Supreme Court agrees with the offender, her or his conviction could be overturned (it is as if the trial never took place) and the State's Attorney would then need to make a decision whether to conduct another trial. Many times, the State's Attorney can no longer locate key witnesses or evidence, or a victim may not want to testify in court again, so there will be no new trial and the offender will go free.

#### Post-conviction Relief

If the Vermont Supreme Court does not agree that the offender had an unfair trial, the offender may appeal to the Vermont Superior Court for post-conviction relief. Post-conviction relief (PCR) is an appeal of the sentence that was imposed for the conviction. PCRs are rarely successful.

#### Writ of Habeas Corpus

Habeas corpus (literally produce the body in Latin) is a request (writ) made to the U. S. Court of Appeals. Like a PCR, habeas corpus asks the court to decide that the conviction was unfair because the trial was flawed.

#### Appeal to the U. S. Supreme Court

If, all of the above appeals have been denied, the offender may appeal to the U. S. Supreme Court. Appeals from Vermont district courts to the U. S. Supreme Court will only be heard if there is a issue relating to the U. S. Constitution.

### PAROLE

Parole is the early-supervised release of offenders who are imprisoned. The parole board makes the decision whether an offender is paroled. The Department of Corrections will inform you when there will be a parole hearing to determine whether an offender should be paroled. You will have an opportunity to appear and tell the parole



board why you think the offender should or should not be paroled. If the offender is granted parole, the parole board then becomes responsible for supervising the offender while she or he is on parole.

#### **POST-TRIAL RELEASE**

In some cases, the court may allow the offender to be released after conviction and before sentencing. If the judge decides that an offender can be released, the judge will usually impose a number of conditions of release.



## RE-ENTRY

Re-entry is when an offender is released from supervision by the State. Upon re-entry, any conditions of probation or release are no longer in force. Although the district court can no longer order an offender to not contact a victim, a victim may still ask a superior court to enter an order that would stop an offender from having any contact with the victim. Re-entry may take place in a number of ways.

### RELEASE FROM PAROLE:

If the parole board has released an offender on parole, the offender can be released by the parole board.

### RELEASE FROM JAIL:

When an offender has fully served her or his sentence, or is released earlier because of earning "good time", the offender is free to move about as she or he chooses.

### RELEASE FROM PROBATION:

An offender's probation may be discharged (ended) either satisfactorily (sat discharge) or unsatisfactorily (unsat discharge). While releasing an offender with an unsatisfactory discharge does not sound very satisfactory, the offender will no longer be eligible for probation in the future.

## CIVIL COMMITMENT

Although the Vermont Legislature proposed a law that would allow for civil commitment of sexually violent predators and violent predators in 2006, the proposed law was not passed. Civil commitment is a legal proceeding, just like a trial, in which offenders who the Department of Corrections believe pose a significant danger to society can be kept in jail after their sentence has been fully served.

As of this writing (April 2007), no bills are currently proposed that would provide for civil commitment.

## REPARATIVE BOARDS

Reparative boards are part of a restorative justice program of the Department of Corrections. The reparative boards (or rep boards as they are commonly called) serve to help facilitate victims having contact with their offenders in order to help bring about closure. Your participation with a reparative board is strictly voluntary.



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## GLOSSARY

- Affidavit and Information:** An "Affidavit and Information" refers to the affidavit of probable cause and an information (which is a pleading filed with the district court) that begins a criminal prosecution.
- Affidavit of Probable Cause:** The "Affidavit of Probable Cause" is a pleading filed with the district court that has been signed by the law enforcement officer who conducted the criminal investigation or witnessed the criminal activity.
- Attorney General:** "Attorney General" refers to Vermont's Attorney General, an elected official, and her or his Assistant Attorneys General who represent the State of Vermont.
- Bail:** "Bail" is a certain amount of money that the court will require a defendant to pay to the court in order to assure that the defendant will show up in court when there are hearings or for the trial.
- Bench Trial:** "Bench Trial" refers to a trial that is conducted before a judge, without a jury. In a bench trial, the judge makes decisions about the facts (guilty or innocent) and the law while in a jury trial, the jury makes the decisions about the facts.
- Civil Commitment:** As of the date of this Guide, Vermont does not have a civil commitment procedure.
- Conditions of Probation:** "Conditions of probation" are the requirements set by the court in order for the offender to be on probation. If the court decides, after a violation of probation conditions hearing (VOP), that the offender violated her or his conditions, the court could revoke the offender's probation and she or he could be sent to jail.
- Conditions of Release:** "Conditions of release" are the requirements set by the court after a defendant has been charged with a crime and before sentence is carried out. Conditions of release are also used in sentences of probation.
- Court:** Vermont has five distinct courts: district, family, probate, superior, and supreme and each one deals with a particular area of law. District court primarily handles criminal cases. Family court handles divorce and juvenile cases. Probate courts handle wills, estates, and adoptions. Superior court (including small claims) handles cases generally related to money. Supreme court is the highest court and handles appeals of decisions made by lower courts, such as appeals of criminal convictions in district court.
- Cross-examine:** The phrases "cross-examine" or "cross-examination" refer to the opposing party questioning the testimony of a witness, such as when the prosecutor asks a defense witness questions about her or his earlier testimony.
- Defendant:** "Defendant" is used to describe a person who the prosecuting attorney has charged with committing a crime, but who has not been convicted.



## Victim's Guide to Vermont's Criminal Justice System

Defense:	"Defense" refers to the defendant in a criminal case and, if there is one, the attorney representing the defendant.
Deposition:	A "deposition" is a legal proceeding that takes place without a judge present. During the deposition, both the prosecutor and the defense attorney ask questions of a person to learn what the person knows about the crime.
Double Jeopardy:	"Double jeopardy" refers to being charged with the same crime twice. The Fifth Amendment of the U. S. Constitution prohibits double jeopardy.
Due Process:	"Due process" refers to a defendant's general rights to a fair trial.
Evidence:	"Evidence" includes both testimonial and non-testimonial evidence.
Exculpatory Evidence:	"Exculpatory evidence" is evidence that tends to show the defendant is innocent.
Expert:	An "expert" is a witness in a trial that has special training or experience in a particular matter and who is asked to testify about issues beyond the average person's knowledge or understanding. Examples of experts are a psychologist who testifies about a defendant's mental state, a doctor who testifies about the nature of an injury, or a fingerprint expert who testifies about the fingerprints found at a crime scene.
Good Time:	"Good time" refers to days deducted from the time that an offender must serve in jail. Usually, good time is given to offenders as an incentive for good behavior in jail.
Grand Jury:	The "grand jury" refers to a group of jurors who listen to evidence in a potential case and, if a majority believe the evidence presented, they indict the defendant.
Habeas Corpus:	"Habeas corpus" is a type of appeal to the superior court in a criminal case when the defense asserts that the defendant has been unlawfully restrained or detained.
Impeachment:	"Impeachment" means to show that a person's testimony is false or contradictory. Usually, impeachment takes place when a witness testifies differently at trial than she or he did in an earlier deposition or sworn statement.
Information:	An "information" is a document prepared by the prosecutor that begins a criminal case in the court. The information, together with the affidavit of probable cause, let the court and the defendant know what criminal laws the defendant is being charged with violating.
Insanity:	"Insanity" is a defense that can be raised by a defendant alleging the defendant was incapable of understanding the difference between right and wrong at the time of the crime.
Jury:	A "jury" is a group of people that have been gathered to fairly listen to and evaluate evidence.



## Victim's Guide to Vermont's Criminal Justice System

Law Enforcement Officer:	"Law enforcement officers" mean officers of the State Police, County Sheriffs and deputies, and city or town police.
Listed Crime:	There are different rights available for victims in Vermont depending upon whether the crime is identified as a "listed crime". "Listed crimes" are generally the worst crimes and the victims of "listed crimes" have more rights than the victims of crimes that are not included as a "listed crime".
Motion in Limine:	A "motion in limine" is a request made by the prosecutor or defense to the judge asking that some evidence or testimony in a case be limited or excluded.
Non-testimonial Evidence:	"Non-testimonial evidence" includes all evidence presented to the court that is not a witness speaking, particularly physical evidence such as DNA evidence and fingerprints.
Offender:	An "offender" is a person who has been convicted of committing a crime.
Parole Board:	The "parole board" is an agency of the Department of Corrections that independently reviews incarcerated offenders' cases and may choose to release offenders from jail.
Parole:	"Parole" is releasing an offender from jail to the supervision of the parole board. To receive "parole" an offender must appear before the parole board and the parole board must agree that the offender should be released from jail.
Plea Agreement:	A "plea agreement" is an agreement between the prosecution and defendant to resolve criminal charges. The plea agreement must be approved by the judge.
Post-trial:	"Post-trial" refers to the events that take place after the trial has been completed, including sentencing and appeals.
Pre-trial:	"Pre-trial" refers to the events that take place before the start of the actual trial in court, including the investigation, the exchange of evidence between the prosecution and the defense, pre-trial conferences, and plea negotiations.
Prosecution:	"Prosecution" means either the attorneys who represent the State in a criminal trial or the act of prosecuting a defendant for allegedly committing a crime.
Re-entry:	"Re-entry" refers to the release from supervision of an offender by the Department of Corrections and her or his return to society.
Restitution:	"Restitution" is the repayment by the offender to the victim, usually money, for losses caused by the offender's crime.
State's Attorney:	The phrase "State's Attorney" means the attorney who is elected in each County to prosecute crimes. State's Attorney can also include Deputy State's Attorneys who are employed by the State's Attorney. Vermont's State's Attorneys prosecute most of the crimes in Vermont.



## Victim's Guide to Vermont's Criminal Justice System

Supervision:	Supervision" refers to supervision of a convicted offender. The district court, the Department of Corrections, or the Parole Board, may be the agency responsible for supervision of an offender.
Suspect:	A "suspect" is a person whom a law enforcement agency believes has committed a crime but who has not yet been charged with committing that crime.
Testify:	To "testify" is to give statements or answer questions asked by attorneys in a criminal trial.
Testimonial Evidence:	"Testimonial evidence" means the statements made by a witness.
Testimony:	"Testimony" refers to statements made and responses to questions by a witness. Testimony can be made through written affidavits, statements at depositions, and statements at trial.
Trial:	A "trial" usually consists of a number of preliminary hearings and one main hearing when the prosecutor and defense present their arguments and evidence.
Victim Advocate:	"Victim Advocate" refers to advocates employed by the State's Attorney to provide support and information to crime victims.
Victim Compensation:	"Victim Compensation" refers to the Vermont Victim Compensation Program that can pay up to \$10,000 of expenses incurred by victims of violent crime.
Victim:	"Victim" refers to someone who has been the victim of a crime. Victims of "listed crimes" have more rights in Vermont's criminal justice system.
Witness:	"Witness" refers to someone who either witnessed a crime or someone who will testify in court.



**SELECTED RESOURCES FOR VICTIMS**

**Victim Advocates:**

Addison County:	Deb James	802-388-7931
Bennington County:	Tammy Loveland	802-442-8116
Caledonia County:	Susan Carr	802-748-6657
Chittenden County:	Karen Frucci and Armina Medic	802-863-2865
Essex County:	Gail Guilette	802-723-3010
Franklin County:	Catherine Waltz	802-524-7920
Grand Isle County:	Teresa Hurlbut	802-372-5422
Lamoille County:	Siri Rooney	802-888-7945
Orange County:	Ann Rouse	802-685-3036
Orleans County:	Ann Vining and Vicki Thibault	802-334-2037
Rutland County:	Dyanne Lertola and Virginia Philo	802-786-2531
Washington County:	Dina Guinn	802-479-4220
Windham County:	Martha Momaney and Carol Scott	802-257-2860
Windsor County:	Pam Weigel	802-295-8870
Attorney General:	Amy Farr	802-828-3171

**Victim Compensation Program:**

Vermont Victim Compensation Program 802-241-1250  
58 South Main Street  
Waterbury, Vermont 05676

**Vermont Center for Crime Victim Services:**

Vermont Center for Crime Victim Services 802-241-1250  
58 South Main Street  
Waterbury, Vermont 05676

**State of Vermont Restitution Unit:**

State of Vermont Restitution Unit 802-241-4688  
Post Office Box 10  
Waterbury, Vermont 05676

**Vermont Department of Corrections:**

Amy Holloway 802-241-2302  
Vermont Department of Corrections – Victim Services  
103 South Main Street  
Waterbury, Vermont 05676



**ABOUT US:**

The Vermont Victim Advocacy Project is a Vermont non-profit corporation whose mission is to provide crime victims with (1) information about the criminal justice process in Vermont's District and Juvenile Courts, (2) independent legal advice, and (3) legal representation at court proceedings.

**CONTACT US:**

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