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The FAQs by First Time Offenders in Virginia

Navigating the Virginia criminal justice system can be scary for anyone, but it can be especially overwhelming when it's your first time. Below are some common FAQs related to the difference aspects of the criminal justice system, as asked by those charged with their first crime.

- 1. How do you know when you have been criminally charged with a crime?** You will be served with either a summons or a warrant.
- 2. I was charged with reckless driving (55 in a 25 mph zone), but the speed limit sign said 40 mph. Do I have an argument?** If you are like many people with cell phones, as soon as you received the paperwork from the police officer, you went back and took a picture of the sign. In that case, any pictures you may have taken, give you a **chance of successfully fighting the charge**. If you did not take a photo, you should return to where you were pulled over and take a picture of the sign; otherwise, it then becomes your word against that of the traffic enforcement officer. The court may well accept the word of the officer.
- 3. Upon initial consultation with new clients, do you ask where they were born or if they are a US citizen? Why do you do this?** I routinely ask these questions to ensure that I have a complete client history and will keep any **potential negative immigration consequences** in mind when negotiating a possible resolution or as a factor in advising my client of the pros and cons of going to trial. I am too often asked by several immigration lawyers who have clients with convictions which now result in deportation hearings, whether I can "go back and fix" the problem.
- 4. Can a police officer get probable cause for a search warrant by searching the building before they got the search warrant?** Sure, if someone in authority (the owner, landlord) **gave permission to search**. That said, only an experienced criminal defense lawyer would pick up details (or lack of) for a motion to suppress.
- 5. I confessed to the police for felony crimes of stealing and using a credit card. Do I have any hopes to beat this or am I guilty by default?** Every case is unique, especially the circumstances of the case and the confession. While confessions make the prosecutor's case much stronger, **there is still hope** for you. Were your rights violated when you gave the confession? Did you understand what you were confessing to? Hiring an experienced criminal defense attorney gives you a better chance at seeing if or how the confession could be thrown out.
- 6. Should I sign a release warrant without speaking with an attorney first?** I always recommend that an experienced **criminal defense attorney be present** whenever a person has contact with the police in situations where he or she is going to be charged with a criminal offense.
- 7. Right after my Miranda rights were read, I admitted my guilt of writing bad checks. What do I do now?** Being a **convicted felon for life** creates a lot of problems. The only way you are going to have a chance to avoid this is to hire a local experienced criminal defense attorney. If you cannot afford an attorney, the court will appoint one to represent you. Despite making admissions, an attorney may still be able to get a good

result for you.

8. **What court documents are not open to the public?** Statements to police, consent to search forms and search warrants are in the **possession of the Commonwealth**. Depending on the county, these documents can be read by defense counsel but cannot be copied.
9. **How would I know how many counts I have on a charge?** Each count has its own charging document and **you should have received such documents**. If you still have questions about your charge(s), go to www.courts.state.va.us and click on the county court where you must appear and do a name search on yourself.
10. **What happens after my husband is booked for assault and battery, and strangulation resulting in bodily harm on me?** Your husband will be asked if he can afford an attorney. If he cannot afford an attorney, the court will appoint an attorney to represent him. A preliminary hearing date will be set since he has been charged with a felony. **You are now a prosecution witness**; if you do not wish to proceed with the charges, you will be asked to speak to victim services. Whether the charges go forward or not is out of your hands.
11. **How long does it take to obtain discovery in a criminal case?** There is no hard and fast answer to this question as it all **depends on the county**. In some counties, there is "open file" where the defense attorney can review the entire file in the Commonwealth's office and make notes. In other counties, the assistant Commonwealth attorney sits down on the day of trial or preliminary hearing with the defense attorney and provides a verbal summary of what is in the file. In yet other counties, the defense attorney can make an appointment to meet the assigned Assistant Commonwealth attorney in advance of the trial or hearing and verbally go over the evidence.
12. **How do subpoenas work?** Virginia subpoenas are court orders to attend a specific court at a specific location on a specific date and time. They are **generally served by the sheriff's office** but can be delivered by a police officer if the subpoenaed person lives in Virginia. If the person is not home, it is posted on the front door. If properly subpoenaed and that person does not show up at court, the court can order the person to be arrested and attend court for a show cause hearing.
13. **What exactly does "held over" mean?** "Held over" refers to the **lack of bond status** of the defendant until the completion of their case, either by dismissal or conviction.
14. **What is a preliminary hearing?** A preliminary hearing is conducted to determine whether there is **"reasonable ground to believe"** that the defendant committed a crime. So, there is a low evidentiary hurdle to overcome. In some cases, if the victim does not show up, the Commonwealth may offer to resolve the case.
15. **Is the victim required in preliminary hearing?** It depends on if a subpoena has been issued or not. If the victim is **issued a subpoena** and chooses to ignore it, it then becomes the Commonwealth's decision whether to ask for a *capias* (bench warrant) to be issued for the arrest of the victim.
16. **How many continuances are usually allowed in a preliminary hearing?** While judges generally do not like more than **one or two continuances** of a preliminary hearing, it depends on the facts and circumstances of the continuance requests and the personality of the judges in a particular jurisdiction. Usually the defense and prosecution will get one continuance each for good cause. After that, it is rare that a judge will continue the case if one of the parties does not agree, but some judges are more likely to grant multiple continuances than judges in other counties.

- 17.** **My preliminary hearing was scheduled on a day when the courts were closed due to the weather. Who arranges the new date?** Generally, when a court is closed due to the weather, on the next open court date, the **judge will continue the case** to the arresting officer's next court date when the court docket is not full. To see when your preliminary hearing is now scheduled, go to www.courts.state.va.us and click on the county court where you must appear and do a name search on yourself.
- 18.** **Will the arresting officer show up at every preliminary hearing?** The arresting officer or detective may have a legitimate reason for not showing up at a preliminary hearing. In that case, the Commonwealth will likely ask for a continuance. Whether the officer or detective is **required for evidentiary purposes** depends on the circumstances of each case.
- 19.** **I was questioned by police outside of my house. When I was told to show an ID, which was inside, I was told I had to be accompanied inside the house. A search began as soon the officers and I entered my bedroom. I never said I do not consent, but never gave consent. After they searched for a while, contraband was found. How hard is it to get the evidence suppressed?** A motion to suppress based on an illegal search has a chance of success based on your facts. You **requiring ID while in your own home** is an interesting legal issue and you should contact a local experienced criminal defense attorney right away.
- 20.** **Does a juvenile record affect points on pre-sentence report guidelines for an adult case?** While misdemeanors will be erased after juveniles reach a certain age, felony convictions stay on their record for life. Regardless of whether it's a felony or misdemeanor, the fact that a defendant has a **juvenile record does add points** on the Sentencing Guidelines Calculation.
- 21.** **What does it mean when sentencing guidelines come back as no jail time?** Guidelines in Virginia are something the judge can take into account when sentencing; the judge can sentence above or below the guidelines. When the guidelines say no active jail time, it means that it is **likely that the sentence will be suspended** and the accused will be on active probation instead. The suspended sentence hangs over their head for the period of probation, so they must follow everything the probation officer suggests according to the court order.
- 22.** **Is it easy to get into the work release program for a non-violent theft crime?** As each individual situation is different, it's difficult to say whether it will be "easy or challenging" to get into the program. You should be speaking to your attorney about whether you **qualify for work release**. He or she should have details about your job, whether you support others financially, etc.

This Guide does not constitute legal advice and is meant for information purposes only. Information provided is current as of April 2016 and is subject to legislative change at any time. The author of this Guide is not responsible for providing updates when legislative changes occur.

