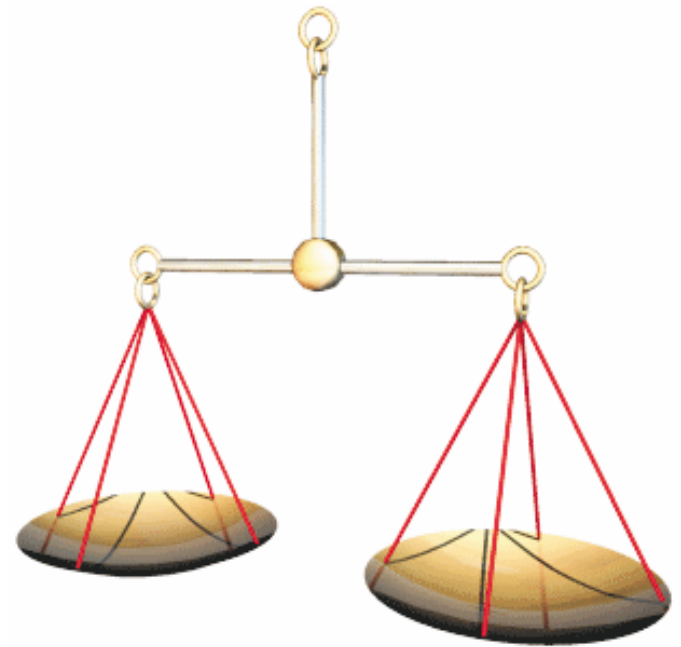


Facts for

Federal Criminal Defendants



FACTS FOR FEDERAL CRIMINAL DEFENDANTS

I. INTRODUCTION

The following is a short summary of what will happen to you if you are charged in a federal criminal case. This information is very general and does not apply to any particular criminal charge. It is presented by the Southern District of Alabama Federal Defenders Organization. This is not legal advice from the United States District Court or any other federal agency.

II. SILENCE

By the time you read this material you will already have 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 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.” Silence means: Do not discuss your cases with inmates or with anyone on the telephone. ALL CONVERSATIONS FROM THE JAIL ARE RECORDED.

III. YOUR LAWYER

If you cannot afford to hire your own attorney, you will be appointed a lawyer by federal law (18 U.S.C. §3006A, The Criminal Justice Act). You will be appointed either a Federal Public Defender or a Criminal Justice Act (“CJA”) Panel Lawyer. Federal Public Defenders work for an organization that only represents federal criminal defendants. CJA Panel lawyers are private lawyers approved to represent federal criminal defendants when requested by the Court. A Magistrate Judge will determine whether you qualify for appointed counsel.

A. 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.

B. 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 other inmates are in state custody and know nothing about federal criminal law. Even the ones facing federal charges may give you bad advice either because they do not know any better or because they want to mislead you.

E. Release There is no parole in the federal criminal justice system. You will serve most of your sentence, minus Good Time Credit. The Bureau of Prisons often places prisoners in a halfway house when there is 6 months or less on their sentences. You will begin a term of supervised release after you are released from custody. 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.

XIX. CONCLUSION

The above information is only very general advice. There may be special rules that apply to your particular situation. You need to talk about the specific issues in your case with your lawyer. Every case is different.

Notes:

of Appeals decides there was some important mistake 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 sentencing. That is called a “reversal.” It does not happen often. It is nearly impossible to be released while your appeal is being decided.

XVI. 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 most federal drug trafficking crimes. Except 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.

XVIII. PRISON

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

A. State Custody If the reason you first came into custody was a state charge, a state parole warrant, or state 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 Alabama Department of Corrections until the State of Alabama (or whatever other jurisdiction you owe time), is done with you. Even if you got a federal sentence that is to run at the same time as your previous sentences [see Section XIV(F)], you will do that time in the other jurisdiction’s prison.

B. Federal Custody You are in federal custody if you were arrested 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.

C. Designation If you are in federal custody, then a federal institution must be designated for your sentence. This designation takes about four to six weeks and is made by the Federal Bureau of Prisons. During that time you will probably remain in the county jail. The decision about where you will go depends upon the seriousness of the crime, your criminal history and 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.

D. 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 computed until after your first year in prison or shortly before your release date, whichever is first.

C. 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.

D. Telephone Calls Be responsible about collect calls to your lawyer. You cannot expect your lawyer to accept continuous collect calls from you. If you have not heard from your lawyer for an unreasonable time, then either call and request a meeting, have a friend or relative call and request a meeting, or write a letter and request a response.

IV. RELEASE OR DETENTION

The first thing to be concerned 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.

A. 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.

B. Pretrial Report 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. If you lie to the officer, it will hurt you later. If you are not certain about whether to answer a question, ask to speak to an attorney for advice.

C. Chance for Release You are most likely to be released if you have little or no criminal history, if you have solid employment, if you have family ties in your community, if you are a United States Citizen, and if you are not charged with a 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.

V. 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, 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, reasonable bail, and freedom from cruel and unusual punishment.

A. Case law 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 Eleventh Circuit and the United States Supreme Court.

B. Application Not all 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.

VI. 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 those rules are made by other inmates.

A. Clothing Despite what others tell you, your lawyer cannot simply bring you clothing. Trial clothing can be brought to your lawyer's office shortly before your next court appearance. You will be allowed to change in the holding cell at the federal courthouse.

B. Other Possessions Most items need to be purchased through the commissary. You may keep legal documents in your possession.

C. 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. The jail requires visitors to make appointments at least 24-hours in advance.

D. Attorney Visits Most defendants would like to see their lawyer as often as possible. Because of the caseload each attorney has, it is not possible to visit any particular client every time the client calls. This does not mean your lawyer does not care about you or will not properly prepare your case for trial.

VII. ARRAIGNMENT

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

A. 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 probable cause to believe that you committed a felony, the grand jury will issue an indictment. An indictment is the document that states what the charges against you are.

2. Objections Before the District Judge gets the Presentence Investigation Report, it will be sent to your lawyer. Your lawyer will bring it to you for your inspection. 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.

E. 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 usually do not like to hear from relatives who are just there to plead for a reduced sentence, but their presence is welcome. 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 the sentence, you can speak. You should speak only if you are going to say something about being sorry for the crime. It is a bad idea for you to start claiming innocence or making excuses at sentencing. It is better to say nothing.

F. 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).

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

2. Other Charges Sometimes a defendant is already serving a sentence before being convicted in a federal court. Usually, the federal sentence will be consecutive.

XV. VOLUNTARY SURRENDER

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

XVI. 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 Eleventh Circuit, which is located in Atlanta, Georgia. You may only appeal after you have been sentenced. 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

XIV. SENTENCING

Sentencing takes place approximately three months after you have been convicted by a jury or guilty plea, unless you had an expedited presentence interview [See below (D)]. 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.

A. 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 range, based upon your criminal history points and the points you received for the offense conduct.

B. 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.

C. Departures If the District Judge sentences you to more or less time than your sentencing range, it is called a “departure.” 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.

D. 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 important, 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. If you agree in writing, the probation officer can begin the interview before your conviction. This can greatly reduce the time you remain in local custody between conviction and transfer to a federal facility. Discuss this procedure with your lawyer.

1. 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.

B. Hearing The arraignment takes place before a Magistrate Judge, not the District Judge who will hear your case. The Magistrate Judge will ask you how do you plead to the charges? Your lawyer will answer “Not Guilty.” You cannot plead “Guilty” at an arraignment. Pleading “Not Guilty” will never be used against you.

VIII. PROBATION OFFICE CONFERENCE

In this District, all criminal defendants must attend a conference with their attorney, the prosecuting attorney and a probation officer. The purpose of the conference is to inform you of your potential sentence if you are convicted either by a trial or guilty plea. Listen to what is said to you, but do not say anything. What you say will be used against you.

IX. 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.

A. Pretrial Detention A defendant is rarely 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 all of the prosecutor’s files.

B. Dismissal There are many exceptions to the Speedy Trial Act. The usual reason why a prosecutor requests a continuance is that there are co-defendants that have not yet been arrested. The speedy trial deadlines do not even begin to run until all charged defendants have appeared in court. Also, whenever any of the defendants have filed motions, the time until those motions are decided is not counted toward the speedy trial deadline. Cases are usually tried within the speedy trial deadlines.

X. 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 get to decide punishment. The District Judge decides punishment.

A. Jury Selection The trial begins with the selection of the jury. A panel of potential jurors is called to court from voter registration and drivers license lists. The District Judge asks questions of the panel, and the panel also answers written 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, and the next two panel members become alternate jurors.

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

C. 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 the government's case.

D. 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 may prohibit a prosecutor from calling a witness to testify that he heard about what you did. The same rule can stop your lawyer from introducing an affidavit made by some person who is unwilling to come to court and testify for you.

E. 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 may 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).

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

G. 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 they are not supposed to, such as: the appearance of the defendant, the defendant's character, their own biases and prejudices. There is nothing to stop them from doing this, and they cannot be questioned about how they reached their decision.

H. 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 three months between a conviction and sentencing, unless you had an expedited presentence interview [See Section XIV (D)].

I. 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 drug trafficking offense.

XI. 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: the prosecutor may dismiss some charges; the prosecutor may not file new charges; the prosecutor may recommend a favorable sentence; you may get credit for accepting responsibility, etc.

A. Plea Agreement Any promises the prosecutor makes for your guilty plea will be put in a written plea agreement. That agreement is signed by you, your lawyer, and the prosecutor. Some plea agreements require you to waive your right to appeal a sentence, unless it is above the sentencing range determined by the Federal Sentencing Guidelines.

B. 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.

C. Effect of Plea Once the District Judge accepts your plea, you are just as guilty as if a jury returned that verdict. Once you are convicted of a felony, you lose the right to vote, the right to hold public office, the right to sit on a jury, and the right to possess firearms.

D. 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 be either released or detained until sentencing [see section X(I)].

XII. 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 can be dangerous and it usually requires a defendant to set up others or testify in court.

XIII. OTHER CHARGES

Often, 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 same offense. This is not double jeopardy. It is also possible to get “stacked time” (a consecutive sentence), by pleading guilty to an unrelated state or federal case before getting a conviction in your federal case. Be careful not to do anything about your other cases without telling your attorney.