

## The Stages of a Criminal Case

### Pre-arrest

Do not speak with the police or sign any documents.

- Police officers are trained in criminal investigation.
- Police officers are usually experienced expert witnesses.
- Police officers will lie to "trick" you into doing something or making a statement.

For example:

"Come to the precinct; we just have a few questions for you." Usually a lie; They just want you to come there so they can arrest you without having to send out a squad car.

"We have all sorts of evidence against you." Usually a lie; They probably have nothing and just want to trap you into a confession.

"Your friend has already told us you were involved." They probably also told your friend that you squealed on him and are hoping one of you tells them what they want to hear.

- Despite what the police officer or detective might say, your silence cannot be used against you in court!
- Do not be tricked into "working with" the police.
- The police cannot "cut you a deal," or "make it easier for you."
- The prosecution of any criminal case is determined solely by the office of the district attorney. The police do not have to read you Miranda rights!
- Miranda rights apply only to custodial interrogations (questioning by the police while you are in custody).
- Even if the police question you in custody without first "Mirandizing" you, the DA can still prosecute, but the statements you made will not be admissible as evidence against you.
- The police can arrest you without ever reading you any Miranda rights, as long as they don't interrogate you.

Contact a lawyer immediately.

- If you are in police custody, as soon as you request an attorney or tell the police that you have an attorney, all questioning must stop.

- The police will be far more careful not to violate your rights when they know an attorney is "looking over their shoulders." This alone can often help prevent arrest altogether!

## Arrest

### Voluntary Surrender

- How is this done? If the police express intent to arrest you, turning yourself in to them voluntarily is better than having them come out to bring you in. However, this is best done with the advice and guidance of an attorney.

- How can a lawyer help? Your lawyer's presence can help assure that your rights are protected, that the police don't "overcharge" you, and can ultimately help achieve a lower bail at your arraignment, or even get you released with no bail at all.

### Arrest (Involuntary)

- Never resist arrest. This can never help you, and can very likely hurt. When your attorney attempts to negotiate a favorable disposition (outcome), the assistant district attorney will inevitably interview the arresting officer before making you an offer or agreeing to a deal. If the officer indicates that you resisted or were confrontational, the assistant district attorney may choose to make a lesser offer.

### Booking

- After an arrest a defendant is taken to Central Booking where fingerprints and photographs are taken. A background check is run.

### Filing of the Accusatory Instrument

- The arresting officer or another witnesses will contact the District Attorney's office, which will prepare and file an "accusatory instrument" ("criminal complaint" or "information") with the court.

### Desk Appearance Tickets

- With certain minor offenses a desk appearance ticket (DAT) is issued, instead of arrest and booking. This summons states the offense and requires the recipient to voluntarily appear for arraignment on a given date.

## Arraignment and bail

An arraignment is typically the first court appearance after arrest, during which a person is formally charged and enters a plea, almost always "not guilty." The most important part of the proceeding is often the bail application.

### Bail

- What is it? Bail is money the court holds as security to ensure the defendant's court appearance.
- Will I see my money again? Bail is returned when the case is over, but it can be forfeited if the defendant does not appear in court or gets rearrested.
- What if I don't have enough cash? Courts usually set bail in two amounts, one for cash and one for a bond. A bail bond is essentially a guarantee by a bail bond agency to pay to the court the designated amount if the defendant forfeits. With a bond, only a small portion needs to be paid in cash, the balance being in some form of collateral (for example, a house or a car).
- How much bail will the court require?

The court will do one of the following:

- Release the defendant on his/her Own Recognizance ("ROR") - No bail is required.
- Set a specific bail amount - This depends on various factors, including the seriousness of the crime charged, the defendant's background and the strength of the case, and how well the lawyer advocates;
- Set no bail at all - This occurs with the most serious offenses.
- How can a lawyer help? A well-prepared lawyer can make a dramatic difference in the judge's decision on bail, and can save a defendant's family thousands of dollars in bail. Even when an attorney comes on board after the bail was set at arraignment, the bail can be lowered by the attorney making a bail application to the court. Our firm recently succeeded at getting a defendant's bail lowered from \$75,000 to \$25,000 with such an application.

### Plea Negotiations ("Plea Bargaining")

Plea bargaining is what most criminal defense attorneys spend most of their time doing. The prosecutor has the option of holding a criminal defendant to the charge or offering to allow the defendant to plead to a reduced charge. The better the attorney negotiates, the better deal results. Experience, knowledge of the law, communication skills, and common sense all play a role in successful negotiations.

### Grand Juries and Indictments

(felonies only)

What is an indictment? While misdemeanors can be prosecuted by mere complaints or information, felonies can be

brought to trial only by an indictment. A grand jury hears evidence presented by the district attorney. If it finds the evidence before it is legally sufficient and provides reasonable cause to believe that the defendant committed the crime charged, it will vote to indict. Alternatively, the grand jury can vote to dismiss the case, but this rarely happens.

What is the attorney's role? While the attorney does not participate in the questioning of witness during grand jury proceedings, he/she can be the key to getting the grand jury to dismiss. The attorney guides and coaches the defendant and/or witnesses, functioning as lawyer behind the scenes. The attorney's skills can make all the difference in whether the grand jury indicts or dismisses.

#### Motions, hearings and trial

Once plea negotiations fail, and the defendant decides to proceed to trial, various motions are prepared and filed by the attorney. These papers demand certain evidence be turned over by the prosecutor, and ask the court to suppress certain evidence from trial. Based on the motions, the court may order certain hearings. Finally, a trial, usually before a jury, determines the defendant's guilt or innocence. Obviously, the lawyer's role is critical at trial.

#### Sentencing

How is the sentence determined? A defendant is sentenced by the court either after a negotiated plea or after a conviction at trial. The lawyer, after negotiation with the district attorney, tries to convince the judge to sentence the defendant favorably.

What kinds of sentences are available?

##### - Non-jail Sentences

- Probation - The defendant is required to comply with certain conditions for a specified period of time under the supervision of the Department of Probation. This usually involves periodic meetings with a probation officer.

- Conditional Discharge - The defendant must fulfill certain conditions imposed by the court within one year from the date of sentence.

- Unconditional Discharge - The defendant is free to go with no conditions attached.

##### - Jail Sentences

A person can be sentenced to local (city) time or to state prison, depending on the length of sentence. Skilled attorneys do whatever they can to prevent their clients' incarceration.

##### - Alternatives to Jail

There are many programs available to defendants which a resourceful attorney should propose as an alternative to a sentence of incarceration. So often these programs prove not only to be a means of avoiding jail but to provide a new direction in life.