



Thank you for downloading my 10-minute Ready Reference and Action Plan. If you have had a family member or friend arrested for a crime in San Diego, this short pamphlet will provide you with a solid understanding of the criminal case process, and the information you need to take immediate action to help your loved one through this difficult time.

If you have questions, or if you would like to schedule a consultation, please call my office at **(619) 341-3149**.

The Arrest

In California, arrests happen in one of three ways.

For misdemeanors, the arresting officer observes the misdemeanor happen. For example, in a DUI case the arresting officer may actually see the defendant speeding and weaving on the road. The officer can stop the driver, conduct a DUI investigation, and arrest the driver.

For felonies, the arresting officer may simply have reason to believe the person he is arresting has committed the felony. For example, an officer may receive a call that a robbery has just occurred and a description of the suspect. The officer may detain a person matching that description and, after a brief investigation, arrest him.

The third method of arrest is by arrest warrant. If an arrest occurs pursuant to an arrest warrant, it is almost certain that there has been a lengthy investigation and that information has been provided to a judge in support of that warrant.

After the arrest, the arresting officer prepares his investigative report. This report will contain all the details of the arrest, including the rough facts of the crime, the names of any potential witnesses, the name of the victim who was involved, and other relevant information.

This report is then forwarded to the arresting officer's supervisor, the supervisor reviews the report, and when the supervisor approves the report, he will then send the document to the prosecutor for their review and consideration in anticipation of criminal charges.

If the case is a felony, the report will be forwarded to the San Diego County District Attorney. If the case is a misdemeanor and occurs within the city of San Diego, the case will be forwarded to the San Diego City Attorney. If the case is a misdemeanor and occurs outside of the city of San Diego, the case will be forwarded to the San Diego County District Attorney.

Both the San Diego City Attorney and the San Diego County District Attorney have lawyers in their office who review these police reports and make determinations as to what type of charges to file.

*****Note: In San Diego County, the District Attorney prosecutes misdemeanors and felonies in the Vista, El Cajon, and Chula Vista courthouses. The District Attorney prosecutes felonies and some misdemeanors in the downtown San Diego courthouse. The San Diego City Attorney prosecutes most misdemeanor offenses committed within the City of San Diego.***

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It is important to remember that a critical piece of the case occurs between arrest and the first court hearing. For this reason, it is important to consult with and even retain an attorney BEFORE the arraignment. If there is sufficient time before the arraignment, the defense attorney can engage in pre-charging negotiation with the prosecution. This negotiation may lead the prosecutor's office to agree to reduced charges, or to decline prosecution at all.

Bail

Bail is a mechanism by which the court guarantees that a person charged with a crime shows up to court for their hearings.

At the very beginning of a case, it is the arresting officer who controls on the issue of bail. The arresting officer determines the charges for which the defendant is arrested and booked into the jail, and for that reason has the greatest say as to bail early on.

However, every county has a bail schedule. The bail schedule lists the bail amount for each criminal offense, and in San Diego county the bail schedule is more than 100 pages long.

Thankfully there are many options available to help someone arrange for bail. Including the posting of a cash bail with the Sheriff, hiring a bail agent or bail bondsman to post a bail bond, or securing bond by way of real property. The most common way of securing someone's release on bail is through a bail bondsman. The bail bondsman earns his fee by allowing you to essentially borrow his money. The bail bondsman will prepare a bond or a promissory note and deliver that to the Sheriff to secure the release of the defendant. For this service a bail bondsman typically charges a premium – or a fee – of 10%. Bail bondsmen do offer discounts, and an 8% premium is not uncommon. If you are referred to a bail agent by an attorney, and especially if you have already retained the services of an attorney, the bail agent may offer a fee as low as 6%.

It is important to remember that a bail agent's fee is non-refundable. Once the bail agent posts the bond, his fee – whether that is 10%, 8% or 6% – is earned in full.

If the family has the cash available to post a cash bond, the county will refund the cash once the criminal case is completed. Similarly, if a family has posted real property to secure the defendant's release, the county will reconvey the trust deed once the case is over.

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Having a friend or family member arrested and jailed is a stressful, not just for the defendant but also for his family and children. Often getting the friend or loved one out of jail as quickly as possible is the most important goal. For this reason, using the services of a trusted bail bondsman is the fastest way to get a defendant released from jail. The defense attorney can provide you with a referral to a reputable bail bondsman and can help you save money on the cost of the bond.

If bail is set very high, then it is important to seek a reduction of bail at arraignment or at a special bail hearing. Arranging for bail is a collaborative effort between the defendant's family and the defense attorney. Since the two main considerations for bail are danger to the community and flight risk, gathering as much information about the defendant's background – including educational history, work history, criminal record (or lack thereof), family status (married, single, children), family ties (names of parents, siblings, other relatives), and ties to the community – is critical.

The Court Hearings

Arraignment

In California the very first court hearing after an arrest is called the arraignment. The arraignment must occur within 3 business days of the arrest, so a defendant arrested on a Friday may not appear in court for an arraignment until the following Wednesday.

The purpose of the arraignment is to advise the client of his constitutional rights, to advise him of the nature and consequences of the charges, to allow for the entry of a not guilty plea and to set the case for future hearings.

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It is surprising how often a client will appear in court for an arraignment and will have no friends or family in the audience to support him. It is strongly recommended to have several close friends and family members arrange to appear in court on behalf of the defendant. It makes a good impression on the court, and may even convince the judge to reduce bail.

Preliminary Hearing

In felony cases the defendant has the right to a probable cause hearing. Often called a preliminary hearing. This hearing must be held within 10 days, and no later than 60 days, from the date of arraignment. The purpose of the preliminary hearing is for the prosecutor to show a judge that there is sufficient basis to take the case to trial. The preliminary hearing is the prosecution's burden, and they will call witnesses and put on evidence to show a judge that it is more likely than not that the defendant was involved in the crime charged.

It is important to remember that the typical trial standard of proof beyond a reasonable doubt does not come into play at the preliminary hearing. The standard used is one of preponderance of the evidence.

Readiness Conference

The next hearing is called a readiness conference/pretrial conference/mandatory settlement conference. The readiness conference is simply the first opportunity that defense counsel, the prosecutor and the judge have to sit and discuss the case and any potential resolution.

For felony cases, and if the client is in custody, the readiness conference is typically set within one week of the arraignment. If the client is out of custody, these readiness conferences can be set up to 30 days after the arraignment.

Similarly, for misdemeanor cases, readiness conferences are that first opportunity for the defense attorney and the prosecutor to sit and discuss the case and any potential resolution. These are also typically set at least one month out from arraignment.

Multiple readiness conferences are common and are typically scheduled about a month apart.

Motion Hearing

Based on a review of the discovery provided in the case, as well as the investigation conducted by the defense attorney, it may become necessary to file certain motions in a criminal case. These motions can be set at any time after arraignment and will be heard on the court's schedule.

Jury Trial

Criminal trials are usually scheduled 45 to 60 days after arraignment. All criminal trials are open to the public. The prosecutor bears the burden of proving every element of the crime beyond a reasonable doubt. The prosecutor must prove his case to a jury of 12 individual jurors drawn from the community, and those jurors must unanimously decide guilt. If all 12 jurors agree that the defendant committed the crime, they will return a verdict of guilty. If even one juror does not believe that the defendant committed the crime, there is a hung jury.

The Plea Agreement and Change of Plea Hearing

While a case is ongoing, the defense attorney and the prosecutor will be in contact to discuss and negotiate the case. If the defense and the prosecution can reach an agreement as to a resolution, the defendant may enter into a plea agreement. The plea agreement is a contract between the defendant and the prosecutor, and include promises by the defendant and the prosecutor. These promises may include an agreement to plead guilty to certain charges in exchange for the prosecutor's willingness to dismiss other charges. Plea agreements may also include a promise by the prosecution to request only a certain type of sentence.

If the defendant, defense attorney, and prosecutor are able to reach an agreement to resolve the case, the court will set a Change of Plea hearing. At that hearing the court will formally accept the plea agreement and the defendant's guilty plea, and will then set a sentencing hearing.

Sentencing

After a conviction at trial or the entry of a guilty plea, the court will set the matter for a sentencing. Sentencing typically occurs in felony cases no sooner than 28 days after the conviction. The purpose of this 28 day delay is to give the defendant time to meet with the probation office to participate in a probation interview, to give the probation officer time to prepare the probation report, to allow the defendant time to prepare a sentencing memo, and to give the court time to consider these documents prior to the date set for sentencing.

For misdemeanor cases, sentencing typically occurs much more quickly. A misdemeanor defendant is entitled to a cooling off period – from 6 hours to 5 days – to consider his plea and prepare for sentencing. Most misdemeanor defendants prefer to proceed with an immediate sentence. That means that the sentence is imposed on the same day that a guilty plea is taken or that a conviction is had at trial.

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Other than trial (and not all cases will end up in a trial), the sentencing hearing is the single most important event in a criminal case. Sentencing is where the skill and magic of the defense attorney are revealed. The sentencing hearing is an opportunity to tell the client's story – NOT his version of events, but rather his successes and failures, his accomplishments, and his goals – to make him more than just a criminal defendant but a *person*, with a history and a future.

It is not uncommon for attorneys to spend several days working with a client's family gathering information – education and health records, family photos, character letters and letters of support – for inclusion in the sentencing memorandum. You should ask the defense attorney for sample letters to use as a model, and the family should begin gathering important records early in the case. These documents can be useful for the negotiation of a case.

As with arraignment, it is strongly encouraged that as many friends and family members as possible attend sentencing.

The Next Steps

Now that you have an idea of what to expect during the criminal case process, you can start making decisions about how to best help your friend or family member. Decide whether posting bail makes sense, begin gathering useful information about the defendant and his background, then consult with and hire an experienced criminal defense attorney.

My office and staff are here to help you and your loved one through this challenging time. Whether the crime is a state or federal offense, misdemeanor or felony, here in San Diego or anywhere in Southern California, you can trust that we are: **Here for you. There with you.™**

About Michael

For nearly 20 years Michael Hernandez has prided himself on providing high quality end-to-end criminal defense services for his clients. He understands the case process, and the results that can be achieved at every stage. If contacted shortly after the client has been arrested, Michael can often engage in pre-charging negotiation with the prosecuting offices (District Attorney or City Attorney) to keep the case out of court. If criminal charges have already been filed, Michael can employ several strategies to assist clients; uniquely formulated pre-plea diversion programs, deferred entry of judgment, reduced charges at sentencing, or even deferred sentencing with a pre-negotiated alternate charge. If a trial is required, Michael is confident litigating cases to the fullest.

Prior to opening his own law office, Michael worked with a certified specialist in immigration law. As such, Michael is keenly aware of the potential immigration consequences of criminal convictions, and is careful to craft case resolutions to minimize the negative impact on a client's immigration status. For his foreign clients already in the workforce, this means preserving specialty visas and employment; for his foreign students, this means preserving student visas and the ability to complete their studies and engage in optional practical training.

For those clients who retain Michael after a conviction, he can often assist by challenging the conviction or sentence on appeal. Michael has successfully argued before the California Court of Appeal, and has a published opinion in his name.

In the community, Michael is an adjunct professor of law (Federal Criminal Practice and Adjudicatory Criminal Procedure) at Thomas Jefferson School of Law, and a volunteer attorney with the California Western School of Law Community Law Project.