



## KNOW YOUR RIGHTS: CRIMINAL COURT

This guide provides general information about the Arkansas criminal court system.

### Things You Should Expect and Request of Criminal Courts

1. Clear notice of your right to counsel before the entry of any plea, and access to a public defender if you cannot afford to pay for one.
2. Enough time and contact with your public defender that they understand your case and can adequately represent you.
3. A speedy and public trial.
4. No jailing of people who cannot pay court debts.
5. No revocation of driver's licenses for inability to pay court debts.

### Pre-trial holding:

- You cannot be held in jail forever, under the law.
- You must be taken to a judge or magistrate for your first appearance without unnecessary delay. Arkansas has not set a specific time limit, though there is a general 48-hour rule.
- Your phone calls to anyone but your attorney will likely be recorded by the jail. Your mail to or from anyone but your attorney may also be read.

### First Appearance/Probable Cause Hearing:

At the probable cause hearing, the judge should advise you of the following:

- The charges against you and the potential range of jail time and/or fines.
- You should be asked if you understand the nature of the charges and the potential punishment. Do not discuss or dispute the facts at this point, because anything you say can be used against you.
- If you face possible jail time, you have a right to counsel, or a public defender may be appointed at no cost if you cannot afford counsel (though you may be assessed fees).
- You have a right to communicate with your counsel, family, and friends, and reasonable means should be provided for you to do so; and

- The amount of your bail, if you are eligible.

## What is bail and how is it determined?

- Bail (also referred to as Bond) is giving the court something of value that guarantees you will appear before the court for trial at a later date.
- Bail should be set only if the judge determines it is necessary to ensure you will appear in court, or if the judge determines it is necessary for the protection of the public, victims, or potential witnesses. The judge may look at whether you have failed to appear before any court in the past in determining bail.
- The judge may choose to set a cash bond or a surety bond.
  - A cash bond must be paid in full, and whoever pays is responsible for your appearance in court. This money may be forfeited if you fail to appear in court.
  - A surety bond is a bail that is paid or pledged by another person, usually a bail bondsperson, offering money or a valuable piece of property as collateral. This person is then responsible for making sure you appear in court. If you use bail bond company, you will not get your money back or have what you paid the company credit toward your fines and fees. Additionally, bail bondspersons are not bound by the same rules as the police. For example, they might enter your home without a warrant if you fail to appear in court.

## How to post bail/bond:

- If the judge sets bail at a certain dollar amount, you may pay that amount.
  - If convicted, this payment may be used to pay any fines or court costs.
- If the judge sets a surety bond, the person assuring your appearance must be a licensed bail bondsman or a resident of Arkansas owning property greater than the value of their debts and the amount of bail. A bond company will usually ask that you pay ten percent of the bond set by the judge.
- Officials that can accept bond:
  - If at **court: a judge, magistrate, or court clerk.**
  - If held in a county jail: a sheriff or deputy.
  - If held in a *city jail: a designated police officer.*
- Any official who accepts a bond must provide a pre-numbered receipt showing the value of all the collateral offered as bond.

## Right to Counsel:

**If you face possible jail time**, you have a right to have an attorney give you advice on your case, and advocate for you in court.

## What if I lack the financial resources to hire an attorney?

- You may qualify to have appointed counsel (also known as a public defender) represent you.
- To establish this lack of financial resources, you will have to complete an Affidavit of Indigency, which is provided to you by the court in which you are charged. You should complete this form fully and truthfully, including income **and** expenses. If you receive public assistance, you should note this.
  - A sample Affidavit of Indigency form is attached below.

### What if the judge tells me that I do not qualify to have a public defender appointed to me?

- Write to the Public Defender Commission. See Resources section for mailing address.

### What if my attorney is not adequately representing me?

- Write to the attorney and try to find out why. Keep a written record of your contacts and attempts to contact counsel.
- You may file a complaint with the following agencies, but know that this is unlikely to get you any fast relief concerning your relationship with counsel.
  - Office of Professional Conduct,
  - Public Defender Commission, and
  - ACLU of Arkansas.
 See Resources section for contact information.
- If you have hired counsel, you may seek a different attorney. If you are appointed counsel, the court would have to appoint sometime else, which is rare.

### Plea:

This is your response to the charges brought against you.

- You should not be required to plead until you have had an opportunity to retain an attorney (or have an attorney appointed if eligible) unless you have waived the right to an attorney or refused your attorney's assistance.

### Right to a Speedy Trial:

If your case has not been tried within a certain time, it should be dismissed for lack of speedy trial.

- In Arkansas the prosecution has
  - 12 months to bring you to trial if you are not incarcerated, or
  - 9 months if you are incarcerated.

- However, if you or your lawyer asks for more time to prepare your case, that time will not count as a delay of your right to a speedy trial.
- Time for speedy trial begins when the probable cause hearing is held. This is when bond is set and counsel is appointed.

## Right to Confront Witnesses:

- The Confrontation Clause of the Sixth Amendment provides you the right to confront the witnesses against you by cross-examining these individuals, and to compel your own witnesses to testify in court.
- However, special circumstances do exist, which allow witnesses to testify without you being present.

## Rights When Sentenced to Probation:

- A request for probation must fall under a specific statute. If you'd like to request probation, it is best to discuss this with your attorney.
- If you are a first-time felony offender, you are eligible for probation if you plead no contest or guilty.
- If it is not your first felony, you may still be eligible for probation, unless you've been convicted of Murder, Treason, a class Y felony, Driving/Boating While Intoxicated, or Continuing a Criminal Enterprise.
- Your probation officer must give you a written statement explaining the conditions of your probation.
  - Arkansas Law requires that you waive some of your 4<sup>th</sup> Amendment rights when accepting the conditions of probation; while on probation, a law enforcement officer can conduct a search of you or your property without a warrant.
- If your probation is being revoked, you have the right to a hearing within 60 days of the violation. At the hearing, you have the right to
  - hear the case against you,
  - present your own case, and
  - be represented by an attorney.

## Rights When Sentenced to Pay Fines:

- You may request to pay the fines by a specific date or to create a payment plan. Otherwise, the payment will be due and must be paid by the end of the next business day.
- The court should ask about your ability to pay. If you are unable to pay in full, or if you are unable to afford the amount the court requests per month, you can raise this with the judge before you step down. If the court determines that paying immediately is beyond your means, it should create a payment plan for you, taking into account your income and expenses.
- The court must accept payment by check, as long as you can show you are a resident of Arkansas and your check draws from a bank in Arkansas.

- Most counties accept debit and credit card payments, though they may charge a transaction fee if you pay with a debit or credit card.
- If you pay online through a third-party entity, you should not be charged a transaction fee.

### The Right to be Free from Double Jeopardy:

- You cannot be charged twice for the same occurrence of a crime.

### The Right to Appeal:

- District Courts hear traffic and misdemeanor cases, as well as first appearances on felony charges. Circuit Courts hear felony cases.
- District Court cases can be appealed to Circuit Court. There is often no court reporter in District Court to record testimony. If you appeal from District to Circuit Court, you will have a new trial. If you were sentenced in District Court, that sentence will be carried out unless the outcome of your new trial is different. You cannot renew plea negotiations by appealing to Circuit Court.
- Appeals from District to Circuit Court must be filed by 30 days after your plea or conviction.
- You may also appeal from Circuit Court to the Arkansas Court of Appeals or the Arkansas Supreme Court.

### Resources:

<p><b>Arkansas Public Defender Commission:</b>          101 E. Capitol Ave #201          Little Rock, AR 72201          501-682-9070  <a href="http://apdc.arkansasadmin.net">apdc.arkansasadmin.net</a></p>	<p><b>Office of the Committee on Professional Conduct</b>          (receives and investigates complaints against attorneys):          2100 Riverfront Drive, #200          Little Rock, AR 72202          501-376-0313  <a href="http://www.arcourts.gov/administration/professional-conduct">www.arcourts.gov/administration/professional-conduct</a></p>
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Check Administrative Office of the Courts Public CourtConnect to find out information and filings in your case - (Note: Not all courts participate):  
[https://caseinfo.aoc.arkansas.gov/cconnect/PROD/public/ck\\_public\\_qry\\_main.cp\\_main\\_idx](https://caseinfo.aoc.arkansas.gov/cconnect/PROD/public/ck_public_qry_main.cp_main_idx)



902 W. 2nd Street, Suite 1  
Little Rock, AR 72201  
501-374-2660  
[www.acluarkansas.org/get-help](http://www.acluarkansas.org/get-help)

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS

\_\_\_\_\_ DIVISION

STATE OF ARKANSAS

PLAINTIFF

V.

CASE No. \_\_\_\_\_

DEFENDANT

***AFFIDAVIT OF INDIGENCY***

\_\_\_\_\_, the defendant in the above-captioned proceeding, being first duly sworn on oath, deposes and states:

**A. PUBLIC DEFENDER INFORMATION**

I have been evaluated by the office of the state public defender: ( )Yes ( )No  
If yes, I have been found: ( )Eligible ( )Ineligible ( )Partially Eligible

**B. PERSONAL INFORMATION**

Date of Birth: \_\_\_\_\_  
Marital Status: ( )Single ( )Married ( )Separated ( )Divorced  
Children and Ages: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Do these children live in the home? ( )Yes ( )No  
Do any other persons live in your home? ( )Yes ( )No  
If yes, explain: \_\_\_\_\_

**C. EMPLOYMENT INFORMATION**

Current Employer: \_\_\_\_\_  
Address and Telephone of Employer: \_\_\_\_\_  
Supervisor: \_\_\_\_\_ Net or take home pay: \$ \_\_\_\_\_ per: \_\_\_\_\_

If married and not separated:

Spouse's Employer: \_\_\_\_\_  
Address and Telephone of Employer: \_\_\_\_\_  
Supervisor: \_\_\_\_\_ Net or take home pay: \$ \_\_\_\_\_ per: \_\_\_\_\_

**D. ASSETS (Include assets of spouse if married and not separated)**

Cash: \$ \_\_\_\_\_ Stocks/Bonds: \$ \_\_\_\_\_  
Savings: \$ \_\_\_\_\_ Cash Value Life Insurance: \$ \_\_\_\_\_  
Checking: \$ \_\_\_\_\_ Other: \$ \_\_\_\_\_

**E. NON-LIQUID ASSETS (Equity = value - money owed) (Include assets of spouse if married and not separated)**

Real Estate (house): \$ \_\_\_\_\_  
Vehicles (car, truck, cycle): \$ \_\_\_\_\_  
Other: \$ \_\_\_\_\_

**F. LIABILITIES (Money owed, including that of your spouse if married and not separated) (Include source, reason, amount and monthly payment)**

SOURCE	REASON	TOTAL AMOUNT	MONTHLY PAYMENT
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____



**G. AVERAGE MONTHLY BUDGET**

House (rent, mortgage):	\$		
Food:	\$	Utilities:	\$
Transportation:	\$	Health/Vehicle Insurance:	\$
Day Care:	\$	Child Support:	\$
Recurring Medical:	\$	Recurring Prescription Drugs:	\$
Educational:	\$	Court Proceeding:	\$

**H. FAILED ATTEMPTS TO SECURE LEGAL COUNSEL**

(List names and addresses of attorneys whom you have consulted)

I swear that the above statements are true and correct to the best of my knowledge and recollection; that I have not sold or disposed of any assets for less than their fair market value prior to the commencement of the above-captioned proceeding in order to obtain appointed counsel; and that I understand that furnishing false information under oath may subject me to a criminal prosecution, with a possible punishment of up to 6 years in the Arkansas Department of Corrections and a fine of up to \$10,000. Further, I state that any change in my financial condition will be reported to both this Court and appointed counsel immediately.

In exchange for legal representation provided by the State, I, \_\_\_\_\_, agree to pay the amount ordered by the Court, both upon the initial Appointment of an Attorney (user fee) and for any amount ordered by the Court after the case has concluded (attorney fee).

Your state income tax refund, legal settlements or favorable verdicts, lottery winnings, or any moneys or property forfeited by the State shall be intercepted to satisfy this debt under Ark. Code Ann. § 16-87-217.

Defendant

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

State of Arkansas Notary Public

My commission expires: \_\_\_\_\_

JUDGE

DATE