

INFORMATION FOR
FEDERAL CRIMINAL DEFENDANTS



Prepared By:

*Office of the Federal Defender
Eastern District of Texas*

**INFORMATION FOR
FEDERAL CRIMINAL DEFENDANTS**

TABLE OF CONTENTS

INTRODUCTION	1
SILENCE	1
RELEASE OR DETENTION	1
Court Appearance	1
Pretrial Report	1
Chance for Release	1
YOUR LAWYER	1
Honesty	1
Bad Advice	1
Respect	1
YOUR RIGHTS	2
Caselaw	2
Application	2
CUSTODY	2
Clothing	2
Other Possessions	2
Visits	2
ARRAIGNMENT	2
Indictment	2
Hearing	2
Discovery	3
Motions	3
SPEEDY TRIAL	3
Pretrial Detention	3
Dismissal	3
TRIAL	3
Jury Selection	3
Opening Statements	3
Order of Proof	3
Rules	3
Prior Acts	4
Final Arguments	4
Jury Deliberations	4
Verdict	4
Release	4
GUILTY PLEAS	4
Plea Agreement	4
Plea Hearing	4
Effect of Plea	4
After Plea	4

COOPERATION	4
OTHER CHARGES	5
SENTENCING	5
Federal Sentencing Guidelines	5
Mandatory Minimum Punishments	5
Departures	5
Presentence Investigation Report	5
Interview	5
Objections	6
Sentencing Hearing	6
Concurrent and Consecutive Sentences	6
Present Charges	6
Other Charges	6
VOLUNTARY SURRENDER	6
APPEAL	6
PROBATION	7
PRISON	7
State Custody	7
Jail Credit	7
Federal Custody	7
Designation	7
Good Time Credit	7
Release	7
CORRESPONDENCE	8

INTRODUCTION

The following is a short summary of things that may happen to someone charged in a federal criminal case. This is very general information and does not apply to any particular criminal charge.

SILENCE

By the time you read this material you will have already entered the federal criminal justice system. Whether you are in custody or in the “free world”, one firm rule applies: **Do not discuss your case with anyone but your lawyer.** Anything you say can and will be used against you. This is true whether you talk to a police officer, a person you just met in a holding cell, or a “friend”.

RELEASE OR DETENTION

The first thing to worry about is whether you are going to be released while waiting for trial. There is no bond set automatically in federal court. Your family cannot simply pay a bondsman to get you out.

Court Appearance: If you were arrested and taken into custody, you will soon appear before a United States Magistrate Judge. This is not the District Judge that will hear your trial. This Magistrate Judge will decide if there are any conditions that would allow your release.

Pretrial Report: In order to assist the Magistrate Judge, a Pretrial Services Officer will interview you and give the Magistrate Judge a written report about your background and criminal history. The Officer will not ask you about the facts of your case and you should not volunteer any information. If you lie to the Officer, it will hurt you later on.

Chance for Release: You are most likely to be released if you have little or no criminal history, if you have solid employment and family ties in your community, if you are a United States Citizen, and if you are not charged with a serious drug trafficking offense or crime of violence. Even if you are not a good risk for release, the Magistrate Judge must still hold a hearing and find reasons to keep you in custody. The only time this hearing is unnecessary is when you are being held in custody for other reasons -- such as a sentence in another case, a parole warrant, or a probation revocation warrant.

YOUR LAWYER

You have been appointed a lawyer from the Office of the Federal Defender for the Eastern District of Texas. All Federal Defenders are experienced federal criminal defense lawyers. The Office of the Federal Public Defender exists solely to provide legal assistance to people who are facing criminal charges (or potential charges) in federal court, and who are unable to afford a lawyer to represent them.

Honesty: Defendants often believe it is better not to tell their lawyers the truth about their case. This is not a good idea. Everything you tell your lawyer is privileged and cannot be told to others. The best defense is one that prepares for all the bad evidence the prosecutor may present against you at your trial. Your lawyer must know all the facts. It is foolish to ignore the dangers and simply hope everything will turn out all right. That is the sure way to be convicted.

Bad Advice: If you are in custody, you will probably get a lot of free advice from other inmates. Unfortunately, much of that advice will be wrong. Many of the other inmates are in state custody and know nothing about federal criminal law. Even the ones facing federal charges may give you bad advice; they may not know any better, or they want to mislead you.

Respect: Treat your lawyer with respect and that respect will be returned to you. Lawyers are human beings who tend to work harder for clients who do not mistreat them.

YOUR RIGHTS

When people talk about “rights” in the federal criminal justice system, they are usually talking about the Fourth, Fifth, Sixth and Eighth Amendments to the United States Constitution. These rights include freedom from unreasonable searches and seizures, the right to remain silent, the right to legal counsel, due process of law, equal protection under the law, protection from double jeopardy, a speedy and public trial, the ability to confront one’s accusers, subpoenas for witnesses, no excessive bail, and freedom from cruel and unusual punishment.

Caselaw: There are many books and thousands of cases that discuss what these rights mean. The law is always changing. A court opinion written in 1934 by a Montana court of appeals is probably no help in your case. Your case will mostly be affected by recent published opinions of the United States Court of Appeals for the Fifth Circuit and the United States Supreme Court.

Application: Not all of these rights apply in all cases. If you never made a statement to the police, then it will not matter whether you were told of your right to remain silent. If you consented to a search of your car, then it will not make a difference whether the police had a search warrant.

CUSTODY

There are no benefits to being locked up. Jail has many rules and regulations. Some of those rules are made by the jailers. Some of these rules are made by the United States Marshal.

Clothing: You can get clothing two ways. The way to get underwear, tennis shoes, socks, etc. is to buy them through the jail commissary. Despite what others tell you, your lawyer cannot simply bring you these items. In most instances, trial clothing can be brought to the U.S. Marshal’s office shortly before your court appearance. You will be allowed to change in the holding cell at the federal courthouse.

Other Possessions: Sometimes the jail may allow you to receive magazines by subscription or books mailed from a store. It depends on the jail’s rules. Most other items need to be purchased through the commissary. All jails prohibit your lawyer from bringing you any items, such as cigarettes. You may keep legal documents in your possession.

Visits: Your friends and relatives must follow the jail’s rules when making appointments to visit you. You must put the names of these persons on your visitation list.

ARRAIGNMENT

At some point you will come to court for an arraignment. This is the time when you enter a plea of “Not Guilty”.

Indictment: Before the arraignment, you will have been indicted by a Grand Jury. Neither you, nor your attorney, has a right to be present at the Grand Jury session. A Grand Jury decides if there is enough evidence to have a trial in your case. If there is not, then the case is dismissed. If there is, the Grand Jury issues an Indictment. An Indictment is the document that states what the charges against you are. The Grand Jury sessions are rarely transcribed, so it is usually not possible to receive a transcript of their sessions.

Hearing: The arraignment takes place before a Magistrate Judge, not the District Judge who will hear your case. The Magistrate Judge will ask you several questions: (1) Do you understand what you are charged with?; (2) Do you understand the potential penalties if you are convicted?; and (3) How do you plead to the charges? Since you will have discussed the case with your lawyer by this time, you will be able to answer the first two questions “Yes”. Your answer to the third question is “Not Guilty”. You cannot plead “Guilty” at an arraignment. Pleading “Not Guilty” will never be used against you.

Discovery: Federal law provides only limited access to the government's evidence against you. Under local rules, you and your attorney are permitted to have copies of only certain types of documents in the government's file. The rules of discovery must be strictly adhered to, and your attorney will discuss these rules with you more thoroughly as your case progresses.

Motions: Before or after investigating your case, your attorney may feel it appropriate to file a motion(s), which may be heard before or at trial. **You should never file your own motions** without fully discussing the proper procedures with your attorney. If you have ideas about specific motions that could be filed your case, you should discuss with your attorney whether those particular motions would be appropriate or beneficial to your defense.

SPEEDY TRIAL

Many defendants want a quick trial. This is usually for two reasons. First, defendants who are in custody want to get out of the county jail as soon as possible. Second, defendants believe that if they are not tried within the Speedy Trial Act's 70-day time limit, then their cases will be dismissed.

Pretrial Detention: There is no question that conditions in the county jail are not good. However, a defendant is rarely ever helped by going to trial as soon as possible. The prosecutor is prepared to try the case when it is filed. Your lawyer is only then beginning to investigate the case. Your lawyer does not have access to offense reports of the law enforcement officers that have already investigated the case. Also, "aging" a case has other benefits -- the case becomes less important over time, witnesses' memories fade, etc.

Dismissal: There are many exceptions to the Speedy Trial Act. Generally, a prosecutor can get a continuance of the trial whenever requested. The usual reason why a prosecutor requests a continuance is because there are co-defendants who have not been arrested yet. The speedy trial deadlines do not begin to run until all charged defendants have appeared in court. Also, any time any of the defendants file motions, the time until those motions are decided is not counted toward the speedy trial deadline.

TRIAL

A felony trial in federal court is decided by twelve jurors. The jurors only decide if you are "Guilty" or "Not Guilty" of the charges in the Indictment. **Jurors do not decide punishment.** The District Judge decides punishment.

Jury Selection: The trial begins with the selection of the jury. A panel of potential jurors is called to court from voter registration lists. The District Judge, the prosecutor, and your lawyer talk to the panel and ask questions. The lawyers are allowed to keep certain members of the panel from sitting on the jury. The first twelve of the remaining panel members become jurors.

Opening Statements: Before the evidence is presented, the lawyers may make opening statements. Opening statements are when the lawyers tell the jury what they believe the evidence will show.

Order of Proof: The prosecutor presents evidence first. You are presumed to be innocent until proven guilty beyond a reasonable doubt. You do not have to present any evidence or testify. If your lawyer does put on evidence, it will happen after the prosecutor has finished presenting evidence.

Rules: During the trial, the lawyers must follow the rules of evidence and procedure. These rules are complicated. The rules can both help and hurt you. For instance, the rule against hearsay evidence prohibits a prosecutor from calling a witness to testify how he heard about what you did. The same rule will stop your lawyer from introducing an affidavit made by some person who is unwilling to come to court and testify.

Prior Acts: Although you are only on trial for the charges in the Indictment, there are two ways the jury can learn about other accusations against you. First, if you testify then the prosecutor will be able to introduce your prior convictions. Second, the prosecutor can introduce your prior acts -- even if they are not convictions -- if they are similar to the crime you are charged with (for example, prior drug sales in a drug distribution case).

Final Arguments: After all the evidence has been presented, the lawyers argue the facts to the jury.

Jury Deliberations: Jurors are usually average working people from the community. They are not specially trained in law. They use their common sense when deciding the case. Although the District Judge will instruct them about “the presumption of innocence” and “proof beyond a reasonable doubt”, jurors rely on many things in coming to a decision in a case. Jurors often rely on things such as: the appearance of the defendant, the defendant’s character, and their own biases and prejudices. They cannot be questioned about how they reached their decision.

Verdict: If you are found “Not Guilty”, you will be released. If there is a “Guilty” verdict, then the District Judge will order the Probation Department to prepare a Presentence Investigation Report to assist the District Judge at sentencing. It takes approximately two months between a conviction and sentencing.

Release: If you were previously on pretrial release, the District Judge may continue that release until sentencing, unless you were convicted of a crime of violence or a serious drug trafficking offense.

GUILTY PLEAS

Statistics show that most defendants plead guilty. You make the decision to plead guilty. That decision is never simple. Some possible benefits of a guilty plea are that: (1) the prosecutor may dismiss some charges; (2) the prosecutor may not file new charges; (3) the prosecutor may recommend a favorable sentence; (4) you may get credit for accepting responsibility, etc.

Plea Agreement: Any promises the prosecutor makes for your guilty plea will be stated in a written plea agreement. That agreement is signed by you, your lawyer, and the prosecutor.

Plea Hearing: You must enter a guilty plea in court before the District Judge. The District Judge must ask you many questions so the record shows you understand what you are doing. During the hearing, the prosecutor will briefly tell the District Judge the facts of the case. You must agree to those facts for the District Judge to accept your guilty plea.

Effect of Plea: Once the District Judge accepts your guilty plea, you are just as guilty as if a jury returned that verdict. Once you are convicted of a felony, you lose certain civil rights, including the right to vote; the right to sit on a jury; and the right to possess firearms.

After Plea: The procedure after a guilty plea is the same as after a conviction at trial. A Presentence Investigation Report will be ordered and you will either be released or detained until sentencing (see “Trial” section).

COOPERATION

Some defendants give prosecutors information against other persons for the possibility of a reduced sentence. There is no guarantee that a defendant will get a lower sentence for “giving people up”. Cooperation usually requires a defendant to testify in court or before a Grand Jury.

OTHER CHARGES

Many times, federal defendants are first arrested by state officers on state charges. Sometimes, even when federal charges are filed, the state charges are not dismissed. **It is possible to be convicted of both state and federal charges for the exact same offense. This is not “double jeopardy”.** It is also possible to receive

“stacked time” (a consecutive sentence), by pleading guilty to an unrelated state or federal case before being convicted in your federal case. Be careful not to do anything about your other cases without telling your Federal Defender. If you are summoned to “jail call”, do not agree to plead guilty to your state charge in exchange for “time served” without telling your Federal Defender. Despite what the state prosecutor may tell you, this conviction will affect your federal sentence.

SENTENCING

Sentencing takes place approximately three (3) - six (6) months after you have been convicted by a jury or guilty plea. The District Judge decides the sentence. Unlike state court, you cannot simply agree with the prosecutor to serve a particular amount of time or probation.

Federal Sentencing Guidelines: The District Judge decides your sentence based upon a book called the “Federal Sentencing Guidelines Manual”. That book works on a point system. You get points for the seriousness of the offense and your role in the offense. Points may be subtracted if you accept responsibility for the offense or if you were only a minor participant. The Manual also considers your criminal history. Your criminal history is the record of your prior convictions in state and federal courts. A chart at the back of the Manual determines your sentencing guideline range, based upon your criminal history points and the points you received for the offense conduct.

Mandatory Minimum Punishments: Some drug and firearms cases have mandatory minimum punishments. These minimum punishments apply even if the Federal Sentencing Guidelines would otherwise give you a lower sentence. For instance, anyone possessing over 50 grams of crack cocaine, with the intent to deliver it, must receive at least ten (10) years in prison; even if that person is a first offender.

Departures: If the District Judge sentences you to more or less time than your sentencing guideline range, it is called a “departure”. Departures are unusual. The District Judge must have a good legal reason for a departure. The District Judge cannot depart downward below a mandatory minimum punishment, unless the reason is that you have provided substantial assistance to the government in the prosecution of others or you qualify for the “safety valve” provision as a first offender. Only drug cases qualify for the “safety valve”.

Presentence Investigation Report: Before the sentencing hearing, the District Judge will review a Presentence Investigation Report prepared by a Probation Officer. That report summarizes the offense conduct, your criminal history, and other relevant background information about you. Most importantly, the report calculates a range of punishment for the District Judge to consider in your case. The Probation Officer creates the report based upon information from the prosecutor, independent investigation, and an interview with you in the presence of your lawyer.

Interview: It is important to be honest with the Probation Officer at the presentence interview. If you mislead the officer you may increase your sentence for “obstruction of justice”. **Also, you will not get credit for accepting responsibility unless you talk truthfully about your crime.** Do not talk about any other conduct for which you have not been convicted, unless your lawyer tells you to.

Objections: Before the District Judge gets the Presentence Investigation Report, it will be sent to your lawyer. The probation office will also mail a copy directly to you for your inspection. **Review it carefully.** If there is anything incorrect about the report, your lawyer can file objections. Some mistakes are more important than others. If the report says your car is red rather than blue, that is probably not important. If the report says you have five (5) prior felonies when you do not, that is important.

Sentencing Hearing: At the sentencing hearing, the District Judge will review your objections to the Presentence Investigation Report and make findings about any facts or legal issues that cannot be agreed upon. Your lawyer will address the legal issues and point out the facts in your favor. District Judges do not want to hear from witnesses who are just there to plead for a reduced sentence. Letters of recommendation and other helpful evidence should be provided to your lawyer well before sentencing so the District Judge can see them before the hearing. Before the District Judge pronounces sentence, you can make a statement.

Concurrent and Consecutive Sentences: No area of law is more confusing to defendants and lawyers than whether multiple sentences (more than one) may be served at the same time (concurrent) or one after another (consecutive).

Present Charges: If your federal Indictment has several related charges, and you are convicted of them, you probably will serve these sentences at the same time. However, it is possible for the District Judge to “stack” unrelated convictions so each must be served before another begins.

Other Charges: Sometimes a defendant is already serving a sentence before being convicted in a federal court. Unless the District Judge specifically orders the new sentence to run at the same time as the previous sentence, they will be stacked and will run consecutively. You would have to finish your other sentence before the new one begins. Even if the District Judge runs the new sentence at the same time as your previous sentence, you will not get credit for the time you served prior to sentencing.

VOLUNTARY SURRENDER

If you were on release until sentencing, you may be allowed voluntary surrender. This means about 45 days later you report directly to the federal prison designated for sentence. Otherwise, you would go directly into custody if you received a prison sentence.

APPEAL

An appeal is not a new trial. An appeal is a review of your case by the United States Court of Appeals for the Fifth Circuit, which is located in New Orleans, Louisiana. You may only appeal after you have been sentenced. A notice of appeal must be filed within 10 days after judgment (your sentencing order) is entered, or you lose that right. Transcripts of all testimony, and all the legal documents in your case, are sent to the Court of Appeals. The Court of Appeals decides whether the District Judge made any mistakes in ruling on the law in your case. If the Court of Appeals decides there were some important mistakes made by the District Judge in your case, the usual remedy is that you will be allowed to have a new trial or a new sentence. That is called a “reversal”. It does not happen often. It is nearly impossible to be released while your appeal is being decided. The decision to appeal should be made only after a careful discussion with your lawyer. The Fifth Circuit is strict about accepting cases that raise legitimate issues. A claim that you received “too much time” will not prevail in the Fifth Circuit. The Fifth Circuit will dismiss your appeal if you do not present an issue they consider meritorious. Also, you and your lawyer can be sanctioned (punished) if you present a “frivolous” issue on appeal.

PROBATION

Probation means your term of imprisonment is suspended, you must follow restrictive conditions, and report to a probation officer. Probation is not available for federal drug trafficking crimes. Except for minor fraud cases, **most federal defendants do not get probation**. “Shock Incarceration” or “Boot Camp” is not probation. That is a military discipline program followed by time in a halfway house. It is available mostly to young, nonviolent, first-time offenders.

PRISON

Most defendants who are sentenced to prison go directly into custody or continue to remain in custody. Where the sentence will be served depends on several factors.

State Custody: If the reason you first came into custody was a state charge, parole warrant, or probation revocation warrant, then you are in state custody, not federal custody. **Neither the United States Marshal, nor the District Judge, has the authority to take you from state custody so that you may begin serving your sentence in a federal institution.** This means you will remain in the county jail, or the Texas Department of Criminal Justice, until your State of Texas (or whatever other jurisdiction you owe time) sentence is completely served. Even if you got a federal sentence that is to run at the same time as your previous sentences (see “Sentencing” section), you will do that time in the other jurisdiction’s prison.

Jail Credit: In the federal system, the district judge does not have the authority to award jail credit at your sentencing hearing. See United States v. Wilson, 112 S.Ct. 1351 (1992); 18 U.S.C. §3585(b). Under the statute giving a defendant convicted of federal crime the right to be credited for time spent in official detention before sentence begins, the Attorney General is required to compute credit after the defendant has begun to serve his sentence, rather than the district court at time of sentencing. Statute giving defendant convicted of federal crime right to receive credit for time spent in official detention before sentence begins does not authorize district court to award credit at sentencing.

Federal Custody: You are in federal custody if you were brought in on a federal warrant. It does not matter that you are being held in the county jail or that state charges or revocations are later filed. It is always better to be in federal custody, because the State of Texas will give you credit for serving your state sentences no matter who has custody of you.

Designation: If you are in federal custody, then a federal institution must be designated for your sentence. This designation takes about one (1) month and is made by the Federal Bureau of Prisons. During that month, you will probably remain in a county jail. The decision about where you will go depends upon the seriousness of the crime, your criminal history, the location of your family, among other things. A recommendation by the District Judge to send you to a particular place is not binding on the Bureau of Prisons.

Good Time Credit: The Bureau of Prisons can give you up to 54 days a year of “Good Time Credit”. This is time subtracted from your sentence. The credit is a privilege for good behavior, not a right. It does not begin to be counted until after your first year in prison.

Release: There is no parole in the federal criminal justice system. You will serve the majority of your sentence, minus Good Time Credit. You will receive a term of supervised release that begins after you are released. Like probation or parole, supervised release means you have to follow rules and report back to a probation officer. Violating supervised release can mean going back to prison.

CORRESPONDENCE

You must use your own judgment about writing letters. **You should not write about the facts of your case to anyone other than your lawyer.** If you have any questions about your case or suggestions about it, you should contact us immediately. Your mail should not be censored. However, it is wise to write on the envelope:

“CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE”

Always include your return address and indicate your location and your jail identification number in the facility or jail if you are incarcerated.

Address your letter to the appropriate Federal Public Defender’s Office as follows:

Name of Attorney
Federal Public Defender’s Office
200 E. Ferguson, Suite 407
Tyler, TX 75702

or

Name of Attorney
Federal Public Defender’s Office
350 Magnolia, Suite 117
Beaumont, TX 77701

or

Name of Attorney
Federal Public Defender’s Office
One Grand Centre
1800 Teague Drive, Suite 204
Sherman, TX 75090