

**STRAFFORD COUNTY
Department of Corrections**

LEGAL HANDBOOK

What You Should Know If A Family Member Has Been
Arrested And Accused Of A Crime



*Originally developed by Joyce B. David, Attorney at Law,
(718) 875-2000 and edited and adapted for Strafford County
D.O.C. Family Reception Center by Attorney Randy Hawkes*

**This information was provided by an area attorney and does not necessarily
reflect the advice or opinion of the Strafford County Department of Corrections.**

INTRODUCTION

The purpose of this handbook is to provide answers to some very basic questions that inmates or inmates' families might have regarding the processes of the criminal justice system. In no way does this brief overview intend to be comprehensive or to answer every question. Because every criminal case is unique, individual questions should be answered by qualified legal counsel.

DO YOU NEED A LAWYER?

When you are being investigated for a crime, or have been charged with a crime, you could probably use some advice. Before you talk to anyone else, you should consider exercising your constitutional right to speak with a lawyer. If you are guilty and want to take responsibility for your crime, you can always speak with the police; and a lawyer may encourage you to do that in certain situations. But you should make a fully informed decision about whether it is in your best interest to talk to the police.

Whether you are in custody or not, you are NOT required to talk to the police. You may think that you can convince the police that you are innocent. That happens sometimes. More often, you stand a chance of saying something that may put you at a disadvantage if you later decide to exercise your right to have a trial. You have the right to remain silent when being questioned. You have the right to speak with a lawyer. The sooner you get a lawyer involved in your criminal case, the better. You have many important decisions to make and you have rights that should be protected. Do NOT rely on advice from non-lawyers. The law is complicated. Criminal procedures are complicated. The more serious your case, the more you need professional assistance.

Do not talk about your case with anyone until you talk with a lawyer. If you are in jail, do NOT discuss your case with other inmates. Other inmates may pretend to be your friend. They may try to work out their own problems with the law by becoming a witness against you. The same goes for co-defendants. Do NOT talk about your case over the telephone at the jail. ALL calls are recorded. Anything you say on the phone will be used against you later. Count on it.

PRIVATELY RETAINED LAWYERS

If you can afford to hire a lawyer, you should do so as soon as you possibly can. Lawyer's fees vary, depending on the amount of experience the lawyer has and the nature of the case. Make sure you have a clear understanding of exactly what

services the lawyer will provide for the fee. Does the fee cover the arraignment, probable cause hearing, and continue through the trial or plea? Or does the lawyer only agree to represent you through a certain phase of the proceedings? You should be confident that you have a clear understanding before any fee is paid or work is done. Find out about the lawyer's reputation in the criminal justice community.

ASSIGNED COUNSEL

If you are facing New Hampshire criminal charges, and you want an attorney but cannot afford to hire one, you **MUST** submit an application for the appointment of counsel to the court where you are charged.

If you are charged with a Class A Misdemeanor or any Felony under New Hampshire law, then you may be entitled to appointed counsel. If the police gave you a piece of paper entitled a "complaint" or if you received an "information" or an "indictment," you can determine whether you are charged with a Class A Misdemeanor or a Felony by reviewing that document.

You are only entitled to an appointed attorney if you are not able to afford to hire your own, private attorney. Whether you are able to afford to hire a private attorney is a matter of fact which is determined by the courts in a written application process. The Courts of the State of New Hampshire determine financial eligibility for the appointment of counsel in New Hampshire criminal cases. The process involves submitting a written application. In the application you will be asked to provide detailed personal financial information. The application is submitted to the court through the Clerk of Court's office in the New Hampshire court where your criminal charges are pending. A judge then reviews the application and grants or denies the request for appointed counsel.

If you are eligible for a court appointed lawyer, there will be no charge to you initially. However, you will be responsible to repay the Office of Cost Containment a nominal fee. The cost may be made over time. You should contact the OCC and let them know how much you can pay per month. The fee you will be required to repay is as follows:

- Misdemeanor: \$275
- Misdemeanor appeal: \$412
- Felony: \$756
- Serious felony: \$2282

Please note that, by law, the New Hampshire Public Defender is not able to determine your eligibility for an appointed attorney. You must apply to the court. The New

Hampshire Public Defender may only represent you after having been appointed by a New Hampshire court which has determined that you are eligible for appointed counsel.

Please also note that the New Hampshire Public Defender does not represent criminal defendants facing federal charges. If your case is being heard in the federal court system, and you cannot afford to hire counsel, you will be assigned a Federal Defender or a Criminal Justice Act (CJA) lawyer.

If you want to make an application for an appointed attorney, or if you have any questions at all about whether you are eligible, go to the court where your charges are pending. Go the Clerk's Office of that court and ask to speak to someone who can help you apply for an appointed attorney in your criminal case. If you are incarcerated, ask a corrections officer for a "financial affidavit and request for counsel" form. Fill it out, request to have someone notarize it, and ask that person to send it to the court where you were arraigned.

Very often, but not always, the New Hampshire Public Defender is the "appointed attorney." In certain instances the courts will appoint "contract" or private attorneys rather than the New Hampshire Public Defender.

If two or more defendants are charged with committing a crime together, the public defender office can only represent one defendant. The others will be assigned contract counsel. Contract lawyers are private lawyers who accept assignments of criminal cases from the Court and are paid by the state to represent indigent defendants.

WHAT DOES BEING "ARRESTED" MEAN?

An arrest is defined as taking a person into custody to answer for the commission of a crime. The circumstances of the seizure (the taking into custody) are important because all citizens have the right to be free from an unreasonable seizure. You cannot be arrested unless there is probable cause to believe you have committed a crime. Because the facts of every case are different, it is important for you to discuss the particular facts of your arrest with your lawyer.

Some people are arrested on a warrant. The warrant is approved by a judge after she/he hears sufficient facts (probable cause) to conclude that you likely committed a crime.

Some people are arrested without a warrant. An officer may arrest a person without a warrant if the officer has reasonable grounds (probable cause) to believe that person has committed a felony. An officer may also arrest a person without a warrant

if the person commits a violation or misdemeanor in the officer's presence, or has committed a domestic violence offense within the past twelve hours, or if the officer has probable cause to believe the person has committed a misdemeanor and - if not taken into custody - is likely to destroy or conceal evidence, or flee, or do further damage to property.

WHAT HAPPENS AFTER ARREST?

If the police arrest you without a warrant for a misdemeanor or violation, the arresting officer may simply give you a summons to appear in court. In that case, you do not even have to see a bail commissioner. You simply take the summons and go about your business. The summons gives you a date to appear in court. Make sure you appear or you will have more problems.

Generally speaking, if you are not released on a summons, you will be "processed" or "booked" at the police station. This includes fingerprints and photos. While you're being booked, the police will prepare a formal complaint. The complaint will notify you about the crime you have been charged with. The complaint contains the date, time, and place of the alleged crime, and a brief statement of the act you allegedly performed that constitutes a crime.

Prosecutors may alter or amend the complaint by the time of your arraignment. They may speak with the arresting officer and/or the witnesses/victims and they may charge you with different crimes than the police did.

You may be bailed by a bail commissioner and released from the police station after you've been "booked". If you are not bailed by a bail commissioner, you may be transported to the house of corrections, to be held until the next session of the district court. If you are arrested Sunday through Thursday, you will most likely be arraigned in district court the following day. If you are arrested on a weekend, you will likely be arraigned on Monday.

DISTRICT COURT ARRAIGNMENT

Generally speaking, if you have been arrested, you will be arraigned by a district court judge. In some circumstances, you may be directly indicted by a grand jury without having been arrested first. (more on indictment later)

If you were released on bail following your arrest, you will be given a date to appear in court for your arraignment. You will appear in person before the judge. If you

were detained at the house of corrections following your arrest, your arraignment may be conducted via video. During a video arraignment you will enter a room at the jail where there is a closed circuit TV and audio hookup that allows you to see and hear the judge, and the judge to see and hear you. Whether in person or by video, the judge will read to you the charges you are facing at the arraignment.

If the charge is a misdemeanor, the court will ask you how you plead. You can either plead guilty or not guilty.

If you want to plead guilty, be sure that you are making an informed decision. If you are guilty, and if you feel that your constitutional rights have not been violated, and if you have had a chance to speak with the prosecutor, and if you feel that the sentence s/he is recommending is fair...then you can plead guilty and the matter ends there.

If you choose - for whatever reason - to plead not guilty, the court should advise you of your right to have a lawyer to represent you. If you want a lawyer, but cannot afford one, you should ask the court to appoint you a lawyer. You **MUST** fill out a financial affidavit when you request a lawyer. Do not leave the court without filling out the necessary paperwork. If you are arraigned by video, ask the corrections officer for a financial affidavit and request for counsel. Fill it out as soon as possible and make sure it is sent to the court.

After scheduling either a trial (misdemeanors) or a probable cause hearing (felonies), the district court will address the issue of bail. If you are not represented by counsel at the arraignment, you should ask the judge to release you on your own recognizance (P.R. bail) or to set low bail. You should make the court aware of your ties to the community (family, job, length of residence, etc.) to convince the judge that you are neither a risk to flee nor a danger to the community.

If the court sets a cash bail that you cannot pay, you should discuss the possibility of having the court reconsider the bail when you meet with your attorney.

WHAT HAPPENS AFTER DISTRICT COURT ARRAIGNMENT?

If you are released on bail or personal recognizance, you will go home. If you can't make bail, you are returned to the house of corrections. Either way, you should make sure to contact (or stay in contact with) your lawyer.

If your case is a misdemeanor, you have to prepare for a trial or negotiate a plea bargain. Your attorney cannot do either without your input. Stay in touch with your lawyer.

When you plead not guilty on a misdemeanor, the court will give you a date for your trial. Write the date down. You must appear at court on that date for your trial or you will create more problems for yourself.

If you are charged with a felony, the district court does not have the authority to take a plea. Therefore, the district court judge will not ask you how you plead. Instead, the judge will enter no plea on your behalf, and will schedule a "probable cause hearing". This preliminary hearing is one at which the prosecution must demonstrate that a crime has been committed and that you were the person who committed it.

If you are being held in jail, the court must hold the probable cause hearing within 10 days. If you are released, the hearing will be held within 20 days.

The probable cause hearing is not a trial. It is merely a mechanism whereby, upon sufficient evidence, the district court will bind the case over to the superior court for the next session of the grand jury. The court does not have to find beyond a reasonable doubt that you committed the offense charged. The court must simply find that it is more likely than not (in other words, probable) that you committed the offense.

WHAT HAPPENS AFTER THE PROBABLE CAUSE HEARING?

GRAND JURY

If your case is a felony, the State cannot proceed against you unless you are indicted by a grand jury. A grand jury is a group of citizens who meet in a closed court session to hear evidence presented by the county attorney. They decide if there is enough evidence to transfer your case to the Superior Court as a felony. The grand jurors can either vote to return an indictment or "no true bill".

The grand jury usually only hears "one side of the story". There is no judge to rule on the admissibility of evidence. Nor is there any defense lawyer to cross-examine the witnesses. The defendant does not get to present his side. To be blunt, if the prosecution wants you to be indicted, you will likely be indicted.

INDICTMENT

An indictment is a formal accusation listing the felony charges against you in the Superior Court.

If you're indicted your case is transferred to the Superior Court. If you're out of jail, you and your lawyer will be notified by mail and instructed to come to Superior Court to be arraigned on the indictment. If you're in jail, you'll be brought to Superior Court for arraignment and your lawyer will be notified to appear.

SUPERIOR COURT ARRAIGNMENT

The Superior Court arraignment is similar to the District Court arraignment on the initial complaint. You're advised of the charges against you. You enter a plea - either guilty or not guilty. If the parties agree on bail, the court approves the agreement. If the parties disagree on bail, the court will hold a bail hearing. If you're out of jail and have been coming to court when you were supposed to, and if you appear for arraignment when notified, your bail status will probably remain the same.

You may enter a plea of not guilty and waive your arraignment. This is done by a form called a "97". If you sign and submit a "97", you do not need to go to Court for the arraignment. Speak with your lawyer about submitting the "97".

COURT APPEARANCES

If you're out of jail while your case is pending, you must appear in court on every court date, unless your lawyer has arranged for you to be excused. It's your responsibility to know your court date. Be on time. Be well dressed.

If you get to court on time and don't see your lawyer, check to see if your name is on the court calendar to make sure you're in the right courtroom on the right date. If it's the right courtroom and date and your lawyer isn't there, she/he might have had to cover another case in another court first. Tell a bailiff or another court employee that you are present and that you are waiting for your lawyer. If you leave the courtroom to call your lawyer's office or for some other reason, tell one of the court officers, so they won't call your case and issue a bench warrant for you while you're not there.

BENCH WARRANTS & BAIL FORFEITURES

If you're late or don't show up, the judge may issue a bench warrant. You can be arrested on that warrant. If you're out on bail, your bail money might be forfeited. A bench warrant for a "failure to appear" will stay on your record and come back to haunt you later, even if you clear it up. It will give a judge an excuse to set higher bail on you in the future.

Bail jumping is also a separate crime that you can be charged with if you fail to show up for a court date. If you can't come to court because you're sick or you've been rearrested, it's your responsibility to contact your lawyer. If you have a court-appointed lawyer, that is no excuse for not calling to let her/him know you can't come to court. You should have your lawyer's card with his/her name and phone number. Don't assume your lawyer or the court will know if you've been rearrested.

If you know in advance that you will not be able to make it to court, let your lawyer know. If you have a good reason and your lawyer knows about it before going to court, she/he can tell the judge and ask her/him not to issue a bench warrant. Otherwise, the judge will issue a bench warrant, creating a problem for you and possibly for the person who posted your bail.

HOW LONG WILL IT TAKE TO RESOLVE YOUR CASE?

Sometimes cases can be resolved within days. Others can take over a year or more. Every criminal case is different. There are no hard and fast rules that dictate a timeline for how cases proceed through the system. There are many variables, including the complexity and seriousness of your case and whether you decide to plead or have a trial. Different cases require different amounts of preparation and litigation. Talk to your lawyer. Your lawyer can explain this more fully as it relates to your case.

TRIAL PREPARATION

It may be frustrating, especially if you are sitting in jail, to wait while your lawyer prepares your case for trial. However, you do not want to go to trial without adequate preparation, even if you're in jail. Your lawyer will request information about your case from the prosecutor. That information is generally referred to as "discovery" and it usually includes police reports, witness statements, photos or diagrams, and any other material that is relevant to your case. Your lawyer will review discovery with you. Your lawyer may have to conduct further investigation. The

good news, if you are incarcerated, is that incarcerated defendants are given preference when it comes to getting a date on an over-crowded court docket. When you are ready for trial, you will be able to get a court date relatively soon.

TO PLEAD OR NOT TO PLEAD

Many people think plea-bargaining is a dirty word, but it is nothing more than negotiating a fair disposition of a case. No matter how experienced or skillful your lawyer is, there's no guarantee of winning a trial. Sometimes a negotiated plea is the best thing to do. Whether you take a plea or go to trial is an important decision that your lawyer cannot make for you, but his/her opinion is important. Once your lawyer knows enough about the evidence against you, she/he can evaluate the chances of winning your trial. She/he will balance your odds of winning against the amount of time you could get if you lose at trial, and the sentence being offered in the plea-bargain. You should discuss your options with your attorney. Take your time. Make sure all your questions are answered. Once you plead guilty, you can't take your plea back if you change your mind later, so make sure it's what you want to do.

By pleading you will be giving up your constitutional right to:

- A speedy and public trial
- A trial by jury, all of whom would have to agree on your guilt or innocence
- See, hear and cross-examine all witnesses against you
- Present evidence in your favor
- Subpoena witnesses in your favor
- Testify or not testify (your choice)
- Appeal

Your lawyer will explain each of these in greater detail.

TRIAL

If you decide to maintain your plea of not guilty and have a trial, your lawyer will explain what you can expect to happen. He or she should discuss with you the process of jury selection, witness subpoenas, opening statements, direct examination, cross-examination, the rules of evidence, objections, the question of whether or not you will testify, closing arguments, and jury deliberations. He or she should also discuss what you can expect at sentencing if you are found guilty.

CONCLUSION

We hope that this pamphlet has been helpful in answering some of the more basic questions you had about the criminal justice process. Obviously, you may have more, particularized questions. We encourage you to find the answers to your questions. There are few things more frustrating than having things happen to you while you do not completely understand what is going on. One of your lawyer's jobs is to make sure that you are aware of what is happening at any given time. Communication is important. If you have any questions, ask your lawyer.