



An overview of the

ARRAIGNMENT

In Washington State

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There is no greater threat to a free and democratic nation than a government that fails to protect its citizen's freedom and liberty as aggressively as it pursues justice."

-Bernard Kerik

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THE BASICS OF A CRIMINAL ARRAIGNMENT IN WASHINGTON STATE

What is an arraignment?.....	5
Who will be at the arraignment with me?.....	6
Do I have to speak at my arraignment?.....	8
Why do I plead “not guilty”?.....	10
Can I plead guilty?.....	11
If I am not in custody, will I go to jail at my arraignment?.....	13
Will the court impose conditions of release?.....	14
Can my arraignment date be continued?.....	15
Can I waive my arraignment?.....	16
How to prepare for my arraignment?.....	18
Can I appear virtually?.....	22

WHAT IS AN ARRAIGNMENT?

An arraignment is a formal proceeding where a criminal defendant is read the charges that have been placed against them by the State. The defendant is also advised of their Constitutional Rights, advised of the potential consequences of the charge, and a formal plea is entered at this time.

Pleas are typically guilty or not guilty. Nearly all cases begin with a not guilty plea. In certain circumstances, a judge may allow a criminal defendant to continue their arraignment for a reasonable amount of time. The judge will also make a determination of probable cause (PC). If PC exists, the Court can set conditions of release and future court dates, including a trial date. If there is no PC, then a court can set dates for future appearance but can't necessarily set conditions of release. If the evidence used to establish PC is weak, arraignment is the first and best opportunity for your defense attorney to argue to the Court that there is no probable cause.

The date of arraignment will begin the speedy trial clock for a criminal case. If a person is in custody, speedy trial is 60 days from the date of arraignment, if out of custody, speedy trial is 90 days.

WHO WILL BE AT THE ARRAIGNMENT WITH ME?

Unless you make arrangements in advance, you will be appearing at the arraignment alone. Some courts will have a public defender present at the arraignment as a courtesy, but only for the specific purpose of assisting at the arraignment.

If you would like to have an attorney present, you need to hire a private defense attorney in advance. Then, the retained attorney would be with you for the remainder of your case.

If you are in custody during the arraignment, most courts will *appoint* a public defender for you at that time. This does not mean that you can't hire the private attorney of your choosing following the arraignment. If you know that you will not qualify for a public defender due to your income, you should begin seeking private counsel as soon as possible.

Courtrooms in Washington are also open to the public, so you can certainly bring friends, family members, members of your church etc. for moral support.

The State will be represented by a deputy prosecuting attorney and, of course, a judge will be present as well.

DO I HAVE TO SPEAK AT MY ARRAIGNMENT?

You will have to speak at your arraignment, but the amount is very minimal. You will actually be admonished if you speak too much or wade into the facts of your case.

All the Court wants to do is establish that you have reviewed the charging document, confirm that your name and date of birth is correct on the charging document, and that you understand what you are being accused of. Once you have answered those few "yes or no" type questions, that is generally all the speaking that is required.

There is a lot of other discussion that happens at arraignment but it is all done by your attorney, the judge, and the prosecuting attorney. If you have questions or comments that you want to make, those are typically whispered to your counsel, who, if appropriate, makes the comments for you. Your speaking role in the hearing is very small in comparison to the other people speaking for you and about you.

While it may seem strange that you do such a small

amount of speaking, it makes perfect sense when you understand that the system is in place to protect your Fifth Amendment Rights. In other words, the Court is trying to ensure that you don't say something in open court that could later be used against you as evidence in trial.

WHY DO I PLEAD “NOT GUILTY”?

A defendant is encouraged to plead not guilty at arraignment as a means of protecting their important constitutional rights.

Most courts won't accept a plea of guilty at arraignment because this undermines the defendant's ability to consult with experienced counsel and weigh all the potential defenses and resolutions of their case.

An arraignment is a short moment in time. At arraignment, defenses may not be immediately apparent. Typically, your defense attorney will receive “discovery” from the prosecutor's office after your arraignment and then be able to conduct an investigation of the facts and legal defenses.

Once you plead guilty, you cannot go back and reclaim the important rights that were afforded to you at your arraignment. Hence, this is the reason nearly all courts, barring certain calculated circumstances, discourage and sometimes refuse to accept a guilty plea at arraignment.

CAN I PLEAD GUILTY AT ARRAIGNMENT?

Yes, you can plead guilty. However, most judges will make you create a record that satisfies the court as to what good reasons you have for pleading guilty at arraignment. And, it can't be "because I want to get this over with." Judges are the guardians of your constitutional rights and, frequently, they can be overly zealous. For that reason, you have an uphill battle if you plan to plead guilty at arraignment.

There are some strategic reasons as to why a person should plead guilty at arraignment. Perhaps there is a negotiated plea where a felony is dropped down to a misdemeanor with the condition that the defendant plead guilty at their arraignment in District Court. Additionally, a defendant could make the tactical decision to plead guilty at arraignment where there is the possibility that a fact, which supports an element of a more serious crime, could become worse over time. For example, a person could plead guilty to misdemeanor assault before the prosecution is aware that the injuries meet the threshold for felony assault. Once there is a plea, the prosecutor can not "re-open" the case even if the facts are much worse than originally believed.

These tactical decisions are always done with the assistance of a skilled defense attorney. As such, the attorney will be creating the record for you and presenting sufficient reasons to the judge for a guilty plea at arraignment.

So, yes, you can plead guilty at arraignment. However, there should always be a very experienced criminal defense attorney advising on such a move.

IF I AM NOT IN CUSTODY, WILL I GO TO JAIL AT MY ARRAIGNMENT?

Typically, if you are out of custody and appearing for your arraignment, the answer is no. Generally speaking, judges do not take an out of custody defendant in to custody.

There are exceptions to this. The most frequent exception is when the judge or prosecutor discovers additional criminal history that was not known when you were summonsed to appear. Another example is when the court notices that you have an active arrest warrant out of other courts. This will often result in you being taken into custody at arraignment and having bail set.

WILL THE COURT IMPOSE CONDITIONS OF RELEASE?

Yes, in almost all cases, the judge will impose conditions of release at arraignment. Conditions of release are viewed as necessary as well as a less restrictive alternative to housing a defendant in jail as they await their trial date.

Conditions of release can vary tremendously. Some are simple such as "update the court if you change your address." Others conditions of release can be quite onerous. For example, in a DUI case, the judge may order "effective immediately, do not operate a motor vehicle without a functioning ignition interlock device." In nearly all assault cases, there will be a condition to have no contact, directly or indirectly, with the alleged victim. If the allegation is a property crime, the court will usually instruct the defendant to not return to a specific location, such as a store or private residence.

If the court is notified through the state that a release condition has been violated, a hearing will be scheduled to address the violation of the conditions. The hearing usually results in bail being set and the defendant being taken into custody.

CAN MY ARRAIGNMENT DATE BE CONTINUED?

In most courts, especially district and municipal courts, the judge will let a defendant set over their arraignment. There are usually two reasons to set over an arraignment.

First, if the individual is unprepared and does not have their attorney present, the judge may allow for a set over.

Second, sometimes a defendant will want to appear for their arraignment when they are in a better position legally. For example, if a defendant is accused of driving on a suspended license, the court will often look on them more favorably if the defendant appears at the arraignment with a valid driver's license. In some rare occasions, the prosecutor may dismiss the case altogether if the defendant can remedy the underlying problem before the arraignment date.

CAN I WAIVE MY ARRAIGNMENT?

The court rules allow for a defendant's arraignment to be waived. This means, if you hire private counsel prior to your arraignment, your attorney can send to the court and to the prosecutor a document that enters a plea (of not guilty) in your absence. When the document is received, the court clerk will strike your matter from the arraignment calendar.

For most offenses, this works in district and municipal courts. However, there are exceptions to this general rule in every jurisdiction.

The crimes that are exceptions to this general rule are DUI and physical control, crimes that involve domestic violence, the crime of Harassment, and any violation of an anti-harassment order as well as stalking. In other words, if the crime you are charged with is on this short list of 6 charges, you **MAY NOT** waive your arraignment. For all other charges that are not on this list, you **MAY** waive your arraignment. However, **a waiver of arraignment can only be confirmed by your attorney.** There are always unique facts and a defendant should never fail to appear

for court under the assumption that he or she can waive their arraignment.

Since public defenders are only appointed at or after a person's arraignment, a public defender can not waive your arraignment for you. If you have an arraignment in the near future, you must contact a private attorney and tell them that you would like to waive your arraignment.

HOW TO PREPARE FOR YOUR ARRAIGNMENT

1. Make sure you know the date and time of your arraignment. If you are in custody, the jail staff will make sure you appear in the correct court room at the correct time.
2. If you are not in custody, go to the courthouse at least 30 minutes early. It is common for the security screening process to take extra time prior to a regularly scheduled criminal calendar. Additionally, do not take extra items with you since you will be pulling everything out of your pockets or purse to get through screening.
3. Dress appropriately. You do not need to wear a dress or a suit to court but your appearance should indicate that you take the matter very seriously. Be sure to shower and wear clean clothes. If you do not own slacks, it is okay to wear jeans (never shorts). Do not wear any shirt with reference to drugs or alcohol or appears to disparaging to the court process. Better yet, try to find a button up shirt or a sweater.
4. Make sure you are in the correct courtroom. If in doubt, you can ask someone in the court clerk's office.

5. When the judge walks into the courtroom, you should stand up. The bailiff will likely say "All rise. The honorable judge X presiding." Once the judge takes her seat, you will sit down.
6. Listen for the judge to call your name. This is not the time when the prosecutor or defense attorney will address the case, it is just calling the calendar (making sure everyone is present). When your name is called, you answer, "Present, your honor." If you are represented by a private defense attorney, you may hear this person say, "With counsel, your honor." Then, you wait until the judge calls your case for review.
7. When the judge addresses your matter, you will hear the defense attorney address the judge. The judge may ask you to answer some basic information about your name, date of birth, and whether you have seen the criminal complaint. The judge will also ask if you understand the charges against you. A simple yes or no is the appropriate answer. Do not get into the facts of your case. The judge may request you speak with your attorney or public defender if you do not understand.

8. Depending on the facts of your case, your defense attorney may address the court in a brief argument. The attorney might argue a lack of argue probable cause, bail concerns, or facts related to conditions of release. If this happens, it will be very brief and you will not speak.
9. At the end of the Arraignment, the judge may ask you to verify your address where the court can send correspondence such as future court dates. If this is not asked, you should assume all court correspondence will be mailed to the last address updated with the Department of Licensing. You should make sure that address is current. The judge or clerk will assign the next court date, which will likely be termed a Pretrial hearing or Omnibus hearing. You should make a note of that date.
10. If you are in the military and know that you will be deployed, you should alert the judge. If you find out later that your deployment conflicts with a scheduled court date, notify your attorney immediately. She can appear on your behalf (usually with proof of your orders) to request a future court date.

11. Remember that you should never discuss the facts of your case with anyone other than your attorney. You may ask the court staff about dates and other matters that would be public information but you should never discuss details about your case or strategy in a public setting with anyone other than your lawyer. If you discuss your case in a public setting at a volume that others could easily hear you, it can be presumed that your conversation is not privileged.

CAN I APPEAR VIRTUALLY?

Whether you can appear in-person or zoom depends entirely on the court protocol where you are criminally charged. For example, in Kitsap County you must in person for your arraignment but, in Thurston County, you can appear via zoom. However, whether Thurston County continues that practice is unknown. So always check with your attorney. If you have not hired a private defense attorney before arraignment, you should contact the court clerk's office where you are being criminally charged. If in doubt, always appear in-person.

Additional Information:

<https://wittlegal.com/blog/why-should-i-call-a-lawyer-before-my-arraignment>

<https://wittlegal.com/blog/what-are-my-rights-at-arraignment>

<https://wittlegal.com/blog/can-i-waive-my-arraignment>

<https://wittlegal.com/blog/i-received-a-summons-for-court-what-do-i-do>

<https://wittlegal.com/blog/am-i-going-to-go-back-to-jail-at-my-arraignment>

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