NAVIGATING YOUR

# CRIMINAL CASE

IN FLORIDA

CAREY MELDON

IAN PICKENS & TANNER DEMMERY





# CAREY MELDON IAN PICKENS & TANNER DEMMERY



ONLY OFFICIAL LAW FIRM OF THE FLORIDA GATORS

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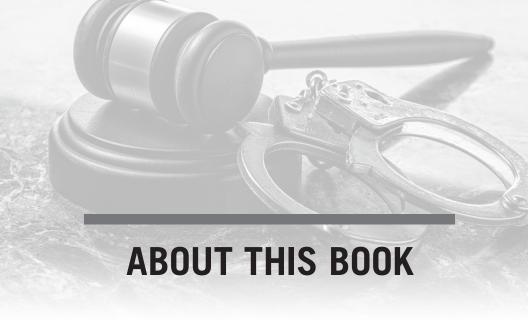
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If you are reading this book it is because you have just been arrested in the state of Florida, and you are facing a serious life altering event and need to make important decisions immediately.

Two Important things you should do at this point are:

- 1. Hire a qualified and experienced legal team to represent you.
- 2. Do it ASAP.

As the only Official Law Firm Partner of the Florida Gators, we hold ourselves to high standards of excellence and don't back down from a fight. Please join our team so we can fight for you.



This book is based on Carey Meldon, Ian Pickens and Tanner Demmery's years of criminal defense experience. The intent of this book is to educate the reader on possible ways to avoid being charged and convicted of a crime in Florida.

This book is NOT intended to give legal advice nor to encourage committing a criminal offense in Florida.

This book is intended to answer some of the following questions:

Common Questions You Will Have Throughout the Process:

- 1. What do I do now?
- 2. Where do I start?
- 3. What am I being charged with?

- 4. What's the difference between a misdemeanor and a felony?
- 5. Who is my assigned judge?
- 6. Will the Judge let me resolve the case?
- 7. When do I get to tell the Judge my side of the story?
- 8. What Court am I in?
- 9. Who is the assigned prosecutor?
- 10. How do I contact the prosecutor?
- 11. Why won't they speak with me?
- 12. How do I negotiate with the State?
- 13. How do I get onto the Court docket?
- 14. Who is the JA?
- 15. What are motions to suppress/dismiss?
- 16. How do I put a motion together?
- 17. My accuser said they don't want to press charges so why am I being charged?
- 18. What is a waiver of prosecution?
- 19. What is diversion and do I qualify for it?
- 20. How do I get an offer to resolve my case?
- 21. How do I know if this offer is in my best interests?
- 22. What is the difference between an adjudication and a withhold?

- 23. What does it mean to become a convicted felon?
- 24. What is a deposition?
- 25. How do I set up a deposition?
- 26. How do I subpoena witnesses?
- 27. How do I change the conditions of my pretrial release?
- 28. Can I travel while I'm on pretrial release?
- 29. Can I work while I'm on pretrial release?
- 30. What is a scoresheet?
- 31. What is a mandatory minimum sentence?
- 32. What does Habitualized mean?
- 33. What does PRR mean?
- 34. What does HOO mean?
- 35. Will I have to serve jail time?
- 36. Am I going to prison?
- 37. What is a downward departure?
- 38. Do I qualify to be sentenced as a Youthful Offender?
- 39. What is a speedy trial?
- 40. How do I get one?
- 41. Who has the burden of proof?
- 42. What is reasonable doubt?
- 43. How do I prove my innocence?

- 44. What is Voir Dire?
- 45. When do I get to question the witnesses?
- 46. How do I object to certain evidence against me?
- 47. What is an opening statement?
- 48. What is a closing statement?
- 49. Why does the state attorney get to do 2 closing arguments?
- 50. What is a motion for directed verdict?
- 51. How do I make one?
- 52. How do I call my own witnesses?
- 53. Can I appeal my conviction?
- 54. How do I seal my record?
- 55. Can I get my record expunged?
- 56. I have been sentenced and placed on probation; am I allowed to travel?
- 57. Do I need permission to work? Attend a funeral? Go to the store?
- 58. What if I can't afford to pay restitution?

If you have concerns about your case and any of the questions above have crossed your mind, give us a call at (800) 373-8000. Our team of highly experienced and seasoned criminal trial

attorneys can answer your questions and help you navigate a successful resolution to your matter.

The best time to get an attorney involved is as soon as possible in the process but we are here to assist at every stage of your case even if you have already been sentenced.

As you can see from the list of non-exhaustive questions above, enduring the criminal justice system as a defendant can be a stressful and oftentimes complicated event without the assistance of competent counsel advocating on your behalf; be sure to hire the right attorney to have the best opportunity for a favorable resolution that meets your expectations.

As always, our initial consultations are free of charge over video conference, telephone, or in our physical office locations.

This book is dedicated to preserving the rights of the accused.

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# MY PROFOUND APPRECIATION TO IAN PICKENS!

Posted by Ben May 8, 2019

Ian Pickens is a dynamite attorney! I consider myself fortunate that he took my case and enthusiastically defended me. He kept me informed and updated during the entire legal process. All my phone calls and emails were promptly returned. Mr. Pickens and his staff worked diligently and strived for the ultimate outcome; the results far surpassed my expectations. I highly recommend Mr. Pickens and will definitely contact him again for my future legal needs.

# IAN PICKENS THANK YOU!

Posted by Glenn July 2018

I want to give a huge thanks to Meldon Law. They were a big help to me winning my 2nd DUI case. Attorney Ian Pickens took my case and he did a great job. He helped get my whole case thrown out. He always stayed in contact with me. I always felt hope when we spoke. His assistant Ms. Abby was very nice and I would refer them to anyone.

# IAN PICKENS WAS WONDERFUL!

Posted by Christina June 2020

"Ian Pickens was wonderful! I would highly recommend him if you are looking for a good attorney. He and his staff were understanding and they answered all of our questions. Ian was constantly in touch with me concerning my husbands case. He was very patient and helpful on helping us understand every step of our legal situation. He also was very reassuring and kept us calm during this process. I would highly recommend Meldon Law Firm for anyone needing legal help!"

# **MY SINCERE THANKS!**

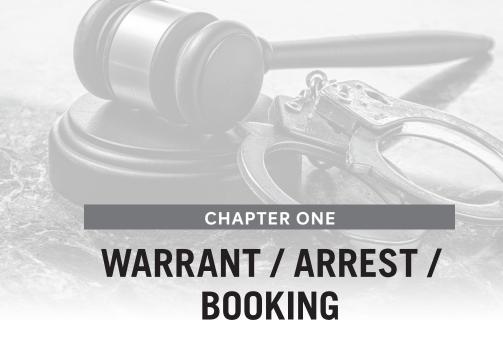
Posted by Zosita April 2021

My sincere thanks for the professionalism that service Tanner Demmery and his team displayed was exceptional. Especially helpful were the frequent updates from Alexandra. I'm extremely satisfied with everything they did upon my behalf and am pleased with the outcome. I found them to always be friendly and straightforward, my questions and concerns were always fully answered. I highly recommend Meldon Law.

# A GREAT LAW FIRM!

Posted by Fred March 2021

They are a great law firm. Tanner did a great job helping me with my case and getting me the best possible outcome. Alexandra was very helpful and responsive. I was always able to reach her about any questions I had with my case. I would highly recommend them to anyone in search of legal help.



# **ARREST**

You either were pulled over, stopped, or approached in some manner by law enforcement. Based on the officer's belief in observing your actions or receiving information from others as to your involvement with certain actions, you have been arrested. It is a rare occasion that anything you say at this point is going to suddenly change a cop's mind to "unarrest" you. This is the triggering event that will start your journey through the criminal justice system.

# **BOOKING**

Once you are arrested, you will be taken to a central law enforcement location where you will be photographed, fingerprinted and likely questioned. Be advised that everything

EVERYTHING
YOU SAY OR
DO IS BEING
RECORDED AND
MEMORIALIZED
IN SOME
MANNER

you say or do is being recorded and memorialized in some manner and will most certainly be used against you even at this time. Don't make the cops' lives any easier by discussing your case. Be polite, and remain calm. After the arrest you have the right to remain silent. You can invoke this right by simply saying "I want to invoke my right to remain silent."



# 1ST APPEARANCE IN COURT

(BOND DETERMINATION)

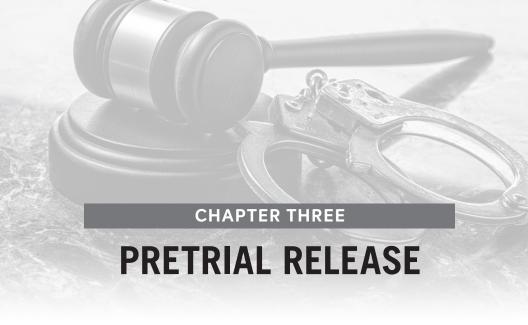
# 1ST APPEARANCE COURT/BOND

This is the procedure where within 24 hours of your arrest, you will be brought before a judge to determine if probable cause exists for the charge or charges you were arrested for and also the time when your bond is set typically based on the severity of the charge, your prior criminal history and whether or not you pose a flight risk. In certain instances, a Judge might elect to Release You on Your Own Recognizance (ROR) or place you on something called Pretrial Release with or without Monetary Bond as well. If you have an attorney at this early part in the process, he/she may argue on your behalf that the officer did not have probable cause to make an arrest for the charge submitted or in the alternative,

only has probable cause for a lesser charge. This can be valuable to you as if there is no probable cause, then you

IF THERE IS
NO PROBABLE
CAUSE, THEN
YOU CANNOT
BE HELD ANY
FURTHER

cannot be held any further unless the State attorney can "perfect" the charges. Additionally, if probable cause is found only for a lesser charge, then you will likely have to post less money to bond out and/or be more likely considered for pretrial release without posting any monies and minimal conditions.



# **RELEASE**

Once the court finds probable cause for any of the charges that you were arrested, you may have to post bond for whatever amount the court ordered or you will be placed on Pretrial Release or some combination of the two if the charges are more serious. Pretrial Release is a form of monitored supervision during the pendency of your matter before you either accept a plea, the charges get dismissed or you go to trial. Depending on the charges, your prior history and other factors, pretrial supervision can range from simply calling in once a week to full-blown house arrest with an ankle monitor, random visits, and random drug tests. If the charge is associated with a domestic violence charge such as battery or the like, you will also have to endure a no-contact order and at the minimum, a no harmful contact order. An attorney can assist you in arguing on your behalf

for more lenient conditions of your release and/or pointing out financial constraints that would otherwise prevent you from otherwise posting any bond and therefore you may remain stuck sitting in-custody during the duration of your

YOUR
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YOU RELEASED
ON YOUR OWN
RECOGNIZANCE

case. An attorney can point out favorable information at this early stage to help the court get a more complete picture of the events associated with your arrest and help you to secure the most lenient and favorable conditions for release while your case is pending. In some cases and most determined by the severity of your charges, your attorney may even be able to get you released on your own

recognizance (ROR) so that you can continue living your life during the process of your case with as little intrusion into your daily life as possible.



# BOND MOTIONS/ CONDITIONS OF BOND

# MOTION FOR BOND REDUCTION

In most cases, when a person is arrested, they are given a bond for the offense or offenses that have been alleged against them. Some counties have a bond schedule, which is a list of criminal offense along with set bond amounts, however, a Judge still has discretion to set a bond/bail that is higher or lower than the scheduled amount. Other counties do not have a bond schedule, in this case, a person is typically held overnight until they can appear before a Judge at First Appearance. During the first appearance proceeding the Judge will determine a bond/bail they believe is appropriate. However, just because a bond amount is set doesn't necessarily mean that the defendant can afford to post that bond and be released from the county jail. There are certain

factors that a Judge takes into consideration when determining a bond/bail amount that is appropriate. For instance, the nature of the pending offense, and whether it is a violent or non-violent offense. Certain offenses require that a monetary bond/bail be set. Does the defendant have prior criminal convictions or arrests? What are the defendant's ties to the community? Do they live in the State of Florida, the county the offense occurred in, do they work in the county, have family in the area? Another important factor is, does the defendant have any prior failure to appears? Sometimes at first appearance all of the information needed to make an effective argument is unknown.

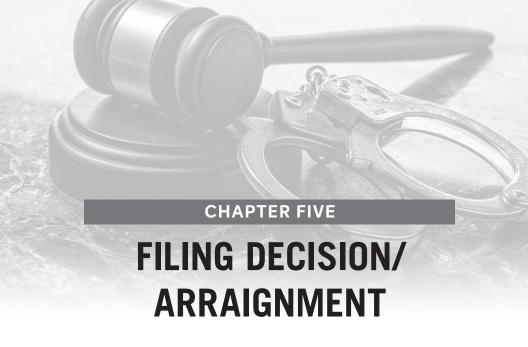
Filing a motion to reduce bond, allows for a specific hearing before the Judge that the case is set in front of. At this hearing, the defendant can present witness testimony, other evidence, and argument by their attorney to have the bond lowered or have the defendant ROR'd. At this bond/ bail hearing, it is important to establish ties to the community, providing testimony that the defendant has lived in the state/county and for how long. Providing evidence that the defendant has family in the area and is employed locally is also important to suggest that the likelihood of the defendant failing to appear for the next court appearance is unlikely or low. The attorney can also make an argument that there are conditions of release that the Judge could impose that would protect the community at large, the alleged victim (if there is one), or orders that could ensure the certain behaviors are not engaged in. For instance, in a DUI case, an attorney may argue that the Judge could place an alcohol monitor on the defendant to ensure that there is not alcohol consumption.

Another piece of evidence that can be provided is the defendant's financial means, or his or her family and friends' financial means to support the defense's position of what is a reasonable bond for this specific defendant. Time and effort are essential to make an effective argument for a bond reduction.

AT THE BOND/
BAIL HEARING,
IT IS IMPORTANT
TO ESTABLISH
TIES TO THE
COMMUNITY

# MOTION TO MODIFY BOND CONDITIONS

Another motion that can be filed on behalf of a Defendant is a motion asking the Court to modify his/her bond conditions. For instance, if a Defendant is told not to have contact with a specific person or return to a specific place, a motion can be filed, and a hearing can be held were the attorney can present evidence to support allowing the person to have peaceful contact with an individual or return to that address.



# FILING DECISION

Most people don't realize that just because the law enforcement officer charged you with a certain crime, it's typically the prosecutor who has the final word on the specific charges that are ultimately filed against you. You may have been charged with a misdemeanor petit theft from the local convenience store but then the State turns around and files a felony theft because they see you have multiple priors or can prove a certain value threshold that could justify escalating the charge. The State can also add counts for additional charges if they can justify it based on collecting additional information from witnesses and or other evidence review. On other occasions, the State will downgrade charges or outright choose to not file any charges altogether. Having

an attorney at this juncture before the filing decision is made can sometimes make a difference on whether you are charged with a more severe crime, more counts of crimes, or if your case is downgraded or dismissed altogether. Depending on what County you are charged, it is almost always much easier to get a charge no-actioned before it is ultimately filed rather than fighting to defend against it to get a nolle prose.

# ARRAIGNMENT (ALSO SEE CHAPTER 10)

Arraignment occurs when you are brought physically in front of a Judge to be informed of the charges the prosecutors has filed against you. Once the charges are read, the Judge will ask you if you want to plead guilty, not guilty, or no contest. These are your only three options at that time. If you say anything other than guilty, not guilty, or no contest the Judge will most likely advise you that the Court only is addressing one issue and that is whether you

ARRAIGNMENT
IS NOT THE
PLACE OR TIME
TO ARGUE YOUR
CASE.

want to say the words "guilty", "not guilty", or "no contest". In other words, arraignment is extremely limited in its scope and is not the place or time to argue your case. In Florida, if you hire a private attorney for a criminal charge, your arraignment will most

likely be waived since private counsel may file a pleading of "Not Guilty" on your behalf in written form so long as it's filed with the clerk prior to arraignment. If you do not hire a private attorney to waive your arraignment, you must show up to your arraignment date personally. If you don't the Court can issue an arrest warrant for failure to appear.



# DISCOVERY/ DEPOSITIONS

# **DISCOVERY**

Discovery is more than just a report or a statement, it is a process. Typically, after a person is arrested for an offense an attorney files a not guilty plea and then files a demand or notice of intent to participate in discovery. The filing of a demand or notice of discovery triggers a period in which the State needs to provide defense counsel evidence they have against the person accused. Florida Rules of Criminal Procedure 3.220 governs the rules of discovery and sets forth a time for the State to provide the discovery documents within 15 days. The typical discovery items that are furnished by the State are listed in a discovery exhibit. Discovery encompasses all the materials the State intends to use to prove the charges they have filed against you. This commonly includes

such items as police reports, probable cause affidavits, supplemental police reports, lab reports, witness statements, audio tapes of statements, videos of witness interviews, confessions, surveillance, fingerprint results, dna results, Etc. Having an attorney to thoroughly review these materials is essential in issue-spotting for possible motion practice and formulating a proper defense. Additionally, an attorney can file the appropriate motions with the Court to ensure that all materials have been turned over to you and uncover what the State may not have as well.

# **DEPOSITIONS**

A deposition is essentially a sworn question and answer session memorialized by an audio and/or written record. Depending on the severity of the charges you are facing

DEPOSITIONS
CAN BE HELPFUL
TO UNCOVER
INFORMATION
NOT OTHERWISE
DISCLOSED IN
EXISTING
WRITTEN REPORTS

and the complexity of issues surrounding your facts, depositions can be helpful to uncover information not otherwise disclosed in existing written reports. They also can help to establish what the position is of a witness and can be used to "box them in" to that position. These statements can be used to impeach a witness

that later gives a different version of their story or provide a basis to point out inconsistencies in how an investigation was carried out when a witness suddenly supplements their story or leaves things out of their story.

# **INFORMATION**

This is the item that puts you on notice of what charges the state attorney has decided to file against you. It will include the statute number corresponding to a charge and give other details with some level of specificity so that you are aware of what you are being accused of. It is a piece of paper similar to a speeding citation you may have received at some point in your life. A skilled attorney can sometimes find problems or inconsistencies in the information filed by the state and use this to assist you in getting a favorable outcome.

# CHAPTER SEVEN PRETRIAL MOTIONS

Pretrial motions include motions to suppress evidence, motions to dismiss and a whole wide range of procedural mechanisms to help uncover problems with a state's case against you far before a jury trial. They also can be utilized to compel the State to turn over information that you are otherwise entitled and can be utilized to exclude certain other damaging information as well. The filing of pretrial motions can oftentimes accelerate a quick resolution to your charges in a favorable manner and at the minimum can oftentimes facilitate favorable negotiations to get you a better deal. Motions must be filed in accordance with certain procedural rules that govern the court you are in and must be supported by well-researched statutes and caselaw to be effective. Not all cases will have facts with debatable issues, but a skilled attorney can oftentimes be effective at pointing out nuances in the law that may benefit you in defending your case.

# CHAPTER EIGHT PLEA NEGOTIATIONS

Plea negotiation is the process of receiving an offer to resolve your case from the State. An offer to resolve your case includes the proposed penalties for the crime you are accused. This may include jail time, prison time, probation, fines, restitution and any number of conditions that impede the ability to live your life freely. The prosecutor on your case generally has a wide latitude in making you any offer they choose. Certain charges carry mandatory minimum sentences for which they have no discretion to change such as drug and firearms charges but it's important to know that prosecutors primarily control this aspect of the negotiations unless and until you can point out the weaknesses in their case against you. More often than not, not even a Judge will get involved in making you an offer different than what the state has offered. In felony cases, something called a scoresheet is utilized which gives the state even less ability to make you a more reasonable offer as your score will determine what

your sentence would be. Crimes are assigned a level and then a corresponding point-value and then added up with any prior record points and a sentence is then calculated. Less serious charges also might carry the option of being resolved through certain diversion programs. It's important to be aware of what charges are eligible for diversion and what those conditions are. A skilled attorney is your first line in seeing whether or not you qualify for a diversion program and/or showing the prosecutor that their case is weak and that they should give you a more lenient offer to resolve or dismiss the case entirely. This can be difficult to accomplish unless you are familiar with the specific programs in your jurisdiction, have filed motions or have submitted your own evidence to support such a request.

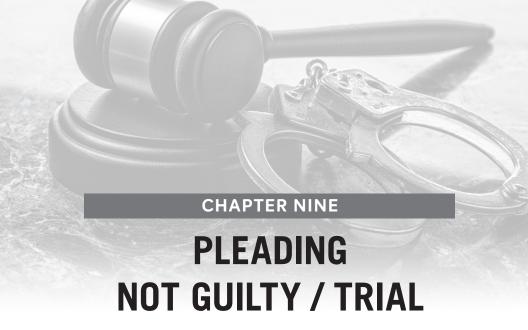
### DEFERRED PROSECUTION AGREEMENTS (DPA)/DIVERSION

A Deferred Prosecution Agreement (DPA) is a contract between the defendant and the State Attorney's Office. This contract is something that is typically negotiated between a defense attorney and a prosecutor, typically a defendant must have no prior criminal history and in cases involving a victim (Battery), the victim usually must be ok with a deferred prosecution agreement being offered. A deferred prosecution agreement allows a person to enter into a contract with the State; typically a person does not have to enter a plea to the charge to enter into the DP agreement. Once the

agreement is signed by all parties (i.e. defendant, attorney, and prosecutor) the case will be closed during the period of time specified in the agreement. The specific agreement will layout certain conditions that the individual must complete within a certain time period, usually four to six months. Usually, you will need to complete all of the conditions a month prior to the contract termination date. One important thing to know is that a person who has entered into a DPA is not on probation, thus the individual is responsible for making sure all of the conditions are completed on time. If a person is unsuccessful in completing a deferred prosecution agreement the case will be re-opened and the State Attorney's Office will resume active prosecution of the case. However, in certain cases, an attorney may be able to negotiate an extension or avoid noncompliance violations.

If a person completes the conditions outlined in the contract, then at the end of the time period the prosecutor will drop the charge or charges, and then that person may be eligible to have their case expunged.

DPA IS NOT
PROBATION, THE
INDIVIDUAL IS
RESPONSIBLE
FOR COMPLETING
ALL CONDITIONS
ON TIME.



### **TRIAL**

Trial is the process of selecting a jury of persons from a pool of people within the community you reside to listen to the evidence presented and to decide the facts of the case. After listening to the evidence and weighing the credibility of that evidence as submitted, the jury will render a verdict of guilty or not guilty and in some rarer cases they will not render a verdict at all. Entire books have been written on the trial process alone. Trial includes selecting a jury, making opening statements, questioning and cross-examining witnesses, motions, and closing arguments. Depending on the charges, a trial can last anywhere from a day or two to weeks and months and sometimes even longer. Most trials take a couple days but all demand a strong understanding

of the rules of evidence and the litany of procedural rules that govern depending on your jurisdiction and the ability to wage appropriate objections. If the State is not willing to negotiate with you on what you feel is a reasonable offer, you may decide that a jury trial is the best opportunity for you to attempt to get a better resolution to your charges. There are many attorneys that specialize in various areas of the law but it is imperative to have an attorney that is

RETAIN AN
ATTORNEY
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IN ACTUALLY
TRYING CASES

skilled in the trial process itself. Many attorneys that have successful practices never have set foot inside of a courtroom so it's important to retain an attorney that does have great familiarity in actually trying cases. Make sure the attorney you hire is a trial attorney.

### **SPEEDY TRIAL**

Under Section 16 of the Florida Constitution, every person accused of a crime has the right "to have a speedy and public trial by an impartial jury in the county where the crime was committed". Rule 3.191 of the Florida Rules of Criminal Procedure outline the basic time periods for a speedy trial. The length of time is dependent on the degree of the offense, speedy trial for a person charged with a Misdemeanor is 90 days from the date of their arrest. The speedy trial period

for a person charged with a Felony is 175 days from the date of their arrest. Now if a person is charged with multiple offenses, for instance, one felony charge and one misdemeanor charge, they do not have two separate speedy trial rights. In this situation, a speedy trial for the misdemeanor charge would be governed by the speedy trial rule that applies to the felony court. A person may elect to waive the right to a speedy trial, a waiver does not waive a person's right to have a trial by jury if they wish to have one, instead, it just waives the period in which they would need to be brought to trial. Each case is different so a decision to waive or not waive speedy trial is based on what is in the person charged with the crime best interest. For example, there may be pre-trial motions that need to be filed, outstanding discovery items (i.e reports, medical records, statements) that need to be gathered and reviewed, or depositions that need to be taken to properly prepare for a trial or to help facilitate plea negotiations. Also, even if a person elects to waive his or her right to a speedy trial they still can file a demand for a speedy trial pursuant Florida Rule of Criminal Procedure 3.191(b) at a later date if they choose to do so.



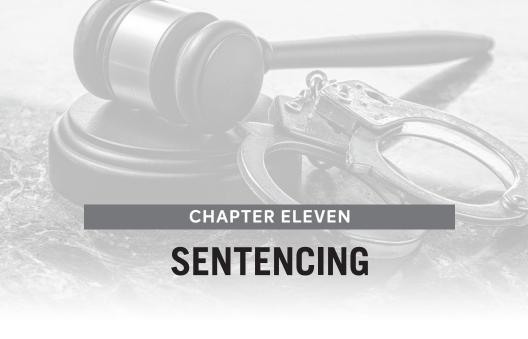
### PLEADING GUILTY / NO CONTEST

A not guilty plea can be withdrawn and a plea of guilty or no contest may be entered. A plea of guilty admits the truth of the allegation, while a no contest plea neither admits nor denies the allegations. However, a no contest plea while it neither admits nor denies the truth of the charge it does not affect the sentence that a judge may impose. A person may still be convicted of the charge, sentence to probation or jail regardless of whether they plead guilty or no contest. A person can still be adjudicated guilty of an offense even if they plead no contest. There are many reasons why a person may wish to withdraw a not guilty plea and enter a plea or guilty or no contest, the most common is they believe it is in their best interest to resolve their case by that plea. For instance, the State Attorney makes a favorable plea offer regarding the potential punishment or offers a plea to a lesser included offense. A lesser included offense is a similar offense however

the degree or level of the offense is less than what is charged, for instance a lesser included offense of grand theft which is a felony level offense and requires the value of the items stolen to be over \$750 is petit theft which is a misdemeanor which covers items that are stolen with a value of \$749.99 or less. A plea may also be entered by a person as part of the defense overall strategy. If a person has multiple cases or charges, they may choose to enter a plea to one case or one charge and then proceed to trial on the other cases or charges. A defendant may enter their plea either through negotiations with the State or they may enter an open plea. While a negotiated plea is an agreement between the State and the Defense as to what the parties feel is appropriate resolution for the case, with an open plea there is no such agreement. With an open plea, a defendant enters their plea to the court and then may present evidence and argument to the court suggesting an appropriate sentence, however the sentence is unknown until imposed by the Judge. Before entering a plea of either guilty or not contest, whether it is negotiated or open a person needs to understand the rights that they would waive by entering a plea. Those rights include the right to a trial, to cross examine witnesses, present any defense, call witnesses on their behalf and waives

A PLEA MAY
BE ENTERED
AS PART OF
THE DEFENSE
STRATEGY.

the requirement of the state to prove the truth of the charged beyond a reasonable doubt. The decision to plead guilty or no contest, or to persist in a not guilty plea and proceed with a trial is a very important decision that only the person accused of the offense can make



### FELONY SCORESHEETS

If you have been charged with a felony in the State of Florida, then you may have heard that question. In Florida every felony charge has a degree and a level. The most common three degrees are first, second and third. A third-degree felony is the lowest degree and is punishable by up to 5 years in prison and up to a \$5,000.00 fine. Whereas a second-degree felony is punishable by up to 15 years in prison and up to a \$10,000.00 fine, while a first degree is punishable by 30 years in prison and up to a \$15,000.00 fine. There is also a capital felony which are punishable by life in prison. The levels range from 1-9 and rank essentially the severity of the felony charge. For instance, Possession of Cannabis 20 grams or more is a third-degree felony level one, while dealing in stolen property is a second-degree felony level six. Now on a scoresheet these levels equal points, the

higher the level the more points the charge carries. Once all the charges are entered into the scoresheet there is a total amount of points, if that point total is 44 points or greater than the total is placed in a mathematical equation and lowest permissible prison sentence (LPS) is generated. If a person has less than 44 points but more than 22 points that person scores permissible prison, meaning essentially, they could be sentence to prison, but are also eligible for non-prison sanctions like county jail or probation. If a person has less than 22 points than they typically must be sentenced to non-prison sanctions.

### DOWNWARD DEPARTURE

Once all the charges and potential enhancements are entered into the scoresheet the total amount of points is calculated. If that point total is 44 points or greater than the total is placed in a mathematical equation and lowest permissible prison

IT IS
POSSIBLE
TO SCORE
PRISON
AND NOT BE
SENTENCED
TO PRISON

sentence (LPS) is generated in months to be served in the Florida Department of Corrections. However, it is possible to score prison and not be sentenced to prison. A downward departure happens when the Judge goes below or departs from the lowest permissible prison sentence. For instance, if a person had an LPS of 24 months in prison, but the judge

only sentenced the person to probation then that would be a downward departure. There are specific reasons and criteria set out in the Florida statutes pertaining to downward departures and they are listed on the scoresheet as well.

- A legitimate uncoerced plea deal, which means the state and defense both agree to go below the guidelines to resolve the case.
- Another would be if a person is below a certain age they could be sentenced as a youthful offender which would justify departing from the guidelines. To qualify as a youthful offender a person must have been under the age of 21 when the offense was committed.
- If the defendant was an accomplice to the offense and was a minor participant.
- The defendant lacked the capacity to appreciate the criminal nature of the conduct.
- The defendant requires specialized treatment for a mental disorder and amenable to treatment. The key to this mitigating circumstance is that the specific mental disorder is unrelated to substance abuse.
- The payment of restitution to the victim outweighs the need for a prison sentence.
- The alleged victim was the initiator, willing participant, aggressor, or provoker of the incident.
- The defendant acted under extreme duress.

- Before the identity of the defendant was known, the victim was compensated.
- The defendant cooperated with the state to resolve the offense and other offenses.
- The crime was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- Another option is if the offense is for a nonviolent felony and the defendant scores less than 60 points and the court determines that the individual is amenable to treatment then the person may be sentenced to a post-adjudicatory drug court program in lieu of prison.

However, it is important to know that just because a person may qualify for a downward departure does not mean the Judge has to depart from an LPS. When dealing with a felony case, it is important to hire an attorney that understands the intricacies of a scoresheet, not all prior history can be scored against you, there are exceptions, what facts and mitigation can be used to argue that a person should receive a downward departure and so much more.

### **CHAPTER TWELVE**

## COLLATERAL CONSEQUENCES OF A CRIMINAL CASE

When as case gets resolved with a plea, so much attention is placed on the terms of that agreement. Will it be jail or probation and if so, how much, are there fines, courses, community service and so much more. However, with so much focus on the specifics of the resolution sometimes what goes by the wayside is how resolving the case could affect you in other areas of your life. In some instances, a criminal case can have consequences that go above beyond the sentence that a Judge imposed. These are referred to as collateral consequences, while they are not a part of you sentence you may receive from the criminal justice system, they still can have a massive impact on you day to day life. The consequences very depending on the specific offense, whether you were

formally convicted of the offense, or if the offense was as felony. How the case is resolved could also have carry potential immigration consequences.

### **FELONY CONVICTION**

- A conviction for any Felony offense will result in a loss of your right to vote and also your right to own or possess a firearm.
  - It is a second-degree felony for a person who is a convicted felon to possess a firearm or ammunition.

### DRUG OFFENSE CONVICTION

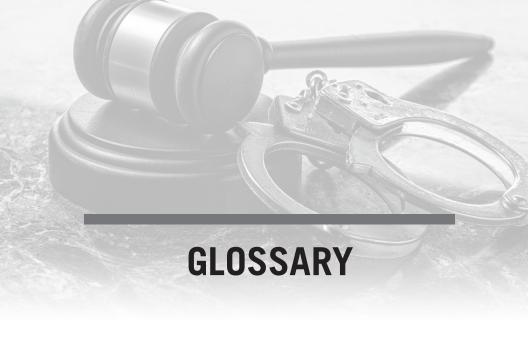
 A conviction for a drug offense, even for a misdemeanor amount of Marijuana will result in a suspension of your driving privilege for a period of 6 months.

### DOMESTIC VIOLENCE OFFENSE

- Even if a person receives a withhold of adjudication of a felony or misdemeanor offense of domestic violence that person will be prohibited from obtaining a concealed carry license until 3 years has passed and any conditions set by the court have been met.
- A conviction for a misdemeanor offense domestic violence battery can result in a person be federally barred from possessing a firearm.

### FINAL INJUNCTION / DOMESTIC VIOLENCE PROTECTIVE ORDERS

- A person who has been issued a final injunction that is currently in force will be prohibited from purchasing or possession a firearm. A person may also be forced to surrender firearms if ordered by a Judge.
  - It is a first-degree misdemeanor for a person to possess a firearm or ammunition in violation of a domestic violence injunction.



**ARRAIGNMENT** – Court hearing where you tell the Judge whether you want to plead guilty, not guilty, or no contest.

**BOND/BAIL** – Court order where you have to pay the specified amount to be released from jail (you may also pay a bail bonds person generally ten percent of that amount and the bondsperson will post a bond on your behalf)

**PRE-TRIAL SERVICES** – Where the Judge, usually at first appearance, orders that you be supervised by a pretrial service officer before your case is over.

**CASE MANAGEMENT CONFERENCE** – a hearing where the Judge wants an update on the status of your case.

**FIRST APPEARANCE** – A hearing held within a day of your arrest where the Judge determines whether to release you with conditions or not.

**MOTION TO SUPPRESS** – Hearing to get evidence thrown out because the government violated your constitutional rights.

**MOTION TO SET A BOND** – Hearing to have your bond set if you do not already have one set by the Judge.

**MOTION TO DISMISS** – Hearing to have your case thrown out.

**NOLLE PROSSE** – Your case is dismissed, and charges thrown out.

**VERDICT** – Jury or sometimes Judge concludes whether you are guilty or not guilty of the crime.

**PROSECUTOR** – the lawyer who works for the State of Florida and decides how to proceed with your criminal case. Also known in Florida as the assistant state attorney.

**JUDGE** – the person who controls when and how your case is heard and your punishment, if convicted.

**FELONY** – a crime where you can be sentenced to prison and /or probation.

**MISDEMEANOR** – a crime where you can be sentenced to jail and/or probation.

**PROBATION** – Occurs when the Judge sentences you to be supervised by a probation officer and you have to meet certain conditions, or you can be violated and face severe consequences including being sentenced to jail or prison.

**RETAINER** – The initial amount of money paid to private attorney to secure his/her representation. Retainers at Meldon Law are applied to the total fee if client hires Meldon Law.

**JURY TRIAL** – A specific process where the lawyers in the courtroom argue whether you are guilty of the crime using evidence and witness testimony.

**JURY** - a group of people who are selected to determine whether you are convicted of the crime.

**HEARING** – a meeting with judge, prosecutor, and you (and your attorney)

If you have concerns about your case and any of the questions above have crossed your mind, give us a call at (800) 373-8000. Our team of highly experienced and seasoned criminal trial attorneys can answer your questions and help you navigate a successful resolution to your matter.

The best time to get an attorney involved is as soon as possible in the process but we are here to assist at every stage of your case even if you have already been sentenced.

As you can see from the list of non-exhaustive questions above, enduring the criminal justice system as a defendant can be a stressful and oftentimes complicated event without the assistance of competent counsel advocating on your behalf; be sure to hire the right attorney to have the best opportunity for a favorable resolution that meets your expectations.



### **ABOUT US:**

- We have offices located in Gainesville, Ocala and Ft. Lauderdale and represent people charged throughout the entire state of Florida.
- The fee we charge for our services in representing people charged with a criminal offense allows us to invest the time and resources necessary to give our clients a better chance at winning their case.
- We do not take short cuts in our office. We want to give our clients the full benefit of our team's criminal and civil defense experience.
- The Criminal Defense Team of Carey Meldon, Ian Pickens and Tanner Demmery have over 30 years of combined experienced in Florida courts defending the rights of individuals charged with a crime.

### HERE IS AN OVERVIEW OF THE TEAM:

### **CAREY MELDON, ATTORNEY:**

- Assistant State Attorney for 4 years.
- Has personally handled thousands of criminal cases ranging from misdemeanors to capital felonies.
- Was a member of the 7th Circuit State Attorney's special crimes prosecution unit giving him extensive courtroom experience.
- His interest is in trial practice involving DUI and other criminal cases.
- Member of the Florida Association of Criminal Defense Lawyers.
- President, Florida Association of the Criminal Defense Lawyers; Eighth Judicial Circuit 2013-2014.
- Member of the National Association of Criminal Defense Lawyers.
- Florida Bar Traffic Court Rules Committee member,
   2010 to present.
- Lorman Seminar Lecturer, "Florida DUI Update," July 29, 2010.
- Defending DUI Cases Basic Criminal Practice 2013, 71A
   Bar
- Rossdale Group Webinar Lecturer, "Criminal Law & DUI," August 11, 2010.
- Barrister Inns of Court.

• Volunteer Lecturer, University of Florida Levin College of Law; Trial advocacy, appellate, and advocacy clinics.

### IAN PICKENS, ATTORNEY:

- Assistant State Attorney for 3 years
- Current President of the Marion County Association of Defense Lawyers
- Member of the Florida Association of Criminal Defense Lawyers
- Member of the National Association of Criminal Defense Lawyers
- Member of the D.R. Smith Inns of Court
- Mentor for the Marion County Take Stock in Children Program

### TANNER DEMMERY, ATTORNEY:

- Former Chief Prosecutor and Assistant Public Defender with over 15 Years Experience as a Trial Attorney
- Member of the Broward County Bar Association
- Member of the Broward Association of Criminal Defense Lawyers
- Member of the Florida Association of Criminal Defense Lawyers

- Member of the National Association of Criminal Defense Lawyers
- Member of the Nation College for DUI Defense
- Member of the Broward County Trial Lawyers Association

## HOW TO SELECT A CRIMINAL DEFENSE ATTORNEY

Practice makes perfect and with a combined experience amongst the criminal defense attorneys at Meldon Law, we have over over 30 years of criminal trial experience throughout the state of Florida. Some things to consider when hiring the right attorney for your case:

- Do they practice regularly in the jurisdiction that you were arrested?
- Do they have actual courtroom experience?
- Have they handled this type of charge before?
- Do they have familiarity with the Judge that your case was assigned?

- Do they have familiarity with the prosecutor assigned to your case?
- Have they filed motions to suppress in cases with charges similar to yours?
- Are they familiar with the local rules associated with the courts in your case?
- Have they taken a case with the type of charges in your matter to trial?
- How many times have they gone to trial?
- Do they have a winning trial record?
- Do they have demonstrated successful results?
- Is your attorney available to communicate with you about your concerns?

If you are reading this book to this point, you understand that this is a very serious situation for which life-changing consequences may very well apply to you. It is extremely important to entrust your future with a well-qualified and experienced criminal defense attorney that can navigate you through what can be a very complicated and stressful situation. Now is not the time to simply hire the cheapest person willing to take your case; you don't bargain shop for the best cancer doctor or knee surgeon, why would you do the same when your liberty is on the line? You have one shot to get the best opportunity at a favorable result.

Many of you might be assigned a public defender at the onset of your 1<sup>st</sup> appearance hearing and while there are certainly very talented and capable attorneys in their ranks,

it's important to remember that depending on the severity of your charge, you may be assigned a fairly new attorney with limited experience in the field or worse, simply has far too large a caseload to give you the personal time, attention and man-hours you need. When you hire an attorney with Meldon Law, you aren't just paying for their knowledge and experience, but you're paying for personalized service and attention to your specific case.

Now is not the time to be ashamed, now is not the time to feel sorry for yourself, now is the time to take control of your future and retain an accomplished criminal defense attorney with Meldon Law.



- 1. Homicide
- 2. Assault, Battery, Stalking, Culpable Negligence, Violations of Injunctions
- 3. Kidnapping and False Imprisonment
- 4. Weapons offense
- 5. Sex offenses
- 6. Arson and Criminal Mischief
- 7. Burglary and Trespass
- 8. Theft and Dealing in Stolen Property
- 9. Robbery
- 10. Child Abuse
- 11. Forgery and Worthless Checks
- 12. Perjury

- 13. Bribery
- 14. Fraud
- 15. Obstruction of Justice
- 16. Gambling
- 17. Prostitution
- 18. Obscenity/Disorderly Conduct
- 19. Drug Possession
- 20. Racketeering
- 21. Escape
- 22. Violations of Probation and/or Community Control
- 23. Modifications to supervision
- 24. Early Termination of supervision
- 25. DUI

### **CONTACT US**

You can contact the Criminal Defense Team of Carey Meldon, Ian Pickens and Tanner Demmery at Meldon Law:

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1 East Broward Blvd., Suite #700, Fort Lauderdale, FL 33301

### **WARNING**

The information in this book is solely for educational purposes. It is not intended to give legal advice for any individual case. Every case is unique! WA

This book, written by experienced criminal defense trial lawyers, Carey Meldon, Ian Pickens, and Tanner Demmery gives insight into the various aspects of a criminal case, along with ways the State can prove the charge and possible legal defenses.

Being charged and convicted of a crime can alter your life forever. This book gives information on what the criminal trial process is and much, much, more!

Florida Criminal Defense Attorneys, Carey Meldon, Ian Pickens, and Tanner Demmery have over 50 years of combined experience in representing individuals charged with various crimes in the state of Florida. They are trial lawyers and members of both the Florida and the National Association of Criminal Defense Lawyers.



**Carey Meldon** 



**Tanner Demmery** 



**Ian Pickens** 

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