

ARRESTED IN MEXICO AS A U.S. CITIZEN?

A BASIC GUIDE FOR U.S. CITIZENS

*(Please Note-*The information provided herein is meant as general guidance only and may not apply fully to your particular situation. Specific questions about interpreting Mexican law should be addressed to competent Mexican lawyers.)

INTRODUCTION: WHAT YOU NEED TO KNOW ABOUT MEXICO

Mexico's legal system differs from that of the U.S. in a number of important ways that any U.S. citizen accused of a crime in Mexico needs to understand. Most importantly, many of the legal **rights and protections that U.S. citizens enjoy at home do not apply** in Mexico and punishments for many crimes are more severe. Worldwide, Mexico has the highest number of arrests of U.S. citizens abroad and the largest U.S. prisoner population outside the United States.

KEY DIFFERENCES BETWEEN U.S. AND MEXICAN LAW

A fundamental difference between the U.S. and Mexican legal systems is that Mexico is a "civil law" country while the U.S. is a "common law" country. Common law emphasizes case law relying on judges' decisions in prior cases. In contrast, Mexico's civil law system is derived primarily from Roman law and the Napoleonic Code and focuses more on the text of actual laws than on prior court decisions. In the U.S., even one case can establish a legal principle and lawyers need to analyze many cases to interpret the law. In Mexico, one studies the law and makes the best argument given the facts.

“GUILTY UNTIL PROVEN INNOCENT”

For an accused person, one of the most critical differences is that under Mexican criminal law, the accused is essentially **considered guilty until proven innocent**. Mexico does not allow bail on personal recognizance and therefore a cash bail must be posted (which may not be available depending on the potential sentence). Many activities that are not considered crimes in the U.S. may be crimes in Mexico. Additionally, the role of judges in Mexico is broader than in the U.S. Mexican judges are active in developing a case and gathering evidence. In the absence of jury trials, judges also make the ultimate decisions about the innocence or guilt of an accused.

BEING ARRESTED IN MEXICO

When you are arrested you have the **right to contact your consular representative**. The authorities should both inform you of this right and provide access to make the contact. The U.S. Consulate in Tijuana will provide you with an overview of Mexican law and a list of attorneys and, at your request, contact

friends or relatives to advise them of the situation. However, the Consulate cannot provide legal counsel or interfere in the due process of law. Please note that, pursuant to the Privacy Act of 1974, a consular representative cannot release information about your case without your consent.

If you are arrested for a serious crime in Mexico, the police will turn you over to the *agente*, or district attorney's office which could be state or federal, depending on the charge (Serious crimes under federal jurisdiction include, for example: drug possession, alien smuggling, certain firearms/ammunition charges, and possession of counterfeit money. Serious state crimes include: homicide, kidnapping, rape, assault, theft, child pornography, corruption of a minor, driving under the influence breaking/entering, possession of a deadly weapon and property damage.) **The district attorney's office will then conduct a preliminary investigation to determine if the case should be prosecuted.** If they decide to prosecute, the case will be turned over to a judge. The DA's office, state or federal, can keep you in custody up to 48 hours (unless they receive an extension) before deciding whether to charge you. By the end of the 48-hour period, the district attorney must turn your case over for prosecution, set bail, or drop the charges and release you. If bail is not set, or if it is set but you can't pay it, your case will be turned over to a court and you will be moved to a different facility.

Within the 48-hour period, you will be asked to make an official statement about what happened which you may decline to do. If you do make a statement, you are entitled to have an attorney present. If you don't speak Spanish, you are entitled to an interpreter. **Don't sign anything that you don't understand. It is important that you have an attorney representing you when you give your statement** to ensure that your rights are fully protected. Public defenders are available, but large caseloads mean they can't devote the attention to your case a private attorney would. If you hire an attorney, have a written contract stating what they will do and how much they will be paid. Get receipts and make full payment only after all the work has been done.

Once you are turned over to a court's jurisdiction, the judge has 72 hours to determine "probable responsibility," similar to "probable cause" in the U.S. During this period your defense attorney should have an opportunity to present your side of the case. At the end of this period, the judge may release you for lack of evidence, set bail ("fianza," which may not be available depending on the type of crime), or decide to keep you in custody and continue with court proceedings.

Trials in Mexico are quite different from in the U.S. Mexican trials are often split into many separate hearings and testimony and arguments are written rather than live. In the absence of a jury, the judge will decide the case based on the documents presented and impose the sentence. If the maximum potential sentence is less than two years, judges are theoretically required to reach a verdict within 4 months. If the maximum potential sentence exceeds two years, judges normally have up to a year to resolve cases. In practice, reaching a verdict can sometimes take even longer than this. You have the right to request a meeting with your judge while your case is pending resolution or sentencing.

LIFE INSIDE A MEXICAN JAIL

Mexican jails usually do not provide all the amenities that U.S. jails do. Depending on how long you are going to be incarcerated, you should consider making **arrangements with friends or family to have money, food, and other necessities delivered** to you. Many prisons supply only the very minimum of basic necessities. In others, prisoners may have to purchase their own food, clothing, bedding and even pay rent on their cell. Although prison regulations require that prisoners have access to medical care, the standard of care varies widely. You should therefore consider making your own arrangements to be seen by a doctor or dentist. If you are unable to obtain appropriate medical care you may advise Consular employees of your medical problems and they will try to help you obtain the care you need.

Incarceration is a difficult and traumatic experience. These suggestions are offered to help prisoners adjust to the realities of life in a Mexican prison.

Prisoners should try to:

- Learn the written and unwritten rules of the prison and understand the psychology of the guards and inmates.
- Learn Spanish to reduce unnecessary problems.
- Make friends with compatible prisoners to reduce the sense of isolation and create a support network.
- If jobs are available try to obtain one to stay busy and possibly reduce your sentence.
- Guard your health: eat the most balanced diet you can, especially fruit and vegetables.
- Exercise when you can and stay vigilant in dealing with health problems.

HOW THE STATE DEPARTMENT CAN HELP

One of the most important responsibilities of the Department of State and its

Embassies and Consulates abroad is to provide assistance to U.S. citizens arrested in foreign countries. We make every effort to ensure that U.S. citizens **receive equitable treatment in accordance with the Mexican criminal justice system** and are not discriminated against because of their nationality. However, we **cannot provide legal counsel or interfere in the due process of law.**

Consulate employees try to visit every U.S. citizen arrested in our consular district on serious charges soon after their arrest. We inform them of their right to legal counsel, provide them with a list of attorneys they may wish to retain, assist them in contacting an attorney, and obtain personal data which allows us to communicate with family members and friends who may be able to help. In addition, we provide information about the Mexican legal system and the practical realities of serving time in a Mexican prison.

Consulate employees regularly visit long-term prisoners. We typically provide vitamins and reading material for prisoners and will try to ensure that any medical or other serious problems are addressed. We can protest mistreatment or abuse to the authorities and relay requests to your friends and family. Some prisoners are eligible for transfer to a U.S. prison and we will assist those who wish to pursue this option. Since October of 1977 the U.S. and Mexico have had a prisoner transfer treaty allowing most prisoners to transfer to prisons in their own countries after they have been sentenced. Proof of citizenship is required for a transfer. Although transfers are free, prisoners must first pay all court ordered fines. Helping you during this difficult time is our job and we will make every effort to assist you.

For further information or assistance, please contact:

American Citizen Services

U.S. Consulate General in Tijuana

Paseo de Las Culturas and Camino al Aeropuerto

Mesa de Otay, Delegación Centenario

Tijuana, Baja California, Mexico 22425

You can contact them by phone at:

(664)-977-2000 (from Mexico)

011-52-(664)-977-2000 (from the U.S.)

You can fax them at:

664.686.1168 (from Mexico)

011-52-664-686-1168 (from the U.S.)

Or via email: **consulartijuan@state.gov**

An American Officer is available to provide emergency assistance to U.S. citizens 24 hrs a day, 7 days a week, and may be reached, during non-work hours, at:

001-619-692-2154 (from Mexico)

619-692-2154 (from the U.S.)

General information about Mexico may be found at: <http://travel.state.gov>.