

NATIONAL LAWYERS GUILD

KYR GUIDE

Legal Steps & Choices

Navigating the criminal
punishment system

This general educational material does not constitute
legal advice or encouragement to take action.
Local law, policy, and/or procedure can vary greatly.
Contact a local attorney for additional questions.



Adapted with permission from
Midnight Special Legal Collective's
Know Your Rights Materials

<http://midnightspecial.net/materials/kyr.html>

Legal Steps & Choices: Introduction

Prosecutions vary from state to state, and even city to city and county to county, but they follow a similar process across the U.S. Although designed to be oppressive and scary, **there are choices to be made at each step of the process.**

Familiarizing ourselves with the steps and choices can keep us safer, as well as preserve our autonomy and dignity! **This guide is not exhaustive** - there are numerous other parts and actions that can be taken. In addition, the State can (and will) ignore standard procedure in political prosecutions.

But being aware of the process and possible points of intervention can be helpful for defendants, support crews of defendants, legal workers helping with the case, and lawyers.

This KYR Guide is adapted from the Midnight Special Legal Collective's Know Your Rights Materials:

<http://midnightspecial.net/materials/kyr.html>.

We are grateful to their work, supporting the movement for many years. NLG encourages groups and collectives to organize independently, outside of the State and the non-profit industrial complex!

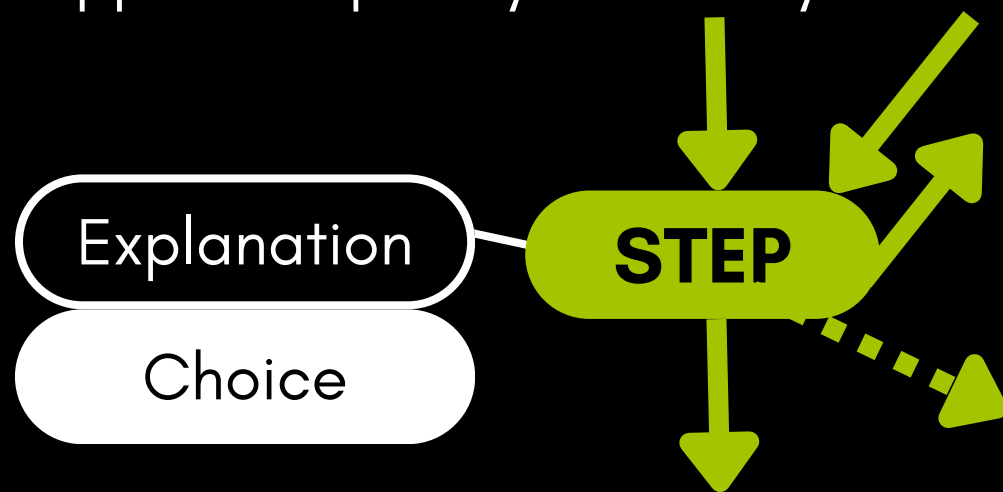
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Legal Steps & Choices: How to Use Guide

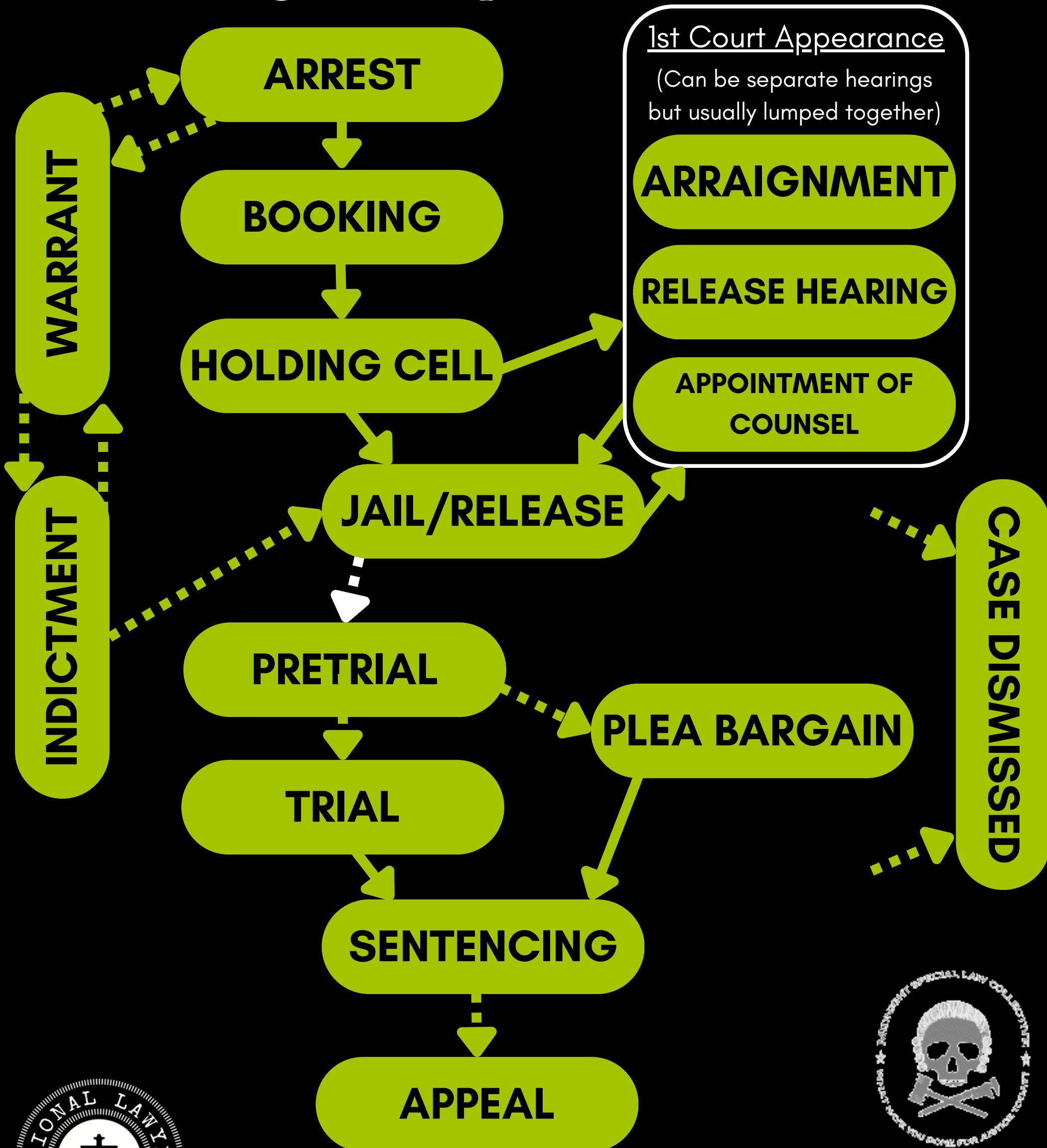
This Guide lays out different Steps of the criminal punishment process, connected by arrows. An overview of the entire process is provided first. Note that the arrows at times flow back and forth between certain Steps. This is because, depending on the situation, certain Steps might actually happen in another order. The dotted arrows represent steps that might not happen at all, although some of the Steps might get skipped or happen so quickly that they aren't even noticed.



In the following pages, the Steps are broken into parts, providing an Explanation and Choice next to them. The Explanation of the Step in the legal process is above, followed below by the Choice (or Choices) the defendant has. Note that how the Steps are broken up in the Guide does not mean anything - this is purely for formatting and readability.

Again, these Steps, Explanations, and Choices are not exhaustive. They might also be totally wrong given particular charges, jurisdiction differences, or specific circumstances. But they capture the general flow of the U.S. criminal punishment system and should hopefully give inspiration for even more Choices !

Legal Steps & Choices



Legal Steps & Choices: Charges to Arrest

Explanation

STEP

Choice

To keep you in jail, cops get an arrest warrant from a magistrate or judge. Prosecutors or cops might also get the warrant after the alleged offense or indictment. There might not be any notice of the warrant.

Cooperate or don't when served. Demand to see the warrant or court papers. Only turn in once you're prepared or ready.

WARRANT

INDICTMENT

ARREST

As soon as cop indicates that you are not free to leave and you cannot leave, or there is a warrant. Does NOT require handcuffs or formalities. You will then be taken to a squad car, police van (paddy wagon), or bus, depending on number of arrests. Cops can then make you sit at cop stations or other random places.

Cooperate or don't at arrest (go limp, refuse to move, run). Cooperate or don't at transport (rock car, refuse to move, go totally silent).

Some charges, generally felonies, require an indictment, issued by a grand jury. Prosecutors can indict a ham sandwich because they completely control the grand jury process. Grand juries can involve ongoing investigations. The prosecutor can get an arrest warrant with the indictment. Or the indictment can happen after the original arrest.

Resist grand jury subpoenas. Refuse to talk with cops or prosecutors gathering information.



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Legal Steps & Choices:

Booking to Holding Cell

Explanation

STEP

Choice

BOOKING



HOLDING CELL

Deputies take fingerprints/DNA and photos, ask questions about identity, medical issues, make you sign things. At this point, the arresting cops hand you over to jail employees, but you can still be taken for questioning by cops, detectives, prosecutors, or any other State agent.

Cooperate or don't.
Generally only have to give your identifying information (name, birthday, address).
You do not have to sign anything.
You decide what religious beliefs, disabilities, gender to disclose.

Jail is all about waiting and it starts here. They might put you in a holding cell for hours before booking, after booking, in the middle of booking... You might be alone, you might be with strangers, but you are being watched.

Cooperate or don't when they try to move you.
Demand food, water, accommodations, calls/contact with the outside world.



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Legal Steps & Choices: 1st Court Appearance

Explanation

STEP

Choice

Prosecutor formally charges you, and you make a plea. In some places, done through video from jail. Generally needs to happen within 48-72 business hours after booking. Speedy trial clock starts ticking. Usually a bad plea deal is offered.

Plea not guilty, make a demurrer/motion to dismiss (something is wrong with the warrant/indictment so charge dismissed, but the prosecutor can correct the problems), or accept plea deal and plea guilty. Demand speedy trial (refuse to "waive time"). Most lawyers waive time because it gives them more time to prepare.

Judge decides bond, release issues, conditions. Release hearings can become mini-trials if the prosecutor doesn't want you to get out. Prosecutor can offer a "consent bond," with agreed conditions for release.

Agree or not to a consent bond with all its conditions. Have your lawyer get another hearing, make arguments to get you released, get witnesses, documents, and letters to prove that you are a nice, safe person with ties to the community.

If you qualify based on income, get assigned a lawyer, usually a public defender, sometimes a private attorney paid by the court/state. This may be the first time you talk with a lawyer.

Ask for an appointed lawyer or not. Establishing you are indigent (unable to afford competent counsel) might help with court costs and arguments later.

1st Court Appearance

(Can be separate hearings but usually lumped together)

ARRAIGNMENT

RELEASE HEARING

**APPOINTMENT OF
COUNSEL**



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Legal Steps & Choices:

Jail/Release to Plea Bargain

Explanation

STEP

Choice

JAIL/RELEASE

By cops: Citation/summons release, charges dropped/not pressed. If not quickly released, you might be put into jail clothes for more holding.

By court: Judge sets bond and you post it, or \$0 bond.

Note: You might not be released if the court refuses to set a bond, or it's so high, it's unaffordable. This Step could carry on through Trial.

Friends can bring \$ to jail. Get out privately/quietly or publicly/loudly (jail vigil, press conference). If not released, friends can organize prolonged jail support.

PRETRIAL

There can be many pretrial hearings before trial. This is when verbal and written arguments (motions) are made and decided by the judge. Discovery gets released to the defense. Things can go slow for months and then suddenly very fast.

You and your friends can help your lawyer prepare good motions and begin to mount a rigorous defense. You can demand to see discovery and to participate in strategy. If other defendants are involved, you can create joint defense strategies.

PLEA BARGAIN

A plea bargain is when you agree to plea guilty (or no contest) in return for a set of charges and sentence. Only about 15% of cases go to trial, the rest are resolved by plea bargains. They are offered by prosecutors, but you can propose one too. They usually suck unless you have good bargaining power (good facts).

Accept or reject the plea bargain. Negotiate a better plea bargain with the prosecutor.



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Legal Steps & Choices:

Trial to Appeal

Explanation

STEP

Choice

TRIAL

If you took a plea, the judge ratifies it and enters the sentence. If you are found guilty at trial, the judge determines the sentence. For some sentences, the jury will also have a say.

SENTENCING

You have the right to make a statement. You can bring witnesses, documents, and letters to get a better sentence. If you pled guilty, you can withdraw it at any time before the sentence is entered.

APPEAL

Depending on jurisdiction and the possible sentence for the charges, you might get a 6- or 12-person jury, or a bench trial (judge only). Trials can take a long time to be scheduled, even if speedy trial was demanded. Once trial starts, you are stuck in court and your freedom is restricted.

You and your friends can help lawyers: do research and investigation, gather evidence, make courtroom displays, etc. Friends can show up to court to support you at trial. They can observe the courtroom and trial to help the lawyers. You can coordinate with your lawyer on how to communicate during trial and provide notes.

If you are found guilty at trial, sometimes you can make an appeal to a higher court to overturn the ruling due to legal problems during, before, and after trial. There are many things and ways to appeal, but there are usually strict deadlines you or your lawyer will need to follow. In most jurisdictions, you can ask for an appointed appellate lawyer.

Appeal or don't. Many political cases assume that there will be an appeal given the aggressive behavior of the State and unprecedented facts/law.



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Legal Steps & Choices: Case Dismissed Detour

Explanation

STEP

Choice

At any point before a judge enters a final judgment (guilty, not guilty, dismissal), the State can dismiss your case, formally stop prosecuting it, or grant a dismissal based on "good behavior," "compliance," or any justification they come up with. Most cases are dismissed at the Pretrial step, after the prosecutor reviews the evidence. But they could be dropped as early as after Arrest and as late as during Trial itself. Sometimes, however, a dismissal is not a guarantee that you won't face later charges, or that other consequences of the prosecution are about to hit you. Some forms of dismissal still allow the State to try again.

Celebrate publicly (press conference, big party, rally at the courthouse) or privately (outing with friends, wine and crying, cutting your hair and bleaching it blonde). Go on a media tour. Continue to support others facing political prosecutions. Take a pause to get your affairs back in order. Write a guide like this one for future defendants. Help build up local mass defense infrastructure for others.

CASE DISMISSED



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Legal Steps & Choices:

Strategies to Increase Choices

- **Indictment & Warrant Steps**

- If something went down, you do not need to wait for the cops to begin arrests or come knocking to start organizing and gathering your people.
- Getting on the same page early on can help maintain collective positions when the State begins to divide and conquer or sow fear and paranoia. Warrants and indictments make people panic.

- **Arrest to 1st Court Appearance Steps**

- Going to jail is awful and isolating, by design. Forming networks for a robust jail support can make the difference between life or death, staying strong or losing people to State tactics.
- Being incarcerated makes people vulnerable and raw, and the State will take advantage of this in every way it can. Community can be the strongest defense against this.

- **Release to Pretrial Steps**

- A pending charge can make everything change: relationships, job, housing, health. Surrounding yourself with affirming and supportive people will allow you to continue making the best choices. The stigma of being a “defendant” is real!
- Lawyers are not always your friends, and their interests might not align. Get others’ opinions, check with your people.

- **Trial to Appeal Steps**

- By the time trial comes, your whole life might have changed since the original charge. Stay grounded on what happened in the first place, why it happened, and what you believe in.

NATIONAL LAWYERS GUILD MASS DEFENSE PROGRAM

nlg.org/massdefenseprogram

