

## Part 2:

# Everything You Need to Know About Criminal Law

By Guy Fronstin & William "Barry" Paul



Contributing writer **Guy Fronstin** began his career as a Prosecutor in Palm Beach County in 1992. In private practice as a criminal defense attorney since 1996, Guy uses his wealth of insider experience in the criminal justice system and countless trials to aggressively defend his clients. Guy is designated as a Florida Super Lawyer, a distinction limited to only 2.5% of Florida lawyers.

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"The prosecutor represents the State or U.S. government and is very sensitive and attentive to their witness who is the victim in the case."

**Q. Can a Victim drop charges against a Defendant and do I have the right to an attorney?**

**A.** Florida Statutes establish a Victim's Bill of Rights which provides a victim influence in the process and the right to be heard in court. This results in a victim's wishes playing a major part in the prosecution of a case. A victim of a crime may request the State not pursue charges however, ultimately the decision to pursue or abandon a prosecution lies solely with the prosecuting authority. A victim is a witness in a case and they are not technically represented by the prosecutor. The prosecutor represents the State or U.S. government and is very sensitive and attentive to their witness who is the victim in the case. However, victims often hire an attorney to assure that their rights under the Victim's Bill of Rights are honored. Hiring an attorney can also be beneficial to a victim during the investigation of a crime because the attorney can help gather evidence and then present it in legal terms to the law enforcement officers investigating the case which will increase the likelihood that charges will be filed.

**Q. What is the difference between jail and prison?**

**A.** The first distinction between a jail sentence and a prison sentence is where the sentence is served. A jail sentence is referred to as a county jail sentence because the incarceration is served in the county jail where the crime occurred. The second distinction is that a jail sentence can not exceed 365 days. Therefore, county jails house defendants sentenced up to one year in jail on either misdemeanors or felonies. The final distinction is that jails are run by the local Sheriff's Office. Prisons are run by the Florida Department of Corrections and house defendants who receive a felony sentence from 366 days in prison up to death. Prisons are located throughout

the State and the Florida Department of Corrections determines what prison a defendant will be sent to.

**Q. What are the ways a criminal case can be resolved?**

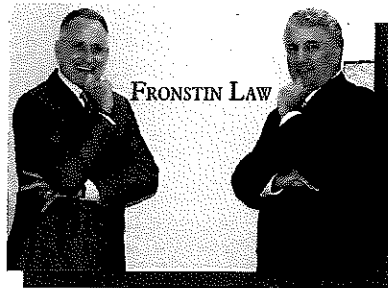
**A.** Criminal cases can resolve in one of five ways. First, at the conclusion of the investigative stage, the state can choose not to file charges (a no file). Second, the State can offer a diversion program which require a defendant to complete certain tasks in return for the state dropping (nolle pros) a case. Third, cases can resolve by a negotiated settlement known as a plea; most cases resolve in this manner. Fourth, defense attorneys can write, file and argue a Motion to Dismiss and if granted by the Court, the case is dismissed. Finally, cases can resolve by trial either by jury verdict or by a bench trial. A bench trial is a trial where the evidence and testimony is presented only to a judge and the judge acts as the "jury" and decides the case.

**Q. What does it mean to appeal a case or verdict?**

**A.** Criminal defendants have a right to an appeal which is the process of asking a higher court (the appellate court) to review what happened in the trial court to determine if the ruling(s) made were legally sound and correct. A defendant can not appeal simply because they lost or do not like a ruling. There must be legal grounds for an appeal which most commonly involve errors made by the judge in either admitting or prohibiting evidence which can occur on pre-trial motion and during trial. If an appellate court decides an incorrect ruling was made it provides direction to the trial court on how to proceed. For example, if the incorrect ruling occurred during a trial preventing the defendant from receiving a fair trial, the appellate court might order the trial court to grant the defendant a new trial. **stb**

## How to Select a Criminal Defense Attorney

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**"Hire an attorney with extensive trial experience who is not afraid to go to trial. Prosecutors give better deals to attorneys they know will take a case to trial."**

**C**hoosing the right attorney can result in charges being dropped while choosing the wrong attorney can result in prison time. Therefore, hiring the right attorney is the most important decision to make after being arrested. However, most people lack the knowledge necessary to select the right attorney — until now! The following are factors to consider when choosing criminal defense counsel.

### What To Do:

- 1.** Hire an attorney with extensive trial experience who is not afraid to go to trial. Prosecutors give better deals to attorneys they know will take a case to trial.
- 2.** Hire a former Prosecutor or Public Defender. They have had more trials in a year than some attorneys have in an entire career. By the time they go into private practice there's virtually no case they haven't seen.
- 3.** Hire an attorney who takes depositions and files pre-trial motions. This process exposes weaknesses in the prosecution's case and achieves the best possible outcome.
- 4.** Hire an attorney with substantial experience with the type of crime they're being hired to defend. For example, an attorney with business experience and success defending business crimes should defend a white collar case and not a DUI because the facts, evidence and law is drastically different in each case. Conversely, an attorney whose practice is DUI defense is better to hire to defend a DUI.
- 5.** If the case is in the news, hire an attorney with media training and experience. An attorney like this will use the media to neutralize the message the public is receiving about a person's guilt, which is crucial since members of the public make up the jury.
- 6.** Hire an attorney respected in the community and recommended by trusted sources with knowledge of the attorney. This prevents hiring an

attorney who is inexperienced or not respected by Judges and prosecutors.

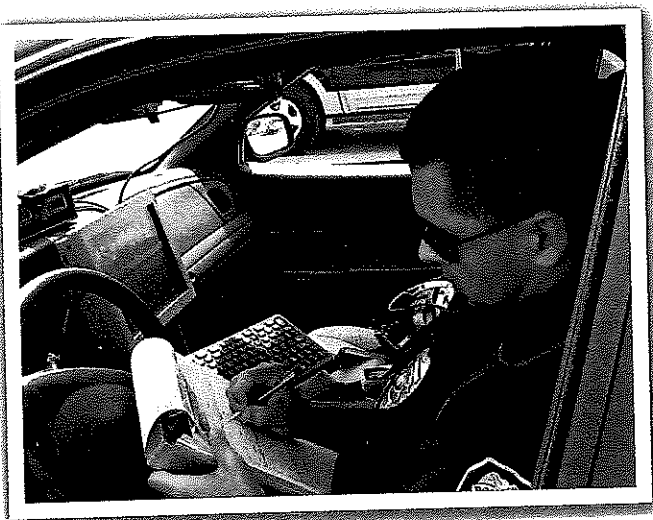
**7.** Interview an attorney before hiring. A client must feel comfortable and trust their attorney. After all, a client is placing their freedom in the attorney's hands. The attorney-client relationship lasts years, so a strong connection between the two is paramount.

**8.** Review the Florida Bar website. The Bar website provides attorney discipline history and confirms the attorney's standing.

### What Not To Do:

- 1.** Do not hire an attorney referred by a bondsman! Bondsmen recommend attorneys who pay them referral fees without any consideration for whether the attorney is competent or not.
- 2.** Do not hire an attorney solely based on the recommendation of a referral company, phone solicitation, or because their name came up first on an internet search. Attorneys pay to be recommended this way so their name coming up has no correlation to their skill level.
- 3.** Never hire an attorney who makes promises. An attorney who makes guarantees or promises is only a salesman. No attorney, no matter how brilliant or experienced, knows the future outcome of a case.
- 4.** Do not hire an attorney solely because they have a fancy website. These websites are designed to attract people through entertaining video and visual effects. However, when reviewing a website, attention should focus on the attorney's career, experience, and successes.
- 5.** Do not hire an attorney just because they are the least expensive. Typically, but not always, this means they are inexperienced, which could adversely impact the case.

Following these guidelines will give a Defendant the greatest chance of hiring the right attorney and of realizing the best outcome in their case! **stb**



## ***DUIs are On the Rise and they're Not Just For "Alcohol" Anymore!***

By Guy Fronstin,  
Criminal Defense Attorney

Did you know you can get arrested for "Driving Under the Influence" (DUI) without having an ounce of alcohol? During the past few years, I have seen a significant spike in DUI and "non alcohol" DUI arrests and convictions. This increase is due to Police and Prosecutors being better trained at identifying impaired drivers and using forensic evidence at trial. Officers and Prosecutors are always looking for new and creative ways to build stronger DUI cases including utilizing Judges to assist in obtaining evidence. Therefore, defending DUIs have become more challenging so hiring a Criminal Defense Attorney, with extensive DUI experience, is more important than ever.

Today, DUI arrests are made and prosecuted even when Defendants refuse the breath test or blow .00, indicating no alcohol in their system. If there's no "alcohol" then how can someone be prosecuted for DUI? The answer is simple. A driver can be arrested and prosecuted for DUI if they are under the influence of alcohol "or" under the influence of an illegal substance/drug. While the arrest of drivers under the influence of "alcohol" is on the rise, the real spike is with drivers driving under the influence of an illegal substance or prescription drug, leading to the recently coined term; "drugged driving."

In past years, Officers were not trained to detect "drugged driving" but,


now they are. Officers now go through extensive training to become "Drug Recognition Experts" (DRE), enabling them to detect and apprehend drivers under the influence of drugs. Training permits Officers to identify what drug a person is under the influence of based upon physical observations. Once an Officer makes an arrest, the case is passed to an Assistant State Attorney, for prosecution.

Assistant State Attorneys/ Prosecutors use the DRE's investigation and observation as evidence at trial along with expert medical testimony from toxicologists about effects of drugs on drivers. Expert witness testimony plus forensic evidence has improved Prosecutors' likelihood for guilty verdicts and convictions.

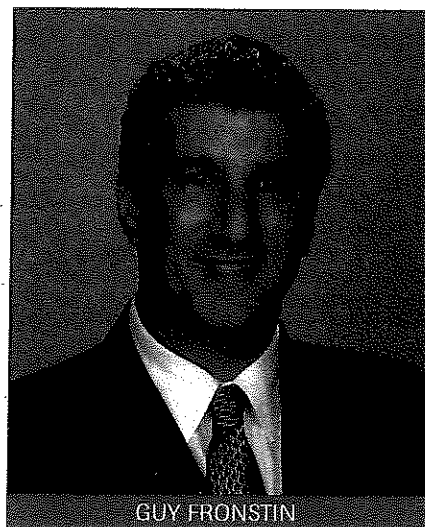
In response to the increase in "drugged driving," Officers and Prosecutors are more aggressive in their investigations and recently began obtaining search warrants for blood when drivers refuse to provide breath tests. Warrants are based on Officers' observations (driving pattern, speech, eyes, etc.) and that the evidence of DUI is located in the driver's blood. When Judge's sign warrants, a driver's blood can be drawn, without their consent.

When evidence exists to charge a driver with DUI, potential penalties, in Florida, are harsh and include permanent criminal record/conviction, probation, driver's license suspension, vehicle impoundment, jail (even for

first offenses), etc. Additionally, it is likely a Defendant's auto insurance premium will significantly increase for years to come.

While "drugged driving" cannot be condoned, such charges nevertheless must be defended to assure that Officers and Prosecutors do not violate our Constitutional Rights when arresting and prosecuting drivers for DUI. If charged with DUI it is important to hire a defense attorney with extensive DUI training, knowledge and trial experience because defending DUI is extremely complex and technical. 

*Guy Fronstin, a criminal defense attorney, is a contributing writer to Simply The Best and began his legal career in 1992 as a Prosecutor and in 1996 established The Law Offices of Guy Fronstin which focuses exclusively on criminal law. [www.fronstinlaw.com](http://www.fronstinlaw.com)*



GUY FRONSTIN

## Criminal Law 101:

# A Series of Articles on Everything You Need to Know About Criminal Law

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"The distinction is quite simple; civil law is about money and criminal law is about liberty."

**Q. How is criminal law different from civil law?**

**A.** The distinction is quite simple; civil law is about money and criminal law is about liberty.

**Q. How is a federal criminal case different from a state criminal case?**

**A.** There are three primary prosecuting authorities in Florida. The first is the United States Government which prosecutes "federal" crimes proscribed by Federal Statutes. The second and third prosecuting authorities are at the state level; they are the criminal division of the Florida Attorney General and the Office of the State Attorney. These agencies prosecute crimes in violation of Florida Statutes. The State Attorney prosecutes cases that occur in their "judicial circuit" which typically consists of several adjoining counties. However, since Miami, Broward and Palm Beach have such large populations their judicial circuits do not include other counties. A crime committed in more than one judicial circuit is prosecuted by the Florida Attorney General.

**Q. What is a Prosecutor, D.A., State Attorney, and U.S. Attorney?**

**A.** All are prosecutors; the distinction lies in who the prosecutor represents and the law of the case. For example, a prosecutor who prosecutes federal cases is called a "United States Attorney" while the State Attorney and District Attorney prosecute crimes that violate state laws. Florida uses the title State Attorney while most other states refer to these attor-

neys as District Attorneys or D.A.s. The United States Attorney is appointed by the President of the United States while most State Attorneys and District Attorneys are elected but some are appointed by a Governor. Prosecutors who work for these attorneys are called Assistant U.S. Attorneys (AUSA), Assistant State Attorneys (ASA), and Assistant District Attorneys (ADA).

**Q. How is a Public Defender different from a Private Criminal Defense Attorney?**

**A.** Public Defenders are often referred to as P.D.s and they either work for the U.S. government or the State government depending on what prosecuting authority brought the case. P.D.s are appointed to represent defendants who a Judge rules is indigent. The services of a PD are free to the defendant although the court can impose a modest fee in the form of a civil judgment. Public Defenders are competent and very hard working but unfortunately their case load is extremely large. A defendant can pay a private criminal defense attorney to defend them and that attorney's case load will be much smaller than the PD's allowing the private attorney to spend more time preparing a defense. The cost to hire a private attorney varies based on the attorney's experience.

**Q. Can a victim get money for being victimized?**

**A.** In a criminal case a Judge can only order a Defendant to reimburse a victim for the victim's out-of-pocket expenses. Therefore, if a victim of a crime wants to be reimbursed for more than their out-of-pocket expenses they must file a civil lawsuit against the Defendant. **stb**



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## What I Need To Know Before and After An Arrest For DUI

By Guy Fronstin & William "Barry" Paul

**Q: What exactly is a dui?**

**A:** DUI is defined as operating a motor vehicle while under the influence of alcohol or drugs to the extent your normal faculties are "impaired". Impairment includes the ability to see, hear, walk, talk, drive a car, act in emergencies, judge distances, make judgments, and in general, to normally perform the many mental and physical acts of our daily lives. To be found guilty of DUI the State must prove these elements "beyond a reasonable doubt."

**Q: What are the consequences of a dui conviction in florida?**

**A:** A DUI conviction is a permanent criminal record that you can never expunge or seal. Additionally, a DUI defendant can be Sentenced to jail, probation, community service, drug and alcohol evaluations and treatment, fines and fees, driver license suspension, and believe it or not, even the car driven during the DUI gets punished and can not be driven for 10 days. In addition to the criminal court suspending a Defendant's driver license, DMV will also administratively suspend the license if the Defendant blew .08 or higher or if they refused to submit a breath test (Note: DMV might not suspend the driver's license if you contact them within 10 days of arrest).

**Q: What evidence will the state use against me to prove the dui?**

**A:** First, if you provide a breath sample, the State will attempt to enter the breath results into evidence. Additionally, the prosecutor will use the officer's "observations" of you,

including driving pattern, smell of alcohol, slurred speech, and bloodshot eyes. The last and possibly most important evidence against a Defendant is their performance on the roadside tasks such as the Walk and Turn, One Leg Stand, Finger to Nose, and Alphabet. While these tasks are performed, the officer is typically video and audio recording them with his body cam and / or with an in-car camera.

**Q: Why should i hire an accomplished dui attorney?**

**A:** DUI is a very complicated offense with a myriad of legal and evidentiary issues and each DUI stands on its own because they are very fact and opinion specific offenses. Every issue MUST be investigated before a Defendant can make an educated and fully informed decision on how to resolve their case. An experienced DUI attorney knows all the nuances of DUI law and how to properly investigate and effectively challenge the evidence so that in the end their client can make an informed decision on whether to settle their case or go to trial.

**Q: How much does it cost to defend a dui?**

**A:** Hiring an attorney is a very important decision. If you hire an attorney to accompany you to the first hearing to plead guilty to DUI or Reckless Driving that will not cost much money. However, that kind of representation does not review, evaluate and challenge any of the evidence and therefore it rarely results in the best outcome for the Defendant. While the cost to hire an experienced and competent DUI attorney can be expensive, the benefit is worth every penny! **stb**



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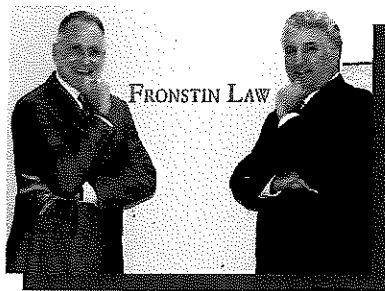
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## What Were The Nuremberg Trials And What Impact Do They Have On Our World Today?

By Guy Fronstin, William "Barry" Paul & Samantha Silverman,  
Tulane University Summer Law Clerk

The Nuremberg Trials arose out of WW2 and were a set of thirteen trials that lasted almost one year involving dozens of Nazi war criminals who promoted and participated in horrific acts against humanity. Adolf Hitler, the leader of the Nazi regime, committed suicide in the final days of the war; therefore he could not be questioned or prosecuted. However, Nazi members, Herman Goering and Heinrich Himmler were some of the most powerful and malicious military leaders that were prosecuted. Not only did the trials serve as a source of justice for people of all race and religion around the world, but they also established the first International Court.

The first trial, which is commonly referred to as, The Nuremberg Trial, had twenty-one Defendants and lasted 6 months. The trial was presided over by four judges from the Allied powers; the United States, France, Great Britain, and the Soviet Union; and began with the Chief Judge reading aloud the four Indictments against each defendant. The charges stated were: 1. crimes against humanity, 2. war crimes, 3. crimes against peace, and 4. conspiracy to commit the crimes. More than two hundred witnesses testified and over two hundred thousand pieces of evidence were introduced at trial. Each defendant presented evidence which they believed exonerated them and proved that their

actions were intended to have positive outcomes.

When the defendants concluded presenting their case, the Closing Arguments began with Chief United States Prosecutor Robert Jackson, delivering the Government's closing statement which he directed at each defendant, individually. Following Jackson's statements, the defendants' attorneys each responded in their own way, even though the most common defense was that the defendants were following "superior orders." Deliberations then began, and in the end, twelve of the eighteen defendants were found guilty and sentenced to death, three were sentenced to life in prison, and four received imprisonment for a duration ranging from ten to twenty years. Three of the twenty-four defendants were found not guilty.

Although there were a number of Nuremberg trials with over 100 defendants prosecuted, many believe countless other war criminals should have been prosecuted but were not. However, the cruelest and most powerful WW2 criminals were tried and held accountable, and in the end, The Nuremberg Trials established an International Court and a worldwide "Rule of Law" and a precedent for trials of war related crimes. As a result of the success of The Nuremberg Trials, the International Court will forever serve as a just and humane model for addressing crimes against humanity. *stb*