

Christopher F. Morales  
Attorney at Law  
Board Certified Specialist in Criminal Law  
415-552-1215

## **Does Self-Representation in a Criminal Case Ever Make Sense?**

Criminal defendants might represent themselves in a few situations. There are many reasons why some criminal defendants may wish to represent themselves in a criminal trial. Although it is usually wise to get a defense lawyer, sometimes it's not necessary. The key to deciding if you need a lawyer is to look at the punishment you'll face if convicted. The harsher the potential punishment, the more important it is that you are represented by counsel.

### **Why Some Defendants Want to Represent Themselves.**

Defendants may choose to represent themselves for a variety of reasons:

Some defendants can afford to hire a lawyer, but don't do so because they think the likely punishment is not severe enough to justify the expense.

Some defendants may plan to plead guilty to an offense whose sentence never varies, and they realize that hiring a lawyer will do them little good.

Some defendants believe (often mistakenly) that an attorney who represented them previously was not competent, and figure they can do just as well on their own.

Some defendants believe that lawyers are part of an overall oppressive system and seek to make a political statement by representing themselves.

Some defendants who are in jail awaiting trial can gain privileges through self-representation, such as access to the jail's law library.

Self-represented defendants are not bound by lawyers' ethical codes. This means that a defendant who represents himself can delay proceedings and sometimes wreak havoc on an already overloaded system by repeatedly filing motions. However, this approach is not recommended because it often backfires.

### **Choosing to Represent Yourself**

While it's not usually a good idea for a criminal defendant to represent him- or herself, it may make sense in some situations. The most obvious rule is that the less severe the charged crime, the safer it is for a defendant to self-represent. For

example, defendants charged with minor traffic offenses or shoplifting may get by without hiring an attorney, while defendants charged with violent offenses or felonies should rarely be without one.

Some crimes have sentences that appear relatively minor, but the conviction may have serious repercussions later. For example, convictions for some vehicular offenses may result in increased insurance rates. Or, if the defendant reoffends, the sentence for the second conviction may be much more severe than the first offense. So before deciding whether to hire an attorney, defendants should try to learn what the punishment is likely to be if they are convicted, both immediately and in the future (if the defendant is arrested or convicted for a similar crime), and whether there are collateral consequences, such as insurance rate hikes.

### **Find Out the Likely Punishment**

It can be difficult to learn about common sentencing practices. Typical sentences aren't usually listed in statutes or court rules. (Sentencing in federal court is a big exception, though judges aren't bound by those guidelines.)

However, some states do have what are called determinate sentencing laws. These laws provide specific sentences (or a range of sentences) for each crime -- for example, four, five, or six years for a burglary. Many statutes allow the judge to add or subtract a year or two from the sentence, depending on the circumstances.

Other states have indeterminate sentencing laws, which allow the judge to sentence an offender for a period of time between a minimum sentence and a maximum sentence -- for instance, ten years to life. The prisoner will probably be eligible for parole after serving the minimum sentence, but only if a parole board agrees to the release.

If a defendant wants to find out what the punishment is likely to be if convicted, the defendant might take the following steps:

Pay a private defense attorney who handles cases in that court for an hour of consultation. An experienced defense attorney can often make accurate predictions as to likely punishment.

Ask a relative or close friend who is an attorney for informal, unpaid advice.

Talk to an attorney from the public defender's office.

## **Representing Yourself at the Arraignment**

In most criminal courts, the arraignment is where the defendant first appears before a judge and enters a plea of guilty or not guilty to the offense charged. Assuming the defendant plans to enter a plea of not guilty, which almost every defendant does at this early stage, the court will then:

- set a date for the next procedural event in the case

- consider any bail requests the defendant or the prosecutor makes (usually if the defendant is at liberty -- not in jail -- at the arraignment, the defendant will continue at liberty without a change in bail status)

- appoint a lawyer for the defendant upon the defendant's request and a showing of eligibility, and

- ask the defendant (or the defendant's lawyer) to "waive time" (that is, give up the defendant's right to have the trial or other statutory proceedings occur within specified periods of time).

Most people can handle an arraignment without a lawyer. However, if the defendant can get the court to appoint a lawyer for him or her without having to delay the arraignment, or the defendant is able to arrange for private representation before the arraignment, having a lawyer at this stage is always better.