

California Criminal Process

Stop

You may be stopped for questioning by the police. A stop is not the same as an arrest because, although you may be detained, you aren't moved to a different location. During a stop the police officer may ask you questions, but you have the right to refuse to answer.

Search

Search Warrants

A **search warrant** authorizes police to conduct a search of a specific, place such as your residence. In order for a warrant to be issued by a judge, "**probable cause**" is necessary.

Probable cause to search means that:

It is more likely than not that the specific items to be searched for are connected with criminal activities

Those items will be found in the place to be searched

Warrantless Searches

The general rule is that warrants are required for searches. But search warrants are not required for the following:

Searches incident to arrest: Police officers are permitted to search your body and/or clothing for weapons or other contraband when making a valid arrest.

Automobile searches: If you're arrested in a vehicle, the police may search the inside of the vehicle. To perform a complete search of the vehicle (such as in locked glove compartments, for example), probable cause is necessary.

Exigent circumstances: Searches may be conducted if there are "exigent circumstances" which demand immediate action, such as to avoid the destruction of evidence.

Plain view: Police do not need a search warrant when they see an object that is in plain view of an officer who has the right to be in the position to have that view.

Consent: If you consent to a search of your body, your vehicle, or your home, police are not required to have a warrant. You aren't required to consent to any police searches.

Arrest

In order to be arrested, there must be what's called "**probable cause.**" This means that there must be a reasonable belief that a crime was committed and you committed the crime. An arrest warrant is not necessary.

After you're placed under arrest, you are protected by **constitutional rights**. Two important rights to be aware of are **right to remain silent** and the **right to have an attorney**. After your arrest, you aren't required to say anything else to police or investigators, until you have an attorney present. You must be given the opportunity to contact an attorney.

Miranda Rule

Under the Miranda Rule, if you are **in police custody** you must be informed of specific constitutional rights before interrogation begins. Those rights are as follows:

- The right to remain silent

- The right to have an attorney present during questioning

- The right to have an attorney appointed if you are unable to afford one

Important to note is that **Miranda rights do not have to be read until you are taken into custody**. That means that you can be questioned by the police before being taken into custody, and anything you say at that point can be used against you later in court.

Booking

After you're arrested, the police will bring you to the police station for the **booking process**. You'll be fingerprinted and asked a series of questions, such as your name and date of birth. You'll also be searched and photographed. Your personal property such as jewelry will be catalogued and stored.

Appointment of an Attorney

In California, if you cannot afford to hire an attorney, and if you are charged with a crime that is punishable by incarceration, an attorney will be appointed to defend you. Usually a public defender will be appointed as your attorney.

Once a public defender has been appointed to defend you, you may ask the court to appoint a substitute attorney if you and your attorney are having such serious disagreements that your relationship is jeopardized. But you are not entitled to choose a particular attorney as appointed counsel.

Arraignment

Once criminal charges are filed, you'll make a court appearance which is known as an "**arraignment**." If you are incarcerated, this will usually occur within 72 hours of your arrest.

During your arraignment, you'll be asked to enter a "**plea**" to the crime you've been charged with. California pleas and corresponding definitions follow:

Guilty plea: If you plead "guilty," you're admitting to the facts of the crime and the fact that you were the one who committed that crime.

Not guilty plea: A "not guilty" plea asserts that you did not commit the crime with which you were accused. After your plea, a pre-trial or trial date will be set.

No contest plea: A "no contest" plea indicates that, while you are not admitting guilt, you do not dispute the charge. This is preferable to a guilty plea because guilty pleas can be used against you in later civil lawsuits.

"Mute" plea: In California, you may "stand mute" instead of making a plea. The court will then enter a plea of not guilty. By standing mute, you avoid silently admitting to the correctness of the proceedings against you until that point. You are then free to attack all previous proceedings that may have been irregular.

If you plead "guilty" or "no contest," there will not be a trial. You'll then be sentenced.

During the arraignment, the court will also:

Set bail

Refuse to set bail; or

Release you on your own personal recognizance, which means that the court takes your word that you will appear when necessary for later court obligations

Bail/Bond

"**Bail**" is money or property put forth as security to ensure that you'll show up for further criminal proceedings.

In California, bail can be paid:

In cash

A pledge of property (if permitted in that court)

A bail bond

A professional bail bondsman is an individual whose business is to pledge his or her own property or security to guarantee the bail bond to the court.

Speedy Trial

You have a right to a speedy trial under the Sixth Amendment of the United States Constitution, which requires that the trial be held within a certain time frame after a person has been charged with a crime.

This right can be waived by asking for additional time for the preparation of your defense.

Speedy trial rights in California:

With exceptions, a defendant should be brought to trial in California within 60 days for both **felony and misdemeanor** crimes.

Trial

Many prosecutors will consider "**plea agreements**," although it's not legally required. If you don't reach a plea agreement with the prosecutor, your proceedings will move toward the trial stage.

Usually, if you are charged with a crime punishable by six or more months of imprisonment, you have the right to a jury trial. This right may be waived by:

Pleading guilty, or

Choosing a **bench trial** (a trial in front of a judge only)

If you request a bench trial, the judge will perform the fact-finding function that is usually performed by the jury.

Appeals

If you're found guilty after a trial, you're entitled to an appeals process. This process varies depending upon the crime, but there are always time deadlines by which you must file an appeal.

In California, in criminal cases not involving the death penalty, you generally have 60 days following the judgment to file an appeal. Appeal of death sentences is automatic.

There are numerous reasons for an appeal from a guilty verdict in a criminal case, including what's called "legal error." **Legal error** may include:

Allowing inadmissible evidence during the criminal process, including evidence that was obtained in violation of your constitutional rights

Lack of sufficient evidence to support a verdict of guilty

Mistakes in the judge's instructions to the jury regarding your case

You may also appeal due to misconduct on behalf of the jurors, or if there is newly discovered evidence to exonerate you.

In California, if you entered a plea of guilty or no contest, you may only appeal if the following conditions are met:

You filed with the trial court a written statement under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds relating to the legality of the proceedings that occurred in your case.

The trial court has filed a certificate of probable cause for the appeal with the clerk of the court.

Expungement

In California, under some circumstances, you may be able to have your criminal records expunged, which means that you may be released from further criminal penalties and disabilities such as a loss of voting rights. In some cases, expungement involves sealing and/or destruction of records.

You may be eligible for an expungement if:

You have successfully completed probation, or

You were convicted of a misdemeanor and have fully performed any sentence, or

Charges against you were dismissed or you were found not guilty

If you are eligible for an expungement following a conviction, the court may enter an order setting aside your guilty plea or a verdict of guilty and dismissing the case. You may also petition to seal the records from public view. If you were never convicted of an offense, you may petition the law enforcement agency that has your records to seal and eventually destroy them.