

KNOW YOUR RIGHTS: Your Right to an Attorney if You're Arrested

Do I have the right to an attorney?

Today, if you are accused of a crime, you have the right to retain an attorney. Under the U.S. Constitution and the New York State Constitution, if you cannot afford an attorney, a public defense attorney should be provided for you at the expense of the state.

When should I first talk to my attorney?

You should retain an attorney as soon as possible. If you are arrested, you must be brought before a judge in your local criminal court within 24 hours for a court appearance called an "arraignment." This is when the judge determines whether or not you can be released on bail or whether you must be sent back ("remanded") to jail while you await the resolution of your case.

Your attorney needs time to review the facts of your case before arraignment -- including your ties to the community and your criminal history (or lack thereof). This information can help your lawyer persuade the judge to release you from jail or set a reasonable bail. Your lawyer must also be present during the arraignment to advocate on your behalf.

How should my attorney help defend my case?

After you are arrested, your case can be resolved through a plea bargain, trial or dismissal. Your defense attorney should investigate your case to help you decide which resolution is best. Investigation includes interviewing witnesses, collecting physical evidence, consulting experts, and examining the quality of the prosecution's evidence against you. Defense attorneys should work with investigators to help gather and analyze evidence. Experts in subjects like mental health, ballistics or DNA

evidence are often necessary to present an effective defense or to provide an opinion independent of the prosecution's expert. Defense attorneys often should file motions to get access to the prosecution's evidence and to enforce your procedural rights. Any fact-finding and motions filed can have a critical impact on the outcome of your case and the decisions you make, even if you are guilty of some or all of the charges against you.

When should I hear from my attorney?

Your attorney should meet with you as soon as possible after your arraignment to discuss the charges against you and how to defend against them. This, and all meetings with your attorney, should be in a confidential space.

While you are waiting for your case to be resolved, a series of court dates and other procedures will be set. If you miss a mandatory court date and you are not in custody, the judge may issue a warrant for your arrest. Your attorney should inform you of court dates, including hearings and other procedures. Your attorney should also discuss with you if he or she plans to postpone any court dates.

Your attorney should also keep you informed of any proposed plea bargains and should discuss and evaluate the pros and cons of plea bargaining with you. Plea bargains are negotiated between the prosecutor and your defense attorney. When you accept a plea bargain, you usually plead guilty to some or all of the charges against you in exchange for concessions from the prosecutors (such as reduced charges or a shorter sentence).