

RIGHTS OF THE CRIMINALLY ACCUSED

CHAPTER 10

INTRODUCTION

Constitutional rights relating to American criminal law are the same for all adult persons, whether they have a disability or not. This chapter will briefly discuss these rights and will give suggestions as to how persons with a disability can best utilize these rights.

These constitutional and procedural rights are discussed in connection with an accused person being arrested, tried and sentenced.

Further, a general overview of the basic elements of criminal laws is offered. Finally, brief discussions on the classifications of crime and the range of punishment are presented.

CONSTITUTIONAL RIGHTS

The U.S. Constitution's Fourth, Fifth and Sixth Amendments, through the due process clause in the Fourteenth Amendment, provide the rights relating to criminal laws that all citizens have.

The Fourth Amendment prohibits unreasonable searches and seizures of people and their things. This Amendment also provides that no warrants shall be issued without probable cause to do so, and that all warrants must describe, in detail, the place to be searched and the person or thing to be seized.

The Fifth Amendment allows a person to refuse to make a statement that might incriminate himself, either in court or in response to police questioning. This Amendment also includes the "Double Jeopardy" clause. This clause generally prohibits a person from being tried twice for the same crime.

The Sixth Amendment lists rights that apply in all criminal prosecutions: the right to a speedy and public trial by an impartial jury of the state in which the crime was committed, notice of the nature of the charge, the right to confront witnesses, the right to compel favorable witnesses to appear at trial through the issuance of subpoenas, and the right to have a lawyer in all felony cases and those misdemeanor cases in which imprisonment may be imposed.

These Amendments are now applicable to all government agencies, Federal and State, under the Fourteenth Amendment. This Amendment states "no state shall make or enforce any law that will abridge (shorten) the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person equal protection of the law." In the same manner that the Americans with Disabilities Act (ADA)

ensures equal access to all public places and services, the Fourteenth Amendment grants equal protection of constitutional rights to all persons, with a disability or not.

Finally, the Eighth Amendment prohibits excessive bail and cruel and unusual punishment.

ARREST

When the police stop a person, it does not necessarily mean that the person is under arrest. A police officer can lawfully stop or briefly detain a person or vehicle if that officer has a reasonable suspicion that some kind of criminal activity is occurring. If the officer deems it necessary, he or she may also legally perform a pat-down or frisk of the person during such an encounter. This frisk can only be a minimally intrusive search for weapons or other readily identifiable contraband, such as illegal narcotics. If no such items are found and the officer has fully investigated his suspicions, the person is usually free to leave. In the case of a vehicle stop, it is common for the officer to also issue a traffic ticket or a warning.

Only when police have control and custody of a person, that is, the person being detained is not free to leave, is that person under arrest. Typically, a police officer will place an arrested person in handcuffs; however, it is also possible that a person can be arrested without being physically restrained. For example, it may be difficult or impossible for a person with a physical disability to be handcuffed or otherwise restrained by the police. However, in such instances, the lack of restraints does not mean that the person is free to leave. A person with a disability should be aware that if he or she is in the custody of a police officer and not free to leave, whether physically restrained or not, then they are under arrest. At this time, certain constitutional rights are immediately applicable.

When a person is arrested, he is usually searched, as is the immediate area surrounding him. This should not be resisted. A police officer may search the interior portions of a vehicle, without a warrant, after an arrest of the driver or passenger of the vehicle. However, a search warrant is needed for almost all searches of a house. If the police use a search warrant, it should be read carefully; and the search should be limited to the place stated in the search warrant. One should never agree to let the search go beyond the limits of the warrant.

In any arrest of a person with a developmental disability, his guardian or other personal representative should contact a lawyer immediately. Instructions should be given to the client not to talk with the police until his lawyer is present. If a parent or guardian cannot afford a lawyer, the public defender's office in the county where he resides or where the offense took place may be able to represent the suspect. Before the public defender's office represents the suspect, they must be assured that the suspect cannot afford a private attorney.

Several other practical concerns for individuals with disabilities are present when arrested. First, a person with a disability may not recognize a police officer. Second, he may not understand what is being said by the police, and more importantly, not understand his constitutional rights; and third, he may not know what to do after being jailed. Therefore, it is suggested that individuals with disabilities be trained on what to do when arrested. Further, it

is suggested that special cards be carried by persons with a disability and who do not want to answer any questions if the person is in fact a police officer. Further, the card should have a lawyer's name and phone number for the police to call.

After arrest, the police will usually question the suspect. Before questioning, the police must first advise the suspect of his constitutional rights (also called "Miranda Warnings"). These rights, listed below, are contained in the Fifth and Sixth Amendments to the U.S. Constitution. Specifically, they are:

1. the right to remain silent;
2. anything said can and will be used against the individual in court;
3. the right to have a lawyer present;
4. the right to have a lawyer appointed if the suspect cannot afford one.

RELEASE AND BAIL

After arrest, release is the first concern, for several reasons. The person may have medical problems as well as physical limitations and may make statements harmful to himself. A person has a right to be released unless the prosecutor's office persuades a judge to issue a warrant. In Missouri, unless a warrant is issued and a bond set by a judge, a person can be held, in most cases, for only 20 hours. A person accused of certain dangerous felonies, such as murder and forcible rape, may be held for a period of 24 hours.

If a warrant is issued, there are several ways a person may be released. However, in all instances the judge or bond commissioner must approve the method of release.

First, release may be obtained by asking the judge to allow personal recognizance; that is, the suspect signs a document promising to appear in court when required. If the judge trusts the suspect, then he may grant this request.

Second, sponsored recognizance may be obtained. This is a process by which a relative, friend, guardian, or houseparent of the accused assists the suspect in appearing in court. Such a person should speak directly with the Judge or Bond Commissioner involved with the case, explaining his or her interest in the suspect. This person's name should also be on the suggested card mentioned above.

Third, a ten percent deposit of the bond amount may secure release. The bond is deposited with the clerk of the court setting the amount. Bond is set to assure that the accused will show up in court when required. The bond money is returned at the end of the proceedings if the accused has appeared in court at all times when required.

Fourth, the suspect can post the full amount of the bond with cash, money order or property. If real property is used, that is, land and/or a house, all owners must sign. The value of the real property is difficult to determine; and thus, a lawyer should be contacted.

A lawyer for the accused person may also ask that court reduce the bond and thus achieve release. In these situations, it is important that the accused quickly hire an attorney or contact the public defender because obtaining a bond reduction from a judge may take several hours, or several days if the accused is being held on an arrest warrant. As discussed previously, if a person with a disability is unable to effectively communicate their desire to obtain an attorney to law enforcement personnel, he or she should prepare in advance to carry the contact information of their attorney or other personal representative in writing or on a special card.

As a last resort, a professional bail bondsman may also be used. The bondsman puts up the face amount of the bond and he charges ten percent of that amount which is **not returnable**.

RIGHTS BEFORE TRIAL

An accused person has a right to hear the nature of the filed criminal charges in a timely manner. Normally, this occurs at a proceeding called an “arraignment.” However, arraignment is often a mere formality and is frequently waived by the defendant or his attorney. In other instances, arraignment acts as an opportunity for the accused to request a public defender, if the accused has not already done so.

An accused has a right to a trial in all cases, felony or misdemeanor. In felony cases only, before a trial is scheduled, there is either a preliminary hearing or a grand jury hearing. Either may be used to show sufficient probable cause that the defendant committed the offense. The defendant usually does not appear before the grand jury, but he does appear in court if there is a preliminary hearing.

If the case goes to a preliminary hearing, the defense should use it as a means of discovering the evidence against him. The defendant has a right to discover information and evidence under the rules of criminal procedure. Discovery of information allows the defendant to obtain from the state information regarding names and addresses of the witnesses against the defendant, and reports, such as police reports, names of expert witnesses and examination of any exhibits the state will use at trial. The preliminary hearing allows the defendant to obtain more information than may be present in the police reports and also gives the defendant a look at some of the witnesses and how they testify under cross examination.

The defendant also has the right to file certain motions before trial to try to keep certain evidence out of the trial. These include motions to suppress physical evidence and statements made by the defendant. For example, if the police question the defendant after they have him in custody and fail to read The Miranda Warnings, answers given by the defendant may be excluded at trial. Similarly, if the police search or seize a person or their things without a warrant, or a valid legal reason for not having a warrant, the evidence obtained from the search or seizure will likely be excluded from the trial.

After these pre-trial procedures, the defendant must decide if he wants to plead guilty. Over two-thirds of all criminal cases filed are decided by a plea of guilty. This is done through a process commonly known as plea-bargaining. The prosecutor evaluates the seriousness of the offense, the

criminal history of the defendant and the strength of the case and then makes a recommendation. This sometimes involves reducing the charge or recommending a light sentence. The defendant's history, including his disabilities, as well as what agencies have worked with the defendant should be brought to the attention of the prosecutor by the defendant's attorney.

For the defendant with a disability, plea-bargaining may be an extremely important part of the criminal process. It is quite possible that a person with a disability may commit a crime, due in some to the disability. For example, a person with a disability might choose to steal medication or other items needed for treatment of the disability in times of crisis or financial hardship. In such situations, while definitely guilty of theft, the person is not as criminally culpable as a person who chooses to steal for personal financial gain. Thus, an informed and reasonable prosecutor will likely offer a light punishment in exchange for a plea of guilty.

If the defendant decides to plead guilty to all the charges or some of the charges, he waives several of his constitutional rights. Most important are the right to a jury trial, to subpoena witnesses on his own behalf, and to cross-examine the state's witnesses. Also, note that there is no appeal to a higher court on a plea of guilty unless the plea was not voluntarily and knowingly given.

If the defendant is suffering from a mental disease or defect (including mental retardation) several options are available. First, at the time of trial, if the defendant, because of mental disease or defect, lacks the capacity to understand the proceedings against him or to assist in his own defense, the court will suspend the trial and commit the defendant to a hospital until the defendant regains his ability to proceed. This is commonly done through the defense attorney or the judge. It is not a plea and does not require the defendant's consent.

Second, even if the defendant is able to proceed with the trial he may be entitled to an acquittal if, at the time the offense was committed, the defendant was suffering from a mental disease or defect, and because of this did not know or appreciate the nature or wrongfulness of his conduct, or was incapable of conforming his conduct to the requirements of the law. To be acquitted by insanity, the defendant must plead insanity. This is his decision. When he pleads, the prosecutor must accept or reject the plea. If the prosecutor does not accept the plea, the defendant may ask for a trial and make his plea to the jury. If the insanity plea is found, either by consent or by trial, the defendant will be acquitted. Although he will be acquitted of the criminal charge, he will not be free. After an insanity plea the defendant will be committed to the Department of Mental Health and the Judge must approve his release.

Third, the defendant's mental condition may be a factor in the charge and the sentence even if the defendant is not legally insane. If the defendant has had any psychiatric treatment or has been involved with private or state agencies for mental or social problems, this information should be given to the defendant's lawyer. This can help with the presentation of defense evidence.

TRIAL

It is the job of the prosecuting attorney to prove beyond a reasonable doubt that the defendant committed the offense charged. The prosecutor must prove each part or element of the offense beyond reasonable doubt. If, for example, the defendant is charged with stealing over five hundred dollars, the state must prove that the defendant took property of another with the purpose to deprive him of this property and that this person did not give his consent to the defendant to take his property. The prosecutor must further prove that the value of the property is over five hundred dollars.

The defendant also has the right to a public trial by an impartial jury. He can waive this right and be tried by a judge alone.

During the trial, the defendant has the right to bring witnesses favorable to him into court. This is done by serving a subpoena on such witnesses demanding that they appear. The defendant also has the right to cross-examine the witnesses the state brings into court. The defendant has the right to be present in the courtroom during his trial. From these rights stem the right for a deaf person to have an interpreter during his trial.

RIGHTS AFTER TRIAL

If the defendant is found not guilty by either a jury or a judge, the trial is over and the defendant is discharged. If the defendant is found guilty, he will be sentenced. This may be done immediately as in some misdemeanor trials, or the defendant may ask the judge to order a pre-sentence investigation. If a pre-sentence investigation is conducted, the defendant will come back to court in about a month, and the judge will generally follow the pre-sentence investigation's recommendations on the sentence. In felony cases, unless the defendant has a prior conviction, the jury decides what the sentence will be. The pre-sentence investigation is conducted by the Office of Probation and Parole and consists of a background study of the defendant, including any prior criminal record. In addition, his social and psychological histories are brought out. For a defendant with a disability, all prior connections with state or private agencies should be brought to the attention of the probation offices conducting the pre-sentence investigation. Further, a mental examination should be requested for a defendant with a developmental disability. An extensive pre-sentence investigation gives the defense attorney more options in talking with the judge and the prosecutor about what a proper sentence would be for his client.

ELEMENTS AND CATEGORIES OF CRIMES

A "crime" is any act or omission (failure to act) in violation of a public law forbidding or commanding it. Most crimes in the United States are established by federal, state, and local governments. Laws enacted by such government entities are called statutes. All statutes describing criminal behavior can be broken down into their various elements. As stated previously, prosecutors have to prove every element of the crime to obtain a conviction.

Additionally, the prosecutor must persuade the jury or judge "beyond a reasonable doubt" of every fact necessary to constitute the crime charged.

Most crimes consist of two basic elements: a voluntary act; and, an accompanying mental state at the time of the act. For example, a person commits the crime of murder if he "knowingly causes the death of another person." Therefore, a person is guilty of murder if he commits a *voluntary act* that causes the death of another in a *knowing* manner. These basic elements could be very important for a person with a disability to understand. Since nearly every criminal law requires the commission of a voluntary act, any actions performed as a result of involuntary spasms or seizures would not result in criminal culpability. Similarly, since nearly every criminal law requires a culpable mental state to exist at the time of the crime's commission, any actions performed when the person is not aware of the nature of their actions would not result in criminal liability. Such situations may exist when a person with a disability is under the powerful influence of psychotropic medications, or when a person with a mental disability has episodes that temporarily limit the person's ability to understand the nature of their actions.

Crimes are also classified into two major categories, felonies and misdemeanors. A crime is a felony if, after conviction, a defendant may be sentenced to death or imprisonment for more than one year. A crime is a misdemeanor if the maximum punishment is less than one year in jail. Felonies are further classified as A, B, C or D. The penalty for a Class A felony may be life imprisonment and for a Class D felony, imprisonment up to four years. Murder in the first degree, that is murder committed after cool reflection, is punishable by death or life imprisonment. Rape is punishable by a term of years from five to life. Misdemeanors are classified as Class A, B or C, with the range of punishment being from one day up to one year.

The judge has the option not to sentence the defendant to jail, but grant him probation instead. Probation is defined as a procedure under which a defendant found guilty of a crime is released by the court without imprisonment, subject to conditions imposed by the court and subject to the supervision of a probation officer. Often, probationary conditions involve attending treatment classes, performing community service, and paying any restitution to the victim(s) of the crime. Probation is different from parole. Parole is a release of a prisoner after serving part, but not all, of his sentence.

If a defendant is placed on probation, the judge may suspend the imposition of a sentence or impose a sentence but suspend the execution of that sentence. Where there has been a suspension of imposition of a sentence, there has been no judgment of conviction. This allows the defendant's record to be closed if he successfully completes probation. If he is successful, his criminal record will be available only to law enforcement agencies for the purpose of investigation and prosecution.

In a case where the execution of a sentence is suspended, the defendant does have a record of conviction for the offense, but is spared jail in exchange for probation. If probation is later revoked due to some violation of its terms, a sentence will be executed. That is, the defendant will go to jail for a specific period.

APPEAL

An appeal of a guilty finding is an opportunity provided by law to have a decision of a lower trial court reviewed, and, if necessary, trial error corrected by a higher court. It is very important to understand that a plea of guilty to an offense, freely and voluntarily given by the defendant, is a waiver of the right to an appeal.

Determining whether an appeal should be taken from a finding of guilty is a difficult and complicated matter and requires substantial reliance on the judgment of an attorney. Among the factors to be considered are the type of sentence the court has imposed and the possibilities of success and the financial practicality of what may be a very costly procedure.

JUVENILES

In Missouri, as in other states and federal system, young people who have difficulty with the law are given special treatment and consideration.

In addition, there are statutory provisions that govern the treatment of a suspected juvenile offender who is also thought to have mental retardation or developmental disability, as defined by state law. A child in Missouri, for applying the Juvenile Code, is a person under the age of 17. This should not be confused with the general civil law pertaining to minors. Although much too broad a topic for this chapter, certain factors should be pointed out in order to provide a general understanding of the role of the child in the criminal justice system.

The Juvenile Court has jurisdiction in the criminal process:

1. When the child is alleged to have violated a state law or municipal ordinance; or
2. For the suspension or revocation of a state or local license or authority of a child to operate a motor vehicle.

While the general jurisdiction of the Juvenile Court is much broader than stated above, this chapter is confined to those matters relating to the criminal justice system.

When a child is taken into custody, with or without a warrant for an offense, the child is to be taken immediately and directly before the Juvenile Court or a juvenile officer. The purpose of this procedure is an effort to keep youthful offenders out of the general system and give them the opportunity of guidance and rehabilitation, rather than expose them to the penal aspects of the criminal law.

Somewhat similar to the “Miranda” warnings for adults is a statement of juvenile rights that must be read by a juvenile officer (not a police officer) to each juvenile brought in for questioning for a specific offense. All individuals present must sign the waiver statement. A juvenile, with a disability or not, can be questioned by law enforcement officials only in the presence of one or both parents and a juvenile officer.

The statements that comprise the Juvenile Waiver of Rights are:

1. You have the right to remain silent. This means that you do not have to answer any questions or make any statements.
2. Anything you say can and will be used against you in a juvenile court of law.
3. You have the right to talk to a lawyer and have him present while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish.
5. If you are over the age of 14 years, the Juvenile Court has the option of deciding whether you will be certified as an adult. (This means that instead of being tried in Juvenile Court, you could be tried in an adult criminal court.)
6. If you choose to talk now, you can decide at any time to exercise those rights and not answer any further questions or make any further statements.

In some situations, young people may not be given the advantages of the juvenile system. When a child 14 years of age or older has committed an offense that would be a felony if committed by an adult, that child may be prosecuted under the general law as an adult. This is a matter within the discretion of the judge of the Juvenile Court. In such an event, prosecution will proceed as in any other case, and the benefits of the Juvenile Code are lost to the offense. With few exceptions, it is in the best interest of the child to make every effort to remain within the jurisdiction of the Juvenile Court.

Chapter 211 of the Revised Statute of Missouri has undergone some significant revisions concerning the treatment of juvenile offenders with mental retardation, a developmental disability, or other mental disability.

Specifically addressed are such subjects as the responsibilities of juvenile courts and various mental health facilities in determining the appropriateness of both admission and continuation for commitment of juveniles to such facilities. Both outpatient and inpatient care are discussed, as well as responsibilities of evaluations, time periods within which such evaluations must be made, and processes to be followed, depending on whether any kind of treatment is found to be appropriate.

There is also a provision that a committing juvenile court must conduct an annual review of the child's need for continued placement in a mental health facility. In addition, procedures are spelled out for referring to the Department of Mental Health a child who has been committed to the Division of Youth Services, if such referral proves appropriate.

CONCLUSION

This chapter presents a broad discussion of the criminal justice system. It is by no means to be considered an all-inclusive guide, nor should it be used as a substitute for the professional advice and guidance of an attorney or other professional in a given case or situation.