



# **CHARGED WITH A CRIME IN FLORIDA?**

Helpful Guide To Navigate Your Case

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# **CHARGED WITH A CRIME IN FLORIDA?**

HELPFUL GUIDE TO NAVIGATE YOUR CASE

*By Randy Berman, Esq.*

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*Designed and Published by:*

Speakeasy Marketing, Inc.  
73-03 Bell Blvd #10  
Oakland Gardens, NY 11364

[www.SpeakeasyMarketingInc.com](http://www.SpeakeasyMarketingInc.com)

888-225-8594

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## CLIENT TESTIMONIALS

*“Mr. Berman is an amazing lawyer! I had a DUI charge. I was driving with no head lights, I refused the breath test and I failed all the road side tests. I was very nervous and scared that I would get convicted of a DUI and it affecting my future. Mr. Berman always answers his phone and that is a definite plus! He knows what he is doing and is amazing at trial!! Because of him the jury found me not guilty... I definitely recommend him to be your lawyer.”*

**– Cristina.**

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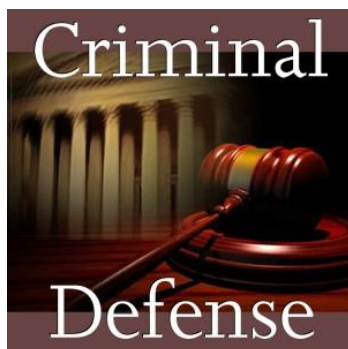
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# AN OVERVIEW OF COMMON CRIMINAL CASES IN FLORIDA

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**Interviewer:** What are the most common types of crime that you represent people for?

**Randy Berman:** I don't have a specific typical crime because having done this



for so many years; I get people with all kinds of different problems. A typical type of scenario is being stopped by the police when you're driving and having them ask to search your car.

## **You Can Refuse to Allow the Police to Search Your Car; it is Well within Your Rights to Do So.**

Most people unfortunately agree to allow the police to search their car when they know they've got some type of contraband in the car. Once the officer has probable cause to conduct the search, they're entitled to search. Refusing to allow them to search is not wrong, you've got that right. Unless they see

something in plain view, unless they smell something that's burning, being stopped for a minor traffic infraction doesn't give rise and allow the police to go searching into your trunk or under your seats. If you agree to let them search without saying "no", then anything they find can be used as evidence to prosecute you.

If you happen to have marijuana under the seat or gun under the seat or some other type of contraband, they're going to be able to get that into evidence in a trial against you if you're charged and agree to the search

## **Theft Crimes are Pretty Common in Florida**

**Interviewer:** Do you handle crimes like theft as well?

**Randy Berman:** Sure, all types of theft. There is burglary, there is grand theft, retail or petty theft, there's embezzlement if you take money from an employer. There's fraud where you use somebody else's credit card or write and deposit someone's



check that didn't authorize it. There's a whole host of different types of thefts that I've been involved with.

## **Drug Crimes are Prevalent in The State of Florida**

**Interviewer:** What kind of drug crimes are you defending people for? Is it marijuana?

**Randy Berman:** Actually I handled an Oxycodone trafficking trial few

weeks ago. That used to be very common until the DEA crack down on pharmacies and doctors



prescribing and filling those types of prescriptions. Or people were faking their illness or pain at a pain clinic in getting the prescription for Oxycodone.

Getting it filled in a pharmacy that was willing to fill it and then taking the prescription out on the street and selling it. Because of crack down and the significant dent that DEA has made in the availability of Oxycodone, surprisingly heroin is coming back as a very popular drug that's being sold on the street. I

have recently gotten a number of heroin possession and sales cases.

### **The Type of Penalties Imposed Depend on the Quantity of the Drugs that are Involved**

The issues are the same regardless of what particular drug someone is arrested for possessing or attempting to sell or selling. The only difference comes in the



type of penalties that are imposed depending on the quantity of the drugs that are involved. The legal questions and issues regarding the legality of the search, the legality of a stop if you're in a vehicle are always going to be the same issues that are argued, as in other crimes.

### **Violent Crimes such as Murder or Assault are also Prevalent in Florida**

**Interviewer:** Have you handled Violent crimes like assault or murder?

**Randy Berman:** I've handled many violent crimes. I used to exclusively do homicide defense. I've done hundreds of first degree murders and had success, robberies, home invasion burglaries of occupied dwellings. Assaults, aggravated assaults, aggravated batteries, batteries, domestic violence, batteries on people over 65.

### **Sex Crimes related to the Internet are increasing**

**Interviewer:** In the long run do you also work with like sex crimes as well?

**Randy Berman:** Sure, most significantly of late I've had a number of clients charged with crimes relating to internet pornography, internet solicitation of minors.



Seems there is a task force of police and federal law enforcement that actively go into chat rooms, posing as minors and trolling for people to engage in discussion and ultimately set up a rendezvous. There

have been a number of cases I've handled recently involving that type of scenario. I have also defended people charged with old fashioned sexual battery, they used to call it rape. Other similar sexual assaults that don't necessarily involve actual rape but maybe unlawful touching. Those types of cases come my way and I handle those as well.

## **COMMON MISCONCEPTIONS ABOUT BEING ARRESTED FOR A CRIME**

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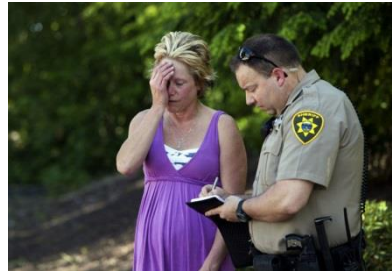
**Interviewer:** What are the top misconceptions that people have about being arrested for a crime when they speak to you about their case?

**Randy Berman:** I don't know if it's a misconception but people make mistakes when they're arrested because of the stress and fear associated with the process making people feel that they've got to say something. It's not a good time to say anything when you're under that type of pressure. It's always best to remain silent, not to say anything even if the police

say that it'll help out the situation or the judge would go easy on them or will put in a good word for them. Police can't promise you anything, only the state attorney can and the state attorney isn't bound by anything that the police tell you.

### **Staying Silent in the Absence of an Attorney; during Police Questioning is the Best Course of Action**

It's always best to remain silent, go through the process, almost always you'll be entitled to a bail and then you post your bail, get out and then do your talking to your



lawyer. There are countless cases where people have opened up their mouth and try to talk their way out of a situation that I've seen that only made their situation worse or made the case for the government where they didn't have a case if they'd kept their mouth shut.

## Common Client Mistakes Detrimental to their Case

**Interviewer:** What are some of the ways that people unintentionally incriminate themselves or work on pending case?

**Randy Berman:** The most blatant example is recently I had a client who was sitting at a beach after hours so it was closed. He wasn't doing anything on the beach, just sitting there. A ranger came up to him and asked him



what he was doing there and he said "I'm sorry the marijuana is in my bag". The officer had no probable cause to search him and had he searched him, and found the marijuana without any permission, it would have been thrown out as an unlawful search but when you volunteer crimes that you might have committed or are committing, the officers don't have to turn their head away. They don't have to close their eyes or plug their ears.

## **Sometimes People voluntarily incriminate themselves by talking too much**

That's the blatant example of making a huge mistake and in essence wrote his own indictment for the prosecution by falling apart when he was merely asked, "What are you doing here?" Any response would have been better than his response like "I'm just sitting here watching the tide". Which would have been followed by, well you know it's after hours, the beach has closed you have to leave. "Okay officer thank you very much, I'll leave". It would be a different circumstance if you were sitting on a beach, smoking a joint in plain view and the officer came up when that happened.

## **The General Public is mostly unaware of White Collar Crimes**

**Interviewer:** Are there any type of crime that you represent people for that the general public usually isn't aware of?

**Randy Berman:** I don't know if people don't know about it but I handled a federal case involving mortgage fraud where the people involved in the conspiracy were getting fraudulent evaluations of the property that inflated the value. With those



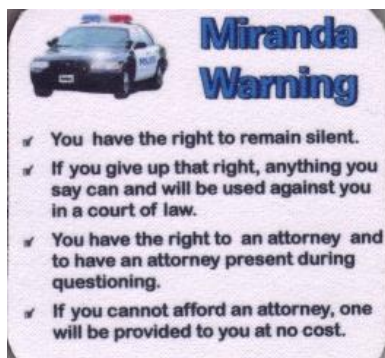
inflated evaluations they were able to get huge mortgages and once the money for the mortgages was given to them, they would take the money and not pay the mortgage. That accounted for millions of dollars in losses by the banks and resulted in federal prosecution for those people that were involved in the scheme.

### **Not Being Read the Miranda Rights does not dispute the Validity of an Arrest**

**Interviewer:** Did you ever get a client who believed that because the Miranda Rights were not read; that their case could be dismissed? Do you ever have that?



**Randy Berman:** Many people have the misconception that if a police officer who arrested them didn't read the Miranda Warnings that the arrest is faulty and the case is subject to being dismissed. What they don't understand is that the requirement of Miranda to warn someone before they give a statement that they have the right to remain silent and that if they make a statement it can be used against them in court, only protects admission of the statement that's made, not anything else.



If an officer stops you for speeding and he asked where you're coming from, where you're going and he doesn't give you Miranda, well those answers might be suppressed but it doesn't prevent them from prosecuting you for speeding. If the officer shows that he clocked you with his radar gun at 50

mph in a 30 mph zone. Miranda doesn't necessarily help in throwing out any case if it's not read; it just helps prevent any statements that you make that could implicate yourself to be excluded from your case. That's all.

## **COMMON REACTION TO BEING ARRESTED AND CHARGED WITH A CRIME**

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**Interviewer:** What did you learn about people's behavior and the reaction to being arrested and prosecuted for a crime? What sort of human insight have you gained into the whole process?

**Randy Berman:** The state of mind is one of fear, total stress, worry and those emotions don't allow you to think rationally or positively for yourself. You just have to remember that if you're arrested, remain silent, be polite to the officer, let the process take its course and you wait to do your fighting through your lawyer not right there on the spot. When you're arrested you're generally going to be taken to a jail

facility. They're going to go through the booking process with the picture and fingerprints. Ultimately you'll either be held in a holding cell or you might be transported to one of the regular cells in the jail.

### **Bail is usually set within 24 Hours of the Arrest**

After the arrest, you're entitled to a hearing within 24 hours before a judge.

Assuming you're arrested at night, the following morning you'll be going to court. The judge will



review the police officer's initial report and bail will be set. Now sometimes bail is set immediately per schedule. They already have preset bail amounts. Once you're booked, if you contact the bondsman and have funds to pay the bondsman, you can get out the same day that you go in.

### **Bondsmen Charge 10% of the total Bail Amount**

When you're alleged to have committed a more serious crime, sometimes there is no bail and you

have to go before the judge the following morning. Here is a tip for people who don't have any prior record. Even though there is a scheduled bail that you could post right away, if you're willing to hold out and go before the judge, many times except for serious crimes, you can be released on your own



recognizance. Meaning you don't have to post any money and you can save yourself the fee that you'd pay the bondsman who gets 10%. If it's a \$10,000 bond, you'd be giving the bondsman one thousand dollars.

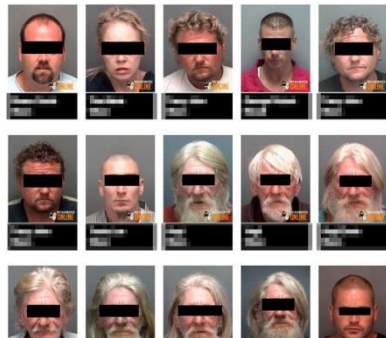
If you hold off and wait to try to get the bond reduced, you save the fee to the bondsman by just waiting less than 24 hours to go before the judge. That's something that you might consider because you probably would prefer spending any money you

have to for your lawyer and not your bondsman who will not return the fee.

## **Public Disclosure of Criminal Charges**

**Interviewer:** When someone is arrested, how public is their situation going to be?

**Randy Berman:** Publicity of an arrest initially comes from the police. If you ask them to contact someone for you obviously they're going to find out what happened but the police won't actively contact your employer or your parents or your wife



unless you ask them to. However because so many internet companies run people's arrest information online, the information does get out that way. Locally here in Palm Beach County the Palm Beach Post has a running site that's attached to the sheriff's department's booking blotter where they publish every person that's getting booked into the county

jail. Some people like to watch this site; it's entertainment for them.

### **There are certain Scenarios in Which Public Disclosure cannot be avoided**

Also depending on the nature of the crime if it's news worthy there is a going to be a story about it in the paper or police digest area. If it's more sensational

then there will be a full headline. Those are the ways your arrest is found out. If the police come and arrest you at home,



neighbors are going to probably hear or see the police. Likewise if you're arrested at your job, everybody at the job is going to see you being arrested. Those types of scenarios you can't avoid the situation being known.

## GUILTY PLEA AND MERCY OF THE COURT

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**Interviewer:** What if I was arrested for a crime and I believe I'm guilty, should I bring myself to the mercy of the court or should I fight the charges?

**Randy Berman:** You should never rely on the mercy of the court at the outset because you don't know what penalties or fines might be mandatory. Many crimes involve mandatory sentences that don't give the judge

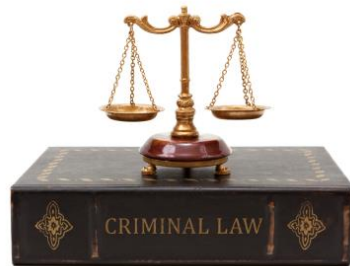


discretion to give you mercy and it would be crazy for you to blindly accept responsibility not knowing what your best case scenario and worst case scenario are going to be. My advice would be never to immediately confess or accept responsibility by pleading right away. You need to find out all of your options first before you make that decision.

## **First Time Offenders are subject to Discretion from the Prosecution**

**Interviewer:** Does it matter if I were a good person or had a family or never been in trouble before, like a first time offense? How do they view first time offenders?

**Randy Berman:** Again it depends on the crime but if there are no mandatory sentences that are



associated with that crime then the judge has discretion in what to sentence you to. The prosecutor has discretion in what to offer you and certainly any positive things about you such as being a first time offender, having specific family problems that caused you to drink and commit the crime. These factors are significant in how the state attorney will look at your case as well as the judge. They have an impact, a significant impact on how your case will be resolved.



## **The Police tend to be Secretive about the Investigation Process**

**Interviewer:** How will I know if I'm under criminal investigation and been charged or will be charge for a crime?

**Randy Berman:** Well the police generally don't announce or broadcast their investigation of any people. They try to keep that under wraps because when someone knows that they are under investigation then any



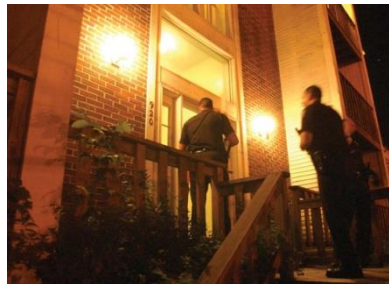
attempt to collect evidence against them or get them to implicate themselves is pretty much gone. If the person is aware , he or she is going to watch everything they do and say, and are cognizant of being watched. The likelihood of someone knowing that they're under investigation and doing something wrong is pretty slim. You have to be not too bright if you know you're under investigation and conduct yourself in any illegal manner.

The answer to the question is you don't know if you're under investigation. You can find out indirectly when someone associated with you has been arrested, for some activity that you're also involved in. That's generally how people find out prior to an arrest.

### **You are not obligated to respond to Police in the absence of an Attorney**

**Interviewer:** Am I obligated to meet with the police or a detective if they call me up?

**Randy Berman:** No, unless they have a warrant to arrest you, you have no obligation to voluntarily go in. If you're told by the police that they just want to talk about



something, it's always best to engage a lawyer first. Give the lawyer the details and have him contact the police for you to try to find out what specifically it's about. Then make the determination of whether it's

in your best interest to sit down and give a statement or not. I recently handled a case where a fellow's house was searched and the police found drugs. He posted Bond and then the lead detective was calling him wanting to talk to him.

He engaged me; I called the officer and discussed with the officer what it was that he wanted to talk about. It wasn't appropriate for the client to be talking to the officer. Now the officer won't bother him



anymore because when they know you are represented by a lawyer they have to engage the lawyer first. It's their obligation to advise the lawyer of their intention of talking to the client.

## THE PROCESS OF INDICTMENT

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**Interviewer:** What does it mean to be indicted?

**Randy Berman:** Well, that's just a method of being charged with a crime. There are two ways to be charged with a crime.

One is by information and that's merely the state attorney drafting a complaint against you



and filing it with court and that's how most people are charged with crimes. An indictment is where the state attorney takes evidence to a grand jury which is a group of people that are selected like a trial jury but they just sit for the purpose of reviewing evidence and allegations against people. The grand jury then votes after they hear the state's presentation of whether to charge the person and if they vote to charge the person that's called an indictment. The indictment like the information is merely a charge,

it's an allegation of wrong doing, it's not proof of anything.

## **The Process of Bail in Florida**

**Interviewer:** How does bail work? What does bail mean? Can it be paid in cash?

**Randy Berman:** When you're arrested you're entitled to a reasonable bail. Most jurisdictions have a preset schedule of Bond amounts for certain crimes. Those bonds can be modified by a judge on a motion to reduce the bond or to release someone on their own recognizance without posting a bond. Once the bond is finally determined by the court and there are no further motions to reduce it, the only way to get out of jail is to post a bond. You can post a bond yourself by paying the full amount of the bond and if you comply by coming to



court and seeing your case to its conclusion without forfeiting your bond you get the money back.

### **If Bail is violated, the Bond Posted is forfeited by a Judge**

The Clerk will deduct some administrative record keeping fees for the clerk that's just usually in the neighborhood of a hundred dollars or so otherwise you get your bond back.

If you can't afford to post the entire amount of the bail, you can engage a bondsman and those people will post your

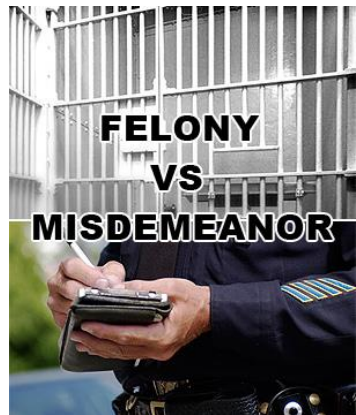


bond through their insurance companies that they're associated with for the full amount of the bond. They get from you a 10% fee for doing that. That fee is theirs to keep and is not refunded to you.

If you jump bail or abscond; the judge will forfeit your bond. If you posted cash, that money goes to the clerk and you don't get it back unless you convince

the court to reinstate it. If you fail to appear or abscond when you're bonded by a bondsman, the bondsmen's insurance will pay the balance to the clerk. The bondsmen will go searching for you to get those moneys returned. The forfeited amount is refunded to the bondsman who surrenders the individual that jumped bail.

If you're fortunate enough to be released on your own recognizance which is your promise to attend all your court hearings until the conclusion of the case, you



are released without having to post a financial bond.

## **The Differences between Felonies and Misdemeanors**

**Interviewer:** What are the significant differences between misdemeanor and felonies? What differentiates that? What do they mean?

**Randy Berman:** Misdemeanors are crimes that carry up to a year in jail and that penalty if it's imposed would be served in the county jail where the crime occurred. Felonies are crimes that carry over a year in jail and if you get sentenced for those crimes you'll serve your sentence at a State prison which can be anywhere in the state. Not necessarily in the area where you were arrested.

## **TYPES OF LEGAL REPRESENTATION IN A CRIMINAL CASE**

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**Interviewer:** What would be benefit of hiring a private attorney as opposed to utilizing the public defender?

**Randy Berman:** Well, generally speaking the public defenders are younger attorneys with a lack of experience. Some are very good but some are not. Even the good ones unfortunately are saddled with huge case loads.



## **Huge Caseloads Render Public Defenders Less Capable of Doing a Good Job**

It's typical for a public defender to have more than a hundred cases pending at any one time. How effectively can a person, even if they're good, do a competent job on a hundred different clients at one time? It's pretty much impossible so, you're running a big risk if you rely on the public defender where you could afford a private attorney who presumably has a lower caseload volume giving him more time and having more experience to do a better job.



### **Self-Representation in a Criminal Case**

**Interviewer:** It is ever a good idea for someone to actually defend himself?

**Randy Berman:** Obviously not. The old saying is, "A man that represents himself has a fool for a client".

There is no way you should ever consider representing yourself. As smart as you might be, as knowledgeable you might be about the law. You can't effectively present your case from an objective standpoint that it needs to be done for success. Even lawyers who get charged with crimes don't represent themselves. They hire lawyers to represent them.

### **Depiction of Law Enforcement Scenarios on Television Rarely correspond to Real Life Scenarios**

**Interviewer:** Do you think it's because a lot of people have easy access to the questions or to the answers on the internet or they may watch a lot of TV and they may feel a little over confident in this case?

**Randy Berman:** TV doesn't depict what really happens. TV condenses it and makes that seem very simple and you don't see from watching TV unless you're watching court TV and watch all the proceedings to know how it really happens. There are so many things that can occur during the course

of a trial if you're representing yourself that you can't possibly be aware of. You might believe that you can defend yourself because you acted in self-defense and you might think, "Well, why do I need a lawyer?"



I can tell the jury how I was defending myself", but do you know how the rules of evidence work? How do statements get admitted? How does evidence get admitted? How to keep adverse matters out? What kind of questions to ask the jury in jury selection? It goes on and on and on, all the different things that you need to know. Just knowing what your defense is and what the law says about the defense doesn't come close to being prepared to effectively try a case.

## **Self-Representation Often Undermines a Legitimate Defense in a Criminal Case**

The embarrassment and humiliation that most people would suffer from trying to represent themselves can very well undermine a legitimate defense that a jury would believe if it weren't for all the errors that they commit when they try to be their own lawyer. If you're making mistake after mistake and it seems that you're trying to play the system, your legitimate defense might be perceived as made up or not sincere. So it's crazy to consider representing yourself.

## **ALTERNATIVE PUNISHMENTS TO JAIL IN THE STATE OF FLORIDA**

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**Interviewer:** What are the alternative punishments to jail that you can get them into?

**Randy Berman:** Alternative sentencing is a huge area that I use for people who are looking at jail. When you have a situation where you decide it's best to accept the best plea offer that includes a jail sentence,

I always look for the alternative that will allow the person to stay out but in a restricted way that the state attorney or the judge would go along with. There is house arrest, where you're literally confined to the four walls of your home.



In that situation they hook you up to a monitor and if you go outside the boundaries of your property the monitor would send on a signal to the police indicating that you've gone too far and you would be violating your house arrest.

### **Probation is one of the Most Common Alternatives to Jail**

Obviously probation is an alternative where you're allowed to remain at liberty but you have conditions imposed on you and you have to report to a probation officer on a monthly basis. For people with drug or alcohol problems a sentence that would

require you to go for inpatient treatment and follow up treatment at a half-way house is an alternative to jail. We always try to seek these types of alternatives to incarceration.

## **The Process of Expungement in the State of Florida**

**Interviewer:** What does expungement mean?

**Randy Berman:** In Florida there are two processes to hide your record from public view. One is called sealing where the court file is sealed and no longer available to anyone but police agencies or governmental agencies so employers or the public can't get access to that to find out what it's about. The other method is expungement which is the wiping out of the record, the actual order of destruction of your record, where it's obliterated by the clerk and by the police or governmental agencies



that had it. Thereby making it really unfindable by anyone.

There's a process to get those. In Florida it can take between 8 months and a year to ultimately get your final sealing or expunging from the time that you initiate the process. It's shorter for sealing because there is one step less to perform. In expunging you initially have to get an application approved by the state attorney where you are prosecuted. The State attorney generally takes three months to return that to you.

### **If Your Eligibility for an Expungement is determined, you will receive a Certificate of Eligibility**

Once you receive the approved application, that and other paperwork has to be sent to the Florida Department of Law Enforcement. They do a background check to make sure that you're qualified for the expungement or the sealing. If they determine that you are they will send you a certificate of

eligibility. That usually takes about six months, sometimes less. Once the certificate of eligibility is given to you, then the motion to seal or expunge has to be filed. The order for the judge to grant a sealing or expunging, is also prepared. A Hearing is scheduled.



Notifying the state attorney and the law enforcement agencies involved. A notice for the hearing is sent out. At the hearing, the motion is argued to the court and most times the judge enters the order granting the expungement or the sealing. There are certain crimes that you can't get sealed or expunged. Those are generally violent crimes or sex crimes.



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Helpful Guide To Navigate Your Case

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