

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. 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, an 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.

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.

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

Miranda warnings must be given before an (1) in custody, (2) an interrogation, (3) by a law enforcement officer. A Miranda violation entitles you to keep your statements out of evidence, but not dismissal of the charges. A normal traffic stop does not trigger a Miranda warning because a driver is not in custody unless and until he is arrested.

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.

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.

Do I get a phone call in jail?

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



Can I talk to a lawyer?

Yes, you are entitled to talk to a lawyer if you are jailed. If you ask to speak to a specific lawyer, the jail staff is obligated to accommodate your request. 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 use a bondsman.
2. You can try to get a Personal Recognizance (PR) bond. If you get a PR bond, you don’t have to put up any money.
3. You can try to reach a quick 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.)

What if I have an ICE hold?

An ICE hold means ICE will pick you up after you are released from state custody. Most illegal aliens can get an immigration bond after they are taken into ICE custody. You can either post a state and an immigration bond OR get your state case done quickly, and then post an immigration bond. See our "ICE HOLDS" brochure.

What happens when I go to court?

It depends. If you are in jail, your first appearance is an "advisement," where 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 gather evidence, or to consult with an attorney.

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 before making any major decisions in your case.

Should I plead guilty or set my case for trial?

If you are not guilty, you should plead NOT GUILTY. But, the fact is 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 held before six jurors and usually conclude in one day. Felony cases are held before twelve jurors and take two or more days.

At trial, **(1)** the jurors are selected 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". If you are found not guilty, you will be released from court (and jail) immediately. **(10)** If you are found guilty of anything, you will return to court at a later date for sentencing by the judge alone. If you are found guilty of a felony offense, the judge will almost always require a pre-sentence investigation by the probation department.



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