



Criminal Law

The criminal justice system can be very confusing and scary. While you have the right to represent yourself in court, the advice of a lawyer is invaluable. Even though you may not feel you have the money to hire a lawyer, you may not be able to afford **not** to have a lawyer. If you cannot afford a lawyer and you are charged with an offense that carries possible jail or prison time, you are entitled to a court-appointed lawyer at state expense. If you post a bond or pay a bondsman, the court may not find you eligible for a court-appointed lawyer. The information in this brochure is intended as general information only. Nothing in this brochure should replace the advice of a lawyer. This information generally applies to Oklahoma District Court cases and not necessarily to municipal or federal cases.

CRIMES

Crimes are generally classified as felonies or misdemeanors. Usually, felonies are punished by a sentence of one year or more in prison. Misdemeanors are generally punished by less than one year in a county jail. Probation is also a possibility. Under probation, a person would not serve any time in jail or prison but would report to a probation officer and be supervised in the community while they do such things as reporting to the probation officer, paying the fines and court costs, completing community service hours, drug testing, attending a counseling or treatment program, etc.

CRIMINAL PROCEEDINGS

The following definitions are provided to explain the criminal justice process:

Arrest and Booking: This is when a police officer takes you into custody and takes you to jail. The process of actually putting you in jail is called booking.

Initial Appearance or Arraignment: If you are charged with a crime, this will be the first time you go before a judge. You will be advised of the charges filed against you, and a bond will be set, which you must arrange to pay before you may be released from jail. In some cases, this bond may be an "Own-Recognizance Bond" (OR Bond), which requires no payment of money to a bondsman. If you bonded out of jail before arraignment, your bond will generally stay the same unless additional charges are filed, if you have any prior felony convictions or if you have violated the terms and conditions of your bond. You also will be told the next time you are to appear in court.

Preliminary Hearing Conference: This hearing may also be called a pre-preliminary hearing or an announcement docket. Generally, these hearings are a time for your lawyer and the prosecutor to discuss your case. The prosecutor may make a plea bargain offer, which you and your lawyer will discuss. If you decide to accept the offer, you would waive or give up your right to a trial and set your

case for a date for you to plead guilty. If you do not accept the plea offer, you will have your case set for a preliminary hearing.

Preliminary Hearing: If you are charged with a felony, you have a right to a preliminary hearing. A preliminary hearing is a court hearing where witnesses testify, and the judge decides whether there is enough evidence against you to order you to have a trial. If the judge thinks there is enough evidence to believe a crime was committed and enough evidence to believe you committed the crime (probable cause), the judge will "bind you over" for trial. Being "bound over" for trial does not mean the judge has decided you committed the crime or are guilty. It simply means the state presented enough evidence to establish probable cause, and your case will proceed to trial. If the judge does not believe there is enough evidence, the case is dismissed. The prosecutor is not required to present all of their witnesses or all of the evidence they have collected. They are only required to present enough evidence to meet the probable cause standard. The judge, by law, must consider all the evidence in a light most favorable to the state.

Pretrial Docket: This is a hearing in a felony or misdemeanor case where you and your lawyer appear before the judge with the prosecutor and announce whether you want a trial or want to plead guilty. The judge will then either set your trial date, accept your plea or set a date for you to return to enter your plea or be sentenced.

Plea or Disposition Docket: At this hearing, you will appear with your lawyer and plead guilty or "no contest" to a judge, and the judge will announce your punishment based on your plea bargain agreement with the prosecutor. If the judge thinks the punishment is not harsh enough, you will be allowed to withdraw your plea of guilty and have a trial.

Blind Plea: If you do not have a plea bargain agreement with the prosecutor, you may still wish to enter a plea of guilty and allow the judge to determine what your sentence will be. This type of plea is often called a "blind plea." In this situation, you do not know the punishment the judge will give you, and you are throwing yourself on the mercy of the court. If you do not like the punishment the judge decides is appropriate for you, you do not have the right to withdraw your plea and have your case set for trial.

Jury Trial: This is where a jury (12 jurors in a felony case/six jurors in a misdemeanor case) decides whether you are guilty of the crime with which you have been charged. The prosecutor must prove your guilt "beyond a reasonable doubt" to the jury or the judge in order for you to be convicted of a crime.

Nonjury or Bench Trial: This is a trial where a jury is waived, and

the judge alone decides whether you are guilty or not guilty of the crime with which you have been charged. In most cases, both sides must agree to waive a jury.

Deferred Sentence: You are not convicted of a crime until you are found guilty and punished for the crime. With a deferred sentence, the judge accepts your guilty plea to the crime but postpones, delays or defers sentencing until a later date. If you do everything the court orders you to do, the court will dismiss your case, and the charge will not appear on your court record. You may be ordered to pay all court costs and fees, see a probation officer, go to treatment and make sure you do not break the law again. If you do not successfully complete the deferred sentence requirements or if you are charged with committing a "new" crime, the court may sentence you to jail or prison. Even if you complete your deferred probation, your arrest will still appear on the records of the Oklahoma State Bureau of Investigation unless you obtain an expungement.

Suspended Sentence: You are convicted of a crime but are on probation for all or part of the sentence. During your suspended sentence, you do not have to go to prison or jail for that amount of time, as long as you satisfy the conditions of probation. The probation may be "supervised" or "unsupervised." If it is supervised, you must regularly report to a probation officer. If it is "unsupervised," you simply must obey the rules of probation and not break the law. If you are unsuccessful, however, you may be sentenced to spend the entire sentence in jail or prison.

Bench Warrant: A bench warrant is an order by the judge to have you arrested because you failed to appear in court when the court told you to appear.

KNOW YOUR RIGHTS

Even before you are placed under arrest, the Constitution of the United States guarantees you certain rights. The following are some of the more basic rights, but it is not a complete list. You have many other rights under our Constitution.

Right to Remain Silent: When the police ask to speak to you, you have the right to remain silent. You may talk to the police about the allegations or charges, but you *do not* have to. If you do start talking to the police, you may stop talking at any time during the interview or interrogation and ask for a lawyer before talking further. If you ask for a lawyer, one will be provided to you prior to any more questions being asked. At that point, the law enforcement officer must stop asking questions until you have spoken with a lawyer. Anything you say or write to the police will be used against you in court. You may also ask to have a lawyer with you when the police want to question you. If you ask for a lawyer, the police cannot ask you any questions until you have spoken with a lawyer or have the lawyer with you at the time of questioning. If you cannot afford to pay for a lawyer, the court may appoint a lawyer to represent you if the court believes you do not have enough money to hire one.

Right to be Represented by a Lawyer: You have the right to have a lawyer in every felony or misdemeanor case. If you cannot afford to hire a lawyer, you can ask the judge to appoint a lawyer to represent you. The judge will then have you fill out an application called an: "Application for Appointed Counsel," "Form 13.3" or "Pauper's Affidavit." After putting you under oath, the judge will review the application, and if the judge approves your application, they will appoint a lawyer for you. If the judge denies your application, you will have to hire your own lawyer. One good reason to be represented by a lawyer is to make sure all of your rights are protected and none of your rights have been violated. Another reason is to ensure that all of the necessary motions, evidence, arguments and witnesses you need to defend yourself are presented to the judge or the jury. Many times, a lawyer knows what kind of motion and evidence is best suited for a good defense. It is extremely risky to defend yourself in a criminal proceeding without a lawyer.

Right to Confront the Witnesses Against You and Present Witnesses on Your Own Behalf: You have the right for your lawyer to ask questions of every witness against you if you go to trial and the right for your lawyer to present witnesses to any defense you have to the charges.

Right Not to be Stopped and Searched Without a Good Reason: Law enforcement officers must have a good reason before they decide to arrest you or search you or your property. This is called "probable cause." In some cases, the officer must first get a judge to issue a search warrant. In other cases, such as routine traffic stops for traffic violations, there must be a good reason why officers suspect you may be committing a crime before they may search without getting a warrant. If the police do not have an arrest or search warrant and ask to search you or your property, you have the right to say *no* and may lawfully refuse their request to search. If the police stop you and ask you to identify yourself or show your ID, you must comply. However, after you have told the police who you are, you have the right to tell the officer you do not want to answer any other questions or speak with them until you have spoken with a lawyer.

Caution: *The law the court must apply may be very complex even in "simple" criminal cases. You should make certain you are comfortable with what you must prove and how to do it before you represent yourself in any court hearing or trial. If you are unsure about proceeding in your case, contact a lawyer.*

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