



What To Expect: Criminal Defense

General

You probably have many questions. I have written this "What to Expect" sheet to answer some of those. Please take some time to read this carefully and be sure to follow all instructions. Ask your attorney or their staff if there is anything you do not understand.

You hire an attorney to help you. You can help your attorney (and save money) by understanding and following these basic instructions.

Communication

1. **You are charged with a crime.** This means the police think you are guilty. You may or may not be guilty. Either way, the most important rule to follow at all times is: Never talk to anyone except your attorney or your attorney's staff about your case. Do not explain yourself. Do not say anything to anyone about your situation. Even if you say something perfectly innocent, there may be a way to use it against you and anyone can be used as a witness against you, even your relatives, friends and cell mates. Don't take a chance - talk only to your attorney.
2. **If you are innocent.** Feel confident it will come out that way. You cannot talk your way out of being charged with a crime so don't say anything to anybody about the case. Your friends don't need to hear it and people who think you are guilty won't believe it. Somebody thinks you are guilty and anything you say might complicate the job of establishing your innocence.
3. **You may be guilty.** Even if you feel you've done something wrong, don't be discouraged. You may be guilty of a less serious offense than the one you are charged with. If you are proven guilty, your attorney can still help you get the best sentence available - whether probation, a short sentence or otherwise.
4. **The only person you should talk to about your case is your attorney.**

What you need to do to help yourself.

1. **Tell your attorney the whole story.** You must be completely honest with your attorney. Your attorney's job is to help you and the attorney is not allowed to tell anybody what you have told them except to help you. If you have lied, your attorney may take action on your behalf which will be impossible to correct when the truth comes out.

Your attorney needs to know the whole truth so they can represent your best interests without being surprised later on after it's too late to change the legal strategy.

2. **Behave yourself.** Between your arrest and your trial you must stay out of trouble. The last thing you need is to go to trial with another problem hanging over your head. Do not go and talk to potential witnesses.
3. **If you are in a pre-trial detention center.** Be aware that telephone calls are monitored. Be aware that your in-coming and outgoing mail may be opened and read. Mail to and from your attorney will not be read if you write "Attorney Client Legal Mail" on the envelope. Be aware that you may have to get prior approval before your family will be allowed to visit you. If you want family members to visit, talk to detention center officials about getting them on your approved list of visitors and/or telephone numbers you are allowed to call. Be aware that in order to purchase things in the commissary or make long distance telephone calls, you must have money deposited into your account with the detention center.

Terms you need to know.

1. **"Arraignment."** The arraignment is an administrative hearing when you will be formally charged with a crime and asked to respond by pleading guilty, not guilty or no contest. Most of the time attorneys prefer their clients to plead not guilty at the arraignment because the plea can always be changed later depending on what the attorney discovers during his or her investigation.
2. **"Arrest."** Where the police detain a person in any way that makes it clear that they are not free to leave. Before the police can ask you any questions about your involvement in or knowledge of a crime, they must read you your "Miranda warnings" and tell you that you have the right to remain silent and that you have a right to speak with an attorney before you answer any questions.
3. **"Bail."** Bail is money that is given to the Court to hold while your case is pending to guarantee that you will show up to court when you are supposed to. You are allowed to post bail while your case is pending except in only a few cases. Not all cases require a bail to be posted for pre-trial release. If you are in pre-trial detention, consult with your attorney regarding the purposes of bail and the specifics of your particular criminal charge.
4. **"Bail Bond."** Money that is given to the court by a "bondsman" to guarantee that you will show up to court when you are supposed to. A Bondsman is a person who charges a fee (usually 10% or 15%) for posting the bond. If you do not appear in court when you are supposed to, the bondsman may lose his or her money or property. Usually, the bondsman will look for you and bring you back to court, forcefully if necessary, in order to get their money back.
5. **"Charge."** A formal accusation of criminal activity. The prosecutor decides on the charges after reviewing police reports, witness statements and any other evidence of wrongdoing. Formal charges are announced at the Arraignment.
6. **"Plea."** The defendant's formal answer to criminal charges.

7. **"Plea Bargain."** A negotiation between your attorney and the prosecutor. The defendant usually pleads guilty to a lesser crime or fewer charges in exchange for guaranteed sentence that is shorter than what you could get if convicted at trial.

The process -- what happens next?

1. **"Arrest."** First you were arrested. This means that the police took you into custody and think you are guilty of a crime. Before the police are allowed to ask you any questions about any crime they think you might be involved in or have knowledge of, they are required to read you your "Miranda warnings."
2. **"Reading Your Rights."** At some point the police should have told you that you have a right to remain silent. That anything you say can be used against you and that you have a right to speak with an attorney. The police should have also told you that if you cannot afford an attorney one will be provided for you. It is important for your attorney to know when this happened.
3. **"Booking."** After you are taken into custody the police will take your photograph and fingerprints.
4. **"Arraignment."** Within 48 hours of your arrest you will be arraigned. This is where the prosecutor tells the court what you have been arrested for. At the arraignment, the judge only wants to know whether you plead guilty, not guilty or no contest. Usually, the judge you see at your arraignment is not the judge who will handle your case after that point. Telling your side of the story to the arraignment judge only helps the prosecutor. Your bail hearing may be held at the arraignment or shortly afterwards. Also, a trial date may be set. If a trial date is set, it may change (get further away) as events progress.
5. **"Indictment."** Typically, only used in the most serious of criminal offenses. After you are arraigned and learn what you were officially arrested for, the prosecutor will show all their evidence to a grand jury (similar to a regular jury.) This is an entirely one-sided proceeding. Neither you nor your attorney are allowed to participate. If the grand jury believes there is enough evidence against you, it will issue an indictment against you. The indictment (silent "c") is the formal charge or charges against you.
6. **"Information."** Similar to an indictment in that it is the formal charge or charges against you. Information is filed by the state attorney without the assistance of a grand jury. Most crimes are charged by information.
7. **"Discovery."** After there are formal charges against you, you have a right to see all the evidence that the prosecutor has including questioning witnesses. This process may take several months. Towards the end of the discovery period your attorney and the prosecutor may begin to negotiate or bargain the charges against you. This is called "plea bargaining."
8. **"Plea Bargaining."** Plea Bargaining may start at any time, but generally, your attorney will wait until he or she sees all the evidence against you. Plea Bargaining may continue even until trial. Be aware that in many cases there are sentencing factors that control how long or short a sentence may be imposed for any given type of crime. Your attorney cannot change these guidelines but he or she may be able to negotiate a different type of charge or fewer charges which carries a lesser sentence.

9. **“Trial.”** If you are charged by indictment or by information and your attorney is unable to negotiate a plea with the prosecutor, there will be a trial. In a trial, the prosecutor goes first and tells their whole case to the jury, witnesses for the prosecution are heard and evidence against you is presented. After the prosecutor is finished, your attorney will tell your side of the story. Your attorney will get the chance to question each of the prosecutor's witnesses and each item of evidence presented against you. Your attorney may use any one of a number of different strategies to defend you at the trial. Trial strategy should be discussed with you in further detail if your case reaches that point.
10. **“Sentencing.”** If the jury finds you guilty it is up to the judge to determine what your sentence will be. The sentencing usually happens a few weeks after the trial ends.
11. **“Appeal.”** If you are found guilty, you are guilty (in the eyes of a court). However, you do have the right to an appeal. There are several grounds for an appeal and you should discuss your particular case with an attorney. It is not uncommon for a different attorney to be employed for an appeal than the attorney you employed for trial. Our office handles only select appeals but would be happy to discuss your case with you.

Do You Need an Attorney?

At a minimum, you should discuss your case with a defense attorney. During an initial consultation, the attorneys at Luke Law, LLC can provide you with an explanation of the charges, a detailed explanation of what the prosecutor must prove in order to win a conviction, and the penalties the charges carry. In addition, our attorneys will be able to determine if there is or was a potential violation of your constitutional rights. Anyone facing a criminal charge should discuss their case with an attorney.

Whether you select Luke Law, LLC to represent you or another attorney, you owe it to yourself to be prepared.

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