

FACTSHEET

Thailand – Legal System

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The aim of this factsheet is to provide an insight into the Thai 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 advice from a lawyer or contact Prisoners Abroad.

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1 The Investigation

Criminal investigations are usually initiated and conducted by the police. The police then pass the investigation files to the public prosecutor who can ask for an additional investigation to be conducted if the evidence is unclear or insufficient to prosecute. Those suspected of committing a criminal offence in Thailand have the right to remain silent during questioning and to consult in private with a lawyer. You should not be deceived or threatened when making their statement, but this regulation is not always strictly adhered to.

An alleged offender can be detained in a police station for up to 48 hours without charge. When this period expires the police must obtain a warrant from a court if they wish to continue to detain you for longer. Alleged offenders can only be released when a warrant of release or bail is granted.

2 Remand

The length of time you can be held depends on the maximum sentence of the offence for which you are detained on suspicion of:

- For offences carrying a maximum penalty of three years' imprisonment or less, an alleged offender can be held on remand for up to six days. However, you must be remanded at court within 48 hours of your arrest.
- For offences carrying a penalty of up to ten years' imprisonment, an alleged offender can be held on remand for up to 48 days during a police investigation period before the file is passed to the Public Prosecutor. However, you must be remanded at court within 48 hours.
- For offences carrying a minimum penalty of ten years' imprisonment, an alleged offender can be held on remand for up to 84 days, during a police investigation period before the file is passed to the Public Prosecutor. However, you must be remanded at court within 48 hours of your detention. The police can ask the court for more time in limited circumstances.

You must be taken to court for a hearing after every 12 day period in which he/she is held on remand. The court has the power to extend the remand period for a further 12 days at each hearing, or at video court remand hearings, which are held inside the prison.

When you are charged, your lawyer will have the opportunity to inspect the police official enquiry investigation file and read documents contained in the file.

2.1 Release

You have the right to apply for provisional release, with or without bail, either before or after being charged with an offence. If the offence is considered to be a serious matter release will seldom be agreed by the court on the basis that you may be a flight risk back to the UK. If you are charged with an offence which carries a sentence of at least three years' imprisonment then you can make an application to the court for bail. If you have not yet been charged an application for bail can be made to the Public Prosecutor's Office. Appeals can be made to a higher court if the court refuses an application for bail.

As a general rule, bail will be granted unless it is deemed inappropriate because of the seriousness of the offence, the special circumstances of the case, the likelihood of the alleged offender trying to leave Thailand, or if there is risk to the public of releasing the alleged offender.

3 Legal assistance

The British Embassy / Consulate can provide a list of Thai law firms with English speaking lawyers. Fees vary greatly, as does the quality of the service. There is no provision for fixed fees, and in most cases lawyers will request some payment in advance, often the full amount.

If you are charged with an offence punishable by death then the court must ensure that you have access to a lawyer to present your case in court. If you do not have a private lawyer then you will be entitled to a court appointed lawyer. In cases where the crime is punishable by imprisonment, the court must ask you whether you want a court appointed lawyer. A court appointed lawyer will only be available if you have not already appointed a lawyer. Most court appointed lawyers are juniors looking for experience and often speak very little English. You must accept the lawyer that is appointed by the court and cannot pick and choose between lawyers.

Every person has the right to apply for a court appointed lawyer, however whether a lawyer is granted will be at the discretion of the court.

4 Interpretation

During the police investigation stage you have the right to be accompanied by a lawyer or a person of your choice. By law the police should call an interpreter to assist with questioning shortly after the arrest.

An interpreter must be provided by the court during the trial. Any interpreter provided must affirm that they will present the evidence accurately and should sign the translation proceedings. You are entitled to pay for a translation, but this can be difficult to organise and expensive.

5 The trial process

The length of time it takes before a case comes to trial depends on the alleged offence. At the end of the remand period formal charges will be read and court trial dates set. Trials can be lengthy and in some cases last more than one year before judgment and sentence are handed down.

Trials are normally held in open court and the accused is presumed innocent until proven guilty. The trial will be conducted before a panel of judges rather than a jury (there is no jury system under Thai law). All proceedings will be in Thai.

The procedure in court is very similar to that of the English legal system. Trials begin with the charges being read out and the defendant (you) will be asked to enter a formal plea of guilty or not guilty. The prosecution will then present its case by producing evidence and calling witnesses. After the prosecution has presented its case it will be the turn of the defence. The trial dates need not necessarily be consecutive depending on the Court calendar.

The fact-finding process is similar to that of the English courts as it involves the examination and cross-examination of witnesses for both sides. The judge has the power to question and summon witnesses to appear before the court. There is no court clerk in Thailand to record exactly what is said during the trial however the judge will record on cassette his/her own trial notes. This cassette is then handed to a court clerk to type up. Therefore, pertinent case information must be presented in a way that can/will be recorded by the judge or by hard copy evidence.

If the offence carries a sentence of less than ten years imprisonment, and you are represented by a lawyer, then you do not have to be present at the hearing. However, you must have the court's permission not to attend.

If you plead guilty, and the offence carries a sentence of less than five years imprisonment, the court does not have to hear any further evidence and can give its judgment. If the crime carries a sentence of more than five years imprisonment, then the court should listen to the prosecution's evidence until it is satisfied that you are guilty or not guilty. A guilty plea can reduce the length of the sentence.

6 Bail

You can apply for bail and will usually be required to pay a sum of money if the application is successful. The amount requested can vary greatly and is at the discretion of the court depending on the nature of the offence.

If bail is granted, the court will generally require you to hand over your passport to the court. However, you will usually be free to travel around Thailand as there is generally no need to report to the police station on a daily basis (unlike in the UK). If you fail to attend court on the nominated hearing date, the bail money will be forfeited and a warrant of arrest will be issued.

7 Appeal

The prosecution have one month to appeal if you are found not guilty. During this time you may still be held in custody.

The defence can usually appeal both on questions of law and of fact. Appeals can be made to the Court of Appeal or the Regional Court of Appeal and a further appeal can be made to the Supreme Court. A case can also be reviewed after final judgment if new evidence comes to light. Appeals should be made within one month of the judgement; however, a 30 day extension period can be granted upon application to the Court. If a prisoner appeals he/she may have to wait up to two years before the appeal is heard.

8 Other penalties

Thailand's Criminal Procedural Code stipulates that there are five penalties which can be imposed for as punishment for violating the code: the death penalty, imprisonment, detention (restricted residence), fines, and forfeiture of property to the state.

9 When will prisoners be eligible for release?

The court may grant probation if the following three conditions are all met

- the offence carries a sentence of less than three years imprisonment;
- the offence is a petty offence; and
- the accused has not committed a crime before – in other words a first offence.

If a prisoner is granted probation there may be conditions attached such as having to report to a Probation Officer. However, probation is seldom, if ever, available to foreign prisoners.

It is very difficult for a foreigner to obtain parole but prisoners may be entitled to have their sentence reduced for good behaviour or benefit from Royal Amnesty or personal Royal Pardon. If prisoners have disciplinary problems or have been convicted of a serious narcotics offence it is less likely that they will be released early. Prisoners whose sentences are reduced may have to comply with certain conditions or risk being sent back to prison.

Royal amnesties are granted to celebrate a Royal or National occasion. Those convicted of narcotics offences are less likely to benefit in this respect.

10 Clemency and pardons

Any convicted person or their relative has the right to submit a petition to His Majesty the King for Royal clemency. This is stipulated in the Penal Code and the Penitentiary Act. Prison officials, upon receiving such a petition, shall forward it to His Majesty the King through a designated channel. The channel begins at prison where all the information on prisoners is filed. It is then forwarded to the Department of Corrections, to the Minister of Justice, to the Prime Minister's Office, to the Office of His Majesty Principal Private Secretary, to the Privy Council and to His Majesty the King. Should a petition be denied a prisoner has to wait two years to re-submit his/her petition.

Under the Constitution, the King has power to grant a pardon to commute, reduce or terminate sentences with or without conditions. Such pardons would overrule the prisoner's conviction.

11 Transfer to a UK prison

It may be possible to transfer to a UK prison if the prisoner in question meets the criteria of the Bilateral Transfer Treaty. Prisoners serving non life sentences must have served four years or one third of their sentence (whichever is shorter) in a Thai prison before they are eligible to apply to transfer. Once they arrive in the UK they will be eligible for release on licence in accordance with the UK's release arrangements.

A similar procedure applies for those sentenced to life imprisonment, but you must have served at least eight years of their sentence in Thailand before being eligible to apply for transfer. As part of the process you will be given a 'tariff' for your life sentence in the UK – this is the amount of time you will serve before you can be considered for release. This tariff will not be reduced once you arrive in the UK unless a pardon or amnesty is granted.

It is likely to take at least between one year and 18 months before any application for transfer is processed and approved.

Prisoners convicted of certain offences are not eligible for transfer. Such offences include crimes against Royalty, crimes threatening the security of Thailand, and crimes breaching the laws governing national art and treasures. Also, prisoners are not eligible for transfer if they have less than one year of their sentence to serve or have any unpaid fines.

Please see the Prisoners Abroad factsheet "*Prisoner transfer to the UK*" for more details.

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If you spot any errors or inaccuracies in this factsheet please let us know by emailing info@prisonersabroad.org.uk. Thank you.

If you require this leaflet in a large print format, please contact us. Our details are below.

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