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NAVIGATING THROUGH THE CRIMINAL COURTS

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## *Navigating through the Criminal Courts*

Being charged with a crime is always a scary experience. Regardless of their guilt or innocence, non citizens face the additional stress of having to navigate through the waters of an unknown system. Sometimes simply knowing the process helps to ease the tension and understand that it will take time to resolve the matter.

The steps listed below is how a normal criminal case generally proceeds from start to finish. This process is substantially abbreviated depending on the charge. Crimes are either felonies or misdemeanors. Felonies are more serious, but for a noncitizen any criminal violation is a potential threat to their ability to remain or return to the United States.

*Arrests:* An arrest is the act of depriving a person of their liberty usually in relation to the investigation and prevention of crime. While many people think that they must be handcuffed before they have been arrested, that is not correct. Not all arrests lead to criminal charges being filed. However, if you do have criminal charges filed against you, chances are you were arrested at some point.

*Charge:* The criminal charge advises a person of what they are accused. Once a police officer is done investigating a possible offense, they forward their reports to the Prosecutor. Subsequently, the government's attorney (the Prosecution) reviews these reports and decides if the facts are sufficient to file charges. The charging document is filed with the Court to show that a case has been initiated. Once charges are filed, the person will be notified of a Court date. In some instances, where a person is in jail, it may become necessary for the person to pay a bond before they can be released.

*Bond:* A bond is a type of surety that a person pays in order to promise that they will do whatever is asked of them by the Court. It also ensures that they agree to appear in Court as directed. At the conclusion of the case, if the person has done everything that was required of them, the bond money is returned. Sometimes a person can use a bondsman to help them get out of custody. Bondsman require that the person pay a percentage of the bond as the bondsman's fee. Then, the bondsman pays the rest of the bond amount so the individual can be released from custody. In this instance, if everything is completed, the bondsman gets a refund of the amounts he paid.

*Defendant:* The person accused with committing a criminal or traffic violation.

*Arraignment:* Arraignment is a formal reading of a criminal complaint and informs the accused of the charges against him or her. In response to arraignment, the accused is expected to enter a plea. Acceptable pleas vary among jurisdictions, but they generally include "guilty", "not guilty", and "nolo contendere" (no contest). The Court then will set the matter over, if necessary, for a preliminary hearing.

**Preliminary Hearing:** The preliminary hearing is a hearing held to determine if there is probable cause to believe a crime has been committed and if there is reason to believe that the Defendant was actually the person who committed the crime. In Federal proceedings, a preliminary hearing is often not needed because a grand jury (a panel of citizens who review the criminal investigation and decide if the facts support a criminal charge), has already made these findings.

**Trial:** The trial is where the prosecutor has to prove each and every element of the criminal charge and prove that the defendant is guilty. The defendant may also offer any defense at that time. Trials are conducted to either a judge or a jury.

**Appeal:** If the defendant has been found guilty, the defendant may file an appeal on the case. The appeal is where the losing party asks the appeals court to review the case for any errors. If a defendant pleads guilty, they may have waived their right to any appeals.

The criminal courts are over-worked and often understaffed. Thus, these cases can take several months to resolve. Approximately ten percent of all cases actually go to trial. Many are resolved through plea negotiations or diversion.

Plea negotiations are where the prosecutor and the defendant (or the defendant's attorney) agree that in the interest of resolving the case, a particular disposition is fair and just. During the plea negotiations, the parties may amend the charges, agree on a sentence and or fine, or agree to probation rather than jail.

Diversions allow the defendant to avoid a criminal conviction under certain circumstances. Under these agreements, the defendant agrees to admit he violated the law and agrees to fulfill certain conditions determined by the prosecutor. If the defendant completes all of the requirements, the prosecutor agrees to dismiss the charges.

Plea negotiations and Diversions are beneficial to non citizen defendants because they may keep them from having an immigration consequence. However, a noncitizen defendant should always seek assistance from an immigration attorney before agreeing to any disposition of a criminal case.

*Sharma-Crawford, Attorneys at Law is a firm deeply experienced in the complexities of immigration litigation. Whether you are facing criminal or civil litigation in state, federal or immigration court – the caring professionals at Sharma-Crawford can help you navigate through the complex legal system. For more information, please call (913) 385-9821 or visit [www.Sharma-Crawford.com](http://www.Sharma-Crawford.com). The choice of a lawyer is an important decision and should not be based solely on advertisements. The information contained in this article is general information and should not be considered legal counsel.*