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**SOME THINGS YOU SHOULD KNOW**



**AN INTRODUCTION TO THE FEDERAL  
PUBLIC DEFENDER OFFICE AND THE  
FEDERAL COURT SYSTEM**

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# OFFICE OF THE FEDERAL PUBLIC DEFENDER

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The Office of the Federal Public Defender represents people who are facing criminal charges in federal court and who are unable to afford a lawyer to represent them. The expenses of this office and your attorney's salary are paid by the federal government. Your attorney's loyalty, however, is to you and you alone.

The attorney who is assigned to your case is experienced in defending people charged with federal crimes. Your attorney will defend you to the fullest extent of the law. You will probably have many questions before and after reading this brochure. Your attorney will be able to answer those questions and to tell you how the law applies to your case.

You have certain rights regarding being represented by the Federal Public Defender Office. These rights are set forth on the next page.

## Terms used in this brochure:

In federal court, "government" means the federal prosecutor(s), also called the Assistant United States Attorney or the U.S. Attorney's Office. "The government" may also refer to law enforcement officers.

The term "the court" means the judge.

# YOUR RIGHTS

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*You have the following rights while represented by this office:*

- You have the right to reasonable contact with your attorney.
- You have the right to an explanation of the charges against you, the possible penalties, and of any possible defenses.
- You have the right to be updated on the progress of your case, and of its investigation.
- You have the right to review all correspondence, discovery, pleadings and orders filed or received on your behalf.
- You have the right to decide whether or not to go to trial or plead guilty.
- If you go to trial, you have the right to decide whether or not to testify.

If you have any questions or concerns about your rights or your representation in general, you should first contact the attorney assigned to your case to resolve your questions. If you are still not satisfied, you should direct your questions to the Federal Public Defender.

# WRITING YOUR ATTORNEY

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Your mail to your attorney is confidential. However, it is wise to write on the envelope:

**“CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE”**

Include your return address, and, if you are incarcerated, include your inmate number. *Address the letter:*

[Name of Attorney]  
Office of the Federal Public Defender  
126 College Street, Suite 410  
Burlington, VT 05401

Be careful what you write to other people. If the government obtains copies of letters written by you to friends, other inmates, etc., that information can be used against you.

## **CALLING YOUR ATTORNEY**

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The Federal Public Defender Office accepts collect calls at (802) 862-6990. Calls to your attorney will not be monitored.

The Federal Public Defender Office handles thousands of calls each year. Your attorney will make every effort to take your calls. However, your attorney may not be available if he or she has court appearances, or other matters away from the office, and your collect call may not be accepted if your attorney is unavailable.

## **CONFIDENTIALITY**

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**Do not talk to anyone about your case without first discussing the matter with your attorney.** You may discuss anything concerning your case with your attorney because these matters are confidential. But this confidential privilege extends only to discussions between you and your attorney. Anything you tell your family, friends, or others, such as

cellmates, is **not** confidential. A judge can require those people to testify about what you have said, whether they want to testify or not.

Your attorney cannot discuss any part of your case with your family or friends, unless you give your permission.

## **CALLS FROM JAILS TO FRIENDS & FAMILY**

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*You should assume that law enforcement is monitoring these calls. Do not discuss your case on the phone with anyone except your attorney.*

## **CONTACT WITH LAW ENFORCEMENT**

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**Always check with your attorney before talking to anyone about your case, particularly to those in law enforcement.** Law enforcement agents may say that they want to help you, but talking to law enforcement agents could really hurt your case.

# OUTLINE OF A CRIMINAL CASE

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Phase I.	Preliminary Proceedings
Phase II.	Filing of Your Case
Phase III.	Preparing Your Case
Phase IV.	Trial
Phase V.	Sentencing
Phase VI.	Appeal

## I. PRELIMINARY PROCEEDINGS

There are three instances in which you may have a lawyer appointed to represent you regarding criminal charges:

- (1) if you receive a *grand jury* target letter from an Assistant United States Attorney;
- (2) if you are charged in a criminal complaint;
- (3) or if you are indicted by a *grand jury*.

### 1. Initial Appearance

After arrest, the officer is required to take you before the nearest available magistrate judge without unnecessary delay. This hearing is called your *initial appearance*. The magistrate will inform you of the charges against you and of your right to request the appointment of an attorney if you qualify. **You will not be required to plead guilty or not guilty at this point, nor will you be required to answer questions about the charges against you.**

At your initial appearance, the magistrate judge will either release you on bond or the government will move to have you detained. Before your initial appearance, a person from the United States Probation Office (Pretrial Services) will interview you about your background,

including your prior criminal record. ***Anything you say during the pretrial services interview can be used against you at either trial or sentencing.*** You have the right to speak with an attorney before being interviewed by Probation.

**Never discuss the charges against you, or any other illegal activity, with the pretrial services officers, because your statements will be used against you.** The pretrial services officer may also interview members of your family. After the pretrial services officer completes his investigation, he prepares a report that contains proposed conditions for your release or a recommendation that you should be detained.

If you are released, a pretrial services officer will supervise you.

## **2. Bail Hearing/Detention Hearing**

If the government makes a motion to detain you, your *detention hearing* will usually be held within 5 days of your initial appearance. You will be held in a jail until your detention hearing. At your detention hearing, the magistrate judge will determine whether you will be released or whether you will be detained.

## **3. Bonds**

If you are not detained, your release may involve:

- (a) secured or unsecured bond
- (b) home confinement- with electronic monitoring (this requires a landline telephone)

#### **4. Preliminary Hearing**

If you have not yet been indicted by a grand jury, you are entitled to a *preliminary hearing* within 10 days of your initial appearance, if you are in custody.

The prosecutor must present evidence to convince a judge that there is enough evidence (“probable cause”) to allow the government to continue holding you on the charges. The preliminary hearing may be the first opportunity that you and your attorney will have to learn about the evidence in your case.

## **II. FILING OF YOUR CASE**

### **1. Indictment**

Either before your arrest or within a few weeks of arrest, an Assistant United States Attorney will present your case to a grand jury. A grand jury consists of 16-23 people who hear the government’s presentation. If the grand jury decides that there *is* enough evidence against you to believe that you committed a crime, the grand jury will issue an indictment against you.

### **2. Arraignment**

You can generally expect to be arraigned before a magistrate judge within one to two weeks after being indicted. At the *arraignment*, your charge(s) will be read to you. You will then be required to enter a plea of not guilty to the charge(s). The judge will inform you of your trial date, dates of hearings or pre-trial motions, and of the judge assigned to your case.

### III. PREPARING YOUR CASE

#### 1. Getting Ready

After you are charged, your attorney will be gathering the facts about the government's case, about any defenses you may have, and the possible sentence you may face if you are convicted. Your attorney will also help you decide whether it is best to go to trial or to plead guilty to one or more of the charges. A complete investigation may take several weeks or months.

Your attorney will keep informed by letter or visit. If you do not understand any matters in your case, write or call your attorney, and these matters will be explained to you.

#### 2. Investigation

Your attorney will have the assistance of an investigator, who may need to meet with you. What you tell them will be just as confidential as if you were talking with your attorney.

To avoid surprises in the courtroom your attorney and your investigator need to know the truth, even if the truth makes you appear to be guilty. You and your family can help in the investigation of your case by giving the names and addresses of witnesses who can give an explanation of what happened. **Do not contact witnesses who will be called to testify against you, or you may be charged with witness tampering, a federal crime.**

The magistrate judge will tell you not to have contact with any potential witness. If you violate this condition, your bond could be revoked.

Your family will naturally be concerned about your case. **However, it is often not in your best interest to discuss your case with anyone, even your family.** Any conversations you have with anyone

other than your attorney or his staff could later be used as evidence against you!

### **3. Discovery**

Your attorney will obtain copies of law enforcement reports and other documents, to learn about the government's case against you. Your attorney will go over the discovery with you. Obtaining the discovery could take several weeks.

### **4. Motions**

Your attorney may file one or more motions before trial. Examples of motions include: motions to continue, in which your attorney asks the court to extend a deadline, and motions to suppress, in which your attorney asks the court to exclude certain evidence from trial. **You should not file any motions on your own.**

### **5. Cooperation/Substantial Assistance**

In some cases, the government might seek your cooperation in the investigation and prosecution of other individuals in exchange for a better deal for you. You are never required to cooperate with the government unless you specifically agree to do so. Your attorney will discuss the pros and cons of cooperation. The decision whether to cooperate is yours to make. Do not speak with, or attempt to cooperate with, any government agent or law enforcement officer on your own.

If you decide to cooperate and your cooperation results in the successful investigation or prosecution of others, the government may file a **"substantial assistance" motion** on your behalf. This motion allows the court to impose a sentence which is lower than the sentence required by the Sentencing Guidelines. **Only the government can file a substantial assistance motion.**

## **6. Trial or Guilty Plea?**

Your right to a trial by jury is guaranteed by the United States Constitution. In making the decision to plead guilty or to take your case to trial, your attorney will assist you; however, the final decision is yours.

## **IV. TRIAL**

Your case will be tried before a jury of twelve people unless you waive this right. Unless the court dismisses the charges against you at the end of the government's presentation, your attorney will have the opportunity to present evidence and witnesses, if any, that he feels will best help you. The decision as to which witnesses to call will be made by your attorney, after consultation with you.

You must decide yourself whether or not you will testify. Your attorney will give you advice on this, including the risks involved, but the final decision is yours.

After all the evidence has been presented, each side gives a closing argument. The judge will then read instructions to the jury for it to use in reaching its verdict. The jury will deliberate until it reaches a unanimous verdict. If the jury cannot agree on a unanimous verdict, then a mistrial is declared.

## **V. SENTENCING**

Your sentence will depend in part on whether you plead guilty or go to trial. Since this may be one of the most critical decisions in your case, you must discuss the application of the Sentencing Guidelines with your attorney before deciding whether or not to go to trial.

## **1. Sentencing Guidelines**

The Sentencing Guidelines, which apply to federal cases and are issued by the United States Sentencing Commission, are the starting point to determine your sentence. Each crime is assigned a “**Base Offense Level**” under the guidelines. The level offense may increase or decrease depending on the circumstances of your case.

The Guidelines also determine your “**Criminal History Category,**” which ranges from I to VI. Your criminal history category is determined by the number of prior sentences you have received. The number of points depends upon the length of sentence, and where and when it was served.

Once your offense level and your criminal history category have been determined, your attorney can refer you to the “**Sentencing Table.**” This table shows the range of incarceration periods.

Your attorney will have an opportunity to present evidence to the judge in support of a sentence below the guideline range. However the government may present evidence in support of a sentence above the guideline range.

## **2. Sentencing Hearing**

If you are found guilty, or if you have chosen to plead guilty, you will be scheduled for a *sentencing hearing*. Before the sentencing hearing, a Pre-sentence Investigation Report (PSR) will be prepared by the United States Probation Office. Make sure that you speak with your attorney before providing any information to the Probation Officer.

Your attorney will get a copy of the PSR, and will review it with you before you are sentenced. If your attorney disagrees with the PSR, he or she may file objections.

You have the right to speak to the judge at your sentencing hearing.

You should discuss that issue with your attorney well before the sentencing hearing.

The judge will also give your attorney an opportunity to speak on your behalf. The judge may also permit other people to speak on your behalf, and he will consider letters of support. **Let your attorney know in advance the names and addresses of the people whose views you believe are important for the judge to know.**

If you are sentenced to imprisonment, you should be prepared to be taken into custody immediately. You are not likely to be given an opportunity to go home to “get your affairs in order.” You will probably be placed into the custody of the United States Marshal immediately. Therefore, you should not carry very much cash, or wear any jewelry, watches, or other items of value to the sentencing hearing, and you should make arrangements for someone to take care of your personal and financial matters.

### **3. Types of Sentences**

Most people convicted in federal court receive a prison sentence. While probation is an option, it is imposed only in limited cases. You could be placed in any institution in the United States. The Bureau of Prisons tries to place people as close to their home as possible; however many factors, including the offense, your prior record, and the projected length of imprisonment, will all be involved in determining where your confinement is served. **Parole has been abolished in the federal system. If sentenced to prison, you can expect to serve at least 85% of your sentence.**

In offenses involving restitution, the court must order you to pay restitution, except in certain situations. The court may, and in some

cases must, impose a fine. You will be required to pay a special assessment of \$100 for each felony count of conviction. The special assessment is similar to court costs.

#### **4. Supervised Release**

Supervised release must also be imposed in connection with a sentence of incarceration. When you are released from incarceration, you will be under supervision of the United States Probation Office for a period usually ranging from two to five years, depending on the crime for which you were convicted. If you violate the conditions of your supervised release, you can be sentenced to an additional term of confinement, followed by another period of supervised release.

## **VI. APPEAL**

If you are convicted (and possible even if you plead guilty) you have the right to appeal your case. A notice of appeal must be filed within 14 days after judgment (your sentencing order) is entered, or you lose that right. An appeal is an opportunity to tell the appellate court (the 2nd Circuit Court of Appeals) exactly how the judge did not follow the law, or what rights you were denied.

If you tell your attorney to file an appeal, he or she will do so. However, if your attorney believes that there are no issues for appeal, your attorney is required to tell that to the Court of Appeals.

Typically, the appeal of your case will take six months to a year or more to be decided. While your case is on appeal, the judge may, but is not likely to release you. You do not have an automatic right to bail while you appeal is pending.

