

THE OFFICE OF THE PUBLIC DEFENDER

Each of the 20 judicial circuits in Florida has a separate Office of the Public Defender. These offices represent indigent (poor) persons charged with a criminal offense and do not handle civil (money) cases. Each office of the Public Defender is headed by an elected Public Defender who is a constitutional officer of the State of Florida. The Public Defender is an attorney and a member of The Florida Bar. The Public Defender is elected to office for a four-year term. The other attorneys in the office are also members of The Florida Bar, and are usually referred to as Assistant Public Defenders.

An Assistant Public Defender, who is supported by investigators, witness interviewers and legal assistants, will represent you. Third-year law students and law school graduates not yet admitted to The Florida Bar may also work with the Public Defender's Office. These individuals are called legal interns.

The Public Defender's Office keeps up with all new developments in the law. As part of continuing legal education, the Public Defender holds in-house training classes for all employees and sends attorneys and other employees to outside training programs.

FIRST APPEARANCE

If you are arrested and placed in custody, you will appear before a judge within 24 hours of your arrest. The judge will first advise you of the charge(s) for which you have been arrested. The judge then will decide if the police had sufficient legal reasons - called probable cause - to arrest you. 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. If you are financially unable to hire your own lawyer, the judge will make a provisional appointment of the Public Defender. You are required to fill out a financial form at the Clerk of Court and you will be charged an application fee of \$50. Unless you are acquitted or your charge is dismissed, the services of the Public Defender are not free. If you are sentenced, the court will make payment of an attorney's fee a condition of your sentence. There is a \$50 attorney fee in misdemeanor cases and \$100 attorney fee in felony cases.

BAIL

Bail is intended to guarantee that you will appear for your scheduled court appearance. You may not have a right to bail if you are charged with a crime that carries a penalty of either life imprisonment, death or you are facing a violation of probation. This may include murder, sexual battery, kidnapping, burglary or robbery. To lower the amount of your bail or have the court set 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, that you will appear when required in court, 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 you cannot make the original bail, your Assistant Public Defender may subsequently file a motion for reduction of bail if your bail seems too high. Remember, you do not have a right to multiple bond hearings unless there are significant changes in circumstances. Not being able to make the previously set bond is not a significant change in circumstances.

INTAKE

The first person from the Public Defender's Office you will see may be either an Assistant Public Defender, a witness interviewer, an investigator or a legal intern for what is called intake. Even though the interviewer may not be an attorney, the information you give is CONFIDENTIAL and will be given to your attorney. You will be asked a number of questions. It is important to cooperate fully and answer all questions truthfully.

If you are released from jail before you have been interviewed, you need to call and schedule an appointment at the Public Defender's office as soon as possible. Remember, it is your duty to call and schedule an appointment so your attorney can begin working on your case.

JAIL VISITS

The attorneys of the Public Defender's staff make regular visits to the jail. Your attorney will meet with you when necessary, but cannot meet with you every time he or she is there. You should request a jail visit only when it is important that you and your attorney meet in person. If telephones are available at the jail, a phone call will often solve your problem. Your attorney may also use video conferencing to make contact with you at the jail. **DO NOT DISCUSS THE FACTS OF YOUR CASE ON THE TELEPHONE OR IN THE HEARING OF OTHER PEOPLE.**

Only jail personnel can decide if your friends and relatives can visit you. Questions about food, clothing, medical treatment and medicine should also be directed to jail personnel.

FILING FORMAL CHARGES

If you are in jail, the State Attorney has 33 days from the date you are arrested to file formal charges against you. If formal charges are not filed within 33 days, the court, on the 33rd day and with notice to the State Attorney, may order you automatically released on your own recognizance, unless the State Attorney files formal charges by that date. The State Attorney 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. The State Attorney has the sole discretion whether to file formal charges against you. Even if witnesses don't want to testify against you or want to stop the case, the State Attorney may file the charges. The law of the State of Florida gives the State Attorney this type of discretion. The State Attorney has subpoena power to have witnesses come to court.

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 if you do not have a lawyer the judge will again determine if the Public Defender's office will represent you. If a plea of not guilty is entered at your arraignment, your case will normally be scheduled for a pretrial conference.

INVESTIGATING YOUR CASE

Anything you tell a Public Defender's investigator or intern, or anything you tell your attorney, 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.

It is important you cooperate with your attorney and with your attorney's investigator. Your attorney and the investigator 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 you are completely honest with your attorney, he or she will not be caught off guard and will be able to better represent 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 your attorney 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. Our 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.

PREPARING YOUR CASE

The Public Defender's Office cannot represent you until a judge or Clerk of Court appoints us to do so. Once appointed, we will get a copy of the charges against you. This all takes time. Each case is different. Complicated cases naturally take longer than other cases, and remember, an extra month or two in jail may save you from years in prison. Your attorney must be thoroughly prepared before he or she can go into court for you. If you do not understand why your case is taking so long to prepare, talk to your attorney. Your attorney will explain the reasons to you.

If you are unhappy with the way your case is being handled, talk to your attorney.

If you are still not satisfied, state your complaint in writing and mail it to the Public Defender.

You are not entitled to the attorney of your choice unless you can afford to hire a private attorney or qualify to represent yourself. **ALL COMMUNICATIONS SENT TO YOUR ATTORNEY SHOULD BE MARKED "CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION."**

Your attorney will file discovery motions to get 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. Your attorney also may talk with the prosecutor to get some idea of the prosecutors' intentions in 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 no contest. If the prosecutor offers a plea bargain to you, your attorney has an ethical duty to tell you about it even if you have said you want a trial.

ALL COMMUNICATION BETWEEN YOU AND YOUR ATTORNEY IS CONFIDENTIAL

Without your permission, confidential information cannot be revealed to the prosecutor or anyone else. Once the preparation of your case is complete, your attorney will update you on all of the facts, and explain available defenses as well as legal options. Your attorney will also explain possible sentences if you plead or are found guilty at trial.

MOTIONS

After investigating your case, your attorney may file motions and ask for a court hearing. **YOU SHOULD NOT FILE YOUR OWN MOTIONS.** If you are represented by a Public Defender the law generally does not allow you to file your own motions. Because you are not an attorney, you may put something in a motion that could hurt your case. If you have a matter that you want the court to know about, ask your attorney about it.

PRE-TRIAL INTERVENTION

The Florida Department of Corrections operates what is called the Pre-trial Intervention Program. This program, primarily for first-time offenders, offers an alternative to formal prosecution. 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, ask your attorney about the possibility of entry into the pre-trial intervention program.

COURT APPEARANCES

You must appear in court for all your court hearings unless your attorney advises you otherwise. If you change your address, notify your attorney immediately so that you can be notified when you must be in court. It is best to arrive before the time scheduled in order to discuss the case with your attorney. If you cannot appear in court on time, notify your attorney immediately. If you do not and 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.

PLEAS

The law presumes you are innocent until proven guilty. You can only plead one of three ways: 1) Not Guilty; 2) Guilty; 3) 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; when you want more time to investigate your case and decide whether to proceed to trial; or when you want to demand a public trial. If you plead guilty or no contest to the charge(s), the judge will ask you questions to confirm that you know what you are doing, and that no one is forcing you to enter the plea.

If you plead guilty or no contest, there will not be a trial and the judge will then proceed with sentencing.

The judge decides if your plea will be accepted. This is true even if you, your attorney, and the State Attorney have negotiated a plea agreement.

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. Your attorney will question the prospective jurors and, with your assistance, try to select the best ones to hear your case. After both sides question the jury and the jurors are agreed upon, the actual trial begins. Next, each side may make an opening statement telling the jury what the case is about. Then, the prosecutor presents his or her witnesses and evidence. Your attorney can cross-examine these witnesses and challenge the evidence. If the State's witnesses do not appear in court for your trial, the judge may dismiss your case, or postpone it at the request of the prosecutor. This decision is up to the judge.

After the prosecution witnesses testify, your attorney may present defense witnesses and evidence which the prosecutor may later rebut. You have the right to testify in your trial, but you do not have to testify. The decision as to how to best defend your case is complex and should be discussed in detail with your attorney. After all the evidence is presented, each side makes its closing arguments to the jury. The judge then tells the jury the laws and rules applicable to your case 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. If the jury is unable to reach a unanimous verdict, meaning every juror does not agree to the same verdict, then a mistrial is announced and the case will be reset for trial at a later date.

PRE-SENTENCE INVESTIGATION

If you plead guilty, or no contest, or are found guilty after a trial, the judge may postpone sentencing and order a pre-sentence investigation (PSI). 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 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, or any other crimes, without permission from your attorney. The PSI will discuss things like your lifestyle, behavior pattern and general attitude. PSI's often take several weeks to complete. Your attorney will obtain a copy of the PSI and review it with you.

SENTENCING

At sentencing, you will have an opportunity to address the judge. You should discuss with your attorney whether to speak and, if so, what to say. The judge will also give your attorney and any other interested persons a chance to speak on your behalf. Let your attorney know in advance the names and addresses of people you want to speak at your sentencing. Do not compare the sentence in your case with those in other cases because each is different.

ALTERNATIVE SENTENCING

If you feel your arrest was caused by alcohol, drug or mental problems, tell your attorney. Some judicial circuits have an Alternative Sentencing Program which may help you get into a special treatment program. Your involvement in a treatment program may help in getting leniency from the prosecutor and the judge. Additionally, some judicial circuits have special courts, called Drug Court, designed to handle such cases.

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.

PAYMENT

If you plead or are found guilty, the judge will require you to pay fines, court costs, attorney fees, and restitution (if applicable).

APPEAL

If you are convicted and want to appeal your case, you must do so within 30 days after sentencing. You have no right to an appeal if you entered a voluntary and intelligent plea, with or without a plea agreement, and the sentence was legal. An appeal will only help you if the judge did not follow the law and as a result of that, your case was prejudiced. You or your attorney must advise the Appellate Court exactly how the judge did not follow the law before a conviction can be reversed. 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

JUVENILE COURT

If you are a juvenile (under 18 years of age), you will be held at a facility for juveniles rather than a jail. Your first court hearing is called a detention hearing, not a first appearance. At that time, the judge will decide whether you should be released from custody and may appoint an attorney from the Office of the Public Defender to represent you.

If you are under the age of 18, you may be tried as an adult under certain circumstances. Your prior record and the seriousness of the charge may be considered. Your attorney will explain these matters to you based on the facts of your case. If you are to be tried as a juvenile, you may be released from custody through a program called non-secure detention. Your attorney may ask for you to be interviewed for non-secure detention, and will ask the judge for your release.

Only the judge can place you in the non-secure program. Non-secure detention allows you to live at home while waiting for trial. A counselor will contact you periodically. You may be returned to custody if you do not follow all rules set by your counselor. After the detention hearing there will be an arraignment where you will be asked to enter your plea. The various pleas available to you and procedures to be followed in handling your case are similar to those for adults, except that you do not have the right to a jury trial (ask your attorney for details). Your case will be heard and decided by a judge assigned to the Juvenile Court. Your trial will be called an adjudicatory hearing. If you have been found not guilty by the judge or if your case has been dismissed, you will be released and there will be no further proceedings in your case. If you are found guilty at the adjudicatory hearing, you will have a dispositional hearing where the judge decides what will happen to you.

In order to determine the disposition of your case, the judge will look at the facts and your personal background including your prior record, if any. Your counselor will provide a report on your background. The judge can commit you to a program supervised by Juvenile Justice or may place you under the supervision of the Department of Juvenile Justice. Do not compare the disposition of your case with other cases, because each case is different.

If the judge orders you to participate in community control, you may be required to work for the victim, repay the victim for any damages, or provide some kind of service working for your community. If you do not complete your responsibilities under community control, you may be brought back to court. Your attorney will represent you at this hearing and must explain why you did not complete the community control program. You may be committed to the Department of Juvenile Justice if the judge finds that you have not done what you were ordered to do.