

YOUR BASIC RIGHTS UNDER THE CRIMINAL JUDICIAL SYSTEM

BASIC INFORMATION YOU NEED TO KNOW

This is simply a basic outline of your rights in a criminal case. It does not attempt to address the facts or applicable case law in your individual case, except to the extent that all people have the same basic rights, nor is it intended to be a guide for representing yourself in Court. The following information is only to give you a broad and general outline of the Court system.

In Oklahoma, there are two classes of criminal cases, felonies and misdemeanors. In the case number, the letter "F" signifies felony, and "M" signifies misdemeanor. Sometimes you will see the letter "T". "T" refers to traffic, which is a subdivision of the misdemeanor class.

You are presumed to be innocent and the State must prove you guilty beyond a reasonable doubt to convict you of any crime.

COURT PROCEEDINGS

Initial Appearance

The first Court proceeding after an arrest, or after charges are filed, is called the initial appearance. At that hearing the judge should advise you:

1. What crime the State alleges you have committed;
2. The penalty for that crime;
3. Your next hearing date;
4. That you have a right to have an attorney at that hearing and to represent you at every phase of the proceedings;
5. If you are indigent, and qualify, the Court will appoint an attorney to represent you at State expense;
6. You have a right, in Court, to confront and cross-examine the witnesses against you;
7. You have a right to trial by jury;
8. If convicted, you have a right to appeal;
9. If you are indigent, and qualify, you have a right to receive a copy of the record of the trial, (a transcript) for purposes of appeal at the expense of the State;
10. You have the right to have bail set, except in capital murder cases;
11. If it is a felony charge, you have a right to a preliminary hearing;

12. You have a right to subpoena witnesses to testify in your defense. That means they have to appear, even if they do not want to.

The judge will normally give you a copy of the charges against you, (information); set bail and set the next hearing date.

In a misdemeanor case, the judge will ask you to plead guilty, not guilty or no contest.

If you plead guilty or no contest, the judge will set your sentence at that time.

If you plead not guilty, the judge will not ask for a plea. He, or she, will set a date for the preliminary hearing and the trial.

Preliminary Hearing

The preliminary hearing is similar to a trial, except:

1. There is no jury;
2. The state does not have to prove you guilty;

At a preliminary hearing, the state must prove only two things;

1. Probable cause to believe a crime has been committed; and
2. Probable cause to believe that you are the person who committed that crime;

If the state (District Attorney) fails to prove either of those 2 things, the charges will be dismissed. If the state meets its' burden then you will be bound over (held for trial and a date set for arraignment).

Arraignment

The arraignment is very similar to the initial appearance. Technically, they are identical but in practice the arraignment is much more formal and structured.

You will be asked to enter your plea of guilty, not guilty, or no contest (nolo contendere).

If you plead GUILTY the judge will be the one to set the sentence. You give up:

1. The right to remain silent;
2. The right to a jury trial;
3. The right to put on a defense;
4. The right to confront and cross-examine the witnesses against you;

5. The right to challenge the state's evidence for unlawful search, seizure, arrest and numerous similar challenges that arise in various cases;
6. The right to challenge defects in the charges against you;
7. Errors that may have occurred in previous hearings;

You still have a right to appeal, but it is limited and you must:

1. File an application to withdraw your plea within 10 days of the date the sentence is entered;
2. File an application for a Writ of Certiorari (appeal) within 90 days if the judge denies your application to withdraw your plea.

If you plead guilty you will be required to give a statement setting forth why you are guilty.

If you plead NO CONTEST (nolo contendere) it is treated exactly like a guilty plea except you do not have to give a statement.

The judge is not required to accept a guilty plea or a plea of no contest. He can order the case to trial.

If you plead NOT GUILTY:

1. You have the absolute right to remain silent and the Court will set a date for trial;
2. The Court will ask if you want a judge or jury trial;
3. The Court will either hear and rule on motions filed at that time, or set a date by which all motions must be filed and a date for argument by the attorneys;

JUDGE TRIAL

The judge alone hears all of the evidence, makes the decision of guilty or not guilty and if he, or she, finds you guilty, he will also set the sentence.

JURY TRIAL

A group of county residents, 12 in a felony case and 6 in a misdemeanor case, will be chosen at random. These people will decide the facts (what happened), and decide if you are guilty or not guilty.

The judge will still determine the law.

You may ask that the jury set the punishment if you are found guilty. You may also ask that the judge set the punishment if you are found guilty by the jury.

SENTENCING

In a felony case, if you plead guilty or are found guilty by a jury, you have the right to a pre-sentence investigation. That means the Department of Corrections will

investigate your background and make a recommendation to the judge about your sentence. This investigation may be waived, but that decision should be made only after a thorough discussion of your case with your attorney.

How to Help Yourself

1. Discuss your case only with your attorney;
2. Do not discuss your case with anyone, without first getting your attorney's permission.
3. Always tell your attorney the truth. Advice given based on false information will be bad advice, and will harm no one except you;
4. Always appear for court on time;
5. Always keep your appointments with your attorney. If you will be unable to keep your appointment, notify the office as soon as possible;
6. Provide us with a list of witnesses who can testify on your behalf or assist us in your defense, including their addresses and telephone numbers;
7. If you are questioned by the police, advise them that you want your attorney present. DO NOT say anything else; DO NOT sign anything; AND call your attorney IMMEDIATELY;
8. Do not violate the conditions of your bond;
9. Do not violate the law or be in a position to be accused;
10. Follow any specific instructions given to you by the attorney;
11. Do not attempt to contact the alleged victim or witnesses;
12. If you have a question, ask it;
13. Bathe, shave and wear clean clothes to court;
14. If you remember something that you forgot to tell us about your case, make notes and get them to us;

FINAL NOTE: Each decision made about your case will be made by you. We will advise you of your options, but the final decisions will be yours.

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