

Answering your legal questions about arrest

Are all arrests the same? What happens if you are arrested? What are the steps in a criminal case?

Are all arrests the same?

No. In some arrests, you're charged with a crime, while in others you're not.

You're charged with a crime only if the possible penalty includes time in jail or prison. There's one exception, though: You may face jail time for failing to pay a fine or forfeiture, but this failure isn't considered a crime.

In most cases, traffic offenses and city, town, or county ordinance violations are not criminal offenses. Certain offenses can be charged as either ordinance or criminal offenses – for example, retail theft (shoplifting) or disorderly conduct. And some offenses are noncriminal for first time offenders but criminal for second time violators. The most common example of this is operating a motor vehicle while under the influence of intoxicants.

A monetary penalty for a crime is called a fine. For a noncriminal offense, it's called a civil forfeiture.

There are some other important differences between criminal and noncriminal cases. First, a criminal conviction may have a negative effect on your employment opportunities, school applications, professional licensing, and so forth. Second, in a criminal case, the prosecution must prove you guilty beyond a reasonable doubt – a stricter requirement than for a noncriminal case. Finally, you have more legal rights in a criminal case, such as the right to remain silent and the right to the assistance of an attorney. In a noncriminal case the prosecution can call you to the stand and force you to testify against yourself.

What happens if you're charged with a noncriminal offense?

If you're charged with an ordinance or traffic offense that is not a crime (such as speeding), you'll be given a citation. In most cases you won't be taken into custody. Police may not search you or your property without permission if you are not taken into custody for a noncriminal offense. The citation will usually give you a choice of paying a forfeiture or going to court. It will state a date for you to appear in court if you choose not to pay the forfeiture.

Your first court appearance is known as the arraignment, during which you enter a plea of "guilty," "not guilty," or "no contest."

This pamphlet, which is based on Wisconsin law, is issued to inform and not to advise. No person should ever apply or interpret any law without the aid of a trained expert who knows the facts, because the facts may change the application of the law. Last revised: 1/2012



The "no contest" plea means that you are not contesting the offense charged. The "no contest" plea will result in a conviction, but the conviction cannot be used against you in a lawsuit. For instance, let's say you have an auto accident. As a result of the accident, you're given a traffic citation for a violation. If you decide to resolve the citation without a trial you may want to plead "no contest," in case the other driver decides to sue you.

In most ordinance or traffic cases, when you plead "not guilty" you're given a pretrial date and a trial date. In noncriminal cases, you do not have an automatic right to a jury trial. Unless you specifically demand a jury trial and pay the required fee within 10 days of your initial appearance, your trial will be held before the judge. At the pretrial you'll meet with the prosecutor and try to settle the case. For example, you may try to change a speeding charge to a lesser point violation.

If you can't resolve the charge at pretrial, you must appear at the trial. You may or may not want to have an attorney, depending upon the seriousness of the offense, the status of your driver's license, and so on.

If the judge finds you guilty and you don't pay the forfeiture by the deadline for payment, your driver's license may be suspended if the violation is for a traffic offense. Otherwise, you could be jailed or ordered to perform community service.

What happens if you're charged with a crime?

Usually you'll be taken into custody when you're arrested. The police may read you your rights, photograph you, and take your fingerprints. If you are arrested without a warrant, a judicial magistrate must determine whether there is enough probable cause to charge you, and this usually must be done within 48 hours of your arrest. The 48-hour rule does not apply to an arrest with a warrant, because a judicial determination of probable cause has already been made to support issuing the warrant.

Remember that you have two important rights: The right to remain silent and the right to a lawyer. If you are indigent, an attorney from the State Public Defender's office will be appointed. Police may not ask you any more questions if you claim either or both these basic rights. If you are unable to communicate with the court or your attorney because of a disability or a language barrier, an interpreter will be provided for you.

To be released from custody after your arrest, you may be required to post bail. In some cases, you can do this by a signature bond (a written promise to appear in court). In other cases, you may be required to provide either a secured surety bond (you put up property, such as a car or house), or cash (which may be posted by you or someone else). In addition, the judge may impose other conditions on you that he or she deems reasonable to assure your appearance or protects members of the community.

If you're convicted of a misdemeanor, you may be imprisoned for up to one year though the maximum penalty varies depending on the offense. Any "time" you serve will be in the county jail or house of correction. A felony charge is much more serious, because it can mean a year or more in prison. In either case, it's very wise to consult an attorney as soon as possible. If you can't afford one, you should contact the State Public Defender's office. You can also ask the judge to refer you to that office.

What are the steps in a criminal case?

In either a misdemeanor or a felony case, you'll have an initial appearance. At this appearance, you'll be served with a criminal complaint that outlines the charge, the probable cause supporting the charge, and the penalty. In a misdemeanor case, you'll also enter a plea at the initial appearance. If you plead "not guilty" to a misdemeanor, you'll be given a pretrial or a trial date.

For a felony, the next step is the preliminary hearing. At this hearing the prosecution must present enough evidence to convince the presiding magistrate that you should stand trial for a felony offense. If the state meets its burden of showing there is probable cause to believe you committed a felony within the jurisdiction, then the case proceeds to arraignment. At the arraignment, the district attorney will serve you with formal charges for a particular felony. At this time, you must enter a plea.

In both misdemeanor and felony cases, you have the right to a jury trial. The jury must consist of 12 people and the verdict must be unanimous. If you are convicted of a felony, you lose certain rights, including the right to possess firearms forever. You also lose the right to vote until your civil rights are restored at the completion of your sentence.

How does plea negotiation work?

In most cases, your attorney and the prosecutor will meet to discuss your case before it goes to trial. The prosecutor may offer to negotiate with your attorney.

There are many possible types of "plea agreements."

The prosecutor may offer a reduced charge. Or, if you're charged with several offenses, the offer may be to dismiss one or more charges or "read in" a charge (this means that you won't plead guilty to that charge, it will be dismissed, but the charge may be considered for sentencing). In return, you'll be expected to plead guilty or no contest to at least one offense. Sometimes the plea agreement will be a recommendation for a particular sentence. Or it may be an agreement that the prosecutor will make no sentence recommendation.

In any event, the judge does not have to honor the plea agreement. Your attorney and the judge must explain this to you. They must also explain all the possible results of a plea of guilty or no contest.

The judge will frequently pronounce sentence immediately in a misdemeanor case. In a felony case, the judge may order a presentence investigation and set a separate sentencing date. Sentencing may be delayed in either case because Wisconsin law requires that victims be notified of the sentencing date and given an opportunity to be heard.

This is one in a series of consumer information pamphlets published by the State Bar of Wisconsin. Bulk print copies and display racks also are available, for a charge, by contacting the State Bar of Wisconsin.

- Arrest
- Bankruptcy
- Buying/Selling Residential Real Estate
- Choosing a Process for Divorce
- Custody and Placement
- Durable Powers of Attorney
- Divorce
- Guardians Ad Litem in Family Court
- Health Care
- Hiring/Working with a Lawyer
- Landlord/Tenant Law
- Marital Property
- Personal Injury
- Probate
- Revocable Living Trusts
- Small Claims Court
- Starting a Business
- Traffic Accidents
- Wills/Estate Planning



**STATE BAR
OF WISCONSIN**

(800) 728-7788 Nationwide
(608) 257-3838 from Madison

P.O. Box 7158, Madison, WI 53707-7158
Email service@wisbar.org
On the Web at www.wisbar.org

© State Bar of Wisconsin