

## Right To Counsel: When Are You Entitled to An Attorney?

In criminal cases, defendants have a constitutional [right to the assistance of an attorney](#). Many will hire a criminal defense attorney, or, if they can't afford one, an attorney will be appointed by the court. In most states, every county has a public defender's office, which supplies these lawyers. In others, the state or county simply maintains a list of private attorneys who have volunteered to serve as defense counsel, usually for a flat fee, and hires whoever is available.

The Constitution provides the right to Counsel in the Sixth Amendment, which reads:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, **and to have the Assistance of Counsel for his defense.**”

It is believed that this amendment was designed to address a practice by the British where some criminal defendants, even when accused of capital crimes, were actually barred from having lawyers defend them, even if they hired them with their own money.

The original interpretation of this clause was that the government couldn't *prohibit* a person from having a lawyer defend them in a criminal case, but the state had no obligation to provide a lawyer to defendants who could not afford one.

This began to change in the mid-20<sup>th</sup> century, when the Supreme Court held that states have to provide counsel to defendants who faced the death penalty. In 1963, in the case of *Gideon v. Wainwright*, the Supreme Court held that all defendants in felony cases must be provided counsel if they cannot afford a lawyer. In the 1970s, the right to counsel was expanded even further, with the Supreme Court ruling that everyone is entitled to counsel if they're charged with *any* crime (misdemeanor or felony), a conviction of which would result in jail time.

### **At What Stage Am I Entitled to Counsel?**

The Supreme Court has ruled that defendants are entitled to counsel at all “critical stages” of a criminal proceeding.

The “critical stages” of a criminal case are any time where the absence of counsel might impair the preparation or presentation of a defense. In general, this means any adversarial court proceeding, starting with the arraignment (where the charges against the defendant are first explained).

In *Miranda v. Arizona*, the Supreme Court greatly expanded the right to counsel, holding that, under the 5<sup>th</sup> Amendment protection against compelled self-incrimination, a suspect

has a right to have an attorney present if they are in custody, and being questioned by the police. If this right is violated, anything that the defendant says in an interview not conducted in accordance with the *Miranda* requirements might be inadmissible in court. Because a confession is often the strongest piece of evidence the prosecution has against a defendant, this has the potential to torpedo a criminal case.

Most police departments have a policy where, if the suspect requests an attorney, questioning will stop, since a lawyer will typically advise the client to remain silent, making questioning pointless. Accordingly, police use many clever tactics to convince suspects to waive their right to have an attorney present.

The most common tactic is to tell the suspect that they have some very strong physical evidence against them (this may or may not be true), and that they should give their side of the story. If the suspect requests an attorney, the officer might say something like “if you want an attorney, that’s your right. But if you bring a lawyer in here, I won’t be able to speak with you anymore. That means I’ll have to write this up like I see it, and right now, this looks a lot like [whatever crime the suspect is accused of].”

Tactics like this are often very effective at getting a suspect to waive this very important right.

### **What if I Am Denied Counsel?**

If you are convicted of a crime, and were denied the assistance of counsel at any critical stage of the proceedings, you probably have grounds to appeal your conviction. If the appeals court determines that your right to counsel was violated, your conviction must be reversed.

Furthermore, the Supreme Court has found that the right to have the assistance of counsel implies that the lawyer representing you must be competent. Accordingly, if you can show that your lawyer did not provide you with effective assistance, this is essentially the same as being denied counsel.

Note that, just because you were ultimately convicted, you have not necessarily been denied effective assistance of counsel. You will have to show that your lawyer was truly incompetent, thereby making huge mistakes that ruined what might have been an effective defense.

### **What if I Don’t Want a Lawyer?**

The right to counsel is held by the defendant, and therefore, the defendant has a corollary right to refuse the assistance of counsel.

If you don’t want a lawyer, you will be allowed to represent yourself, as long as you are mentally competent to stand trial. This is a very lenient standard, with some critics saying

that “as long as you can tell the difference between the judge and a cantaloupe,” you’re mentally competent to represent yourself.

Many people have argued that this standard should be much higher, since it often results in people with severe mental illnesses and delusions representing themselves, arguably making a mockery of the judicial system.

Furthermore, if you choose to represent yourself, you will not be able to appeal a conviction based on ineffective assistance of counsel.

In almost every case, it’s a good idea to have a lawyer represent you in a criminal prosecution. In such cases, the stakes are simply too high to leave anything to chance. Whether you [hire a lawyer](#) or choose to let a public defender represent you, you’ve taken the first important step in ensuring that you will get a fair trial.