

**FEDERAL PUBLIC DEFENDER  
NORTHERN DISTRICT OF WEST VIRGINIA**

# **Client Handbook**



**Last Updated: July 8, 2008**

## CONTENTS

GENERAL CLIENT INFORMATION .....	1
WHAT YOU NEED TO KNOW RIGHT AWAY: .....	2
WHAT YOU NEED TO KNOW ABOUT HAVING A FEDERAL CASE .....	2
INITIAL APPEARANCE AND ARRAIGNMENT .....	3
DETENTION HEARING .....	4
DISCOVERY AND INVESTIGATION .....	5
MOTIONS .....	7
PLEA NEGOTIATIONS AND CHANGE OF PLEA .....	8
TRIAL .....	9
SENTENCING .....	10
VIOLATIONS OF PROBATION OR SUPERVISED RELEASE .....	13
APPEALS AND OTHER POST-CONVICTION RELIEF .....	15

## GENERAL CLIENT INFORMATION

**WHO WE ARE:** The Office of the Federal Public Defender is an organization of criminal defense attorneys. We represent people charged with federal crimes in the Northern District of West Virginia who cannot afford to pay a lawyer. We are free. We can represent you only if the court appoints us, based on your financial situation. Once appointed, we work FOR YOU only, and not for the court. Our only job is to give you the best defense possible. Our defense team includes attorneys, investigators, and administrative staff who may work with your lawyer on your case. The assigned attorney will handle your case all the way through, including, in most cases, any appeals or problems with supervised release after sentencing.

If there are other defendants in your case, we can represent only one of you. We will get you a free private lawyer, known as a "panel attorney," if you qualify for appointed counsel and we can't represent you. We will also get you a panel attorney if we have a conflict with your case (for example, if we previously represented a witness or co-defendant).

**CONTACTING US:** We have three staffed Federal Public Defender Offices located here in the district and they include:

Federal Public Defender  
1125 Chapline St. Rm, 208  
Wheeling, WV 26003  
(304) 233-1217

Federal Public Defender  
230 West Pike St., Rm. 360  
Clarksburg, WV 26302  
(304) 622-3823

Federal Public Defender  
651 Foxcroft Avenue, Suite 202  
Martinsburg, WV 25401  
(304) 260-9421

We accept collect calls. We are open from 8:30 a.m. to 5:00 p.m. You can leave a voice-mail message at other times. We cannot call you while you are in jail, but sometimes we can have the regional jails get you to a phone to call collect. Your attorney will, of course, come visit you. If you are out of custody, you will meet with us in our offices. Please keep all your appointments. If you need to reschedule, call your attorney our secretaries in advance.

**JAIL:** If detained as a federal prisoner, you are in the custody of the United States Marshals. While your criminal case is pending, you will probably be held at one of the five regional jails operating in this district that are under the control of the West Virginia Regional Jail Authorities and these include regional jails in Moundsville, Greenwood, Sutton, Coalton and Martinsburg.

If you have problems at these jails, let us know and we will ask the Marshals to look into it.

**COURT:** Your case will be heard in the United States District Court. The federal courthouses are located in Wheeling, Clarksburg, Elkins and Martinsburg. If you are out of custody, NEVER miss a court appearance or arrive late for court. If you have a problem with a date, talk to your attorney ahead of time. You can give up your right to come to some court hearings, but you must file a written waiver with the court to do so. You should be appropriately dressed for court as you will want to make a good impression.

## **WHAT YOU NEED TO KNOW RIGHT AWAY:**

**Do not discuss your case with anyone except your attorney.** Everything you say to your lawyer is completely confidential. You have the absolute right not to discuss your case with any law enforcement officers or prosecutors. If they try to talk to you, you may request that a lawyer be there.

**Do not discuss your case with other inmates, including your cell mate.** There are inmates at the jails who sometimes pass information onto the authorities. Anything you say could be used against you. Do not discuss the case with friends or family over the telephones. Jail phone calls are regularly recorded. Other people can be forced to testify about what you say to them. Your own lawyer, and people working for him or her, are the only ones you should talk to about your case.

**Do not believe what you hear from other inmates about what might happen to you.** Some jail inmates are not federal prisoners, and do not know about federal cases. Even among federal prisoners, there are many false rumors about sentencing deals and other matters. Your lawyer will have accurate information.

## **WHAT YOU NEED TO KNOW ABOUT HAVING A FEDERAL CASE**

**WHAT IS A FEDERAL CASE?** You are charged with a federal crime. That means either (1) a crime that violates a law passed by Congress for the whole country, or (2) a crime that happened on property owned by the United States government, like a military hospital or National Park. Federal court is very different from state court. Here are some of the main differences:

**BAIL.** As a federal prisoner, you will NOT have bail automatically set. There will be a detention hearing, at which the judge will decide whether to release you or keep you in jail for now. If you are detained, you will probably be held at one of the regional jails operated by the State of West Virginia. You will get credit for time served if you are later convicted, unless you are serving another sentence when you are detained on your federal charge.

**PLEA BARGAINS.** In federal court, judges are not involved in plea negotiations. A plea bargain is an agreement between you and the prosecutor: you agree to plead guilty, and the prosecutor agrees to drop charges or recommend something you want at sentencing. If there is an agreement, the judge will not approve it ahead of time, and may not even know about it in advance. In most cases, the judge does not have to follow the deal. If he does not follow the deal, you are usually NOT allowed to withdraw your plea.

**SENTENCING.** Federal sentences are very different from state sentences, even for the same conduct. Congress decides maximum and sometimes minimum sentences for federal crimes. These are completely different from state court penalties. Federal judges are obligated to consult and

consider complicated rules called the Federal Sentencing Guidelines. Your lawyer will explain how the Guidelines may apply to your case.

How you serve a sentence is also different in federal custody. There is no parole. If you are sentenced to federal prison, you will serve at least 85% of your sentence. There is no good time credit for sentences of one year or less.

**STAGES OF A FEDERAL CASE:** These are the stages that a federal criminal case may go through:

### **INITIAL APPEARANCE AND ARRAIGNMENT**

**INITIAL APPEARANCE:** Soon after your arrest, you will be brought before a U.S. magistrate judge. The magistrate judge will make sure you are the person named in the complaint or arrest warrant. He will tell you of the charges against you, and explain your rights. He will appoint our office to represent you, if you qualify financially.

**RIGHT TO COUNSEL:** You have the right to have an attorney represent you. If you can't afford to hire an attorney, the court will appoint a lawyer from the Federal Public Defender's Office or another attorney to represent you. In order to qualify for appointed counsel, you must complete a financial affidavit. **BE HONEST AND COMPLETE WHEN YOU FILL OUT THE FINANCIAL AFFIDAVIT.** You will be signing "under penalty of perjury," which means it is a crime to lie. An Assistant Federal Public Defender will be available to help you with the paperwork.

**PRETRIAL SERVICES:** A Pretrial Services Officer will ask to interview you before your initial appearance. This person works for the court, and wants to get information about you so he or she can make a recommendation about whether you should be held in jail or released until your trial. If you talk to a Pretrial Services Officer before you see a lawyer, do not discuss the charges against you or any other illegal activity -- what you say will be used against you. Both the judge and the prosecutor will see the Pretrial Services report.

**DETENTION OR RELEASE:** After a hearing, the magistrate judge will decide whether to keep you in jail until your trial, or release you on conditions of supervision. Sometimes this decision is made at the initial appearance, but sometimes the prosecutor asks that a separate detention hearing be held a few days later. This gives the defense lawyer and investigator time to develop a better case for release.

**ARRAIGNMENT:** At arraignment you will be formally notified of the charges against you. Either before the initial appearance or shortly after, the prosecutor will get an indictment from the grand jury. An indictment is a formal document that charges you with one or more federal crimes. These charges will be read to you at the arraignment, and you will be asked to enter a plea.

In almost all cases, you will plead "not guilty" and request a jury trial. You will have the chance to change your plea later if you and your attorney decide that is best for you. A guilty plea gives up many important rights, and you should not do that until your attorney has been able to review all the evidence and potential penalties with you. A "not guilty" plea gives your legal team the chance to investigate and see if the case against you is any good. It preserves all your rights.

**MAGISTRATE JUDGES AND DISTRICT JUDGES:** Your initial appearance, detention hearing, and arraignment will be before a United States Magistrate Judge. At the arraignment, the magistrate judge may give you court dates for your trial in front of a United States District Judge. The magistrate judge will also preside over any later pre-trial motions hearing. The district judge will handle most of the other stages of your case after the arraignment. The district judge can also overrule the magistrate judge's decision about detention or release, or about findings made after the pre-trial motions hearing.

District judges are judges for life, appointed by the President of the United States. Magistrate judges are chosen by the local district judges, and serve for a term before being eligible for re-appointment.

### **DETENTION HEARING**

**RELEASE OR DETENTION?** There will be a hearing to determine whether you should be released until your trial date. The magistrate judge will decide if you should be released, with or without bail, or kept in jail. This hearing may take place at your initial appearance, or within 5 court days after that if your attorney needs more time to prepare.

**PRETRIAL SERVICES REPORT:** Before your detention hearing, a Pretrial Services Officer may want to speak to you. He or she gathers information about your background and personal circumstances, writes a report for the judge, and makes a recommendation about whether or not you should be released and on what conditions. Remember that the Pretrial Services Officer works for the court, not for your lawyer. **It is your choice whether to be interviewed, but you should discuss this decision with your lawyer first.** If you agree to an interview, be honest. You can refuse to answer any question, but any answer you do give must be the truth. Lying to a Pretrial Services Officer can be used against you at sentencing if you are later convicted, and is also a crime. Your lawyer will help you decide whether to be interviewed and what to discuss. If you choose to provide a urine sample the absence or presence of drugs will be made known to the court.

**FACTORS THE JUDGE WILL CONSIDER:** In deciding whether to release you, the judge will consider factors such as your prior record, ties to the community, any prior failures to appear for court, and employment. In general, the law says that the judge can only keep you in jail if there is evidence that you are a danger to the community, or a flight risk. However, certain drug related charges and crimes of violence carry what is called a "presumption of detention." If you are charged

with one of these crimes, the judge will keep you in jail until your trial date unless you and your attorney can convince the judge that you should be released.

**PREPARING FOR THE HEARING:** Your lawyer will need a lot of information about your family, job, financial situation, and background. An investigator may also help prepare for the hearing. They may need to speak with people who know you well, and identify property that could be used to secure a bond. Sometimes witnesses are needed at the hearing, but this is not always the case. Your lawyer will explain the best way to handle your hearing, depending on your circumstances.

**BAIL:** Bail is not automatically set for federal defendants. If the judge decides to let you post bond, you may be required to post cash or property, surrender your passport, and comply with restrictions on travel or residence. Most federal cases here in the district do not require the posting of money or property, but it is an option for the court to consider.

If you are released, the judge will set conditions that you must follow until your case is over, such as drug testing or living at a certain place. A Pretrial Services Officer will probably supervise you while you are out on bail. If you violate the conditions of your release, you can go back to jail. Some violations can also result in a longer sentence if you are convicted later.

**CONTINUED DETENTION:** If the judge decides not to release you before your trial, you will be in the custody of the United States Marshal.

Your attorney has no control over the selection of the local jail in which you are held. You may be moved to a number of regional jails while your criminal case is pending due to overcrowding or the needs of the United States Marshal.

If something about your circumstances changes, your attorney can go back to court and ask the judge to reconsider releasing you.

## **DISCOVERY AND INVESTIGATION**

**PREPARING YOUR CASE:** There are two main ways that you and your attorney get the information you need to defend your case: discovery and investigation.

**WHAT IS DISCOVERY?** "Discovery" is the process of getting information from the other side in a court case. You will also hear the word "discovery" used to describe evidence against you that the prosecutor must give to your attorney. The discovery process lets your attorney get the information he or she needs in order to defend you.

**WHAT TYPE OF DISCOVERY DOES THE PROSECUTOR HAVE TO GIVE MY ATTORNEY?** The government has to give your attorney copies of any documents that they plan to

use against you at trial, or that are important to the preparation of your defense; any test results; and any statements you made to law enforcement. Your attorney will also be allowed to look at any physical evidence that the government plans to use against you.

**WHEN DO WE GET DISCOVERY?** The first thing ordered after arraignment is disclosure of discovery. This can be through local rules or by motion. Then your attorney, and maybe an investigator, will review that discovery with you. The discovery will give us an idea about the strength of the case against you. Decisions about what motions to bring, what investigation to do, and whether or not to try for a plea bargain, often depend on what's in the discovery.

**DEFENSE INVESTIGATION:** Independently of the discovery process, your lawyer and other members of your legal team will explore whether you have any possible defenses. They will also explore other issues that could affect your case. In some cases, but not all, this requires investigation.

Your lawyer will determine whether your case needs investigation. Investigation varies widely from case to case, and can include locating and interviewing witnesses, examining scenes, having physical evidence tested, getting expert opinions, etc.

If investigation is needed, an investigator from our office may do much of the work, such as interviewing witnesses. The investigator may also organize information and prepare exhibits to help your case. You, your lawyer, the investigator, and the Federal Defender staff are a team. What you say to them is completely confidential. Please cooperate with all of them, so that we can do the best job possible in defending you.

Not every case needs an investigator. Your attorney will explain to you what investigation is appropriate for your case.

**DO WE HAVE TO GIVE DISCOVERY TO THE PROSECUTOR?: ANYTHING YOU TELL YOUR ATTORNEY, INVESTIGATOR, OR OTHER FEDERAL PUBLIC DEFENDER EMPLOYEE IS PRIVILEGED, AND WILL NEVER BE DISCLOSED TO THE PROSECUTOR OR ANYONE ELSE,** except with your permission. If your case goes to trial, however, your attorney will have to show the prosecutor any evidence you will use in your case, and any test results that will be used at the trial. During the investigation of your case, your legal team will take care to protect all information you give them. Your attorney will explain as you go along which information has to be shared with the prosecutor.

## **MOTIONS**

**WHAT IS A MOTION?** A motion is a formal request that a defendant or prosecutor makes to the judge in a case. Most motions are written, and include arguments why the judge should grant the request. Most motions come before the trial, and may determine what the trial will be like. (For



example, a defendant might move to have a trial separate from other defendants.) After one party makes a motion, the other side always has the chance to respond to the motion in writing. Sometimes the judge needs to hold a hearing to decide a motion, but sometimes the judge will decide without a hearing, based on the papers that the lawyers have filed.

### **TYPES OF MOTIONS:**

**Pre-trial:** There are many types of motions a defendant or prosecutor can file before trial. A defendant's **motion to suppress evidence** asks the court to throw out evidence that the police got illegally. In order to decide a motion to suppress, the judge sometimes holds a hearing with witnesses, to decide whether the evidence was obtained legally. If the judge decides that the evidence was gathered illegally, then it cannot be used against the defendant at trial. (Suppressed evidence, however, can be used against the defendant at sentencing if there is a conviction.) Your attorney will decide if there is a legal basis for a motion to suppress.

There are many other kinds of pre-trial motions. Ask your attorney which ones might apply to your case.

**In limine motions** are brought right before a trial. These are usually motions about what evidence should be allowed in and what evidence should be kept out. If your case goes to trial, your lawyer will discuss these motions with you.

**Post-trial motions** include motions for a new trial, if something went wrong during the trial.

**Sentencing motions** include motions for "downward departures," to get a lighter sentence under the Sentencing Guidelines. You may also be eligible for a sentence below the guideline range since these ranges are now only advisory, not mandatory. Your lawyer can argue that factors under the federal sentencing statute supports a lower sentence.

**REMEMBER:** There are many types of motions not described here. **It is your attorney's job to decide what motions to bring.** Ask your lawyer what motions are appropriate for your case. Your attorney and possibly an investigator may need your help to develop the facts for a motion. Answer all their questions as honestly and completely as possible.

## **PLEA NEGOTIATIONS AND CHANGE OF PLEA**

**PLEA NEGOTIATIONS:** Before your case goes to trial, your attorney may try to negotiate a plea agreement with the prosecutor. Your attorney will not make any deals for you without your permission. But he or she will find out what kind of an offer the prosecutor is willing to make in your case. Then you can decide what to do, with your attorney's advice.

Sometimes defendants cooperate with the government as part of a deal. Ask your lawyer if you have questions.

**GUILTY PLEAS AND THE SENTENCING GUIDELINES:** Sentences in federal court are determined by the Federal Sentencing Guidelines and applicable federal statutes. Your attorney will show you how the Guidelines might apply to you if you plead guilty, and if you go to trial. In most cases, pleading guilty will result in a lighter sentence than if you were to lose at trial due to a sentencing "credit" for accepting responsibility.

**HOW PLEA AGREEMENTS WORK:** A plea agreement is a deal between you and the prosecutor. The judge is not part of the deal. In federal court, the judge is not allowed to be part of plea negotiations at all. Your part of the deal is to plead guilty. In some deals, the defendant pleads guilty to a lesser charge, or to only some of the charges. Sometimes the defendant pleads guilty to all the charges.

Because a plea agreement is a deal between you and the prosecutor, it does NOT guarantee that the judge will give you the sentence you hope for. As long as the prosecutor makes the recommendation in the plea agreement, he or she has kept the government's side of the bargain. That means you have to keep your side of the bargain, and cannot take back your guilty plea if the judge gives you a different sentence than you hoped for.

Most judges in this district follow plea agreements, but the judge does not have to follow the recommendation. The Court can legally sentence you to whatever the Guidelines and the law allow. In our experience, however, the judges are very good about honoring plea agreements.

There is also another type of plea agreement which is binding on the court. In a few cases, the plea agreement provides that you will get a specific sentence, and if you do not get it you can take back your guilty plea. Then you could try to negotiate a new plea, or go to trial. It is up to the judge to accept or reject this agreement. The prosecutor does not have to offer this kind of deal. The prosecutors in this district offer binding plea agreements rarely, and only in very special types of cases. In most cases, your only choice is between a non-binding agreement and no agreement.

Plea agreements are put in writing and signed by the defendant, defense counsel, and the prosecutor. Before signing a plea agreement, read it carefully and make sure you understand all of it. Your attorney will go over it with you, and answer any questions you may have.

**CHANGING YOUR PLEA:** If you decide to change your plea to guilty, there will be a Change of Plea hearing. If you plead guilty, you are giving up many valuable constitutional rights. Your lawyer will discuss these with you before you decide to accept a plea offer. The judge will also want to make sure that you understand the rights you are giving up. He will make sure that you understand what is going on, and that you are pleading guilty because you want to and not because someone is forcing you. He will go through your rights one by one. He will make sure you understand the possible sentences. He will also ask you to admit facts supporting the charges to

which you are pleading guilty. Each judge handles changes of plea a little differently. Ask your lawyer what to expect.

## **TRIAL**

**IN GENERAL:** The U.S. Constitution guarantees you the right to a trial by jury, except in some misdemeanor cases. The trial date will usually be set when you are arraigned but it can also be continued if good cause is shown. Federal trials can be complicated, and you must help your attorney and other members of your legal team with anything that they ask you. Your attorney has a lot of experience with trials. Some decisions, like whether to testify, are yours to make after advice from your attorney. Other decisions, involving legal strategy and the way that your case should be presented, are for your attorney to make. You will be kept informed about these decisions.

It is the prosecutor's job at a trial to prove that you are guilty. It is not your job to prove you are innocent. If the prosecutor does not prove the charges beyond a reasonable doubt, you must be found not guilty.

**SPEEDY TRIAL ACT:** The law says that you must be tried no earlier than 30 days or later than 70 days after your first appearance in court. There are exceptions which can be granted at the request of the prosecutor, a co-defendant, or your own attorney. These could extend the 70 day limit. You may hear the term "excludable time." This means the time the court needs to make decisions about your case, or a certain period of time your lawyer needs to prepare your case, is not counted toward the 70 day limit. We say that "the clock stops" for those periods of time.

**JURY:** A jury of 12 people will hear your case and decide the facts. You, your attorney, the prosecutor, and the judge will all participate in deciding who should be on the jury. The jury will be selected and then sworn in. You can give up your right to a jury if you and your lawyer decide you would be better off having the judge decide your case, and if the prosecutor also agrees to waive the jury.

**OPENING STATEMENTS:** Each side will get to make a statement to the jury about what the case is about, what the evidence will be, and what the jury will have to decide.

**GOVERNMENT CASE:** The government will then call witnesses and show evidence to the jury about the charges against you. After the prosecutor questions a witness, your attorney will have the chance to ask that witness questions. This is called cross-examination.

**YOUR CASE:** After the government finishes, your attorney will have the chance to present any witnesses and evidence that will help your case. The defense does not have to present any evidence. If it does, the government will be able to cross-examine your witnesses. You will also have to decide if you want to testify. Your attorney should help you with this decision, including telling you the risks that are involved. The final decision about whether you testify is yours.

**REBUTTAL**: If you put on a defense case, the government will have the chance to rebut it. That means showing the jury evidence to contradict your defense.

**CLOSING ARGUMENTS**: When both sides have presented their evidence, each side gets a chance to tell the jury what they think the evidence means, and how the jury should decide the case. The prosecutor goes first, then your lawyer, then the prosecutor gets the final word. This is because the government has the burden of proving its case against you.

**JURY INSTRUCTIONS**: The judge will tell the jury what the law is, and what questions they will have to answer about your guilt or innocence. The lawyers for both sides will have a chance to help the judge choose what instructions to give.

**JURY DELIBERATIONS**: The jury will leave the courtroom and try to decide on a verdict. Every one of the jurors must agree. If they cannot agree on a verdict, then the judge may call a mistrial. A mistrial may mean that you must go through the whole trial process again.

If the jury returns a "not guilty" verdict as to the indictment counts against you, the federal criminal proceedings are over and you will be discharged. The government cannot re-try you after an acquittal.

If, however, the jury returns a finding of "guilty" to one or more counts contained in the indictment, there will later be a sentencing proceeding.

## **SENTENCING**

**THE U.S. SENTENCING GUIDELINES**: Whether you plead guilty or are found guilty after a trial, you will be sentenced about 10-12 weeks later. Your sentence will be determined by the federal sentencing statutes and the Federal Sentencing Guidelines. The Guidelines are an *advisory* set of rules for all federal sentences. Your attorney will review your Guidelines with you, to show you how these rules apply to your case.

The Guidelines work by giving scores to two different parts of your case: (1) your criminal record, and (2) the particular offense level for which you will be sentenced. A chart tells the judge what sentence to give, according to these two scores.

First, the Guidelines rate your criminal history by giving "points" to each of your prior convictions. The total number of "points" will put you in a "Criminal History Category," ranging from I to VI. Figuring out your Criminal History Category can be very complicated. Your attorney will discuss this with you in detail.

Second, the Guidelines rate your offense. The Guidelines give a particular score, called an "Offense Level," to every federal offense. The scores range from 1 (for very minor offenses) to 43 (for very

serious offenses). This number may then be "adjusted" according to the particular characteristics of your case. Adjustments can raise or lower the Offense Level. For example, if you plead guilty you will usually get points off your Offense Level. Your attorney will explain any adjustments which could affect your sentence.

The Guidelines Sentencing Table is a chart that shows what sentence is required for all possible combinations of Criminal History Category and Offense Level. Your attorney can show you the Table and explain how it works. Based on your Criminal History Category and Offense Level, the Table will give a sentencing "range." This is the number of months that you could spend in prison. The "low end" of the range is the minimum that the judge must give you, and the "high end" is the maximum time you could get. For example, if your "range" is 121-135, this means that you face anywhere from 121 to 135 months in prison.

**Departures and Variances:** "Departures" from the required sentencing ranges are allowed in some situations. The judge can depart upward, giving you a sentence higher than your Guidelines range, or downward, giving you a sentence lower than your Guidelines range. Downward departures were somewhat rare when the Federal Sentencing Guidelines were mandatory.

While still very important, the Guidelines are now only advisory, not mandatory. The change from mandatory to advisory guidelines came about in January of 2005. The judge now can consider a "variance" based on the claim that the statutory purposes of sentencing support imposition of a sentence below the guideline range. These factors can include the nature and circumstances of the offense, and the history and characteristics of the defendant.

Ask your lawyer if there are any grounds for a downward departure or variance in your case.

**THE PROBATION OFFICE AND THE PRESENTENCE REPORT:** The U.S. Probation Office helps the judge determine what sentence you should receive. After a guilty plea or verdict, a Probation Officer will want to interview you. The Probation Officer works for the court, and is not your advocate like your lawyer is. When you are interviewed, your attorney will go with you. When you are interviewed, do not lie to the Probation Officer. It is a crime to do so, and may lead to a worse sentence. You can refuse to answer any question, but whatever you do say must be the truth.

After the interview, the Probation Officer will write a Presentence Report for the judge. The "PSR" discusses your federal case, your background, family, criminal history, education, career, mental and physical health, and other information. Probation may interview family members or employers, and may check the information you provide about yourself. The Probation Officer may also talk to the prosecutor and case agent. Probation also figures out your Guidelines scores and sentencing range, and recommends to the judge what specific sentence you should get within your range. However, the judge will decide the appropriate sentence.

The Probation Officer will send a draft copy of the PSR to you and your lawyer, before the judge sees it. You will get to review the draft PSR, and tell your lawyer if there are any factual mistakes. Your lawyer will look for legal mistakes. Then your lawyer may write a letter to Probation about any changes that should be made. Probation then issues the final PSR, which is sent to you, the prosecutor, and the judge.

**THE SENTENCING HEARING:** About 10-12 weeks after your guilty plea or verdict, you will go back to court for sentencing. Three different people will tell the judge how they think you should be sentenced: your lawyer, the Probation Officer, and the prosecutor. Sometimes these people agree about the sentence, and sometimes they do not. Your lawyer may have filed a motion before the hearing, arguing for a particular sentence or departure. The judge will announce the final decision at the sentencing hearing. Even if you have a plea agreement, the sentence may not be what you and the prosecutor agreed upon. Usually, however, the judges do follow our plea agreements.

At the hearing, the judge will ask whether you have read your PSR and discussed it with your lawyer. The judge will then ask your lawyer and the prosecutor if they wish to say anything about your sentence. The judge will ask you if you wish to say anything. It is your absolute right to speak if you want to, but you do not have to. You can say anything you like to the judge about yourself or your case, but should discuss it with your attorney in advance. After listening to everyone, the judge will impose your sentence.

If you are sentenced to prison, your attorney can ask the judge to recommend that you serve your time in a certain part of the country, at a particular prison, or in a special program like drug rehabilitation. The judge's recommendation does not guarantee that you will go where you want. That will be up to the Federal Bureau of Prisons.

**WHAT NEXT?** After sentencing, you will be taken back to jail if you were detained. If you were out of custody, you may be taken into custody in the courtroom, or you may be given a surrender date. The judge will sign a document called a Judgment, which then must make its way through the federal court system to the Federal Bureau of Prisons ("BOP"). The BOP reviews your PSR, any criminal history, gang affiliation, medical issues, and/or recommendations from the judge, and then decides where you should serve your time. It may take a month or even more before you are finally transported to federal prison or given a prison to report to. There are now about six federal prisons in West Virginia so it is likely you can serve your sentence at a facility close to your home, family and friends.

### **RELATED MATTERS:**

**Credit:** There is no federal parole. You will serve your entire sentence, minus 15% good time credit. The 15% credit is not automatic, but is applied if you have no disciplinary problems. **There is no good time credit for sentences of one year or less.** You will also get credit for time served, as long as you were not also serving another sentence (like a state sentence) while your case was pending.

**Release:** Most (but not all) federal prisons send inmates to a halfway house for the last few months of their sentence. The halfway house is to help you adjust back into the community. It has curfews, rules, drug tests, etc. You are not guaranteed to go to a halfway house before your prison term is up. If you are not a U.S. citizen and do not have a green card, you will not go to a halfway house. If you are subject to deportation, that will happen after your sentence.

**Supervised Release:** 99% of all federal inmates are placed on supervised release after their prison term is over. Your supervised release begins the day you are released from federal prison, or a halfway house. Supervised release is like being on probation or parole, only after your entire prison sentence is served. A federal Probation Officer will supervise you, and has the right to conduct warrantless searches, random drug tests, etc. Your lawyer will explain the details of supervised release to you as your case proceeds. A Probation Officer will review your conditions of supervision once you are discharged from your sentence onto supervised release.

### **VIOLATIONS OF PROBATION OR SUPERVISED RELEASE**

**THE FEDERAL PROBATION OFFICER:** If you are on probation or supervised release, you will be supervised by a U.S. Probation Officer. Expect your probation officer to be actively involved in supervising you. Probation and supervised release involve strict rules called "conditions," which include drug testing and staying out of trouble. It is the probation officer's job to make sure that you follow these rules, and to report to the judge if you do not.

**TRY TO ESTABLISH A GOOD WORKING RELATIONSHIP WITH YOUR PROBATION OFFICER, SO YOU CAN AVOID PROBLEMS THAT COULD LEAD TO VIOLATIONS.** If you have problems, call your attorney and ask for help.

**WHAT IS A VIOLATION?** If your probation officer thinks you have broken one of your conditions, you may be charged with a violation. If the judge finds that you have violated, you could go to prison. **IF YOU ARE HAVING TROUBLE WITH YOUR PROBATION OFFICER OR THINK YOU ARE IN DANGER OF BEING VIOLATED, CALL YOUR ATTORNEY.** Often we can resolve a supervision problem before there is a formal violation charge.

**NOTICE OF VIOLATION:** Your probation officer or the prosecutor may file a violation notice, telling the judge that they think you have violated.

**INITIAL APPEARANCE:** You will usually appear before a magistrate judge. The judge will explain your rights and make sure you have a lawyer. If you had an Assistant Federal Public Defender before, that attorney will probably represent you. In some cases you may get a different attorney from this office. If you had a private lawyer but can no longer afford to pay, the court will appoint a lawyer for you if you qualify.

Instead of pleading guilty or not guilty, you will admit or deny the charged violation(s). This may happen at a separate court date shortly after your initial appearance.

**VIOLATION HEARING:** If you deny the charges, there may be a hearing where both sides have the chance to put on witnesses and evidence. There is no jury; the judge decides what happened. It is your decision whether or not to testify. The rules at a violation hearing are somewhat different from those at trial. Your lawyer will explain more.

**CONSEQUENCES OF A PROBATION VIOLATION:** If the judge finds that you violated the conditions of your probation, he can either keep you on probation or revoke your probation. If probation is continued, the judge can change the conditions. If probation is revoked, the judge will resentence you. The law says that the judge must revoke if you possessed drugs or guns. The Sentencing Guidelines apply to revocations. Your lawyer will explain more.

**CONSEQUENCES OF A SUPERVISED RELEASE VIOLATION:** Supervised release is different from parole. Parole substitutes for part of a prison sentence, and if you violate you just serve the rest of your sentence. Supervised release is a separate part of your federal sentence that follows prison. If you violate, you will get a new prison term for the violation even if you served all the time on your original sentence. Also, your sentence for the violation can include another term of supervised release after you get out of prison again. Your lawyer will explain how the Sentencing Guidelines apply to your situation.

**IF YOUR VIOLATION WAS A NEW CRIMINAL OFFENSE:** All violations of the law are also violations of supervision. If you get arrested on state or federal charges while on supervision, you will probably be revoked in federal court. Your sentence for the violation will be separate from whatever sentence you might get in the other case, and will probably run consecutively to it. Your sentence for the violation is punishment for disobeying the federal court; your sentence in the new case is the punishment for whatever you did to break the law. Discuss this with your attorney.

## **APPEALS AND OTHER POST-CONVICTION RELIEF**

**RIGHT TO APPEAL:** In general, you have a right to appeal your conviction and/or your sentence. You need to file a notice of appeal within 10 days of the judgment against you. Your appeal will be decided by the Fourth Circuit Court of Appeals in Richmond, Virginia.

You have the right to an attorney on appeal. If the Federal Public Defender's Office represented you in district court, we will also handle your appeal unless we have a conflict. (In that case, if you cannot afford a lawyer, the court will appoint an attorney from outside this office.) If you had a private lawyer before but have run out of money, you may ask to have counsel appointed for your appeal.

**REMEMBER:** The reason for an appeal is to correct legal errors. The appeals court will not decide whether the jury was right, or whether the sentence is fair. Being unhappy with the outcome of your



case is not grounds for appeal. You will win your appeal only if the appeals court decides that the judge made a serious legal error in your case.

Also, appeals are limited to the evidence that was presented in district court. You cannot introduce new evidence in an appeal or ask for a lower sentence.

**PLEA BARGAINS AND APPEALS:** If you pled guilty, you may have given up the right to appeal any rulings that the judge made before your plea. If you lost a motion to suppress evidence, for example, you can only appeal the judge's ruling if you have a special "conditional plea agreement" that allows you to appeal that issue. If you went to trial, on the other hand, you can appeal any rulings the judge made before, during, or after the trial.

Many plea agreements in this district have "waivers" saying that you give up your right to appeal sentencing issues. What you can and can't appeal depends on the language in your waiver. Talk to your lawyer about the "waiver of appeal" in your plea agreement. There may be some things that you can try to appeal even after a waiver. Your attorney will figure out what issues may be appealable.

**APPEAL TO THE U. S. SUPREME COURT:** The Supreme Court does not have to take any case. The Justices accept only a few very important cases for review every year. If your attorney files a "petition for writ of certiorari," which asks the Court to consider your case, and if "cert" is granted, the Supreme Court will make the final decision in your case. If "cert" is denied, the Fourth Circuit's decision will stand. Your lawyer will tell you if your case presents any issues that can be presented to the Supreme Court

The entire appeals process can take one to two years.

**OTHER POST-CONVICTION RELIEF:** Just as state prisoners can file habeas corpus petitions, federal prisoners can file "motions attacking the sentence" under 28 U.S.C. §2255. A §2255 motion usually comes after an appeal, and usually claims that your constitutional rights were violated. You must file within one year of the date that your conviction becomes final. There is no right to appointed counsel. You must file by yourself and ask the court to appoint a lawyer for you. If counsel is not appointed, you will have to represent yourself.

\*\*\*\*\*

If you have any questions about the manner in which a federal criminal case proceeds, please contact the Federal Defender Office for the Northern District of West Virginia. Please see the "Contact Information" on page one for our addresses and telephone numbers.