

HOW A CRIMINAL CASE PROCEEDS IN FLORIDA

This legal guide explains the steps you will go through if you should be arrested or charged with a crime in Florida. This guide is only general information and is not legal advice or a substitute for legal advice. You should only use this legal guide to familiarize yourself with the criminal justice process in Florida. Importantly, each case is unique and will not necessarily be handled in the same manner as described in this guide. Please contact me if you have specific questions regarding your involvement with the criminal justice system.

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I. FIRST APPEARANCE

You will appear before a judge within 24 hours of your arrest. The judge will then advise you of the charge(s) for which you have been arrested. The judge will then decide if the police had a sufficient legal basis to arrest you. This is also referred to as a probable cause determination. You should not make statements about your case at this hearing. The judge will ask if you wish to be represented by an attorney and, if so, whether you intend to hire private counsel. The judge will then decide if pretrial release (bail) is appropriate in your case, and if so, how much.

II. BAIL OR PRETRIAL RELEASE

The purpose of bail is to insure your presence at your scheduled court appearances. You have a right to bail, unless you are charged with a capital crime (i.e. carries a penalty of either life imprisonment or death) or you are facing a violation of probation. Under the Florida Rules of Criminal Procedure non-monetary conditions of release are specifically preferred; however it is the general practice for a judge to require that a bond be posted.

In setting bail, the judge must be convinced that you will be in court when notified to be there. You may be asked several questions, such as how long you have lived in the area, whether you have family living in the area, whether you are working, whether you have been allowed out on bail before and appeared in court when required, and whether you have a criminal record.

If the court finds your charge is not a serious crime, or that you will appear in court when required, or that you have a responsible person in the community who will guarantee your appearance in court, the judge has the option of releasing you without bail. This is called release on your own recognizance (ROR).

If the Judge imposes bail in an amount you cannot afford, I can file a motion to reduce your bail. However, you do not have a right to multiple bond hearings unless there are significant changes in circumstances, so it is important that we provide a strong showing of your ties to the community and your willingness to appear at all scheduled court dates during the first bond hearing.

III. FILING FORMAL CHARGES

Just because you have been arrested does not mean that you will actually be charged with a crime. After being arrested, the State Attorney reviews the Law Enforcement Officer's narrative of the alleged incident that led to your arrest. Many times the State Attorney's Office finds that the facts as described by the Law Enforcement Officer do not rise to the level of a crime, or they find that the offense charges by the Law Enforcement Officer are excessive and the State Attorney's Office files lesser charges. This is a crucial time, because many times I can intervene with the State Attorney's Office and persuade them that either formal charges are not necessary, or that a lesser charge would be more appropriate. The worst thing that could happen

would be if the State Attorney's Office filed the most severe charges possible for your facts. That puts us at a disadvantage in future negotiations.

It is important to note that the State Attorney's office has the sole discretion to decide whether to file formal charges against you. Even if witnesses do not want to testify against you or they want to stop the case, the State Attorney may still press forward on the charges. The law of the State of Florida gives the State Attorney this type of discretion and they can subpoena these witnesses to come to court even if they should indicate that they do not want to. Nevertheless, the prosecutor must file formal charges within 180 days of your arrest. Otherwise, the State Attorney is forbidden from pursuing charges against you after the expiration of that period. This rule is intertwined with your right to a speedy trial as guaranteed by the United States Constitution.

Additionally, if you are in jail and cannot afford bail, the prosecutor has 30 days from the date you are arrested to file formal charges against you. If formal charges are not filed within 30 days, the court, on the 33rd day and with notice to the State of Florida, must order you automatically released on your own recognizance, unless the State files formal charges by that date. The State may petition the court for an extension of time to file formal charges if they can show good cause for doing so. The extension can be for no more than 40 days from the date of your arrest.

IV. ARRAIGNMENT

After your first appearance, if formal charges are filed, an arraignment will be scheduled. The arraignment is not a trial and not a time when evidence can be presented. At most arraignments your charges are read to you and you will be required to enter a plea at this time. If you have retained my services prior to this court date, I will enter a plea of not guilty on your behalf and waive your appearance. However, it is important, but not necessary, that you have retained my services before this time. If you have not retained an attorney you should a plea of not guilty and advise the judge that you are looking for an attorney. Your case will then be given a pretrial and trial date.

V. PREPARING YOUR CASE

Once retained, I will meet with you to go over the facts of your case, speak with your witnesses, obtain a copy of the charging document and engage in the discovery process. Each case is different and complicated cases naturally take longer than other cases.

I will file the necessary discovery motions to obtain State witness lists, police reports, witnesses' statements, reports of experts and all other important facts in your case. Discovery depositions and other statements given under oath may be taken from witnesses. I will also likely approach the prosecutor to get an idea of the prosecutors' attitude about your case. The prosecutor may decide to dismiss all charges or to "plea bargain," which is to agree to a lighter sentence or drop some of several charges against you, in exchange for a plea of guilty or nolo contendere (no contest). If the prosecutor offers a plea bargain to you, I will inform you of it

immediately, as I have an ethical duty to inform you of any plea offers, even if you have said you wanted a trial regardless of the plea offer.

A. INVESTIGATING YOUR CASE

Anything you say to me is confidential. Conversations with other people are not confidential. These people include your spouse, family, friends, CELLMATES, news reporters, probation officers, or police officers. You should not talk to these people about your case. If you are asked about your case, you direct that person to speak with your attorney regarding any matters concerning your case.

It is important you cooperate with me and my investigator. I must know the truth even if the truth makes you look guilty, makes you think you are guilty, or if in fact you are guilty. If the truth is known, I will not be caught off guard and will be able to better represent you. This is because it is the State of Florida's job to prove your guilt. Many cases are not about guilt or innocence, it is about whether the State of Florida can prove their case, whether they followed the law in arresting you, whether they violated your civil rights, and whether they can locate the necessary witnesses to testify against you. Even if you are guilty of a crime, the State Attorney's office inability to satisfy all of these needs may force them to drop the case against you.

You can help the investigation of your case by providing the names and addresses of witnesses. If you are out of jail, you can help your case by finding witnesses and notifying me by sending a letter, calling in, or coming to the office with the names and addresses of those witnesses. If you are in jail, try to have your family and friends find witnesses. A witness may be anyone who can testify to any circumstances which may show you are not guilty or which may tend to show that the crime was not as serious as the prosecutor claims. My investigator may interview the witnesses against you and try to locate defense witnesses. Accurate names and addresses are helpful.

You should not, however, contact witnesses for the prosecution, the victim, or send other people to talk to the witnesses or the victim for you. If you do, you may be charged with a new crime of tampering with witnesses.

VI. COURT APPEARANCES

You must appear in court for all your court hearings unless I advise you otherwise. It is best to arrive before the scheduled time so that we can discuss any issue that may arise. If you do not show, or you are late, the judge may issue a warrant for your arrest and your right to a speedy trial may be lost. Your bond may also be revoked.

VII. PLEAS

The law presumes you are innocent until proven guilty. You can only plead one of three ways: (1) Not Guilty; (2) Guilty; and (3) Nolo Contendere, which is Latin for no contest. A not guilty plea is entered when you are innocent, when you are not certain which plea to enter, when there is not enough evidence against you to prove guilt or when you want to demand a public trial.

If you plead guilty or nolo contendere, either to the charges against you or to some lesser charge, the judge will ask you questions so that the judge can confirm that you know what you are accused of, that you understand the penalties, and that no one is forcing you to enter the plea. The judge will then proceed with sentencing.

The majority of the time, a plea is entered pursuant to a negotiated plea agreement. However, even if the State Attorney and I have a negotiated plea agreement in place, the judge is not required to accept the agreement. In which case we will have to make a decision to renegotiate an agreement acceptable to the judge, proceed to trial, or plea as charged. Nevertheless, the majority of judges will accept and honor negotiated plea agreements.

A. PRE-TRIAL INTERVENTION

Pretrial intervention is a sentencing alternative that some judges will allow. This program, primarily for first-time offenders, offers an alternative to formal prosecution which will result in your case being dismissed upon successful completion of the program. The program is selective and cannot accept applicants without the approval of the victim, arresting officer, prosecutor and judge. If you have no significant prior record, and are not charged with a violent crime, I may look into the possibility of entry into the pre-trial intervention program.

VIII. TRIAL

If you enter a plea of not guilty, you will have a trial unless the charges are dismissed or you change your plea prior to trial. In a jury trial, a judge presides over the courtroom proceedings, and six or more citizens from the community are chosen to hear the evidence presented against you. These citizens determine whether a crime has been committed and whether you are criminally responsible for that crime.

You and your attorney must decide whether you want a jury trial or a non-jury trial. The State Attorney must also agree to a non-jury trial. In a non-jury trial, only the judge decides whether a crime has been committed, and whether you are criminally responsible for that crime; in a non-jury trial there is no jury. A jury is used for most trials.

A. JURY SELECTION (VOIR DIRE)

This is the process by which the jury of six people is selected. In jury selection a panel of between twenty to thirty people is brought into the court room. Of this group of people, six people will be selected to sit as jurors in your trial. Each side is allowed to fully question the jury panel, for the purpose of revealing bias or prejudice. The state questions the panel first and the defense follows. Once questioning is complete, both sides are allowed some time to privately review their notes on the juror's answers to questions, and determine who to exercise their strikes on.

Each side is allowed three peremptory strikes in a misdemeanor trial and six peremptory strikes in a felony trial. Peremptory strikes allow you to strike a jury from the jury panel for. Additionally, a juror may be challenged for cause if he or she has

answered a question indicating that they have a fixed opinion that will not allow them to follow the law. This may be anything from saying that they would require the defendant to testify in order to decide, to saying they believe you are guilty if arrested. It is up to the attorneys to bring out these prejudices and question the jurors thoroughly. A juror that the court excuses for cause is not counted against the preemptory strikes that each side is allowed. Once both sides have stated they accept six jurors, plus one or two alternates, the panel is sworn and the remaining jurors are excused.

B. SEQUESTRATION OF WITNESSES

This is a rule of procedure invoked after jury selection is completed. All witnesses are brought forward to the court, and instructed that they must now leave the courtroom and not discuss the case with any other witness at all. It is proper for a witness to talk to a lawyer about what his or her testimony will be only. No witness should ask or discuss what any other witness said while testifying. This means that anyone named as a witness must leave the courtroom and return only to give their own testimony.

C. OPENING STATEMENT

This is my opportunity to state to the jury what I believe the evidence will show. The opening statement is not supposed to be an argument, but rather an uninterrupted story of what the trial will show, through the evidence and testimony. Since the State has the burden of proving the charges, they address the jury first, and the defense follows. An opening statement can be anywhere from 5 minutes to an hour.

D. PRESENTATION OF EVIDENCE

At the conclusion of opening statements the State begins to present its evidence. Evidence is primarily introduced through the calling of witnesses to testify. The State may call its witnesses in any order they determine. They may call all or just some of the people they have listed on the witness list.

Once their witness is on the stand, the state conducts a direct examination of the witness, meaning they ask non-leading questions that prompt the witness to tell their individual part of the overall story.

At the conclusion of the State's direct examination, I then cross-examine the witness. Cross-examination is defendant's opportunity to bring out all the counterpoints that the State did not bring out on direct examination, such as bias, mistake, lack of knowledge, etc. Depending on the testimony the witness has given, the Defense may ask many questions, or in some cases, no questions. Again, determining what to ask on cross examination is a strategic decision that is planned long in advance.

1. Objections

During the presentation of evidence, I may object for a variety of legal reasons, which must be stated at the time the objection is made. Many times the Court will ask the lawyers to approach on a particular objection in order to make legal argument so that the jury cannot hear. If there is lengthy legal argument to be made, the court may ask the court room deputies to remove the jury from the courtroom, to allow the lawyers to speak more freely without danger that the jury will hear the legal argument and draw improper conclusions from it.

2. YOUR ROLE DURING THE PRESENTATION OF EVIDENCE

You are a valuable resource of information on the facts of your case. Unfortunately, you may not completely understand the technical legal aspects of the case. You should listen very carefully to all testimony, and be ready to point out inconsistencies or misstatements if they occur. Because I must listen very carefully to every word that is testified to by a witness, for both factual and legal issues, it is best for the lawyer and client to communicate by writing notes to each other while testimony is being given. Please bear in mind that I must act as the final filter regarding information that is put before the jury in both cross-examination and presentation of defense witnesses, so every inconsistency, omission, etc., that the client points out will not necessarily be the subject of an immediate question. It is crucial for the client to maintain a dignified, reserved demeanor, regardless of the testimony that is being given. PLEASE do not react to it by shaking your head, rolling your eyes, grabbing my arm, or speaking out. I cannot emphasize enough how important it is to maintain composure at all times.

E. CLOSE OF THE STATE'S CASE

Once the State has called all the witnesses it believes necessary to prove the legal elements of the crimes charged, they will rest their case. At this time, a recess is taken, and the Court allows the Defense to make a Motion for Judgment of Acquittal (JOA). A JOA asks the Court to find that the State has failed to make a sufficient showing to allow the specific charge to go to the jury. This motion is rarely granted, so the making of it is largely a formality, but it's like the lottery, you can't win if you don't play.

F. THE DEFENSE'S CASE

We are not required to call witnesses, and the Court tells the jury this at several points in the trial. Many times our theory of the case is sufficiently brought out through cross examination, so we do not need to call witnesses in our case. However, when we do call witnesses on our behalf, including you, the same rules that applied to the State's witness will apply to our witnesses. We examine our witnesses with non-leading questions, and the State then cross-examines our witnesses in an effort to bring out bias, mistake, lack of knowledge, etc. We may call all or just some of our witnesses, depending on how the testimony is coming out. We do not want to put on

redundant witness, because where there is redundancy, there is always conflict of some sort. Our goal is to tell our story fully in a coherent, interesting, streamlined and credible manner, all the while minimizing the potential for conflict between our witnesses.

You have the absolute right to testify or remain silent and the Court will instruct the jury of this several times during the course of the case. The decision as to how to best defend your case is complex and should be discussed in detail prior to trial. Nevertheless, it is often a strategic decision that is made by the lawyer and client, as the trial unfolds. Some judges find a moment when the jury is out of the room, when it becomes appropriate, and ask the Client on the record what your decision is, and whether you agree with it. Generally we do not have to make a decision until the close of the State's case.

G. STATE'S REBUTTAL

Once the Defendant has rested, the State is permitted to put on witnesses to rebut a specific point about which the Defendant's witness has testified. The same rules apply to them as all other witnesses. These witnesses must be on the witness list, so there are no surprises.

H. DEFENDANT'S SURREBUTTAL

On rare occasions, the Defendant may put on rebuttal witnesses to rebut the rebuttal.

I. CLOSING ARGUMENT

After all the evidence is presented, each side makes its closing arguments to the jury. Each side is allowed equal time for closing argument. Closing argument should pull all the evidence and testimony together, and explain to the jury why the charges are proved or not proved. We can use any evidence or exhibits that were used in the course of the trial, as well as special exhibits designed to highlight our key points. This can take as long as an hour, or as little as 15 minutes in short cases. Again, the Court will allow us as much time as we need, but we must be factual, to the point, and persuasive.

J. THE JURY'S ROLE

At the conclusion of closing arguments, the judge then tells the jury the laws and rules to be applied during the jury's deliberation. The jury then goes into a jury room to talk about the case until they reach a unanimous verdict of either guilty or not guilty. Depending on the severity of the charges you face, a jury can also find you guilty of a lesser crime. If the jury is unable to reach a unanimous verdict, then a mistrial is announced and the case will be reset for trial at a later date.

IX. SENTENCING

A sentencing hearing will be held if you enter a plea or are found guilty by a jury. At the hearing you will have an opportunity to speak with the judge. Prior to sentencing, we will discuss whether you should speak with the judge and, if so, what to say. The judge will also give myself and any other interested persons a chance to speak on your behalf. If you are entering a plea that

has already worked out, it will be unnecessary for you to present any evidence during the hearing. However, if you are found guilty by a jury, or if you plead straight up to the judge without the benefit of a negotiated plea it will be necessary to present witnesses to testify to your character and to what type of sentence would be appropriate. If you are convicted of a felony offense, and it is your first time, many times a judge will order a pre sentence investigation.

A. PRE-SENTENCE INVESTIGATION

If you plead guilty or nolo contendere, or are found guilty after a trial, the judge may postpone sentencing and order a pre-sentence investigation (PSI) for a first time felony offender. The PSI informs the judge of your background and helps the judge decide your sentence. A probation officer will question you and may question members of your family, your friends, witnesses in the case and your attorney in order to make this report to the judge. The PSI includes the cause and circumstances of the crime, your prior criminal record, if any, your reputation in the community, and background about your family, education, employment and health. If you are a candidate for probation, the PSI will include information about your plans for the future.

Be truthful with the probation officer since all statements are verified and untruthful statements are reported to the judge. **HOWEVER**, you should not discuss your knowledge of the crime for which you are convicted without permission from your attorney. Also, the PSI will discuss things like your lifestyle, behavior pattern and general attitude. PSI's often take several weeks. Your attorney will obtain a copy of the PSI and review it with you.

X. Sentencing Alternatives

A. Pretrial Diversion

Pretrial Diversion is a diversionary program run by the State Attorney's Office and is usually reserved for first time, nonviolent offenders. The diversion program is similar to probation, in that once you are accepted into the program you must report once a month to a supervising officer, undergo random drug testing, complete community service hours, and refrain from being involved in any criminal activity. Additionally, Pretrial Diversion requires the permission of the victim of the crime you are accused of committing. Your charges will be dropped upon successful completion of Pretrial Diversion.

B. Pretrial Intervention

Pretrial Intervention is similar to Pretrial Diversion, however it is run by the Court. Pretrial Intervention is more lenient in that a person does not have to have a spotless record. The Pretrial Intervention program is also similar to probation, in that once you are accepted into the program you must report to the Court on a regular basis, be evaluated for and undergo any recommended drug treatment, complete any other specific requirements ordered by the Court, and refrain from being involved in any criminal activity. Importantly, many Judges do not participate in Pretrial Intervention. As a result it is important that you hire an attorney who is familiar with the individual

Judges and who can advise you accordingly. Your charges will be dropped upon successful completion of Pretrial Intervention.

C. Drug Court

Drug Court is a diversionary program created to address the issue of first time felony drug offenders. The program provides for the identification, evaluation, case management and placement of substance abusing offenders in order to avoid entering the formal criminal justice system. The Drug Court Judge reviews progress reports on each participant. Incidents of noncompliance are reported immediately to the Drug Court Judge, along with recommendations as to consequences to be imposed. Upon successful completion of Drug Court your charges will be dropped.

D. PROBATION

Probation is a privilege -- not a right. If you are a first-time offender, this does not mean you will automatically receive probation. If you are placed on probation, the usual conditions include: 1) reporting regularly to your probation officer; 2) notifying and receiving permission from your probation officer before changing your address, changing your job, or leaving the county; and 3) leading a law-abiding life and not committing any other crimes.

If you violate any of these probation conditions, or any special conditions required by the judge, the judge may sentence you to prison. If the violation of probation is a crime committed by you while on probation, the judge can revoke your probation without waiting until you are convicted of the new charge. A probation violation hearing will be held by the judge without a jury.

XI. APPEALS

If you are convicted and want to appeal your case, or if you plead after we filed a dispositive motion to dismiss or motion to suppress that was denied, you must do so within 30 days after sentencing. You usually have no right to an appeal from a plea of guilty or nolo contendere if the sentence you receive is a legal one. An appeal will only help you if the judge did not follow the law, or if you were prevented from properly exercising all your rights. In an appeal, I must advise the Appellate Court exactly how the judge failed to follow the law or what rights you were denied before the Appellate Court will reverse a conviction. If your case is appealed, the judge may allow your release on bail until a final decision is reached. The judge will only do this if he or she believes you have a good reason for appealing and believes you will re-appear in court; however, you do not have an automatic right to bail when appealing. If you wish to appeal your case, you should discuss this matter with your attorney as soon as possible. In no event should you wait more than 30 days before contacting your attorney.