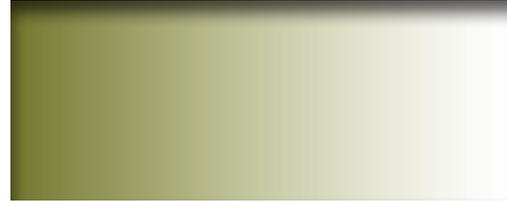


Guide for Families Experiencing the Criminal Justice System

GUIDE FOR ARREST, JAIL TIME/DETENTION, TRIAL/HEARING, AND SENTENCING STAGES (Guide 1 of 3)

[HTTP://WWW.YOUTH.GOV/COIP](http://www.youth.gov/coip)



Families have unique needs and challenges when a parent is arrested. When this happens, family members—including the children—are affected. This guide is the first in a series of three guides that cover a family's journey as the family goes through the stages of, and copes with, a loved one's involvement in the justice system.

This guide covers the first four stages in the typical criminal justice process, and the other two guides cover incarceration and reentry:

- **Arrest (entry into the system)**
- **Jail Time/Detention (prosecution and pretrial services)**
- **Hearing/Trial (adjudication)**
- **Sentencing (before incarceration)**
- Incarceration (Guide 2)
- Reentry (Guide 3)

This guide starts with *descriptions* and *definitions* of the stages to help families understand the legal terms and processes. Having a better understanding may help families feel less overwhelmed. It may also help families know what to expect and what will happen next. Questions and tips are discussed later in the

FAMILIES WILL TALK TO MANY PEOPLE DURING THESE FOUR STAGES:

- Lawyer or public defender
- Judge and court personnel
- Probation officer
- Law enforcement
- Jail or detention facility staff
- Jail or detention case worker
- Child welfare (in some cases)

Families can use the worksheet on the last page of this guide to keep track of important names, phone numbers, and e-mail addresses.

guide. The *questions* are designed to help families and caregivers anticipate and respond to thoughts and concerns their children may have. The *tips* offer suggestions to help caregivers support and care for the children of parents who are in jail.



Description of Stages

Please note: This guide is general in nature. State laws vary, and courts differ in their proceedings. The descriptions provided are general explanations of the stages. For more details about the stages of the criminal justice system, see the chart from the American Bar Association (Appendix).

Arrest

During an **arrest**, a person is taken into custody. An arrested person is brought to the police station or lock-up facility (jail/detention). Law enforcement officers make most arrests. Arrests are based on a suspicion or evidence that a person committed or was involved in a crime. Sometimes, a court issues a demand (called a warrant) for a person's arrest. During an arrest, the arrested person is read his or her rights, also known as Miranda rights (<https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-miranda-v-arizona>). Miranda rights include the right to remain silent (not answer any questions asked by law enforcement) and to be represented by an attorney (this infographic has the exact words a police officer will say: <https://www.uscourts.gov/sites/default/files/mirandawarningfinal.pdf>).

The U.S. Department of Justice defines **arrest** as “depriving a person of his [or her] liberty by legal authority.”

Jail Time/Detention

A person who is arrested is placed in jail or in a detention facility. These are locked facilities located in the community or in a nearby community. **Jail time/detention** refers to the time after an arrest but before a person appears before a judge or jury for a hearing or trial. The term also describes the time after the person has been convicted of a crime and is awaiting sentencing and placement or incarceration in a secure federal, state, or locally operated facility. Jail time or detention involves confinement and a loss of freedom that can last from hours to days to months and sometimes years.

The U.S. Department of Justice defines **jail time/detention** as “the act or fact of holding a person in custody; confinement or compulsory delay.”

Hearing/Trial

Generally, during a hearing or trial, lawyers or other court officials present evidence or facts about a legal matter. A judge or court official presides over hearings and trials. A **hearing** differs from a trial. Compared with a trial, a hearing does not include a jury, is shorter, and is referred to as pretrial proceedings. A **preliminary hearing** is usually held within 48 hours of a person being placed in jail/detention. This hearing may examine whether there is enough evidence to continue holding the person. Important decisions are made during a hearing. Family members may be asked to attend the hearing and speak on behalf of the arrested person.

This process may involve setting *bail*. Bail is security (usually in the form of money) for the release of the person charged with a crime. The court sets bail if the judge decides the suspected offender is likely to show up for his or her court date and does not pose a threat to the community outside of jail while awaiting trial.



A criminal **trial** involves two sides. The *prosecution* is the attorney trying the case against the accused person. The *defense* is the attorney defending the accused person. Both sides present evidence to either a judge or to a judge and jury. Evidence includes calling witnesses to testify about the facts. As a family member, you may be asked to appear in court and provide details about the person who is on trial. Seek the help of a lawyer to better know your rights and what you are required or not required to do or say. For example, a spouse may not have to speak against his or her partner. If you need help finding a lawyer, you may want to contact the Legal Aid Society in your city or state.

The judge or court official typically makes a decision at the end of a hearing or trial. The *decision* either holds the accused person for trial, releases the person, or sets a moderate fine or punishment. Bail may also be set at this time.

Sentencing

During **sentencing**, the judge imposes a punishment on a person who has admitted guilt or been found guilty of a crime. Sentencing typically happens a few weeks or months after the verdict at the trial is made. The judge uses guidelines and recommendations for punishment based on type of crime, whether the person has committed the same crime before, whether the person who committed the crime expresses regret, and statements by the victims of the crime. Punishment can include a fine, community service, time in jail or prison, or probation. Because there may be time between the trial and sentencing and between sentencing and incarceration, the offender may return to the home temporarily, with a specific date to return to court or report to placement. Probation is release into the community with special terms. The terms are created by the courts and probation staff. During probation, the convicted person is usually supervised by a probation officer. Probation may be called “conditional freedom.” Such freedom may be taken away if the convicted person does not follow the terms of probation.

Helpful link for more information:

<https://www.justice.gov/usao/justice-101/sentencing>

Definitions of hearing and trial according to the U.S. Department of Justice:

Hearing: “A proceeding similar to a trial, without a jury, and usually of shorter duration.”

Preliminary hearing: “A hearing where the judge decides whether there is enough evidence to require the defendant to go to trial. Preliminary hearings do not require the same rules as trials. For example, hearsay is often admissible during the preliminary hearing but not at trial.”

Trial: “A hearing that takes place when the defendant pleads ‘not guilty,’ and the parties are required to come to court to present evidence.”

The U.S. Department of Justice defines **sentencing** as “*The punishment ordered by a court for a defendant convicted of a crime. Federal courts look to the United States Sentencing Commission Guidelines when deciding the proper punishment for a given crime.*”



Questions, by Age Group

Children may ask many questions about the parent being arrested, especially if the parent is convicted and is no longer at home. Let children know it is okay to ask questions and that you may not have all the answers, but you will try to find out. Try to answer in a positive manner. Ask follow-up questions to make sure you understand the children's questions.

As a family member or caregiver, here are some questions you may be asked by a child or youth. Questions are grouped by age groups: children (0–6 and 7–12 years old), youth (13–18 years old), and young adults (19–25 years old). **These age groups are only ranges.**

Girls and boys can express their questions and feelings differently. If asked, some children may be more open to discussing their thoughts and feelings. Other children may be more restrained. Consider the children's maturity levels, genders, and abilities to handle a discussion about arrest, jail time/detention, trial/hearing, and sentencing. For children of all ages, a helpful conversation starter can be to share that you have mixed feelings about the situation. This may help them to feel at ease. Then, ask the children how they feel about the situation. Not all children will ask these questions.

Children 0–6 Years Old

1. Why did the police take Mom or Dad away?
2. When will Mom or Dad be home again?
3. Who will take care of me?
4. Why isn't Mom or Dad here to tuck me in?
5. Can I stay with Mom or Dad?
6. Can you take me to see Mom or Dad?
7. Is Mom or Dad okay?

Note: Children ages 0–6 who witnessed the crime or arrest may be scared. If the children are old enough, talk to them to find out what they think about what they saw. Children this age may not be able to verbalize thoughts and feelings. You could ask them to draw a picture about how they felt when the arrest happened.

Children 7–12 Years Old

1. Is Mom or Dad a bad person?
2. Are the police good people?
3. Will Mom or Dad be safe in jail?
4. What did they do to have the police take them away?
5. When will Mom or Dad be home again?
6. Who will take care of me?
7. Who will decide what happens to Mom or Dad?
8. What will the judge do?
9. Can I go visit them? When can I see them?

Note: Children ages 7–12 and youth ages 13–18 years old may have seen things on television and in movies about arrest and jail. Ask what the young person knows and understands to be real and not real about the criminal justice system.



Youth 13–18 Years Old

1. When can I see Mom or Dad again?
 2. What did Mom or Dad do?
 3. Will my friends find out, and what will they think?
 4. What do I tell my friends?
 5. What happens next? What happens at court with the hearing?
 6. Can I go visit them? When can I see them?
 7. Will Mom or Dad be safe in jail?
 8. Who will help Mom or Dad? Do they have a lawyer? Do they get to tell their side of the story?
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Young Adults 19–25 Years Old

1. What impact will this have on my life?
2. Who will find out, and what will they think?
3. When other family members and my friends find out, what do I tell them?
4. Can I do anything to help Mom or Dad? Should I testify on their behalf?
5. How can I help the family deal with this crisis?

Note: Young people 19–25 years old may appear to be unconcerned by the parent’s arrest. However, they may have concerns and questions that they may not know how to express or that they may feel awkward to ask. Starting the conversation with them may be helpful.

Did the children witness the arrest?

Witnessing a parent’s arrest can be very traumatic to children and youth of all ages. If the children witnessed the arrest, you may want to ask them about their feelings and ask if they have any questions about what they saw. Children who have witnessed an arrest may show signs of anxiety or depression. They may have trouble in school and may have difficulty controlling their emotions. If you see these behaviors in the children, encourage them to talk about their feelings with you or with a trusted adult, or you may consider seeking help for the children from a professional.

Tips

These tips about **arrest, jail time, hearing, and sentencing** may help the family communicate with the parent who has been arrested, help manage stress and emotions, and learn ways to prioritize self-care and care for the children. Many of the tips are informed by listening sessions with parents who are incarcerated and youth who have or have had a parent who was incarcerated: <https://youth.gov/coip/listening-session>.

Consider the following factors as you help children handle their parent’s incarceration:

- Children’s ages and maturity levels
- Children’s experiences with the police and the arrest or confinement of others
- Whether the children witnessed the arrest
- Ways the family will be disrupted or impacted (in the short and long term)
- Whether community supports may help the family overcome difficulties

The tips in this guide are important for families and caregivers with children of any age. Tips are organized under three topics: **communication, information gathering, and care for self and the children of the detained or incarcerated parent.**

These tips are suggestions. Not every tip is right for every family. Choose tips that are the right fit for the children, the family, and the parent who is in jail.



Communication

- Discuss with the children how best to address questions from friends, teachers, neighbors, and other family members. Think about how much of the family story you want to share.
 - You may decide to tell the school social worker, guidance counselor, and teachers. If you do, ask them to be sensitive to certain activities, such as making cards on Mother’s Day, Father’s Day, or other holidays.
 - You may ask neighbors, family members, and school staff to be careful about speaking negatively about persons who have been charged with a crime or who are in jail awaiting trial. Ask them to not make statements such as, “People who are in jail are bad people.”
 - Help children answer questions their peers may ask about the parent’s absence. Children may have to face questions such as, “Where is your dad?” or “Why isn’t your mom at our basketball game this week?”
- If the children see a counselor or therapist, tell the counselor or therapist the thoughts and concerns the children share with you, and encourage the children to speak to the counselor about their feelings.
- Consider visiting and communicating with the parent based on the parent’s and the children’s needs and wishes. Consider the children’s maturity levels and abilities to understand the situation. Consider factors at the facility, such as the visiting area.
- When the children are around, try to keep your comments positive or neutral, even if there are things about law enforcement, the courts, the facility, staff, or rules that upset you.
- As a condition of probation, courts may decide that the parent cannot move back into the home or may see the children only when another caregiver is present. Encourage the parent to follow the rules of the probation. If possible, talk with a counselor about how best to prepare children for this situation. A counselor may be available through the courts, the children’s school, the local mental health center, advocacy organizations, or a community-based organization.

Extra Resource: This video and discussion guide are designed for school staff who provide direct supports and services to students: teachers, administrators, and support staff (e.g., school social worker, psychologist, guidance counselor, librarian, art teacher, PE teacher, cafeteria worker, custodian, bus driver). School staff contributed to the planning and content and several are featured in the video.

<https://youth.gov/youth-topics/children-of-incarcerated-parents/federal-tools-resources/tools-school-staff>

Information Gathering

- As a caregiver, seek information and ask questions at every stage in the justice process. The more you know, the better you will understand the process and next steps. Use the worksheet on page 8 to keep track of important people with whom you talk and get information. However, use caution when sharing information or details about your family member’s case because what you say may be used in court.
- As you learn more about the justice process, you may want to explain or share details, as appropriate, with the children so that they know what to expect. This may relieve children’s anxieties and help answer their questions when they do not know how to express themselves about the process.
- Every facility has rules and procedures that must be followed when visiting a person in jail. Find out about the rules before you visit by asking your case worker, asking the parent who is incarcerated, reading the information from the facility, or visiting the facility’s or corrections



agency's website. For more tips on visiting, see the second guide in this series, which is about incarceration.

- Follow the court's and facility's rules. Ask questions if something isn't clear. If your family member has an attorney or public defender, ask the attorney or public defender about court rules and procedures.
 - A facility's priorities are safety and security. The court's priorities are community safety, fair and speedy trials and judgment, and protection of victims' rights.

Self-Care and Care for the Children of a Detained or Incarcerated Parent

- Care for both yourself and that of family members and children is important during this difficult time. Caregivers often experience multiple and conflicting thoughts and feelings about parents who are incarcerated.
 - Caregiver emotions are similar to those experienced by the children (anger, sadness, guilt, shame, resentment, fear, and anxiety). Caregivers might feel embarrassed about their emotions. It is extremely important for your physical and emotional health that you appropriately manage your thoughts and feelings by communicating with a trusted individual.
- Develop a plan for caregiving during the parent's absence.
 - Ask aunts, uncles, or grandparents to be a resource for children as they adjust to the parent's absence.
- Help children through changes in daily routines during the parent's absence (homework, bedtimes, and discipline).
- Remember, you do not have to go through this alone. Seek out support and services, such as advocacy and transportation, from faith- and community-based organizations such as churches, Boys & Girls Clubs, afterschool clubs, or the school counselor.
- Remind the children often that the parent's arrest is not the children's fault. Children may struggle with stress, anger, anxiety, depression, or feelings of shame over the social stigma of having a parent who is detained or incarcerated.
- Consider professional counseling for yourself, family members, and children. Counseling is important if the children saw the arrest or feel responsible for it. Your doctor or the children's pediatrician can suggest licensed counselors in your area.
- Pay attention to the family's budget needs from the loss of the arrested parent's income and the increase of childcare costs. Seek out advice for making ends meet with reduced income.
- Roles, responsibilities, and relationships may change. The caregiver will be focused on navigating the system, which may take the caregiver away from his or her traditional role. To help relieve stress on the caregiver, children, and other family members, discuss how everyone can support each other.

Extra Resource:

This website from the Bureau of Prisons has helpful general visiting information:
<https://www.bop.gov/inmates/visiting.jsp>

Extra Resource:

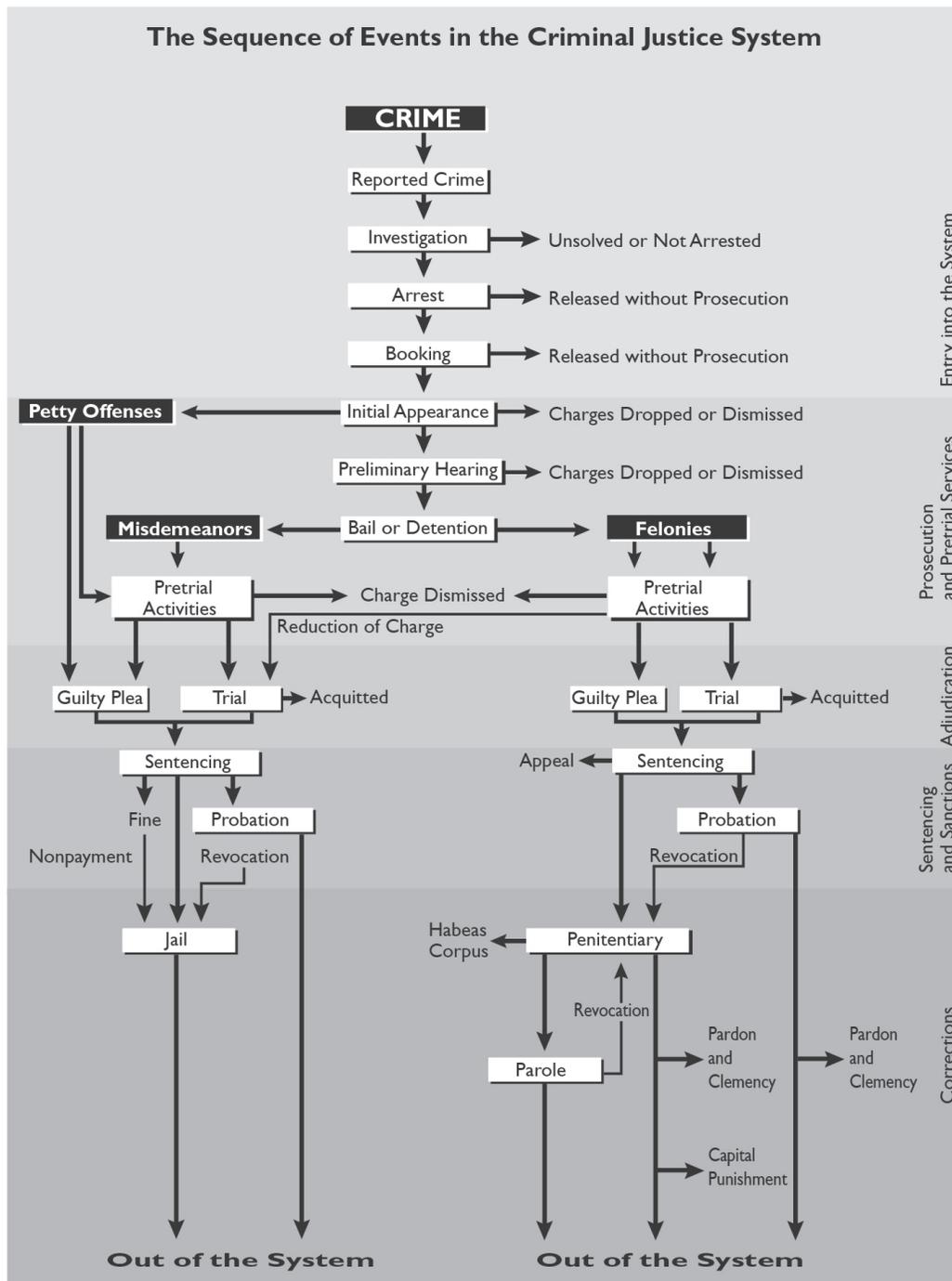
youth.gov has some helpful information about budgeting and finances:
<https://youth.gov/youth-topics/financial-capability-literacy>



Conclusion

This guide is designed to help families and caregivers provide support for children whose parent is involved with the criminal justice system. Two additional guides in this series describe incarceration and reentry. Visit the youth.gov/coip website for more information and helpful resources.

Appendix





Important Contact Information

Name	Position	Phone Number	E-Mail Address	Notes
	Lawyer or public defender			
	Social worker			
	Jail/ detention center case worker			
	Jail/ detention center staff			
	Probation officer or other court personnel			
	Family liaison for facility			
	Family support organization			
	In case of emergency			
	Other			
	Other			
	Other			