

THE CRIMINAL JUSTICE SYSTEM

Frequently Asked Questions

Who files criminal charges?

Most criminal cases start with a decision by a law enforcement officer, e.g., a city policeman, a county deputy Sheriff or a state patrol officer. Contrary to popular belief, citizens do not "file" charges. Citizens can call the police, ask them to make an arrest and give statements, but they are only considered "victims" or witnesses. They do not decide who does or does not get arrested or charged. In some misdemeanor cases, the officer will issue a summons for you to appear in court to initiate the case. In more serious cases, the officer will make an arrest. Once the officer issues a summons or makes an arrest, the case is turned over to the local district attorney's office (or city prosecutor if the charge is a violation of a city ordinance).

What if the cop didn't read my Miranda rights to me?

Then, any statements you made may be inadmissible against you if you were both (1) in custody and (2) interrogated.

What is the difference between a misdemeanor and a felony?

Felonies are more serious offenses than misdemeanors. The main difference is that you can be sent to prison if convicted of a felony, whereas you can only be sent to county jail if convicted of a misdemeanor. Nonetheless, even misdemeanors can have very serious consequences, e.g., loss of gun rights, long jail sentences, or deportation. You should always consult an attorney concerning the potential consequences of any criminal charge.

Will I be charged in district or county court?

Misdemeanors and traffic cases are filed in county court, felonies in district court. If you are charged with both, they will be filed in district court. (Municipal violations are filed in city court).

Do I get a phone call in jail?

Yes, the law allows a reasonable number of telephone calls to your family and friends,

Can I talk to a lawyer?

Yes, you are entitled to talk to a lawyer if you are arrested. If you ask to speak to a specific lawyer, the jail staff is obligated to accommodate your request within a reasonable time. You should talk to a lawyer as soon as possible after you are arrested and should not talk to any law enforcement officer, prosecutor, or anyone else for that matter, before you talk to a lawyer.

How do I get out of jail?

1. You can post bail with cash or a bondsman.
2. You can try to get a Personal Recognizance ("PR") bond.
3. You can try to reach a plea agreement and serve any jail time sentenced by the judge (You will be given credit for the time you have already served in jail since your arrest).



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What if the alleged victim wants to "dismiss" the charges against me?

The alleged victim cannot dismiss the charges in a criminal case. This is a decision that is always made by the prosecuting attorney. As a practical matter, the prosecutor sometimes cannot pursue a case without the cooperation of the alleged victim, but that depends upon the circumstances of each case.

Can I see the evidence?

Yes. The prosecutor is required to give you the "discovery" in the case, including police reports, photographs, statements of all witnesses, and any statement you made to the police. But, you have to ask for it (preferably in writing) and pay a copying fee. Not only can you see it, you should see it (preferably with the assistance of an attorney) before making any major decisions in your case.

What happens when I go to court?

It depends. If you are in jail, your first appearance is an "advisement" when you are advised of the charges against you and your rights. You can request a bail reduction.

If you are charged with a felony, your next appearance is the formal filing of charges. You will get a written copy of the charges



If you are charged with a misdemeanor, you will be expected to meet with the prosecutor unless you have a lawyer. If you have a lawyer, your lawyer will explore a "deal" with the prosecutor. Remember, THE PROSECUTOR IS NOT YOUR FRIEND. He is there to prosecute you.

If you are unable to reach a satisfactory agreement, you have two basic options:

1. Plead "Not Guilty" and set your case for trial.
2. Request a continuance to consider your options, to further negotiate a plea disposition or to consult with an attorney.

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Should I plead guilty or set my case for trial?

It depends. Most criminal cases are resolved by plea bargaining. Effective plea bargaining can be very beneficial to the defendant. In some cases, however, people enter into bad plea agreements for all the wrong reasons: financial constraints, the stress and anxiety of criminal prosecutions, inaccurate advice by inexperienced or uninformed prosecutors or defense counsel, etc. Sometimes the best decision is to reject a bad offer and set your case for trial. To make this decision, you really need the advice of a good trial attorney.

What can I expect at trial?

Misdemeanor trials are before six jurors and usually conclude in one day. Felony cases are before twelve jurors and take two or more days. At trial, (1) the jurors are questioned by the judge, prosecutor, and defense counsel; (2) the prosecutor and defense counsel give opening statements; (3) the prosecution presents its witnesses, documents, and photos; (4) the defense counsel cross-examines the prosecution's witnesses; (5) the defendant presents his witnesses, documents, and photos; (6) the prosecutor cross-examines the defendant's witnesses; (7) the judge gives instructions on the law to the jury; (8) both sides make closing arguments; and (9) the jury returns a verdict of "guilty" or "not guilty".

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HESS & SCHUBERT, LLP is dedicated to people who need the help of experienced trial lawyers. Ted Hess and Bill Schubert have over 50 years of combined experience handling complex cases, including misdemeanors, felonies, and DUIs. It is the only firm in western Colorado with the experience necessary in both criminal law and immigration law to handle the difficult issues faced by non-citizens who are charged with crimes.



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