

What to expect when you're arrested:

A guide for clients and prospective clients of Moore Legal, LLC

So you, or someone close to you, has been arrested and charged with a crime. Depending on the crime charged, this will be an important part of your life for the next several weeks, months, or perhaps even years. While every case is different, and you should not compare your case to anyone else's, there are certain things that you can expect to happen. This guide is designed to help answer some of the most common questions about the criminal justice process in Georgia.*

Step 1: The arrest warrant

Most criminal cases begin when a law enforcement officer swears out an arrest warrant. This happens when the officer testifies before a judge (usually in Magistrate Court) and tells the judge what she knows and what charges she is requesting. This is not a formal process, in fact it rarely takes place in a courtroom. In most larger jurisdictions, warrants can be issued electronically, with the officer testifying through videoconference from the police station or jail. You will not be involved in this process, and there will be no defense attorney or prosecutor. The proof at this stage only has to be sufficient to convince the Magistrate that there is enough evidence (called "probable cause") to believe that a crime has likely been committed. The warrant then gives the police authority to arrest you and hold you in jail until you either make bond or until another judge takes action in a more formal proceeding.

Step 2: Bond

Most arrest warrants will also include a bond amount. The bond is the amount of money that you will have to pay in order to be released from jail while the charges are pending. This can be done in cash, by property, or through a bonding company.

To post bond (or "bail") in cash, you pay the Sheriff's office the full amount of the bond, as a promise (or "surety") that you will come to court as ordered and resolve the charges. If you come to all court dates, when the case is over the Sheriff's office returns the money. If you do not show up for court, the bond can be forfeited, which means it will not be returned even when the case is resolved.

When property is used, the Sheriff's office places a lien against a piece of real property (a house, building, or land) in the amount of the bond. Most offices require that the property be located within the county where the charge is pending. If you come to court and resolve your charges, the lien is released. If not, the property can be seized and sold so that the county can keep the amount of the bond.

If you choose, as most people do, to use the services of a bonding company, that company will charge a percentage (usually 10%) of the bond amount, plus certain surcharges. The company then pledges the full amount of the bond to the Sheriff's office; in order to stay in business the company must show that they have enough assets to cover the bonds they make. If you come to court and resolve your

charges, you will not owe anything else to the company or the Sheriff, but you will not get back the money you paid the company. That is how they make their profit - you pay a substantially lower amount to get out of jail, and in exchange for keeping that money, they take on the risk of losing the larger amount if you do not come to court. Bonding companies often employ bounty hunters to locate people who “jump bail” and bring those people, forcibly if necessary, back to the county jail.

In some cases, you may be denied bond when the warrant is issued. This typically happens if the charge is very serious (such as murder or armed robbery) or if you are already on bond, probation, or parole for another charge. In most cases your attorney can request that a bond be set at a later court appearance. In some cases, you may be given a court date within days of your arrest (sometimes called a “first appearance” or “no bond” calendar) where you or your attorney can request that a bond be set.

Once you have a bond, expect that surcharges will be added. Your bonding company will base their fee on the bond *plus the surcharges*. Every case is different, and you should consult with your local Sheriff and bonding company for details on your individual case.

Step 3: Court

If you remain in jail following your arrest (either because you have no bond or it is too high for you to pay), your attorney may request a “probable cause” hearing. These usually take place in Magistrate Court, but can be held in Superior or State Court, depending on the size of the jurisdiction. You will be present at this hearing, and should be represented by an attorney, but the State does not have to present all of its evidence. They get to put on hearsay (which allows one witness to say what other witnesses have said), and they only have to show the judge that there is enough evidence to allow the case to continue on to the next level of court. The judge will also often use this hearing as a chance to review your bond. Bonds can be set, lowered, raised, or revoked at this stage.

If you make bond, Georgia law provides that you have waived your right to a probable cause hearing. Once the probable cause hearing has either been held or waived, the case will be assigned to the court that has jurisdiction to resolve it. Superior Court has jurisdiction over all crimes, felony or misdemeanor.** State Court has jurisdiction only over misdemeanors. The prosecutor in Superior Court is the District Attorney, in State Court it is the Solicitor General. Not all counties have a State Court (or a Solicitors Office), so for purposes of this guide we will discuss Superior Court.

Different jurisdictions have differing procedures for how cases are assigned, but in most counties your case will be assigned to a particular judge and a particular prosecutor. The prosecutor must file a document in Superior Court (called an “indictment” or an “accusation”) which contains the formal charge(s) against you. This may not be the same as the arrest warrant. The prosecutor is not bound by the warrant, and may add, change, or decline the charges the police officer brought. In some jurisdictions this process happens quickly, but be prepared that in some larger counties it may take six to nine months (occasionally even longer) for your case to

be charged and for you to get a court date in Superior Court. During that time you will have to abide by any conditions placed on your bond.

The first court date you will receive in Superior Court will be an arraignment. The purpose of arraignment is for the court to make you aware of the formal charges against you, and for you to enter your initial plea. You will almost always enter a plea of “not guilty” at this stage; you can always change that later to a guilty plea if you decide that is in your best interest. In most jurisdictions, your attorney can waive arraignment without your appearance, but always stay in contact with your attorney about whether you must appear for a court date.

After arraignment, your case will likely be placed on a “calendar call”. Calendar call will take place at periodic intervals set by the judge, and you will probably have to appear at each, with your attorney, to tell the judge the status of your case. *If you fail to appear at any court date and your presence has not been excused, the judge is likely to issue a bench warrant for your arrest.* In most cases, if you are arrested for failure to appear you will not be granted bond and will remain in custody until your case is resolved.

[Special note for those charged in Cobb County: The Cobb Superior Court judges each hold a calendar call monthly. After arraignment, each month you will receive a notice for “jury trial” which will contain a date during the week (Tuesday - Friday) and either one or two dates falling on Monday. The first date is for calendar call and you will probably have to appear. The Monday dates are the weeks during that month when jurors will be available for trials. You will probably not have to appear on those dates unless/until the judge specifically calls your case in for trial. *When you receive such a notice, you should consult with your attorney.* If you are in doubt, it is better to come to court and be told you don’t have to be there than to miss a court date.]

Step 4: Resolving your case

In broad terms, everyone charged with a crime in Georgia has three basic options. There may be other options in some cases, such as referral to an accountability court or pretrial diversion program, but in most cases you can:

- 1) Negotiate a plea with the prosecutor. In most cases the prosecutor will make an offer (sometimes called a “plea bargain”) and negotiations will continue until both sides agree. Each side will consider the strengths and weaknesses of its case, and those factors are different in every case. The agreed-upon sentence is presented to the judge and will be accepted by the judge in most cases. Plea negotiations will often take place at calendar call, because the prosecutor will have your file in court and will need to make a report (or “announcement”) for the judge about their status.
- 2) Enter a non-negotiated plea. In this scenario you would plead guilty to your charges but ask the judge to set the sentence, without an agreement from the State. The judge would have the freedom to set any sentence within the statutory range of punishment, and that sentence could be harsher or more lenient than what the State recommends.

- 3) Have a trial, either before the judge or a jury. A trial is always a gamble, and when you gamble you either win big or lose big. If you win at trial, your case will be over with no further consequences. If you are convicted of any offense after a trial, however, your sentence will probably be harsher than if you had pled guilty to the same offense.

Only your attorney can advise you, based on your own particular case, which of these choices is best for you. You should be very careful not to compare your case to anyone else's or to assume that other people have gotten better plea deals than you are being offered. Every case stands on its own individual facts and circumstances, and comparing your case to someone else's may only distract you from making the best choice in your particular case. An attorney you can trust can help you navigate these important decisions, and that's what you can expect from Moore Legal.

**If you have not executed a fee agreement, this law firm does not represent you as your attorney and any information contained herein is general information and not legal advice. Nothing herein is intended to address any particular case, and should not be used as a substitute for the individual legal advice of an attorney.*

***Felonies are more serious crimes where the possible punishment is more than one year in jail or prison. Misdemeanors are less serious crimes where the maximum punishment is one year or less.*