

FACTSHEET

USA – Criminal justice system (Federal system)

Prisoners Abroad, 89 – 93 Fonthill Road
London, N4 3JH, United Kingdom
Tel 020 7561 6820 Fax 020 7561 6821
info@prisonersabroad.org.uk www.prisonersabroad.org.uk
Charity Number 1093710



The aim of this factsheet is to provide an insight into the North American legal system. It is intended for guidance only, and not designed to replace expert legal advice. If you require any further explanation or clarification, please seek legal advice or contact Prisoners Abroad.

It should be remembered that the states do not have identical judicial systems and no state system is identical to the federal government system. For more information about distinguishing between the two systems, please see the Prisoners Abroad factsheet '*For family and friends of those detained in the USA*'.

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1 What is the background of the North American legal system?

The laws of the USA are derived from various sources, and the legal system therefore consists of several layers. There is a fundamental distinction between federal (national) and state law.

The supreme law of the land is the United States Constitution (under the Constitution's supremacy clause, laws enacted by Congress and treaties to which the US is a party are also supreme). No law may contradict the Constitution - if Congress passes a statute that is in conflict, the Supreme Court has the power to declare this law invalid.

The power of Congress to pass legislation is derived from the Constitution. If a majority of each house of Congress votes to adopt a bill (or a two-thirds majority of each house, should the President veto the bill), then that bill becomes federal law.

The Constitution also sets out the areas in which Congress may or may not legislate. Almost all statutes have been codified under the United States Code, which means that statutes are in a logical order. Congress may, in some cases, delegate authority to administrative agencies to add detail to particular laws.

Each of the 50 states has its own legislature which may enact laws, provided that they do not contradict either the Constitution or federal law. There are considerable differences between the laws of the States both as a result of the provisions of the laws themselves being different and because state courts have expanded common law rules in different ways.

Common law is the collection of judicial decisions, customs and general legal principles which derive from English common law, and applies in areas not governed by statute or constitutional law. The system of judicial precedent means that when a court interprets a point of law in a particular manner, courts of an inferior rank consider themselves bound on that point of law, thereby developing legal certainty. The system of judicial precedent applies in both federal and state courts.

Many counties, cities and other municipalities create regulations that operate as laws in their respective jurisdictions. When these laws contradict a state or federal law, they are struck down as invalid. These standards may criminalize activities that are not otherwise violations of the law or require administrative procedures which do not otherwise exist at the state or federal level.

1.1 The Courts

The USA has a dual court system, which reflects the distinction between federal and state law. Each level of government (federal and state) has its own set of courts. The US judiciary possesses only those powers which the US Constitution delegates. The Constitution gives federal courts jurisdiction over certain kinds of disputes, including cases involving a question of federal law and disputes between citizens of different states.

Courts hear two types of disputes: civil (an action involving two or more private parties or a private party against a government or administrative agency) and criminal (in which the federal or state or local government brings an action in the name of the people against a defendant charged with contravening a law prohibiting conduct injurious to public welfare).

There is not a uniform criminal court process in the United States: the federal system has its own process at national level, and each state has its own set of rules and regulations.

2 What rights do suspects have when they are detained?

Under the US legal system, there are two types of arrest:

- arrest with a warrant (after a magistrate has reviewed a complaint filed against one person by another, and found probable cause for the arrest)
- arrest without a warrant (if a police officer observes the commission of a crime, or if the police officer has probable cause for arrest).

The vast majority of arrests made in the US are without a warrant.

3 How long can suspects be held without charge?

In the federal system and in most states, following arrest, the suspect should be brought before a judge, magistrate or commissioner "without unnecessary delay".

The magistrate may determine whether the accused should be granted bail and, if so, what the amount of bail will be. In minor cases, the accused will be asked to plead guilty or not guilty (if the plea is guilty, the magistrate may pronounce a sentence on the spot; if the plea is not guilty, the criminal trial process of court dates will be scheduled leading to a trial date). In the case of a felony, the magistrate will determine whether the defendant requires a preliminary hearing.

4 What type of legal assistance is available?

If a criminal defendant could be imprisoned if convicted of the charges against him, the defendant has a constitutional right to be assisted by a lawyer ("attorney" or "counsel"). The Sixth Amendment to the Constitution states that "in all criminal prosecutions, the accused shall...have the Assistance of Counsel for his defence." If the defendant cannot afford a lawyer, but wishes to be represented by one, then the defendant may be assigned a "public defender" or a government-appointed lawyer at no cost to the defendant.

The defence attorney will seek to protect the defendant's constitutional rights during the proceedings, explain to the defendant the stages of the criminal process, negotiate a plea bargain, investigate facts and evidence, present a defence and cross-examine witnesses. All attorneys in the criminal and civil system must abide by a code of ethics in effect in the state in which they are practicing which derives from the American Bar Association's Model Rules of Professional Conduct which influence the ethics code of every jurisdiction.

5 Can suspects apply for bail?

In the case of petty offences, a suspect may be able to post bail at the police station by paying the amount set out in the station's bail schedule at the police station. If bail is not required, the suspect may be released "on their own recognizance" – a signed promise to show up in court. This is likely to be granted if the suspect has strong ties to the community and is unlikely to flee.

If bail is set by a magistrate at the initial court appearance, the only constitutional requirement is that the bail fee should not be "excessive". For more serious offences a court determination is usually necessary. This will consider factors including the nature of the charges, the weight of evidence against the suspect and the history and character of the suspect. Bail may be denied altogether if the suspect is deemed to pose a threat to the safety of the community.

6 What is the trial process?

At the arraignment, the defendant is brought before the judge in the court where they are to be tried to respond to a grand jury's indictment or a prosecutor's bill of information (which set out the charges against the defendant once it has been

determined that there is probable cause for a formal trial). The defendant will then enter their plea. If the defendant pleads not guilty, a trial litigation schedule will be set by the court and attorneys. If the defendant pleads guilty, they may be sentenced immediately or at a later date determined by the judge.

6.1 Plea bargaining

The vast majority of criminal cases at both state and federal levels (over 90%) are resolved through plea bargaining, usually before the case reaches trial. A plea bargain is an agreement between the defendant and the state for the defendant to plead guilty in exchange for either a lesser charge, a more lenient sentence being recommended to the court, or other benefit. A defendant may also plead guilty in return for other charges being dropped, or in return for the state agreeing not to pursue an enhanced sentence as a repeat offender.

However, many federal and state offences carry mandatory sentences, meaning there can be no plea bargain. Similarly, some statutes setting out federal offences expressly prohibit plea bargaining.

6.2 Jury Trial

The usual stages of a criminal jury trial are as follows:

- Jurors are selected by the prosecution and defence attorneys or by the court
- The jury is sworn in
- The prosecution and defence make opening statements which describe the evidence
- The prosecution presents its case (including physical and witness evidence) and the defence may cross-examine witnesses
- The defence presents its case (aiming to demonstrate that the prosecution's case has not proven the defendant to be guilty beyond reasonable doubt)
- The prosecution may present rebuttal evidence
- If applicable, the defence may present rebuttal evidence
- Both sides deliver closing arguments which summarise the evidence
- The judge instructs the jurors as to the meaning and application of the law
- The jury deliberates and reaches a verdict (whether unanimity is required depends on whether the trial is in the federal or state system and the nature of the charges).

If a jury is unable to reach a verdict, with instruction from the court, the jury is a "hung jury" and there is no conviction. The state may proceed to bring charges and begin the process again.

6.3 Sentencing

Sentencing can take the form of probation, community service, mandatory treatment for substance abuse or counselling, fines, imprisonment, or a combination of these. In complex or serious cases, sentencing recommendations are prepared by various parties in a "pre-sentence report" to be considered in sentencing. This takes into account matters such as the defendant's criminal history, the nature of the alleged offence(s) and the conditions of the defendant's family, job and lifestyle.

At the federal level and in most states, the judge decides the sentence. However, in some states, the defendant can choose to be sentenced by judge or jury. The Sixth and Fourteenth Amendments to the Constitution enshrine the right to a formal trial.

Under the federal Speedy Trial Act 1974, criminal charges must be brought to trial or dismissed within 100 days. However, the speed with which a case is brought to trial varies between states. The issue of whether or not a trial is “speedy” depends on the circumstances of a particular case and the reason(s) for any delays.

A defendant has various other constitutional rights – to be tried by an impartial jury, to be tried in the area where the offence was committed, etc. There is a constitutional right for the defendant not to be compelled to testify against themselves, not to be subject to double jeopardy (trial twice for the same crime) and not to have to answer to improper evidence.

7 How can prisoners appeal their conviction or sentence?

Upon conviction of any offence at state and federal levels, the defendant may have at least one appeal. An appeal will generally consist of a contention that an error of law was made by the trial court which may have had an effect on the verdict or the prosecution erred in some procedural requirement in handling the case. A trial judge’s error will not lead to the reversal of a conviction if the error may reasonably be considered to be harmless. Generally, an appeal will only consider matters such as procedure and legal interpretation.

In some instances, the production of new evidence which was not available to the defence at the time of the trial and which presents a likelihood that the outcome would have been different at trial, may, through an appeal, be grounds for the defendant to seek a new trial. It is rare for a higher court to reduce a sentence on appeal if the sentence was within prescribed guidelines or if the law requires a particular sentence.

Appeals of state court cases must first be brought through a series of state court cases. Federal cases are appealed through the federal court system. State court cases may be appealed through the federal court system after exhaustion of the state court procedures where issues of federal constitutional law have been raised.

8 Is there any scope for reduction of sentence?

Sentences are either “determinate” or “indeterminate”, depending on state law. Determinate sentences are fixed-term sentences, such as “four years in state prison”. Indeterminate sentences must be within a range prescribed by law (a number of states also have sentencing guidelines to give greater consistency in sentencing).

As stated above, an appeal court will rarely overturn the discretion exercised by a trial court when passing sentence, and sentences are rarely reduced on appeal. Sentences are subject to the parole laws of the federal and state governments, giving parole boards (who would take into account factors such as a prisoner’s behaviour) the final say. In extremely rare cases, state Governors or the President may grant pardons or clemency for criminal cases after a waiting period and an extensive process of applications to designated bodies.

Since sentences are often subject to the parole laws of the federal and state governments, parole boards may have considerable say in determining how long an individual remains in prison. After being released from prison, many states require a period of parole, supervised release, by a defendant.

Different parole boards have different guidelines and take into account a range of factors when determining the release of prisoners.

9 Is it possible to transfer to a prison in the UK?

UK nationals may apply for prisoner transfer to the UK (under the Strasbourg Convention or, as it is known in the US, the COE Convention). Under this convention, various conditions must be satisfied.

If the prisoner was convicted by the federal Government, then the consent of the US Government, the UK Government and the prisoner is required for the transfer. If the prisoner was convicted of a crime by a US state, and is serving a sentence in a state facility, consent of the state is also required.

Many states lack enthusiasm for prisoner transfer treaties, so a transfer may be more difficult from a state facility. Forty-four states have enacted legislation to implement transfer treaties, but only ten are currently actively participating.

A prisoner is not eligible for transfer until the judgement and sentence of their case is final. The time between the approval of a transfer request and an actual transfer varies widely. A wait of at least three months is typical.

10 Can prisoners apply for clemency or pardon?

Under federal law, the President has the power to grant pardon or clemency. Generally, at federal level, there is a five-year waiting period (after conviction or the end of incarceration) before the prisoner is eligible for a pardon. At state level, the power lies either with the state Governor or an appointed board, and the procedure and conditions surrounding pardons and clemency vary from state to state.

11 Glossary

- Bill – a proposal considered by Congress.
- Common law – is the collection of judicial decisions, customs and general legal principles which derives from English common law, and is applied in those areas not governed by statute or constitutional provision.
- Congress – the national legislative body of the United States, consisting of the Senate and the House of Representatives.
- Felony – a more serious crime (as opposed to a misdemeanour). In most states, felonies are distinguished from misdemeanours according to the length and location of the punishment. Usually, if the punishment is death or imprisonment in a federal or state prison for more than one year, it is a felony.
- Grand Jury – a body of citizens who listen to evidence of criminal allegations and determine whether there is probable cause to believe that the accused committed an offence.
- Statute – a federal law.

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Tel: 020 7561 6820

+44 20 7561 6820 from outside the UK

Email: info@PrisonersAbroad.org.uk

Mail: Prisoners Abroad, 89-93 Fonthill Road, London
N4 3JH, United Kingdom