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What to Expect When You Are Arrested: A Guide to Navigating for Unhoused Defendants

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WHAT TO EXPECT WHEN YOU ARE ARRESTED

A Guide to Navigating Court
for Unhoused Defendants



SEATTLEU
SCHOOL OF LAW

HOMELESS RIGHTS
ADVOCACY PROJECT

What to Expect When You Are Arrested

A Guide to Navigating Court for Unhoused Defendants

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Editor

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EXECUTIVE SUMMARY

Knowledge is power. The goal of this guide is to empower defendants, especially those experiencing homelessness, to effectively navigate the criminal justice system.

This guide is unique. Nothing like it exists. This lack of guidance is problematic because **people experiencing homelessness are increasingly harassed, cited, or arrested**, often for doing nothing more than surviving in public. The experience is called being “criminalized.”¹ Criminalization laws target activities that unhoused individuals must perform in public to survive, such as sleeping, going to the bathroom, protecting themselves from the elements, or receiving food. Due to increased criminalization, if you are experiencing homelessness, you are more likely to interact with the criminal justice system. So, this guide was written with you in mind.

To make matters worse, the public defenders—lawyers assigned to represent unhoused defendants for free—carry large caseloads. Public defenders are often overworked and overwhelmed and have little time to spend with clients.² You cannot always depend on your public defender to explain what’s going on or to provide the best possible advocacy. Although you should have a legal right to a public defender, sometimes, you may not even receive one.³ Therefore, be empowered to advocate for yourself.

This guide was written to help you navigate the criminal justice system more comfortably by:

- **Defining common legal terms.** Legal terms can seem like a different language. You will have more power if you understand the words being used around you.
- **Explaining the timeline of court processes and procedures.** The criminal justice system can seem like an unfamiliar and complicated experience. You can maximize your feeling of empowerment if you can minimize your feeling of vulnerability by knowing what is happening next.
- **Providing a general orientation to a courtroom.** The courtroom is like a different culture. Knowing who is in the room, where you are supposed to sit, and what is expected of you can help you overcome the feeling of unfamiliarity.

¹ See Javier Ortiz & Matthew Dick, Seattle University Homeless Rights Advocacy Project, *THE WRONG SIDE OF HISTORY: A COMPARISON OF MODERN AND HISTORICAL CRIMINALIZATION LAWS* (Sara Rankin ed., 2015).

² See Alexa Van Brunt, *Poor People Rely on Public Defenders Who Are Too Overworked to Defend Them*, THE GUARDIAN (Jun. 17, 2015), <https://www.theguardian.com/commentisfree/2015/jun/17/poor-rely-public-defenders-too-overworked>.

³ Timothy Williams, *Courts Sidestep the Law, and South Carolina’s Poor Go to Jail*, N.Y. TIMES (Oct. 12, 2017), https://www.nytimes.com/2017/10/12/us/south-carolina-jail-no-lawyer.html?emc=edit_tnt_20171012&nid=68062483&tntemail=y.

- **Summarizing basic rights while incarcerated.** You still have certain rights while you are incarcerated, and you have the right to complain if your rights are being violated.
- **Outlining basic ways to advocate for yourself, by explaining “mitigation” techniques and “diversion” options.** If your public defender is busy, he or she may not know that you are different, that your circumstances are unique, or which options might be best for you.

The biggest challenges in writing this guide were (1) explaining legal terms and processes so they are both easy to understand and accurate, and (2) choosing which information to include so this guide is both helpful and manageable. Because this guide is the first of its kind, HRAP hopes other students, professors, and attorneys will be inspired to build on new generations of this guide to help empower defendants. Although this guide may not speak to every circumstance, it may function as a general defendant's handbook in many courts and jurisdictions.⁴

⁴ This guide is informational only – it is not legal advice. For legal advice, you should consult an attorney.

INTRODUCTION

Navigating the criminal justice system can be difficult and confusing for anyone. First, lawyers often use confusing words that it seems only other lawyers can understand. (These strange words are defined in plain English on page 9 and are bolded the first time they appear in the text after the definition section). Second, many things occur, often quickly, during a criminal case; if you don't know what to expect, the court process can be scary. This is especially true if you are experiencing homelessness. Homelessness often means you don't have helpful resources such as transportation, mail service, telephone, and internet service. But, even without those resources, knowledge is power. This guide aims to empower you to feel more prepared to navigate the criminal justice system. But please note: This guide does not provide legal advice and does not create an attorney-client relationship. If you need legal advice, please contact an attorney directly.

Instead, this guide seeks to help by:

- defining common legal terms in plain English;
- highlighting common court timelines;
- providing a physical orientation to the courtroom;
- briefly summarizing your basic rights while incarcerated; and finally,
- suggesting ways you can advocate for yourself.

Clarifying how the legal system works for unhoused people is especially important because unhoused people frequently interact with the criminal justice system. The “criminalization of homelessness” generally refers to the enactment and enforcement of local laws that target or unfairly affect people experiencing homelessness.⁵ These laws make it illegal for people experiencing homelessness to conduct necessary, life-sustaining activities, such as sleeping, going to the bathroom, and receiving food.⁶

While some cities argue these laws are necessary to improve public health and safety, criminalization laws can actually make homelessness, public health, or safety even worse.⁷ For example, the Seattle Police Department's studies have shown there was no significant increase in crime associated with permitted homeless encampments.⁸ Still, people experiencing

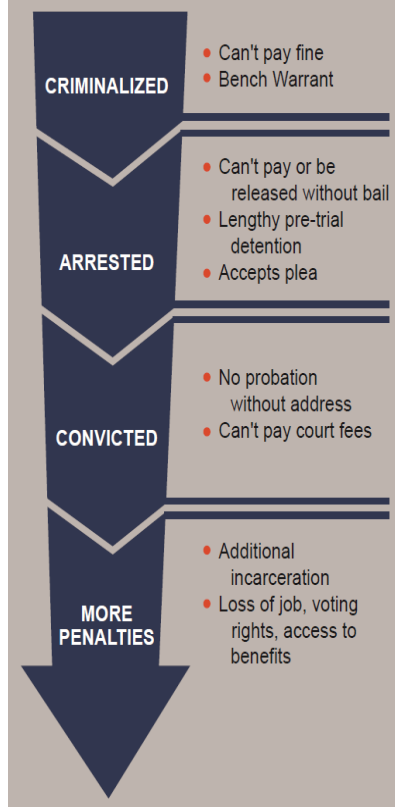
⁵ See Justin Olson & Scott MacDonald, Seattle University Homeless Rights Advocacy Project, *WASHINGTON'S WAR ON THE VISIBLY POOR: A SURVEY OF CRIMINALIZING ORDINANCES & THEIR ENFORCEMENT* (Sara Rankin ed., 2015).

⁶ *Id.*; see also *Criminalization of Homelessness: Additional Resources*, Seattle University Homeless Rights Advocacy Project, <https://law.seattleu.edu/centers-and-institutes/korematsu-center/initiatives/homeless-rights-advocacy-project/additional-resources>.

⁷ See Joshua Howard & David Tran, Seattle University Homeless Rights Advocacy Project, *AT WHAT COST: THE MINIMUM COST OF CRIMINALIZING HOMELESSNESS IN SEATTLE AND SPOKANE* (Sara Rankin ed., 2015)

⁸ The City of Seattle, *Permitted Encampment Evaluation*, 1 (2017), <http://www.seattle.gov/Documents/Departments/HumanServices/AboutUs/Final%202017%20Permitted%20Encampment%20Evaluation.pdf>.

Homeless Persons' Access to Justice



Source: National Law Center on Homelessness & Poverty

homelessness are accused of crimes more often than housed individuals because they are unsheltered; they are more visible to law enforcement.⁹ People experiencing homelessness are also often victims of crimes.¹⁰

Criminalization is not only unfair, it is also expensive. It costs taxpayer money to police and adjudicate these laws and to incarcerate people found guilty of violating them.¹¹ It costs cities time and money to send police out to cite and arrest violators.¹² Resolving these violations in the courtroom also takes the time of judges, prosecutors, and public defenders, all of whom are paid in taxpayer dollars.¹³ Finally, it is expensive to incarcerate those who are sentenced under these ordinances.¹⁴ As one example, Seattle spent at least \$3.7 million enforcing criminalization laws in the five year span from 2009 through 2013.¹⁵

Homeless defendants are often ticketed for public nuisance offenses, such as sleeping on the sidewalk or panhandling; then, they usually fail to appear in court for reasons they cannot control.¹⁶ Surviving homelessness is often a full-time job: people experiencing homelessness must spend a significant portion of their day securing food and shelter and conducting other life sustaining activities. Unhoused defendants rarely have the time or resources to dedicate to fighting a case against them.¹⁷ Unresolved legal issues then

⁹ Interview with Janet Cavallo, Attorney, King County Department of Public Defense (November 2017).

¹⁰ Tom McGhee, *Crimes Against Homeless People Up 42 Percent*, THE DENVER POST (Jan. 15, 2018), <https://www.denverpost.com/2018/01/14/crimes-against-homeless-people-up-42-percent-in-denver-and-suburban-cops-say-thats-pushing-transients-into-their-towns/>

¹¹ It costs cities time and money to send police out to ticket and arrest violators. Resolving these violations in the courtroom also takes the time of judges, prosecutors, and public defenders, all of whom are paid in taxpayer dollars. Finally, it is expensive to incarcerate those who are sentenced under these ordinances. See Howard & Tran, *supra* note 7; see also Fisher, Marina and Miller, Nathaniel and Walter, Lindsay and Selbin, Jeffrey, CALIFORNIA'S NEW VAGRANCY LAWS: THE GROWING ENACTMENT AND ENFORCEMENT OF ANTI-HOMELESS LAWS IN THE GOLDEN STATE (February 12, 2015). Available at SSRN: <https://ssrn.com/abstract=2558944>; see also *Punishing the Poorest: How the Criminalization of Homelessness Perpetuates Poverty in San Francisco*, COALITION ON HOMELESSNESS, <http://www.cohsf.org/Punishing.pdf>

¹² Howard & Tran, *supra* note 7, at 4.

¹³ *Id.*

¹⁴ *Id.* at 4-5.

¹⁵ *Id.* at 5.

¹⁶ Common challenges can include lack of counsel, access to justice issues, sickness, lack of transportation, or mental health challenges. See *Homeless Courts*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/public_services/homelessness_poverty/initiatives/homeless_courts.html.

¹⁷ *Id.* Most unhoused individuals are "not able to fight the procedural or substantive issues a case presents." The inability to fight these issues arises because unhoused individuals usually lack transportation, money, and

turn into bigger problems and can ultimately prevent homeless individuals from accessing "desperately needed services such as employment, housing, public assistance, and treatment programs."¹⁸

Unhoused individuals commonly face a wide range of challenges from arrest to sentencing. For example, although the right to a lawyer is guaranteed by law, in some jurisdictions, the right is ignored in misdemeanor cases due to lack of funding for public defenders.¹⁹ You also have a right to a "speedy" trial, but some defendants still stay in jail for prolonged periods of time.²⁰ Other rights are also unfairly ignored. For example, some laws restrict peaceful begging, even though the constitution protects begging as free speech.²¹ Although criminalizing homelessness is often against the law, it still happens all over the country.²²

Even though some laws violate your rights, they still need to be followed unless and until a court overturns them.

These unfair outcomes often affect unhoused people, so understand how to advocate for yourself. One place to start is to know common legal terms.

I. Common Legal Terms²³

Legal terms can seem like a different language. "Legalese" is a word that refers to the formal and technical language of the legal profession.²⁴ This section defines common legal terms, but the definitions are sometimes oversimplified. The best way to make sure you accurately understand these words is to discuss them with your attorney.

resources, all of which serve as barriers to successfully navigating the criminal justice system; "A general lack of access and information is pretty crippling to unhoused defendants." Interview with Danny Sheed, Attorney, Abdi & Sheed, PLLC (November 27, 2017).

¹⁸ *Homeless Courts*, *supra* note 16.

¹⁹ Williams, *supra* note 3.

²⁰ One defendant in Seattle spent 364 days in jail under the pedestrian interference ordinance. Olson & MacDonald, *supra* note 5, at 17.

²¹ Jocelyn Tillisch and Drew Sena, Seattle University Homeless Rights Advocacy Project, *BEGGING FOR CHANGE: BEGGING RESTRICTIONS THROUGHOUT WASHINGTON STATE* (Sara Rankin ed., 2018); see also *Housing Not Handcuffs*, NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, <https://www.nlchp.org/documents/Housing-Not-Handcuffs>; see also *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015) and *Norton v. City of Springfield*, 806 F. 3d 411 (2015).

²² *Robinson v. California*, 370 U.S. 660, 666, 82 S. Ct. 1417, 1420, 8 L. Ed. 2d 758 (1962) quoted in *Kohr v. City of Houston*, Civil Action No. 4:17-CV-1473 August 29, 2017, which stated that "they are involuntarily in public, harmlessly attempting to shelter themselves-an act they cannot realistically forgo, and that is integral to their status as unsheltered homeless individuals"...enforcing the ban on camping in public would cause homeless individuals "irreparable harm by violating their Eighth Amendment right to be free from cruel and usual punishment due to their status of 'homelessness.'"

²³ Please refer to the Appendix for additional resources such as Black's Law Dictionary.

²⁴ See Legalese, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/legalese>.

A. Common Charges for Unhoused Defendants

The following words and phrases are common charges for defendants generally and unhoused people in particular.

Aggressive Panhandling:

Begging for money or other donations so it makes others feel afraid.²⁵

Drinking in Public

Drinking alcohol in public, except at a bar or other place with a license to serve alcohol.

Loitering:

Remaining in a place for no clear reason.

Panhandling:

Begging from a stranger.

Petty Theft:

Stealing property with low value.

Public Nuisance Offenses:

Any offense that affects the general public. This offense can include anything from fighting in public to urinating in public.²⁶

Public Urination:

Peeing in a public space that is not a bathroom.

Shoplifting:

Stealing something from a store. Also known as a "five finger discount."

Spanging:

Begging for spare change at freeway on or off ramps and in front of stores with or without a sign.

Trespassing:

Being on someone else's property without permission.

B. Legal Terms

You may have heard some of the following words and phrases. They are pretty common legal terms, especially in criminal court settings. Many people, even some law students and lawyers, don't know what all of these terms mean. But getting familiar with these terms can help you understand what's going on in your case.

Acquittal:

When you are found not guilty.

Adjudication:

The conclusion of a judge or jury at the end of a case.

²⁵ See Tillisch & Sena, *supra* note 21.

²⁶ *Id.*

Advocacy:

Doing something to create change. Lawyers practice advocacy when they represent you in court.²⁷

Affidavit:

A signed document that swears that all the statements in the document are true.

Aggravating Factors:

Factors or circumstances that the judge or jury can consider to give you a harsher sentence.

Alford Plea:

A plea is a deal where you plead guilty of something in exchange for avoiding trial and getting a lower or “lesser” punishment. An Alford Plea is a deal where you insist you are innocent, but you admit there’s strong evidence to find you guilty.²⁸ Approach plea deals with caution.²⁹

Allegation:

Something that someone says happened.

Appeal:

After a trial, if you appeal it means you are asking another, more powerful, court to review the earlier trial court’s decision. But you can’t appeal just because you don’t like the decision. An appeal can only happen if the trial court made a certain error.

Arraignment:

A hearing that occurs shortly after arrest, where you are brought into court, told of the charges, and asked to plead guilty or not guilty.³⁰

Arrest:

When you are taken into police custody.

Beyond a Reasonable Doubt:

The measure of just how certain a judge or jury must be that a you committed a crime before they can find you guilty. The prosecutor (the attorney trying to prove you are guilty) must persuade the judge or jury there is no reasonable doubt you committed the crime.³¹

²⁷*Advocacy vs. Lobbying, Coalition Building, and Public Engagement*, THE ALLIANCE (2003), <http://www.ctnonprofits.org/ctnonprofits/sites/default/files/fckeditor/file/policy/resources/AdvocacyVsLobbying.pdf>

²⁸ *Legal Terms Glossary*, UNITED STATES DEPARTMENT OF JUSTICE, www.justice.gov/usao/justice-101/glossary (last visited May 1, 2018).

²⁹ For more information on what you should consider before you take a plea deal, please visit: *What You Should Know About Plea Bargains in Criminal and Traffic Cases*, OHIO STATE BAR ASSOCIATION, <https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/LawYouCanUse-587.aspx>

³⁰ *Legal Terms Glossary*, *supra* note 28.

³¹ *Id.*

Bias:

Any opinion or experience that would prevent a judge or juror from being fair and may disqualify them from serving in your case.³²

Bond (also called Bail):

Money or property given to the court as a sort of security deposit in exchange for your temporary release from jail. This security deposit ensures you will later return to court.

Bondsman:

People who loan you the bail or bond money.

Burden of Proof:

Have you ever heard the phrase “a defendant is innocent until proven guilty?” This phrase means you don’t have to prove you are innocent. Instead, the prosecuting attorney must prove that the you are guilty beyond a reasonable doubt.³³

Calendar:

To calendar something means to schedule a court proceeding such as a hearing or a trial (for example, you may hear your attorney, the prosecuting attorney, or the judge say, “We need to calendar the trial.”) The word “calendar” can also be as a noun when it refers to the court’s calendar or the master list of its all cases ready for trial.

Case Record:

Courts like everything to be written down so they have a record of what’s happened so far in a case. A case record consists of all papers filed during a case, such as motions. The record also includes transcripts, or written copies of things said, at all hearings and trials in the case.³⁴

Closing Arguments:

The final statements a lawyer makes before the judge or jury decides whether you are guilty or not guilty.

Collateral:

Something of value given in exchange for a loan, so the person making the loan (often a bondsman) has a sense of security that the loan will be repaid. If the loan is not repaid, the person who gave the loan can keep the item given as collateral.

Collateral Consequences:

Indirect punishment that defendants may suffer because they were convicted of a crime. Indirect punishments usually include things like getting a job, housing, students loans, and other benefits.

³² THE COURT SYSTEM-HOW IT WORKS-WHAT IT MEANS, tenant.net/Court/Legsystem/jud23.html (last visited May 1, 2018) [hereinafter THE COURT SYSTEM].

³³ Burden of Proof, LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/burden_of_proof (last visited May 2, 2018).

³⁴ THE COURT SYSTEM, supra note 32.

Continuance:

Delaying or postponing a hearing or trial.³⁵

Conviction:

Being found guilty. When found guilty, you've been convicted.

Counsel:

Another word for a lawyer.

Criminalization laws:

Laws that affect unhoused defendants more than other people. These include laws against camping in public and trespassing.

Cross Examination:

After a witness testifies, or answers questions from their own attorney in a court hearing, the other side's attorney gets to ask questions. When the other side gets its turn to ask questions of a witness, that's called a cross examination.

Defendant:

The person accused of and charged with a crime.

Defense table:

The table in the courtroom where you and your lawyer sit.³⁶

Direct Examination:

When your own attorney asks you questions in court. Direct examinations happen before cross examinations (when the other side's attorney asks you questions in court). Ideally, your attorney will give you a chance to practice direct examination and cross examination before you get to court.

Discovery:

Each party in a case must exchange certain information early on so each side can "discover" some of the underlying facts. The discovery process makes sure that no one is hiding certain facts or important information before trial.

Discretion:

When the rules about what a judge gets to decide are a little looser than usual, so the judge might have more freedom and power to decide what should be done.

Docket:

A specific list of dates when certain events are supposed to happen in a case. A log containing brief entries of all the proceedings that have occurred in a case.³⁷

Evidence:

Facts used to prove something to a judge or jury.

³⁵ Interview with Corey Riordan, Attorney, Grant County Department of Public Defense (September 2017).

³⁶ *Legal Terms Glossary*, *supra* note 28.

³⁷ *Id.*

Exculpatory Evidence:

Evidence showing your innocence.

Felony:

A crime more serious than a misdemeanor and usually punishable by incarceration for more than one year.

First Appearance:

Sometimes, within 24 hours of arrest, you will have your first appearance in front of a judge. You'll hear the charges for which you were arrested, and you can request a public defender.

Hung Jury:

When the jury cannot agree on a verdict. A hung jury will cause a mistrial.

Incarceration:

Being stuck in prison or jail after you've been convicted.

Inculpatory Statements:

Evidence showing your guilt.

Inmate:

A person being held in jail or prison.

Jail:

A facility used to temporarily hold those who are suspected or convicted of a crime. It is used for the short-term, usually to hold those awaiting trial or to hold those convicted of low-level offenses with sentences of one year or less.³⁸

Jurisdiction:

A court's "turf." When a court has the power to decide a case, it is said to have jurisdiction over it.³⁹ Jurisdiction can be a geographic area, like a state or a city.

Jury:

People selected and sworn to decide your guilt or innocence.

Jury Instructions:

The legal rules the jurors must follow when deciding a case.

Legal Financial Obligations (or LFOs):

The fines, fees, and costs you are ordered to pay, sometimes on top of another punishment.

Miranda Rights:

If you are a suspect and the police detain you, the police must read you a set of rights. These are called Miranda Rights. When Miranda Rights are read to you, police officers must tell you four things: (1) You have the right to remain silent. (2) Anything you say can and will be used against you in a court of law. (3) You have the right to an attorney. (4) If you cannot afford an

³⁸ *Jail vs. Prison*, DIFFEN, https://www.diffen.com/difference/Jail_vs_Prison (last visited April 27, 2018).

³⁹ THE COURT SYSTEM, *supra* note 32.

attorney, one will be appointed to you. You can refuse to speak to police officers by telling them you want to remain silent and that you want an attorney.

Misdemeanor:

A crime punishable by less than a year in jail.

Mistrial:

A botched trial caused by an important mistake. When a mistrial happens, the trial can start all over again with a new jury.⁴⁰

Mitigation:

Asking the court to take away or reduce a punishment.

Motion:

A written request to the court asking the court to do something.

Negotiate:

Dealing or bargaining with another party to come to a compromise or to reach an agreement.

No Contest Plea:

A plea with the same effect as pleading guilty, where you are convicted and punished. But you don't actually admit guilt in a no contest plea, so you can avoid being sued in another related case. Always talk to a lawyer before you agree to any plea.⁴¹

Notice to Appear:

A written order from a police officer requiring you to appear in a specific court at a specific date and time instead of being physically arrested right then and there.

Oath:

A promise to tell the truth.

Objection:

If one lawyer thinks another lawyer is saying something in court against the rules, that lawyer can object by saying, "Objection!"⁴² Once a lawyer makes an objection, the judge decides whether to allow the statement (by "overruling the objection") or not to allow it (by "sustaining the objection").

Opening Statement:

The statements a lawyer makes to the judge or jury at the beginning of a trial.

Ordinance:

A "local" law passed by city or county lawmakers.

⁴⁰ *Legal Terms Glossary, supra* note 28.

⁴¹ *Id.*

⁴² *Id.*

Plea Deal/Bargain:

An agreement between you and the prosecutor where the you plead guilty in exchange for a lesser or lower punishment.⁴³

Prison:

A facility that holds convicts who have committed crimes the legal system deems especially serious for more long-term sentences.⁴⁴

Probable Cause:

The measure of suspicion a police officer must have that you are doing something illegal before they can stop you, search you, or arrest you.

Probation:

When the court allows you to get out of jail if you follow certain rules and stay under supervision.⁴⁵

Pro se:

If you represent yourself in court without a lawyer. Going pro se is almost always a bad idea.

Prosecutor:

The attorney representing the state, county, or city government that formally accuses you of committing a crime. Also called “the State.”

Public Defender:

A lawyer who represents you if you cannot afford to pay for your own lawyer.

Sentencing:

The process, after you’ve been convicted, when the judge orders you to spend a certain amount of time in prison.

Statute:

A law passed by state or federal lawmakers.

Testimony:

Written or verbal evidence provided by someone in your case. You can also be a source of testimony.

Transcript:

A written copy of everything that is said in court.

Trial:

If you are arrested and your lawyer doesn’t come to an agreement with the prosecutor early in your case, you’ll head to trial. Trial is when the judge or jury hears all the evidence and decides whether you are guilty of a crime.

⁴³ *Id.*

⁴⁴ *Jail vs. Prison, supra* note 38.

⁴⁵ *Legal Terms Glossary, supra* note 28.

Verdict:

The decision of whether you are guilty or not guilty.

Voir Dire:

This phrase literally means “to see to say.” Voir dire is when the lawyers get *to see* people who might be on the jury and hear what those people *say* in response to questions. It’s like a “try out” for the jury. The lawyers will ask a bunch of questions to see what potential jurors know about the case or whether they seem able to be fair. If the lawyers don’t like what they see or what a person says in voir dire, the lawyer can “strike” or remove them from serving on a jury.⁴⁶

Warrant:

A warrant is written permission from the court allowing police officers to either search a person or a place or to arrest someone. An *arrest warrant* is a written order from a court saying the police can arrest a person. A *search warrant* is a written order from a court saying the police can search a specific person or place. A *bench warrant* is a written order from a court saying you have failed to show up to court for a hearing or you have violated a court rule. A bench warrant is enforced by police officers.

Witness:

Someone with knowledge about some events or facts that matter to your case. Attorneys usually want witnesses to write or speak about what they know in testimony that is then shared with the judge or jury.

That's a lot of definitions! You certainly don't have to memorize them all. Just know they are here to look up if you need. For the rest of this guide, we'll try to bold these words the first time they show up in the text, so you can see them being used in context.

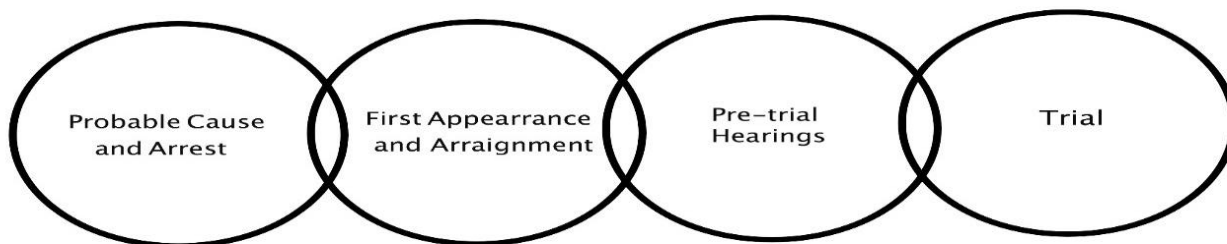
For now, let's move on to what to expect after you are arrested.

II. Timeline: What to Expect After You are Arrested

Navigating the criminal justice system can be a confusing task. This next section sheds light on some basic things that might happen from the time you are arrested through trial. First, this section explains some events that happen after arrest. Second, it gives some information about courts, such as which courts hear which cases, how courtrooms are laid out, who the other people in the courtroom are, and what sort of behavior is expected in the

⁴⁶ *Id.*

courtroom. Finally, this section explains what happens if your case goes to trial.



Artist: Vito Chiechi

A. Post Arrest Hearings and Procedures

Remember that police must have **probable cause** before they can arrest you. Probable cause means that the officer must see reasonable link between you and a crime to believe that you are involved. Probable cause is a fairly easy standard to meet. Sources of probable cause include what the officer sees, smells, or hears,⁴⁷ some indirect **evidence**, an officer's instincts based on police training, or information given to the officer by someone else. After you are arrested, you will either be brought to **jail** or given something called a **Notice to Appear** in court. A Notice to Appear is a written order from a police officer requiring you to appear in a specific court at a specific date and time instead of being physically arrested.⁴⁸ If you don't receive a Notice to Appear and instead are brought directly to jail, you will be booked and processed, which means you and a police officer will fill out some paperwork, record your name and last known addresses, and take your fingerprints and photograph.

A **bond** might be set. The court uses several factors to determine whether to set a bond for you and the dollar amount. These factors include the court's sense of whether you pose a "flight risk," which means whether the court thinks you will run away and not come back to court. Other factors include the crimes, how dangerous you seem, and the safety of the community.⁴⁹ If the crime is non-violent, you will usually be released from **jail** before the next court hearing.⁵⁰ But for individuals experiencing homelessness, **bail** is often denied because judges are concerned about the transient nature of being homeless.⁵¹ This means that judges are concerned that you will not show up to your court hearings because you are experiencing homelessness.

If a bond is set, you may pay the cash amount (which, in some states, might be returned to you at the end of the case), put something valuable up as **collateral** (such as a house or car),

⁴⁷ Observation is information obtained by an officer through first hand observation.

⁴⁸ FL. CRIM. PRO. 3.125., <https://floridacriminalprocedure.com/3-125-notice-to-appear/>.

⁴⁹ *How Courts Work – Steps in a Trial*, ABA AMERICAN BAR ASSOCIATION, www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work.

⁵⁰ Interview with Janet Cavallo, *supra* note 9.

⁵¹ *Id.*

or borrow money from a **bondsman** to get out of jail until the next court hearing.⁵² Many defendants borrow money from a bail bondsman because they do not have enough money to post their entire set bond by themselves. You must pay for the bondsmen's services. Bondsmen usually charge you a percentage of your total bail amount. Once you pay for the bondsman's services, they will post the bond on your behalf. The bondsmen only have to post 10% of the total bond amount to get you out of jail. You will usually be required to pay bail bondsman 10% of the bond amount. Then, the bondsman will secure the rest of your bail in collateral. If you have nothing valuable to put up as collateral, you may ask a relative or a friend to assist you with this.⁵³ Once the bail bondsman posts your bail, you will be released from jail until your next court hearing. If you do not show up to your court hearing, the bail bond posted on your behalf will not be returned by the court. Besides losing the 10% of the total bond, the bondsman will use your or your family's collateral to pay the remaining 90% of the total bond to the court.⁵⁴

*Try to negotiate
with the
prosecutor
BEFORE your
charges are filed.*

In some jurisdictions, if bond has not been set or if you cannot afford the bond, you will have a **First Appearance** hearing in court. If you are arrested in a jurisdiction with First Appearance hearings, this appearance will typically take place within 24 hours of arrest. During this hearing, you will hear the charges for which you were arrested. The First Appearance hearing is a chance for you to request a public defender, although it is not required you get one for this hearing. If bond has not already been set, it will be set during this proceeding. The judge can also choose not to

set bond, in which case, you will be released from custody until the next court hearing.

After the First Appearance hearing, the court will send the prosecutor a document that sets forth all the reasons that the arresting officer arrested you.⁵⁵ The prosecutor reads this document and then decides whether to pursue your case and, if so, which charges to file. The time before a prosecutor formally files charges is an important time. You and your attorney should try to **negotiate** with the prosecutor about your case before the prosecutor files the charge to minimize any damage. It is often easier for your attorney to negotiate charges at this early point than it is to renegotiate for lower charges later. In criminal cases, the prosecuting attorney represents the State against the defendant and is therefore also called "the State."

⁵² See *How Courts Work – Steps in a Trial*, *supra* note 49.

⁵³ See What Is a Bail Bond & How Do They Work?, SURETY SOLUTIONS, <http://blog.suretysolutions.com/suretynews/what-is-a-bail-bond>, (last visited May 1, 2018).

⁵⁴ *Id.*

⁵⁵ In Washington, this is called an "Information." Other jurisdictions may call it an "Arrest Affidavit." Many jurisdictions also use grand jury indictments to file formal charges against a suspect. A grand jury plays an important role in the criminal process, but not one that involves a finding of guilt or punishment. Instead, the attorney that represents the State will work with a grand jury to decide whether to bring criminal charges against a defendant. An indictment is the written document that charges a defendant with a crime.

In Seattle, it takes up to a week to get assigned a public defender, so if you are not held in jail, the public defender must contact you. This arrangement is problematic because it is sometimes difficult for the public defender to get a hold of their clients if they are experiencing homelessness since they rarely have a phone or have only a general mail delivery address to a shelter. If it takes the public defender a lot of time to get a hold of their clients, the clients suffer because they will likely miss their court dates and may end up with a warrant if they do not show up in court.⁵⁶

Make sure there's some way for your public defender to reach you so you do not miss any court dates.

Regardless of whether there is a First Appearance, you will have an **arraignment**. This is the point when you stop being a suspect and officially become a defendant. In jurisdictions that combine First Appearance hearings and arraignments, like Washington, this hearing is when you see the judge and a public defender for the first time. You'll also be told of your rights. During the arraignment, the judge may keep you in jail until your trial begins. The judge may also decide to release you until your trial begins. When a judge releases you, he or she may set conditions of your release. For example, some conditions a judge might give you are that you can't drink or use substances, you can't commit any additional crimes while on release, or you can't have contact with any alleged victim. If you violate the conditions of your release, you will go back to jail until your trial begins. An arraignment is also when you will officially enter a plea of guilty or not guilty.⁵⁷

Next comes the **discovery** phase. Discovery is a formal process where parties exchange information about any **witnesses** and evidence each party thinks is important for trial. This is a chance for you to demand or "discover" all the evidence against you. The prosecutor will have a certain amount of days to give your attorney the evidence he or she has. Discovery allows both parties to see all the evidence before trial, which helps both sides plan and decide what they want to do.

Over 90% of cases end in plea deals, where the case never goes to trial. Approach plea deals with caution.

Around this time, attorneys are usually negotiating **plea deals**. A plea deal is a bargain made between your attorney and the prosecutor, where you agree to plead guilty in exchange for lower charges or a lighter sentence. Most criminal cases result in plea deals, but this does not mean plea deals are always a good idea.⁵⁸ Approach plea deals with caution and discuss the consequences with your attorney.

⁵⁶ Interview with Janet Cavallo, *supra* note 9.

⁵⁷ Interview with Janet Cavallo, *supra* note 9.

⁵⁸ Plea deals may be efficient, but they can also be quite problematic. "Plea bargains make it easy for prosecutors to convict defendants who may not be guilty, who don't present a danger to society, or whose 'crime' may

After discovery, the court will schedule hearings before the trial happens—called **pretrial hearings**.⁵⁹ At pretrial hearings, the judge will often ask whether the parties are ready for trial or whether they need a delay or **continuance**. These pretrial hearings are usually scheduled within two weeks of the arraignment if you are waiting in jail, or four weeks if you have been released from custody.⁶⁰ Lawyers on both sides may request a continuance or schedule the case for trial.

A continuance is supposed to allow each side time to prepare for court, but some lawyers also seek continuances even when they've already had reasonable time to prepare but still have not done so.

You have a right to a speedy trial. A speedy trial begins 90 days from arraignment if you are out of jail or 60 days from arraignment if you are in jail. However, if you want your lawyer to have more time with your case and ask for a continuance, you must give up your right to a speedy trial. "It is not uncommon for public defenders to keep continuing without doing any work on the case because they are just so busy. This can be really difficult for homeless individuals who already have problems with transportation."⁶¹

If the judge grants a continuance, the case is delayed and scheduled for another pretrial hearing later. But, after learning more facts through discovery, your lawyer may file pretrial **motions**, asking the judge to make a decision about something specific. So, another option is to schedule the case to the motion **calendar**. Some common motions include a Motion to Dismiss⁶² and a Motion to Suppress Evidence.⁶³ You can also use a pretrial motion to plead guilty. If you plead guilty before trial, the case skips the trial and goes directly

primarily be a matter of suffering from poverty, mental illness, or addiction." Prosecutors often threaten that if defendants take their cases to trial, they will face more serious charges or harsher sentences. In turn, the style of defense defendants receive from overworked public defenders has been termed, "Meet 'em, greet 'em, and plead 'em." Taking a plea deal can also have longstanding consequences. Having a record, even for a minor violation, can mean that a person will face tougher charges and punishment if he or she again encounters the criminal justice system. Emily Yoffe, *Innocence is Irrelevant*, THE ATLANTIC (Sept. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>. So, although pleas are meant to save time and money, "critics argue that the push to resolve cases through plea bargains jeopardizes the constitutional rights of defendants, who may be pressured to admit guilt whether they are guilty or not." Gretchen Gavett, *The Problem with Pleas*, FRONTLINE PBS (Oct 31, 2011), www.pbs.org/wgbh/frontline/article/the-problem-with-pleas/.

⁵⁹ Pretrial hearings may also be called "calendar calls" or "case settings."

⁶⁰ Interview with Janet Cavallo, *supra* note 9.

⁶¹ Interview with Corey Riordan, *supra* note 35.

⁶² A Motion to Dismiss asks the judge to dismiss the case because there is not enough evidence to convict a defendant beyond a reasonable doubt.

⁶³ A Motion to Suppress Evidence asks the judge to not allow certain pieces of evidence to be displayed or heard at trial. This is commonly used to get rid of evidence that law enforcement obtained unlawfully, such as in an illegal search.

to sentencing. When a defendant takes a plea deal in most misdemeanor cases, sentencing takes place the same day. But if the parties do not reach a plea deal and the pretrial motions don't end the case, the case will eventually go to trial.

At this point in the guide, you already know more than most about what happens in a criminal case. Here's a few key tips from a public defender when it's your case:

Advice from a public defender:

- If you do not have a working phone or address, try to keep an email address.
- When you are being placed into jail, make sure to tell the police that you are experiencing homelessness.
- Provide them with any contact information you can think of, even if it is a friend or family member's contact info.
- This is the only information a public defender gets when they are assigned your case, so it is important.
- The date of your hearing is not the time to sit and talk with your attorney. You should really talk to them before then. Your public defender will probably not have much more than a few minutes to talk to you on the date of your court hearing.
- You can go to the public defender's office to talk to your attorney. If they are not there, make sure to leave a note with information to let them know how to get in touch with you.
- Bring as much information as possible to meet your attorney, such as documents given to you by the judge or a police officer, or a list of any questions you have.

B. Inside the Courtroom

Knowing the stages of a criminal case is helpful, but it's daunting to enter a courtroom without knowing a little about how it is set up or what it is like inside. Therefore, it can help for you to know the levels and types of courts, a basic layout of a typical courtroom, the roles of

various people you'll likely see in a courtroom, and what sort of behavior is expected in a courtroom.

First, the court where your case is heard will depend on what crime you are charged with. If you are charged with a federal crime, your case will be heard in the United States District Court. If you are charged with a local city or state crime in Washington, your case may be heard in a municipal court,⁶⁴ a district court⁶⁵, or a superior court.⁶⁶ Whether you appear in a municipal, district, or superior court will usually depend on whether you've violated a specific city, town or state law, and whether you've been charged with a misdemeanor or a **felony**. You can see which court your case will be heard in by simply looking at your charging documents.

If you are charged with a misdemeanor, your case may be heard in municipal or district court. Municipal is just a fancy word that means city. So, if you've been charged with violating a city law, your case will be heard in a municipal court.⁶⁷ Remember that laws vary from one city to another city. So, what is legal in one city may be illegal in another.⁶⁸

If you've been charged with violating a state law, often called a **statute**, you will appear in district court.⁶⁹

If you are charged with a felony, your first appearance or first hearing may be in district court or superior court. While this first hearing may be in district court, all other court events will take place in superior court if you've been charged with a felony.

Finally, a word about juries. In both municipal courts and district courts in Washington, juries consist of six people.⁷⁰ In superior courts in Washington, juries usually consist of twelve people. However, the sizes of juries may vary depending on jurisdiction.⁷¹

This mess of courts can be hard to follow. A flow chart on the next page shows the relationships of these different courts: typically, trial courts are at the bottom, next highest are appellate courts, and the highest levels are often called supreme courts.

⁶⁴ A list of municipal courts in Washington:

https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.crtPage&crtType=Muni

⁶⁵ A list of district courts in Washington:

https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.crtPage&crtType=Dist

⁶⁶ A list of superior courts in Washington:

https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.crtPage&crtType=Super

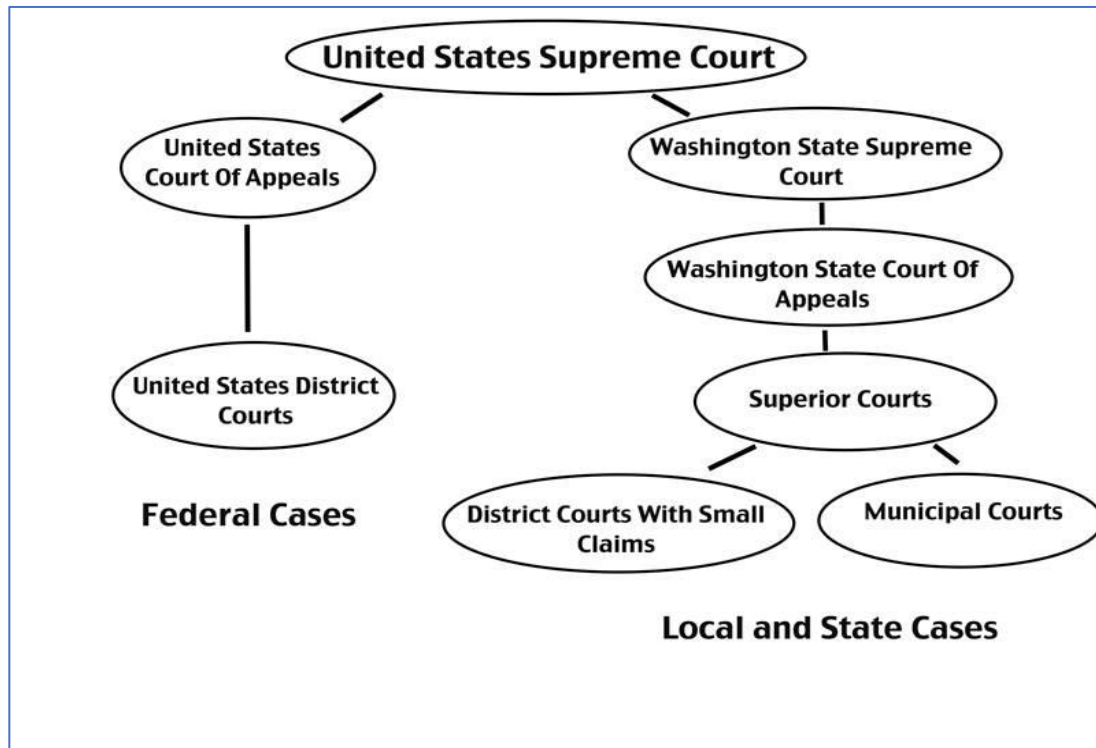
⁶⁷ Seattle Municipal Code, Title 12A outlines the Seattle criminal municipal codes at https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT12ACRCO

⁶⁸ For example, in Washington, what is legal in Renton may not be legal in Seattle.

⁶⁹ WASH. CRIM. CODE, Title 9A RCW, <http://apps.leg.wa.gov/rcw/default.aspx?Cite=9A>

⁷⁰ *Courts of Limited Jurisdiction*, WASHINGTON COURTS, at https://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.display&altMenu=Citi&folderID=jury_guide&fileID=limited (last visited May 1, 2018).

⁷¹ *Id.*



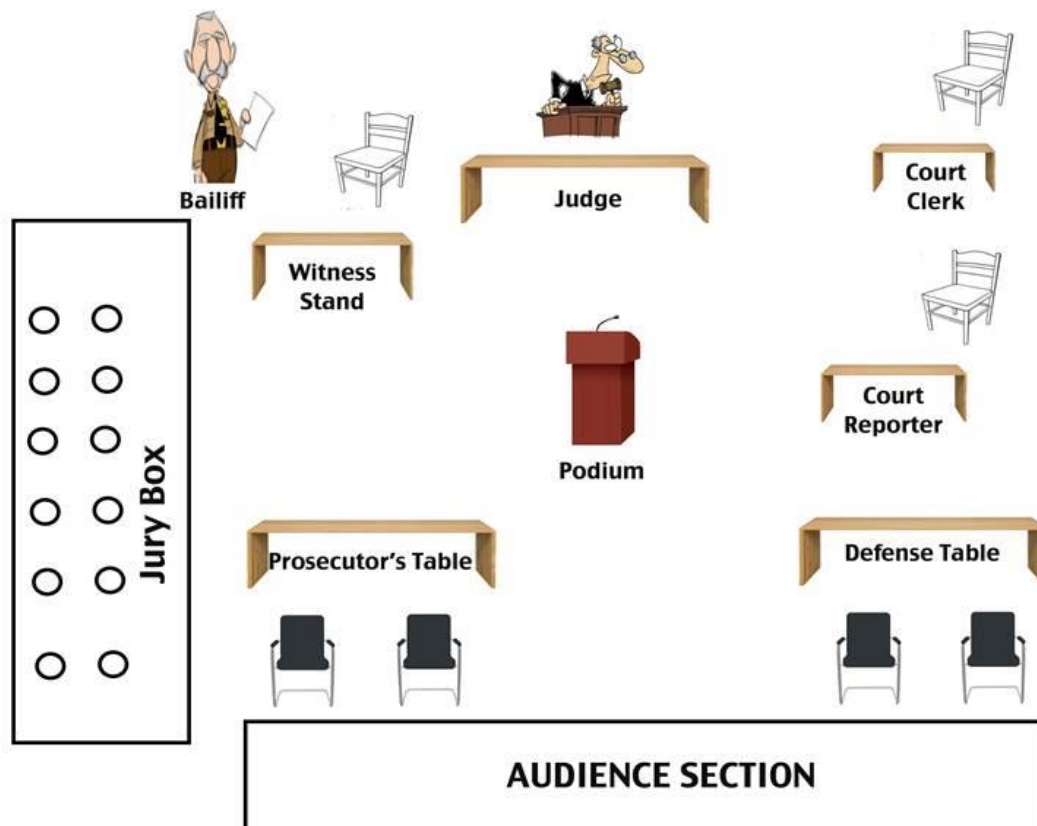
Artist: Vito Chiechi

Now that you know about the levels and types of court, let's cover some of the common ways that courtrooms are set up.

Most courtrooms will have two separate tables for attorneys and parties: one table for the defense and one table for the prosecution. Imagine that you are facing the judge's bench, where the judge sits in the middle of the room. When facing the judge, the table on your left is usually where the prosecutor sits. The defendant will usually sit on the right at the **defense table**.

Right in front of the judge is a podium, which is a skinny standing desk where the attorneys walk up and talk to the judge.

Although courtrooms are usually set up like the drawing on the next page, a courtroom might be laid out differently:



Artist: Vito Chiechi

Besides the judge, lawyers, and defendants, other people in the courtroom include a court clerk, a court reporter, and the bailiff. These three courtroom players help the judge. A court clerk's job is to file important documents in your case submitted to the court as evidence.⁷² The court reporter records everything that is said in the courtroom, usually by typing it up on an unusual-looking typewriter.⁷³ Finally, the bailiff keeps everything and everyone in order, calls witnesses, and is in charge of the **jury**.⁷⁴ The bailiff escorts the jury members from the jury room to the court room and back, and is the main point of contact between the jury and the judge. For example, if a juror is sick or has a question, he or she would tell the bailiff, who would then tell the judge.⁷⁵

Even knowing how a courtroom is designed or the roles of other people in the room may not make you more comfortable about how to behave in a courtroom. The courtroom is a

⁷² THE PLAYERS IN A TRIAL COURTROOM, AZcourts.gov/guidetoazcourts/The-Players-in-a-Trial-Courtroom (last visited May 1, 2018).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Bailiffs: What to do When They Tell You What to Do*, OHIO STATE BAR ASSOCIATION (May 31, 2016), <https://www.ohiobar.org/ForPublic/Resources/LawYouCanUse/Pages/LawYouCanUse-576.aspx>

formal place where people may seem to behave stiffly. Speaking to a judge and all the formal rules can be intimidating.

Therefore, knowing basic courtroom manners can help boost your confidence. First, arrive early or at least on time.⁷⁶ Second, turn off any electronic devices and cell phones before entering the courtroom.⁷⁷ Third, stand up when the judge and jury enter and leave the courtroom.⁷⁸ Fourth, stand when speaking to the judge.⁷⁹ However, allow your attorney to answer questions unless the judge speaks directly to you. When speaking to the judge, refer to him or her as "Your Honor."⁸⁰ It is also a good idea to sit up straight when sitting at the **defense table**. Be polite to the judge, the prosecutor, and court staff, even if it seems like they are not being nice to you.⁸¹ Do not interrupt others while they are talking.⁸² Fifth, do not use profanity, argue, or verbally react to answers anyone else gives in court.⁸³ Don't roll your eyes, sigh loudly, or make any other gesture that shows you disagree what someone else said, even if it seems to you like what they said is wrong or untrue.⁸⁴ Sixth, wear the nicest and cleanest clothes you own or can borrow.⁸⁵ Tuck your shirt in, and remove any hats or sunglasses.⁸⁶

Proper courtroom
manners can actually
influence the
outcome in your
case.

These tips may seem silly or unnecessary, but even good manners and presentation can affect how decision-makers see you in court. And, even though it can be unfair, how they see you can affect whether they think you've done something wrong and, if so, how severe your sentence should be.

C. Trial

Good manners matter; but ultimately, your case will turn on the law and the evidence. Remember that if the case goes to trial, the prosecution has the **burden of proof**. This means you are innocent until proven guilty, and the prosecution must shoulder the "burden" of proving your guilt **beyond a reasonable doubt**. Trials can be "bench trials," where the judge (who sits on a higher up ledge or "bench" behind a table in the middle of the courtroom) will

⁷⁶ Darice Britt, *Courtroom Etiquette: How to Behave in Court*, SOUTH UNIVERSITY, (Apr. 2013), source.southuniversity.edu/courtroom-etiquette-how-to-behave-in-court-132066.aspx.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Courtroom Etiquette*, UNITED STATES BANKRUPTCY COURT, NORTHERN DISTRICT OF IOWA, www.ianb.uscourts.gov/docs/pro_se/CourtroomEtiquette.pdf

⁸⁴ *Representing Yourself in Small Claims Court*, ECOSTAR LAW BLOG, April 23, 2009, <https://ecostarlaw.wordpress.com/category/courtroom-procedures/>.

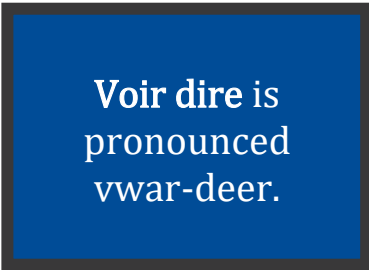
⁸⁵ Britt, *supra* note 76.

⁸⁶ *Representing Yourself in Small Claims Court*, *supra* note 84.

decide the outcome, or jury trials, in which members of the community will hear the evidence and decide. Bench trials typically occur in traffic cases, civil disputes (think: not a criminal case), and certain juvenile offenses.⁸⁷

If it is a jury trial, the first phase is selecting the jury in a process called **voir dire**. Voir dire is a chance for attorneys on both sides to question possible jurors. Attorneys will be strategic in deciding which jurors to keep or which to dismiss.

Once the jury is selected, they are sworn in. Then, attorneys make their **opening statements**. During opening statements, the lawyers briefly explain to the jury what the case is about, what the law requires the attorneys to prove, and what they think the jury should decide and why. The prosecution must go first because they have the burden of proof. Your attorney will usually deliver an opening statement during this time, but they may also wait until after the prosecution is done with presenting its case, sometimes called the point when the party "rests."



Voir dire is pronounced vwar-deer.

After opening statements, the prosecution gets to call witnesses and present evidence. The prosecutor will question their own witnesses through a process called **direct examination**. Direct examination is when an attorney asks questions to a witness they like because they think the witness will help their side. The defense can ask these prosecution witnesses questions too. This process is called **cross examination**. During cross examination, an attorney will try to poke holes in the witness's testimony. The point of cross examination is to prove to the court or the jury this witness is not reliable. Court procedures generally allow the prosecution and defense attorneys to ask questions of each other's witnesses.⁸⁸

Once the prosecution is done with its arguments and "rests," your attorney can present your side, which is essentially the same process as what the prosecution does: calling witnesses and presenting evidence. However, your attorney has no obligation to call any witnesses or present any evidence because the State must prove that you are guilty. It is common for defendants *not* to testify on their own behalf. Still, it is usually a good idea for your attorney to offer the best witnesses or evidence possible for your side.

Once both sides have rested, the State and the defense will give their **closing arguments**. Closing arguments are the last chance for either side to talk to the judge or jury before they decide the case. Closing arguments sum up and recap everything that was said, especially to show the judge or jury why you are guilty or not guilty.

⁸⁷ Marcus Bazzell Boston, *Jury Trial vs. Bench Trial: What Are Some Key Differences*, AVVO (April 18, 2017), <https://www.avvo.com/legal-guides/ugc/jury-trial-vs-bench-trial-what-are-some-key-differences->.

⁸⁸ After the cross examination of each witness, the prosecution will again get an opportunity to question their witness on re-direct examination. Re-direct examination is generally used to remedy any damaging effects the cross examination may have had.

In a jury trial, the judge will instruct the jury on the law, so the jury knows what legal tests or rules they must use before they decide the case.⁸⁹

The jury then deliberates or meets in private to discuss what they think the outcome should be. If jurors agree on a **verdict**, they will deliver a guilty or not guilty verdict to the court, and the verdict will be read aloud in front of all parties.⁹⁰ If the jury cannot agree, that is called a **hung jury** and will cause a **mistrial**.

If you are found not guilty, also called an **acquittal**, the prosecutor may not **appeal**. But, if you are found guilty, you might be able file an appeal and take the case to a higher, more powerful, court. To appeal a finding of guilt, your attorney must find evidence that something was done wrong. You cannot appeal just because you do not like the outcome of a guilty verdict. Figuring out whether you can appeal a case depends on the facts and the law and this decision should be made after discussing your options with an attorney.

If you are found guilty, also called a **conviction**, a sentencing stage will follow. Sometimes, judges must follow certain rules about what sentence you will receive based on the verdict. For example, the law might tell the judge he or she must sentence you to some days in jail. In other instances, a judge has **discretion** in sentencing, which means he or she has a lot more freedom to decide what your sentence will be. Judges may consider many things in your sentencing, such as the crime, your criminal history, **aggravating factors** such as whether you injured anyone,⁹¹ and **mitigating factors**, such as whether you have suffered abuse or other bad circumstances that might have contributed to your actions.

At sentencing, a judge may consider "aggravating factors" that could make your sentence worse, like whether you've injured someone. Or "mitigating factors" that could make your sentence lighter, like whether you've suffered abuse.

Sentencing is an important opportunity for your attorney to present mitigating evidence that supports a lesser sentence, such as having any of your family and friends testify

⁸⁹ Jury instructions are important and are sometimes disputed by parties. Lawyers may object to instructions that are confusing or misleading, or terms that may confuse jurors. See Christina Alonso, *Younger Lawyer's Corner: Advice on Jury Instructions and Verdict Forms*, AMERICAN BAR ASSOCIATION (Sept. 24, 2012), <http://apps.americanbar.org/litigation/committees/appellate/email/summer2012/summer2012-0912-jury-instructions-verdict-forms-young-lawyer.html>

⁹⁰ In federal courts, the jury must reach a unanimous verdict. This means that all 12 jurors must agree that you are guilty. In state courts, whether a jury needs to be unanimous depends on the state and the type of trial. For criminal trials, nearly every state requires a unanimous verdict. *Must all Jury Verdicts Be Unanimous*, FIND LAW, <http://litigation.findlaw.com/legal-system/must-all-jury-verdicts-be-unanimous.html>.

⁹¹ See, e.g., *Cunningham v. California*, 549 U.S. 270 (2007). Aggravating factors, such as the severity of injuries suffered by the victim or hate crimes, must be proven beyond a reasonable doubt to a jury.

about your character.⁹² Remember that sometimes the judge has no choice about the sentence you will receive.⁹³ Some of these factors are discussed further in the next section.

III. Harm Reduction

People often lose hope after they've been found guilty of a crime. However, continue to advocate for yourself even if you've been found guilty. Sometimes your sentence isn't the only punishment you might receive. This section first describes types of "extra punishments" that can happen to you beyond your sentence. These extra punishments, which everyone wants to avoid, are sometimes called "**collateral consequences**." (Ever heard the term collateral damage? Collateral consequences are like that.)

But you can advocate for yourself to increase the chance of a better outcome. This section also provides information on how you can reduce your sentence or punishment by being aware of and voicing circumstances in your life that could reduce or "mitigate" harm to you. These circumstances are called mitigating factors. This section also describes **diversion programs** that can help you avoid **incarceration** and focus on rehabilitation. Once you know about these harm reduction options, you can discuss them with your attorney.

A. Collateral Consequences

Collateral consequences, or extra punishments in addition to your sentence, can happen because the law may prevent people with criminal records from getting jobs, receiving public benefits including Supplemental Nutrition Assistance Program (SNAP) or Temporary Assistance to Needy Families (TANF),⁹⁴ professional licenses, housing, voting, education, and other opportunities.⁹⁵ Collateral consequences most frequently affect people convicted of a crime; however, in some states an arrest alone—even one that does not result in a conviction—can trigger a collateral consequence.⁹⁶

Collateral consequences can have a big impact on your life. But until recently, judges, prosecutors, and defense **counsel** rarely talked about them. The laws dealing with collateral consequences can be difficult to find and understand. So even attorneys and judges may not be familiar with the collateral consequences triggered by certain crimes. They may not have the time or ability to research these laws and figure out whether they apply to your case. The

⁹² Other types of mitigating evidence might include the lack of a criminal record, the defendant's minor role in the offense, genuine remorse, mental or physical illness, or past circumstances of abuse. *See, e.g., Aggravating and Mitigating Factors*, JUSTIA, <https://www.justia.com/criminal/aggravating-mitigating-factors/>.

⁹³ For example, in Washington, certain crimes, such as Murder or Assault in the First Degree, carry mandatory minimum sentences. Additionally, any crime may have an "enhancement," meaning that if a certain fact concerning the commission of the crime is found to be true, such as the use of a firearm, there may also be another mandatory sentence.

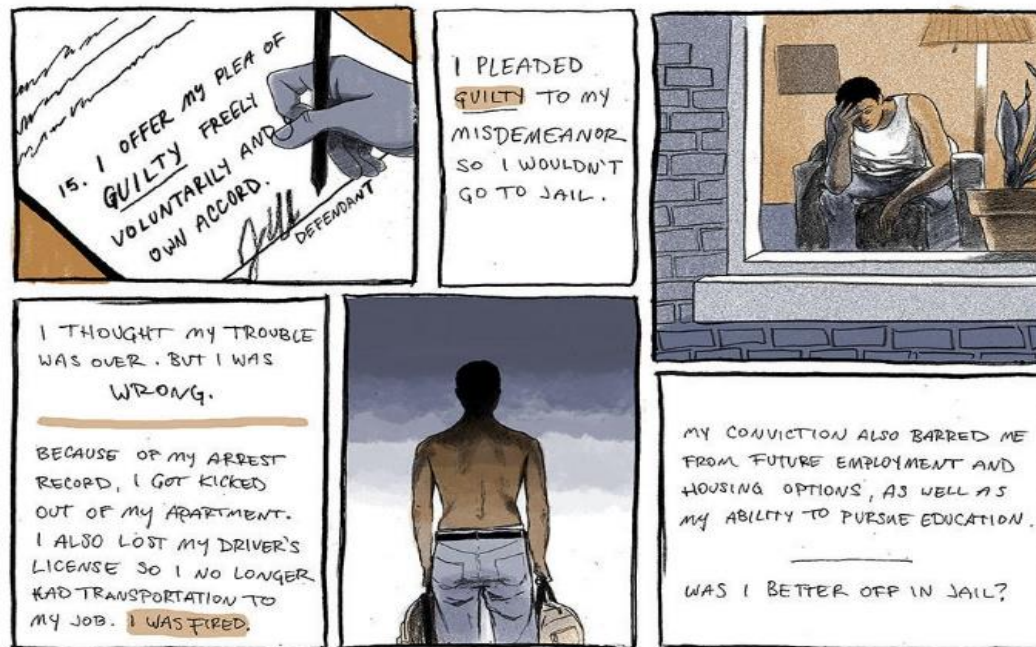
⁹⁴ *Unlocking Justice: State Collateral Consequences Reform*, THE SENTENCING PROJECT, 1, 7 (2012), <http://www.sentencingproject.org/publications/unlocking-justice-state-collateral-consequences-reform/>

⁹⁵ *See National Inventory of the Collateral Consequences of Conviction – Project Description*, JUSTICE CENTER, <https://niccc.csgjusticecenter.org> (last visited December 3, 2017).

⁹⁶ *Id.*

people involved in your case may not realize the full difficulties you might experience if you are found guilty or plead guilty to particular charges.

You are often your own best advocate. Be aware that pleading guilty or being convicted of a certain crime can cause these collateral consequences or "extra punishments" beyond your sentence. Read on.



Artist: Susannah Lohr, St. Louis Public Radio.

Collateral consequences differ according to the crime you are charged with.⁹⁷ Many collateral consequences apply to felonies, and some consequences apply only to specific felonies.⁹⁸ For example, drug crimes carry a special set of collateral consequences such as loss of the ability to secure federal loans for school or to buy a house.⁹⁹ And once you are convicted of a felony, you are prohibited from owning or carrying a firearm for the rest of your life unless

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Sara B. Brenson, *Beyond the Sentence: Understanding Collateral Consequences*, NATIONAL INSTITUTE OF JUSTICE (2013), <https://www.nij.gov/journals/272/Pages/collateral-consequences.aspx>

you try to regain your right to own a firearm.¹⁰⁰ Many states stop a person convicted of a felony from voting; however, there are states where the right to vote is restored if you complete your incarceration or **probation**.¹⁰¹

One possible consequence of a criminal conviction is a **Legal Financial Obligation** or “LFO.” LFOs are the fines, fees, costs, and restitution imposed by the court on top of a criminal sentence.¹⁰²

Nearly every person convicted in a Washington court receives a bill for LFOs at sentencing.¹⁰³ Can you believe that the average LFOs imposed in a felony case is \$2,540?¹⁰⁴ LFOs can include the cost of a public defender and a flat charge for each day spent in jail.

When advocating for yourself, it is helpful to know of a recent Washington State Supreme Court case, *State v. Blazina*.¹⁰⁵ Because the Supreme Court is the highest court in the state, its decisions are especially important. The Washington Supreme Court in *Blazina* ruled that courts must consider whether someone can pay before imposing certain LFOs. This means that if you are convicted of a crime, the court cannot make you pay fines and fees if you are living in poverty. *Blazina* is a big step toward changing an LFO system that traps people in a cycle of poverty and incarceration.¹⁰⁶

Still, fight hard to reduce harm from your conviction because the sentence you receive may not be the only or worst thing that might happen to you. Knowledge is power, so let’s learn about other approaches that can help.

Courts must consider a person’s ability to pay before imposing discretionary LFOs. This means that when you are convicted of a crime, the court cannot make you pay fines and fees if you are living in poverty.

¹⁰⁰ 18 U.S.C. § 922(g)(1-9).

¹⁰¹ *Map of State Felon Voting Laws*, PROCON, <https://felonvoting.procon.org/view.additional-resource.php?resourceID=006025> (last updated on November 9, 2017).

¹⁰² *Questions and Answers about Legal Financial Obligations (LFOs)*, ACLU WASHINGTON, <https://www.aclu-wa.org/questions-and-answers-about-legal-financial-obligations-lfos> (last visited Dec. 3, 2017).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *State v. Blazina*, 182 Wn.2d 827, 838, 839, 344 P.3d 680, 685 (2015).

¹⁰⁶ More specifically, the Court held in *State v. Blazina* that trial courts must make “an individualized inquiry into the defendant’s current and future ability to pay” before imposing court costs, and must “consider important factors, such as incarceration and the defendant’s other debts.” Moreover, the Court stated that if a person meets established criteria for determining indigence (like receiving needs-based public assistance or having an income at or below the poverty level), courts should “seriously question that person’s ability to pay LFOs.” In the *Blazina* case, a poor criminal defendant was ordered to pay thousands of dollars in court costs, including the cost of a public defender, without any inquiry into or consideration of his ability to pay. The Court acknowledged that Washington’s LFO system “carries problematic consequences” including a 12% interest rate and additional collections fees. Such a consequence, said the Court, “inhibits reentry” causing “serious negative consequences on employment, on housing, and on finances.”

B. Mitigating Factors

Even if you are found guilty, you can still advocate for yourself during the sentencing phase by talking to your attorney about whether the judge (or jury) has choices about your punishment. Sometimes the judge has no choice but to give you the highest or worst punishment under the law. But sometimes the judge might have a choice. For example, the judge may choose whether you should be incarcerated at all.

Or if you are to be incarcerated, the judge may decide how long you should stay in jail. Or the judge might have a choice about whether you must pay a fine or how big of a fine you might have to pay. When the judge has such choices, this is another way of saying the judge has **discretion** to decide your sentence or punishment.

Common mitigating factors:

- Do you have kids?
- Are you in school or trying to go to school?
- Do you suffer from PTSD or other mental illness?
- Are you willing to go to AA meetings or get a drug evaluation?
- Did you face other circumstances at the time, such as provocation, stress, or emotional problems that might not excuse the crime but might offer an explanation?
- Do you express genuine remorse for committing the crime?

When a judge has discretion, ask your attorney whether it would help to share information about your life or circumstances that would help others to understand you are a good person or have had challenges in your life. You must tell the truth.¹⁰⁷ Sometimes, it's hard to share this personal information with other people, especially when you have been found guilty of a crime.¹⁰⁸ But sometimes these true stories can help to reduce your sentence or punishment.

Mitigation is a fancy word that means to stop or reduce. So, information that might help to stop or reduce your sentence or punishment are called "mitigating factors."

¹⁰⁷ Ask your attorney whether any "mitigating factors" might apply in your case. Some other common mitigating factors can be found at this link:
http://lobby.la.psu.edu/049_Criminal_Justice_Reform/Organizational_Statements/Sentencing%20Project/SP_Mitigating_frna.pdf.

¹⁰⁸ *Trends in Harm Reduction and Substance Use in the U.S. Criminal Justice System*, VERA,
<https://www.vera.org/publications/new-normal-opioid-use-criminal-justice-system/new-normal-opioid-use-criminal-justice-system/trends-in-harm-reduction> (last visited Dec. 3, 2017).

Mitigating factors are often present in the lives of people experiencing homelessness. People experiencing homelessness are usually charged with crimes they feel they have no choice but to commit to survive, such as trespassing or panhandling. Some people commit these crimes because they do not have shelter or money.¹⁰⁹

Maybe you have tried hard to get a job, to find shelter, or to make your life better. Maybe you have suffered abuse or have a mental illness that creates special challenges for you. Being homeless often means you have little or no money—which can create a big problem if part of your sentence is to pay a fine.¹¹⁰ So letting the judge know if you cannot pay a fine, but you would be willing to perform community service—for example—can help the judge decide what an appropriate punishment might be.

Sometimes, sharing true stories about your life can help the judge and **jury** learn more about who you are and what you've experienced. Then they may feel motivated to give you a lesser sentence. Mitigating factors do not always work, but you should talk to your attorney about whether your true-life stories might matter in sentencing.¹¹¹

Knowing about mitigation is important because criminal convictions carry life changing consequences.¹¹² Going to jail or being on probation places significant restrictions on your options.¹¹³ A conviction can feel like a stain that never comes out: it can make it hard or impossible for you to access shelter, to get a job, to get housing, or to gain certain benefits, like social security.¹¹⁴ So ask your attorney whether mitigating factors might help in your case.¹¹⁵

Often, public defenders are juggling so many cases, they might overlook a program you may be eligible for or they may not know of facts in your life that could help to mitigate harm from your sentence.¹¹⁶ You can be your best advocate.

C. Diversions

Diversion means to stray away. A diversion program in the criminal justice system is a different kind of sentence than jail: diversion programs mean you stray away from jail to a different kind of sentence. Diversion programs can be a good option because they rarely include jail time or imposing a criminal record.¹¹⁷ The programs are run by police departments, courts, district attorney's offices, or outside agencies. Diversion programs try to offer a less severe form of punishment than jail because they try to offer you some time to rehabilitate or

¹⁰⁹ *Id.*

¹¹⁰ See Gary Warth, *New Initiatives to House, Treat Low-level Offenders*, THE SAN DIEGO TRIBUNE (August 23, 2016), <http://www.sandiegouniontribune.com/sdut-goldsmith-repeat-offender-homeless-2016aug23-story.html>.

¹¹¹ *Id.*

¹¹² Berson, *supra* note 99.

¹¹³ *Id.*

¹¹⁴ 2012 *Policy Statement*, CRIMINAL JUSTICE, HOMELESSNESS & HEALTH (November 2009), <https://www.nhchc.org/wp-content/uploads/2011/09/Criminal-Justice-2012.pdf>.

¹¹⁵ Interview with Janet Cavallo, *supra* note 9.

¹¹⁶ Interview with Janet Cavallo, *supra* note 9.

¹¹⁷ Sara J. Berman, *Diversion Programs*, NOLO, <https://www.nolo.com/legal-encyclopedia/diversion-programs.html> (last visited Dec. 3, 2017).

restore yourself.¹¹⁸ When you participate in diversion programs, the State rewards you by dismissing or reducing the charges.¹¹⁹

COMMON REQUIREMENTS TO PARTICIPATE IN DIVERSION

- Participate in educational programs designed to help you stay out of **jail** in the future
- Pay back any victims of your crimes
- Complete community service hours
- Avoid future situations that may lead to committing another such offense (such as avoiding contact with certain people)
- Pay a fine to the court

You may be eligible for a diversion program if you have committed a lower level crime, and the court determines that it makes little sense for you to go to jail or **prison** for it.¹²⁰ Diversion programs can be good for offenders because they keep them out of jail if they complete various requirements of the program.¹²¹ Diversion programs can also be helpful to overwhelmed judges, prosecutors, probation offices, and police departments that deal with many offenders daily. This is because diversion programs are usually an alternative to dealing directly with the criminal justice system.

If you complete a diversion program, your charges may be reduced or even dropped. However, if you do not complete the diversion program, you will likely be charged with a crime, and you must go to court.¹²²

Diversion programs are usually a pretty good deal, but you should still discuss with your public defender what could happen to your criminal history if you participate. For example, even if your charge is dismissed because you've successfully completed a diversion program, you may still get "history points" under the U.S. Sentencing Guidelines if you plead guilty to the crime or if the court finds you are guilty. Be sure to discuss with your attorney.

IV. Incarceration

If you are incarcerated, you may want to know about the facilities where you will serve your sentence. Two main types of facilities house people arrested or convicted of committing a crime: jails and prisons.¹²³

¹¹⁸ *Deferred Adjudications and Pretrial Diversions*, FINDLAW, <http://criminal.findlaw.com/criminal-procedure/deferred-adjudication-pretrial-diversion.html?version=2> (last visited December 3, 2017) [hereinafter *Deferred Adjudications*].

¹¹⁹ *Id.*

¹²⁰ Berman, *supra* note 117.

¹²¹ *Id.*

¹²² *Id.*

¹²³ See Aaron Larson, *What is the Difference Between Jail and Prison*, EXPERTLAW (Jun. 5, 2017), <https://www.expertlaw.com/library/criminal-law/what-difference-between-jail-and-prison>.

A jail is a secure facility that houses three main types of **inmates**:¹²⁴

1. People arrested and being held pending a plea agreement, trial, or sentencing;
2. People convicted of a misdemeanor criminal offense and serving a sentence of (typically) less than 1 year; and
3. People sentenced to prison and about to be transferred to another prison.

Jails are operated at a “local” level, meaning they are run by a county or city government (as opposed to being managed by state or federal officials).¹²⁵ Some jail inmates stay less than one day; some only stay for a few days while they wait for a court proceeding.¹²⁶ If you are sentenced to a short term of incarceration for a misdemeanor, you will likely stay in the city or county jail for your entire sentence.¹²⁷ Since people rarely stay longer than a year in jail, there are not too many programs for jail inmates like educational training or small group counseling.¹²⁸

A prison is a secure facility where people convicted of a felony criminal offense are serving a sentence of typically 1 year or more.¹²⁹ Prisons are operated by a state government or the federal government.¹³⁰ The number of people entering prisons each day is far less than the number of people entering city jails each day.¹³¹ People entering prison may be transferred to prison from jail, taken to a prison from court after a conviction, or they may report to prison on a date set by the court.¹³²

Understanding incarceration is especially important for people experiencing homelessness. Many people experiencing homelessness end up in jail after being arrested for minor misdemeanor crimes because the court is concerned that they will not attend future court dates due to their not having permanent housing or a steady job.¹³³ If you are incarcerated, you will be in the best position to advocate for yourself because communication with people outside the jail or prison is not guaranteed.¹³⁴ While you are incarcerated, many of

¹²⁴ See Margo Schlanger, *Differences Between Jails and Prisons*, UNIVERSITY OF MICHIGAN (Spring 2003), https://www.law.umich.edu/facultyhome/margoschlanger/Documents/Resources/The_Difference_Between_Jails_and_Prisons%20.pdf.

¹²⁵ Larson, *supra* note 123.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Interview with Janet Cavallo, *supra* note 9.

¹³⁴ Larson, *supra* note 123.

your preferred daily activities are very limited or do not exist at all.¹³⁵ But even while you are incarcerated, you continue to have certain rights that the jail or prison must observe.¹³⁶

A. General Rights While Incarcerated

While you are in jail or prison, you still have some rights. But these rights are restricted because jail and prison officials are responsible for keeping the facilities secure.¹³⁷ If you believe that your rights are being violated and you want to file a complaint about how you are being treated, be careful, because most facilities have specific rules about how to file the complaint, and these rules need to be followed precisely.¹³⁸ Failure to follow these exact rules can mean your complaint will not be addressed.¹³⁹

This section gives you a very general sense of the rights you must have if you are incarcerated. However, talk to your attorney about what specific rights you might have based on your individual circumstances.

1. Right to Humane Facilities and Conditions

If you are in jail because you have been charged with a crime, but you have not yet been convicted, you cannot be “punished” or treated as guilty while you are awaiting your trial.¹⁴⁰ Even if you have been found guilty, you still have the right to be free from “cruel and unusual” punishment.¹⁴¹ Courts call any punishment “cruel and unusual” if the punishment violates a person’s basic dignity.¹⁴² Many people feel that jail conditions are not dignified; however, the law requires more to show cruel and unusual punishment. For example, an inmate held in a 150-year old prison infested with rats, fire hazards, and no toilets would be cruel and unusual punishment.¹⁴³ Also, if a prison guard beats or harms an inmate without reason, that would be cruel and unusual punishment.¹⁴⁴ Similarly, if prison guards are denying an inmate access to food, that may be cruel and unusual punishment.¹⁴⁵

¹³⁵ *Id.*

¹³⁶ *Know Your Rights: The Prison Litigation Reform Act*, ACLU, https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf (last visited December 3, 2017) [hereinafter *Know Your Rights*].

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Rights of Inmates*, FINDLAW, <http://civilrights.findlaw.com/other-constitutional-rights/rights-of-inmates.html> (last visited April 28, 2018).

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Your Right to be Free from Cruel and Unusual Punishment*, JAILHOUSE LAW, <http://jailhouselaw.org/your-right-to-be-free-from-cruel-and-unusual-punishment/> (last visited March 12, 2018).

¹⁴⁵ *Know Your Rights: Prison and Jail Conditions*, THE LAW OFFICE OF THE SOUTHERN CENTER OF HUMAN RIGHTS, 1, 4 (Sept. 2010), <https://www.schr.org/files/post/PRISON%20AND%20JAIL%20CONDITIONS.pdf>.

2. Right to be Free from Sexual Crime

While you are in jail, you cannot be subjected to sexual crimes including rape or sexual harassment.¹⁴⁶

3. The Right to be Free from Racial Segregation

Prison officials cannot treat you differently because of your race.¹⁴⁷ Racial segregation may occur when prison officials separate prisoners by race in their cells. If you find yourself being separated or grouped according to your race, that may indicate a potential violation of your rights. Prison officials can, however, separate inmates to preserve discipline and prison security.¹⁴⁸

4. The Right to Express Complaints

You have the right to complain about prison conditions and even voice these complaints in court in front of a judge.¹⁴⁹ However, this process is a little tricky. Under current law, before you can see a judge to voice your concerns about prison conditions, you must make a complaint at the prison first. The prison where you are held at will have its own procedures for filing a complaint. This is called the internal prison grievance procedures.¹⁵⁰ If you file a lawsuit in federal court before taking your complaints through every step of your prison's grievance procedure, it will likely be dismissed.¹⁵¹ Also, filing a complaint in federal court can cost money.¹⁵² If it does, you must pay your own filing fees by either making one payment or paying the fees in monthly installments.¹⁵³

Courts can dismiss any prisoner's lawsuit if they think it is not worthy: they may dismiss your complaint as "frivolous," "malicious" or for "stating an improper claim."¹⁵⁴ Each time a court decides your complaint isn't worthy, the case can be thrown out of court and you may receive a "strike" against you.¹⁵⁵ Once you receive three "strikes," you can no longer file another lawsuit unless you pay the entire court filing fee up front.¹⁵⁶ If a judge decides that you filed a complaint to harass someone, that you lied, or that you presented false information (even if you didn't know the information was false), you lose credibility in any future lawsuits.¹⁵⁷

¹⁴⁶ The Prison Rape Elimination Act became effective on August 20, 2012 and sets strict standards enacted by the Federal Government designed to eliminate prison rape. See *Prison Rape Elimination Act*, NATIONAL PREA RESOURCE CENTER, <https://www.prearesourcecenter.org/about> (last visited December 3, 2017); See also *Rights of Inmates*, FINDLAW, *supra* note 140.

¹⁴⁷ *Rights of Inmates*, *supra* note 140.

¹⁴⁸ *Rights of Inmates*, *supra* note 140.

¹⁴⁹ *Know Your Rights*, *supra* note 136.

¹⁵⁰ *Rights of Inmates*, *supra* note 140.

¹⁵¹ *Know Your Rights*, *supra* note 136, at 1.

¹⁵² *Id.* at 2.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 3.

¹⁵⁵ *Id.* at 3.

¹⁵⁶ *Id.*

¹⁵⁷ *Rights of Inmates*, *supra* note 140.

5. The Right to Assert ADA Rights

If you are disabled, you have rights under the Americans with Disabilities Act (ADA) to ensure that you can access certain prison programs and facilities.¹⁵⁸ The ADA defines “disability” as: (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.¹⁵⁹ A physical impairment includes conditions like deafness, blindness, diabetes, cancer, epilepsy, and mobility impairments requiring the use of a wheel chair, among others. A mental impairment includes conditions like autism, major depressive disorder, bipolar disorder, schizophrenia, and post-traumatic stress disorder, among others.¹⁶⁰ Prove that you have a disability before the jail or prison must accommodate your disability under the ADA.¹⁶¹ Once you prove that you have a disability, the jail or prison must accommodate your needs. For example, you should be able to use the jail showers and toilets without pain or fear of injury.¹⁶² Also, be able to get a wheelchair or a cane if you cannot get around the prison without it.¹⁶³

The Americans with Disabilities Act (ADA) is a civil rights law that prohibits discrimination against individuals with disabilities. The law makes sure that people with disabilities have the same rights and opportunities as everyone else.

6. The Right to Medical Care and Attention

You may need medical care while you are incarcerated. You have a right to medical care and attention as needed to treat both short-term conditions and long-term illnesses.¹⁶⁴ The medical care provided must be “adequate.”¹⁶⁵ For this purpose, “adequate medical care” means that the care is not “deliberately indifferent” to you or your needs, nor does the care “recklessly disregard a substantial risk” to you.¹⁶⁶ You don’t have a right to perfect medical

¹⁵⁸ *Id.*

¹⁵⁹ 42 U.S. Code §12102, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/uscode/text/42/12102>

¹⁶⁰ *Disability Accommodations: Conditions*, SOCIETY FOR HUMAN RESOURCE MANAGEMENT, https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/cms_011495.aspx (last updated November 2017).

¹⁶¹ *Id.*

¹⁶² *Know Your Rights: Legal Rights of Disabled Persons*, ACLU NATIONAL PRISON PROJECT 1, 3, (2015), https://www.aclu.org/files/images/asset_upload_file735_25737.pdf

¹⁶³ *Id.*

¹⁶⁴ *Rights of Inmates*, *supra* note 140.

¹⁶⁵ *Id.*

¹⁶⁶ *Know Your Rights: Medical, Dental and Health Care*, ACLU NATIONAL PRISON PROJECT 1, (2005), https://www.aclu.org/files/images/asset_upload_file690_25743.pdf.

care, but you can't be neglected either. You cannot be put in a situation that causes you unnecessary pain.¹⁶⁷

Some factors that officials might use to determine whether you have a serious medical need are: 1) whether a reasonable doctor or patient would perceive your medical need as important and worthy of treatment; 2) whether the medical condition significantly affects your daily activities; and 3) whether you have chronic and substantial pain.¹⁶⁸ Remember this medical care may not be free; many jails will bill you for care provided to you while you are incarcerated.¹⁶⁹

7. The Right to Appropriate Mental Health Care

If you need mental health care, you have a right to receive that treatment in a manner that is appropriate under the circumstances. Similar to physical health care, your necessary mental health treatment does not have to be perfect, but it must be "adequate."¹⁷⁰ For the jail's or prison's mental health care to be considered "adequate," the jail or prison must have: 1) an intake process that screens and evaluates inmates to identify inmates that need mental health care; 2) treatment that is more than just separating and closely supervising inmates with mental health issues; 3) treatment by trained mental health professionals; 3) maintenance of accurate, complete, and confidential mental health records; 5) prohibitions on over-prescribing behavior-altering medications; and 6) a program for identifying and treating inmates with suicidal tendencies.¹⁷¹

8. The Right to a Hearing

If you are experiencing, being treated for, or have a diagnosis of mental illness, you have the right to be involved in how you receive mental health care in prison.

First, if prison officials want to move you from prison to a mental health facility, and you do not want to be moved, you have a right to a hearing in front of a federal district court judge.¹⁷² You will probably need to file a motion with the proper federal district court, so you can present evidence of your mental state. At this motion hearing, you may also present evidence to convince the judge you should not be moved to a mental health facility.¹⁷³ The judge may, however, request you be evaluated by a mental health professional. If the judge finds there is enough evidence showing you must be moved to a mental health facility, you will

¹⁶⁷ *Id.* at 2.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 8.

¹⁷⁰ *Rights of Inmates*, *supra* note 140.

¹⁷¹ *Know Your Rights: Medical, Dental and Health Care*, *supra* note 166.

¹⁷² In an important case, *Vitek v. Jones*, the Supreme Court found that if prisoners are being transferred from prison to a mental health facility, they are entitled to have some procedural protections. What this means is, if you are being transferred to a mental health institution, you are entitled to have your case heard before a judge. After *Vitek v. Jones* was decided, Congress passed the Through the Insanity Defense Reform Act. The Through the Insanity Defense Reform Act is a law that gives prisoners due process rights if they are being transferred from prison to a mental health institution. See Michael B. Mushlin, 3 *Rights of Prisoners* § 11:24 (5th ed.) (updated Dec. 2017).

¹⁷³ *Id.*

be moved to the facility until the end of your imprisonment or until you no longer need the treatment, whichever occurs earlier.¹⁷⁴ But if you are being moved between two similar facilities, you may not always be entitled to a hearing.¹⁷⁵

Second, you may be entitled to a hearing in front of independent medical professionals before a prison official can force you to take anti-psychotic drugs against your will.¹⁷⁶ However, you may not be entitled to a hearing in front of a judge like you would be entitled if you were being transferred to a mental health institution. For example, the Supreme Court has stated that it is enough for a prisoner to be heard in front of a team of psychiatrists if prison officials are giving them anti-psychotic drugs against their will. Remember that a prison official may be able to force you to take anti-psychotic drugs against your will if you are a danger to yourself or others, and the treatment is in your medical interest. The prison officials cannot, however, force you to take anti-psychotic drugs just to punish you if you do not need it for a legitimate medical reason.

9. Limitations on Inmates' Rights

While you are in jail or prison, your right to freedom of speech is limited because of security concerns. For example, jail or prison officials may open mail addressed to inmates.¹⁷⁷ This is because officials must make sure nothing is illegal or dangerous in mail addressed to inmates.¹⁷⁸ Officials may also cut or cross out certain words in the letters you receive if the jail determines that the mail is rude or might provoke anger or violence.¹⁷⁹ This does not mean jail staff can cut or cross out words or ideas expressed in letters you receive just because the staff personally disagrees with these words or ideas.

Similarly, you have no expectation of privacy in your cell. So, you are not protected from “shakedowns” or searches of your cell because jail staff must check for weapons or other things you are not supposed to have in jail.¹⁸⁰ If you have weapons or other things you are not supposed to have, jail staff can take those away from you. However, jail staff cannot take away items you can have in jail.¹⁸¹ If jail officials take non-prohibited items from you, you can file a complaint in the prison (See *The Right to Express Complaints* section earlier in this guide).¹⁸²

This section offered a very brief overview of just some of the rights you might have while in jail or prison. Consult an attorney about your rights based on your individual situation.

¹⁷⁴ *Id.*

¹⁷⁵ *Rights of Inmates*, *supra* note 140.

¹⁷⁶ MICHAEL B. MUSHLIN, *RIGHTS OF PRISONERS* § 4:38 (5th ed. 2017).

¹⁷⁷ MICHAEL B. MUSHLIN, *RIGHTS OF PRISONERS* § 14:2(5th ed. 2017).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ MICHAEL B. MUSHLIN, *RIGHTS OF PRISONERS* § 9:18 (5th ed. 2017).

¹⁸¹ *Id.*

¹⁸² *Id.*

CONCLUSION

In many cities, homelessness has increased at alarming rates. Cities often respond by enacting laws that punish people experiencing homelessness. These laws often mean unhoused people are arrested, convicted of low-level charges such as trespassing, and are ticketed or jailed because they are unhoused and more visible to police. Therefore, the increased criminalization of homelessness has forced many unhoused individuals into the court system.

If you are experiencing homelessness, are accused of a crime, and cannot afford to hire your own attorney, you will be represented in court by a public defender. Public defenders often carry large caseloads; therefore, they often cannot spend more than a few minutes with you. Finding your way through the criminal justice system with only the limited help of a public defender is difficult for anyone; however, if you are experiencing homelessness, you face increased challenges because you not only lack shelter, but you also likely do not have a stable address or phone number where you can be reached about information surrounding your court case. You may often face jail time or fines impossible for you to pay.

The information in this guide is one way you can empower yourself.

RESOURCES

1. List of states with a link to each state's court website with an explanation of what types of resources can be found on state court websites.

Example: Washington <http://www.courts.wa.gov/>

2. Links and contact information for each state's Office of the Public Defender with a synopsis of how the office can help a defendant.

Example: Washington Office of the Public Defender <https://www.opd.wa.gov/>

3. Visual aids of court forms with short explanations of why the forms are important

- a. Motion and Order for Continuance (Seattle Municipal Court Form <http://www.seattle.gov/courts/attny/formal/31-078.pdf>)
- b. Motion and Order Waiving Fines and Fees (Seattle Municipal Court Form <http://www.seattle.gov/courts/attny/formal/31-074.pdf>)
- c. Waiver of Speedy Trial (Seattle Municipal Court Form <http://www.seattle.gov/courts/attny/formal/31-074.pdf>)
- d. Statement of Defendant on Plea of Guilty (Seattle Municipal Court Form <http://www.seattle.gov/courts/attny/formal/31-005.pdf>)

4. Contact information for diversion programs

Example: King County Adult Drug Diversion Court – Provides adult defendants the ability to seek treatment for drug abuse rather than incarceration.

Contact Info: KC Adult Drug Diversion Court

516 3rd Avenue, Room E-917

Seattle, WA 98104

206-477-0788

<http://www.kingcounty.gov/courts/clerk/drug-court.aspx>

5. Information about collateral consequences for each state with links to websites that provide specific information.

Example: Washington

[Restoration of Rights Project – Washington Profile](#)

Guide to restoration of rights, pardon, sealing & expungement following a Washington criminal conviction

[Beyond the Conviction: What Defense Attorneys in Washington Need to Know About Collateral Consequences](#)

Washington Defender Association