

Frequently Asked Questions & Answers

Welcome to the criminal law information area. Questions introduce topics, but you should realize that you may need additional information after visiting this area and we invite you to contact attorney Kulvinder Singh at (916) 939-5151 for additional information about your particular case.

What is a Criminal Case?

Law enforcement, the police if inside a city or sheriff if outside the city limits, takes an initial report from someone, often identified as a victim or accuser, that someone else, a defendant or accused, committed a criminal act. Law enforcement conducts an investigation and turns evidence and information over to the District Attorney (DA). The DA will review the information to determine if a case should be filed and what charges should be included. Once that determination is made a formal complaint is filed against the defendant.

If there were a serious crime committed, law enforcement may have already arrested someone and are holding that person in custody. If that happens, things move fast. The law requires that you be brought to court within 48 hours of your arrest. This 48 hour time period is extended for weekends or court holidays, so someone may not be seen by a judge following an arrest for up to 5 calendar days.

If the person was not arrested, or if the person arrested was allowed to post bail or a bond, then this process may be delayed by the arresting agency or the prosecuting agency for some relatively short period of time. However, once an arrest has occurred, the state does have an obligation to charge you within certain time limits. This does not mean that you should wait to see if you are going to be charged with a crime before getting the help of an attorney. In most circumstances you may hurt your position by waiting. Even in this early stage of a case, there are a number of things an attorney can do to help protect you.

When am I under Arrest?

You are arrested when you are taken into custody or you are not free to leave the scene. You may be detained or held for questioning for a short time without being arrested. Whether you are arrested or detained, you do not have to answer any questions except to give your name and address and show some identification if requested.

What are my Rights?

You have certain rights if you are arrested, whether you are an adult citizen or non-citizen. Before the law enforcement questioning, you should be notified that:

- You have the right to remain silent.
- Anything you say may be used against you.
- You have a right to have a lawyer present while you are questioned.
- If you cannot afford a lawyer, one will be appointed for you.

Your Miranda rights are guaranteed by the U.S. Constitution. If you are not given these warnings, we can request that statements you made to the police not be used against you in court. This does not apply if you volunteer information without being questioned by the police.

You can be questioned, without a lawyer present, only if you voluntarily give up your rights. If you change your mind, the questioning must stop as soon as you say that you want a lawyer. Your answers after this point can be used against you if you testify to something different. Once you have been booked you have a right to make and complete three free telephone calls within the local dialing area. Any additional calls made from jail must be collect calls.

What is an Arraignment?

A judge in a courtroom arraigns defendants on the charges filed by the DA. The first appearance you make in a criminal case is called an arraignment. This is the time for you to be given a copy of the charges against you and to decide whether you want to have an attorney assist you if you have not already consulted one. It is also the time that a judge will ask you " How do you plead?" Before you enter any plea you should decide whether you want the assistance of an attorney. The law also requires that you be advised of your rights in these proceedings and that you be told the full consequences of entering a plea. If you wish to have the court appoint an attorney to help you or advise you, this is the usually the first and best time to make the request. If you are in custody at this first hearing, this proceeding is also a time in which the judge can consider bail issues or your release during your case. Usually by the time that your case comes into court, it has already been reviewed by a bail officer and judge and a specific bail amount has been set according to what is known as the Bail Schedule. At the arraignment a judge can consider whether to increase or decrease that setting. Your bail can go up or down at the arraignment depending on what charges are filed and

what can be shown about your background and history in this community and elsewhere. Once the amount is set you may post bail in cash or by the use of a bail bond. You or your family may also put up property as bail. Once you have posted bail you will be released during the rest of your court proceedings. If you cannot post bail, you will remain in custody until the case is completed.

At arraignment, your attorney can discuss settlement of your case with the DA. If it is necessary, the arraignment may need to be continued to gather information or to discuss settlement further. What happens after the arraignment depends on some of the choices you make at that stage and what kind of case you have. Criminal charges are either misdemeanors or felonies.

The person who called the police now wants to drop the charges, what happens now?

Whether to file charges or prosecute those charges is not decided by any victim or accuser. The power to charge criminal cases is in the government's control through their prosecuting agency, the DA. Once a person makes a complaint or starts an inquiry, that person does not control the process, although they may still give input to the prosecutor and the court as the case proceeds.

What happens in a Misdemeanor case?

Misdemeanor charges are generally lesser offenses that carry no more than one year in a county jail facility. Simple thefts, simple assault, battery, and driving under the influence of drugs or alcohol are examples of misdemeanor charges.

Once a misdemeanor case has been filed the person charged will be arraigned at the first hearing in court. If you have been arrested and are in custody at the time of your arraignment, you have a right to start your trial within 30 days of your arraignment. If you are not in custody on your case, you have a right to start your trial within 45 days of arraignment. At the time of arraignment you may make a request for the appointment of an attorney if you cannot afford to hire one of your own choosing. An attorney may be provided at that hearing or you may be referred by the court to our offices for additional assistance on your case. Usually the case will be set for trial and/or a "pre-trial conference" during this first appearance.

The "pretrial conference" is scheduled to check on the status of the case and to determine if the case is going to go to trial or to be resolved or dismissed without trial. Your presence at that hearing is required in almost all cases. This is because you will have to make certain decisions about your case that the attorney can't make on your behalf. Between the arraignment and the pretrial conference, you will need to keep in direct contact with your attorney and assist him with your case.

What happens at a Pretrial Conference?

At the pretrial conference you will decide with your attorney whether your case will proceed to trial. If you decide to take your case to trial, the case will be set for another court date that you, your attorney and the court decide upon.

Once the case is set for trial after the pretrial conference, your case goes before a judge with other cases waiting for trial. This can cause delays because even though your case is set for a particular day, it may not start that day. The court can delay your case for some small time period to wait for a courtroom to open up to hear your case. During that time you will have to be available to start the case. If you have an attorney to assist you, he may be able to arrange to appear without you being present during these days. However, you will need to make sure that you can be easily reached when the trial is going to start, since it is rarely good for your side of a case if you are not there. Once the trial starts, your case will be heard continuously until completed and a verdict rendered.

What will happen at Trial?

A trial can be held by a judge or a jury. Most criminal trials are decided by a jury. The first stage of the trial will be to resolve issues that are decided by the judge rather than the jury. These include pretrial issues such as limits on what evidence can be offered and how some evidence can be presented.

A jury is selected by questioning jurors orally and in writing about their background and their suitability and fairness to hear a particular case. During that process each side can excuse jurors for "cause" if they can show there is a reason to believe that a juror could not follow the law or be fair in a particular case. Each side can excuse for any reason a certain number of jurors depending on the type of case. This is called a "peremptory" challenge. Once each side accepts the jury panel, or both sides run out of challenges, the jury will be sworn and the trial begins.

In a criminal case, the prosecution has the burden of proving the truth of the charges beyond a reasonable doubt. For this reason the prosecution is allowed to present their side of the case first. The prosecution gets to make its opening statement to the jury first. Then the defense can choose to make an opening statement at that time or save it for later in the case. Next the district attorney will call their witnesses and produce their evidence. During this presentation your attorney will be allowed to question the prosecution witnesses in a manner known as cross-examination. Whenever a witness is called by a side in a case, the opponent gets an opportunity to cross-examine that witness. Once the prosecution presents all the witnesses they wish, they "rest" their case. At that time you and your attorney can decide on a number of options including presenting any evidence, presenting your testimony or doing nothing.

If you present any witnesses or testify yourself, those witnesses or you will be subject to cross-examination by the prosecution attorney. Once the defense has called all of its witnesses and presented all the evidence they will "rest". The prosecution then gets the opportunity to present "rebuttal" evidence. If that happens, the defense is allowed to add "surrebuttal" evidence to contest the prosecution's "rebuttal" evidence. This sequence continues until both sides decide to produce no additional evidence. At this point the case is closed to evidence and the next step is to decide what jury instructions will be given to the jury.

Jury instructions are written documents used to orally tell the jury what the rules of the case are. This is where the jurors are told all of the rules needed to properly decide the case. After those instructions have been decided upon, each side will get to make their summation or final argument to the jury. Once again the prosecution goes first. Then, your attorney gets to make his or her argument to the jury. Because the prosecution has the burden of proof, it is allowed a second argument after your attorney is finished. Following this rebuttal argument, the judge instructs the jury and they are then placed under the control of the bailiff and taken to the jury room where they make their decision.

Explain the difference between a Misdemeanor and a Felony

Felonies are very serious criminal cases that have punishment including state prison. This differs from a misdemeanor (or less serious) case, in which the punishment is up to a year in county jail.

Felony charges range from drug, burglary and car theft cases, up to rape,

arson and murder. Although some felonies are punishable by life in prison, most cases have fixed sentences set by law.

How does a Felony case get started?

A felony case usually results because the District Attorney's Office has filed a complaint, or formal charges. Much less often, a felony case can result after the county Grand Jury holds a hearing and then files a document called an "Indictment". If you get a notice to appear before a Grand Jury, you have certain rights that you may wish to consider before appearing before them. <http://publicdef.co.riverside.ca.us/faq.asp#felony>

Can I find out that a felony charge has been filed against me?

If have already been arrested the police may have given you some paperwork telling you what the arresting agency thinks the charges may be. However, the District Attorney actually decides what to charge in court. This is done by filing the charges in a formal document called a "Complaint". That document tells you what charges have actually been filed against you. As mentioned above, an Indictment can also charge you with a felony so that type of document will also show your charges.

What happens after I am charged with a Felony?

After a felony charge has been filed, you should get a notice to appear in court for an arraignment if you are not in custody. You must personally be present at the arraignment. At that time, the judge will tell you your rights and the charges against you. Bail also may be set. If you cannot afford a lawyer, the court must appoint one at your request. Also at the arraignment, the judge will ask you to enter a plea of Guilty or Not Guilty to the charges. Almost always, your lawyer (or you) will plead "not guilty." A second court date - usually a Preliminary Hearing -- will then be set. By law, a Preliminary Hearing must be held within 10 court days from the date you are arraigned or you enter a plea, whichever occurs later. The hearing is held unless you and your lawyer agree to a court date more than 10 court days later.

<http://publicdef.co.riverside.ca.us/faq.asp#felony>

What should I do before the Preliminary Hearing?

After the arraignment, you should contact your lawyer before the next court date to discuss your case, possible penalties and any defenses you

may have. You might also discuss whether to settle your case before the preliminary hearing. You should consider all possibilities and advice at this point. You should also work with your attorney to develop any information or evidence that would help you in deciding your case. This includes further investigation, interviewing witnesses and other pretrial activities.

What is a preliminary hearing?

A preliminary hearing or preliminary examination is known as a probable cause hearing. It is not a trial. Before you can be made to stand trial on a felony, the prosecution must show that there is a rational basis for the charge against you. The government must produce evidence that convinces a judge that there is some reason to believe that the crime has been committed and that you are liable for the act or acts charged. Only a minimal showing is needed for this hearing. Not all of the rules of evidence apply to these hearings and in some instances the actual witnesses do not have to "testify" in person.

The defense has an opportunity to produce evidence at this hearing but this is rarely done since the prosecution must present so little evidence. The defense does, however, have the right to cross-examine any witnesses called by the prosecution. Another thing that may happen during the preliminary hearing process is that your lawyer may make certain motions on your behalf. Your attorney can assist you in asking the court to reduce your bail or release you on your own recognizance if the facts warrant it. An attorney can also ask the court to reduce certain types of charges from felony to misdemeanor status.

If the judge concludes that enough evidence was presented to convince him or her that there is a rational suspicion that the crime occurred and that the person charged is liable for it, he will "hold you to answer" to the charges in Superior Court.

What happens after the Preliminary Hearing?

If you have been "held to answer" your next court appearance will be an arraignment on a formal accusation called an "Information". This next appearance must be set no more than 15 days from the preliminary hearing. The reason for this delay is to give the prosecution a chance to review its case again and decide what charges they should file. Also during this time, we can decide whether to provide the prosecution with any other information that might influence their decision. The District Attorney can decide to file the original charges, no charges at all or new

charges not filed originally but which were shown by the evidence at the preliminary hearing.

This next proceeding is called an arraignment and you must be given a copy of the Information. This is again the time for you and your attorney to decide what plea to enter to the final charges filed by the District Attorney. If you enter a plea of not guilty your matter will be set for trial. <http://publicdef.co.riverside.ca.us/faq.asp#felony>

How long does it take to have a Trial after arraignment on the information or indictment?

Trials of felony charges must start within 60 calendar days of the arraignment on the "Information" or "Indictment" unless we agree to a longer time period. This 60 day time limit is part of your "speedy trial" right. However, this 60 day limit can be extended in a number of ways under the law. There are many reasons why cases are sometimes delayed past this limit. One example may be that a particular case is complicated or that witnesses might not be available at the right time. Under these circumstances you may wish to agree to a more convenient date.

What happens after the Felony case is set for trial?

Both the prosecution and the defense may bring a number of pretrial motions. Each side will investigate and prepare its sides of the case. Each case will have its own activities and the possibilities are too many to discuss at this site. However, there are some things you can do to help your case.

You should meet early and often with us and assist us in preparing your case. Make sure we or our investigator can contact you. If you move, change address or telephone number, make sure that we know of these changes.

Make sure you know what your court dates and obligations are! If you have a problem with an appearance date, make sure you inform your attorney as soon as possible. If you are going to be late, always notify the court and our office that you will be late and advise us when you will arrive. Tell us the reasons for your late arrival so that he can help you decide whether any additional explanation or information may be necessary for the court.