

## Your Rights in Court

When you appear in court, you have the right to be told the nature of the charges against you and to have those charges formally read in open court. You have a right to an attorney and, if you cannot afford an attorney, you have a right to have one appointed to represent you.

At a formal trial, you have the right to a jury trial, the right to confront the witnesses against you, and the right to call witnesses on your own behalf at no expense to you. If convicted following a trial, you have a right to appeal that conviction to a higher court.

If you plead guilty to a charge, your attorney and the court must tell you the rights that you are giving up by entering a plea of guilty. These include your right to a trial and the right to appeal. The court must find that you voluntarily waive these rights by pleading guilty.

You have the right to know the maximum sentence that may be imposed by the court and the recommendation that the prosecutor will make to the court about your case. In Washington, the court ordinarily will not tell you in advance what your sentence will be. However, you must be advised of the maximum sentence that may be imposed, and of any mandatory minimum sentences that apply.

## Service of an Attorney

If you can afford an attorney but do not know one, you may wish to ask friends, coworkers, or an employer for suggestions. Many county bar associations operate lawyer referral services.

The Washington State Bar Association also publishes two related pamphlets: *Consulting a Lawyer* and *Legal Fees*.

If you cannot afford an attorney, the clerk of the court may help you locate an appointed attorney. Before you can receive the help of appointed counsel, you may have to submit a financial statement to the court or agency that will determine your eligibility. It is important to be honest in any financial affidavit submitted to the court.

If you wish to have a lawyer help you, it is a good idea to consult with one before making any decisions in your case. You have the right to a lawyer at all stages of the proceeding, and you may ask the court to delay matters until you have a reasonable opportunity to obtain an attorney.

# Criminal Law



This pamphlet was prepared as a public service by the Washington State Bar Association. It contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer.

## Lawyer Referral Service

|                  |              |
|------------------|--------------|
| Clark County     | 360-695-0599 |
| King County      | 206-267-7010 |
| Kitsap County    | 360-373-2426 |
| Lewis County     | 360-748-0430 |
| Pierce County    | 253-383-3432 |
| Snohomish County | 425-388-3018 |

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- Service of an Attorney



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## Criminal Law

### Definition of a Crime

A crime is a violation of a specific state or federal criminal statute or municipal ordinance.

Crimes in Washington generally fall into two categories: (1) felonies and (2) misdemeanors. The exact punishment that can be imposed upon conviction of a crime depends on the type of crime and the individual's prior criminal record.

Generally speaking, a felony is a crime for which the sentence may be more than one year in prison. In the state of Washington, there are three classes of felonies: class A, class B, and class C. Class A felonies are the most serious.

There are two categories of misdemeanors in this state: gross misdemeanors (punishable by up to one year in jail and/or a \$5,000 fine) and simple misdemeanors (punishable by up to 90 days in jail and/or a \$1,000 fine).

Convictions for certain crimes may require mandatory minimum sentences, and penalties may be increased if the crime occurred while armed with a firearm or deadly weapon. Washington's Sentencing Reform Act governs punishments for felonies in this state. Except for special circumstances, the court must sentence the offender within a particular range set by the state Legislature.

For a felony charge, first offenders may be eligible for special sentencing consideration for nonviolent crimes. If the court grants probation as a part of the court's sentence, a person must be placed on community supervision for between 12 and 24 months. For gross and simple misdemeanors, first offenders may be eligible for a disposition that does not result in a criminal conviction.

### Definition of an Arrest

There is no easy definition for what constitutes an arrest. Detention accompanied by handcuffing, drawn guns, or words to the effect that one is under arrest qualifies as an arrest. It requires a seizure and forc-

ible restraint. An officer must have probable cause to determine that you committed a crime to arrest you.

However, not every stop or detention by a police officer means you are under arrest. If stopped only for a short time and questioned, then you may have been "detained," rather than legally arrested. A police officer need not have probable cause to detain and question you; rather, they must have a reasonable suspicion that a crime has occurred, and they can investigate to confirm or dispel this suspicion.

A warrant generally is not required to make an arrest if there is probable cause to believe the person arrested has committed a felony. Also, a warrant may not be required when a misdemeanor was committed in the presence of the arresting officer, or in many misdemeanors cases, outside his or her presence.

### Your Rights if You Are Stopped by Police

You may ask why you were stopped. Also, you can ask if you are under arrest and, if not, whether you are free to leave.

If an officer stops you, you have a right to ask whether you are under investigation for a crime. If the officer suggests you are under investigation, then you have the right to decline to answer any questions. Also, you do not have to be under arrest to decline to answer questions from an officer. Ordinarily, you may be required to identify yourself. If you wish, you may answer the officer's questions. You should remember that whatever you say to the officer may be used if charges are filed against you at a later time (whether or not you give a formal "statement"), so long as:

1. You were merely under investigation, and were not arrested or in custody at the time you made the statement;
2. If you were under arrest, and you were properly advised of your constitutional rights and waived them before making a statement; or
3. You voluntarily tell the officer anything.

If you are arrested, a police officer must advise you of your right to remain silent and your right to an attorney. These rights, or "Miranda warnings" as they are sometimes called, are the result of a 1966 Supreme Court ruling. As a result of this case, police must inform people accused of a crime of certain rights, which are:

- You have the right to remain silent. Anything you say or sign can be used against you in court.
- You have a right to an attorney of your own choosing. Your lawyer may be present before and during any questioning and the making or signing of any statement.
- If you cannot afford an attorney, one will be appointed for you by the court, without cost to you. You have the right to have this attorney present before and during questioning and the making or signing of any statement.

By law, if formally arrested, you may be required to be photographed and fingerprinted after your arrest. If issued a citation (for misdemeanors and infractions), it is lawful to ask you to sign the citation. By signing, you acknowledge its receipt and promise to appear at a future court date. Signing a citation is not in any way an admission of guilt. However, refusal to sign a citation may result in the officer lawfully arresting you and charging you with an additional misdemeanor for refusal to sign the citation. Even though you are presumed innocent until proven guilty, and you may have done nothing wrong, it is your duty as a citizen to act in a responsible manner. Trying to run away or resist arrest is not only unlawful, but also foolish. It may well result in additional charges, such as causing a minor matter to become a felony.

### Police Searches

Many police searches require search warrants — but not all do. If you consent or allow the police to search you or your property, they do not need a warrant and any evidence they find may be used against you. You

have a lawful right to refuse to consent to a search. You should make your refusal clear, but do not interfere physically if police continue to search without your permission.

There are several other instances when police officers do not need a warrant or your consent to search. One example is if you are detained or arrested.

Police may frisk you to determine whether you are carrying a weapon. Also, they may search the area immediately around you. Police officers also may search without a warrant if they have probable cause to believe evidence may be found and when certain "exigent" circumstances exist, such as when valuable evidence would otherwise be destroyed before a warrant could be obtained.

A police officer may search you or your property upon obtaining a warrant from the court. If conducting a search with a warrant, the police must leave a copy of the warrant and a list (or inventory) of the items seized.

### Your Rights if You Are Charged With a Crime

All rights discussed previously still apply if you are formally charged with a crime. In addition, you have the right to be brought "promptly" before a judge for a determination of probable cause and the setting of bail. If you are taken into custody, this must be done "as soon as practicable," but in any event before the close of business on the next court day.

A person charged with a crime has a responsibility to appear before the court on the dates and at times as directed. That person must comply with any other specific conditions of release set by the court pending trial. Some of these conditions may include not contacting certain witnesses in the case, to abstain from alcohol or drugs, or to reside at a particular address. If bail is imposed and you are held in custody, the court must ensure that your trial occurs within 60 days. If you are out of custody, the court must ensure that your trial occurs within 90 days.