

Waiver Trial or Jury Trial?

After the Pretrial, your case is scheduled as a Jury trial or a Waiver trial on a specific date before a specific judge. Where the lead charge is a felony such as an aggravated assault resulting in a serious injury or sexual assault, the case will be assigned to the jury trial list. If the felony charge is less serious, the case is assigned to a judge who presides over waiver trials. A waiver trial is sometimes referred to as a bench trial.

What are the differences?

In a Waiver Trial, a judge hears the evidence and decides if the defendant is guilty or not guilty. In a Jury Trial, the evidence is heard by a jury of 12 citizens who then deliberate and decide if the defendant is guilty or not guilty.

You have a choice:

You have a right to a jury trial. When a defendant has been assigned to a waiver trial, they can request a jury trial. And a defendant assigned to a jury trial can waive that right and have a waiver trial.

However, the DA also has the choice to request a jury trial even if you prefer a waiver trial.

What should my attorney and I consider in making a decision to waive or to request a jury trial?

- There are many reasons to pick one kind of trial over another. Many of the reasons depend upon what the assigned judge is like. This is why your decision should be made only after consultation with your attorney and serious consideration of their advice.
- Here are some questions you might ask your attorney
 - What is our trial strategy?
 - Who is the judge?
 - What is the judge's reputation?
 - What experience do you have with this judge?
 - What is your experience presenting evidence and argument to a jury?

Other considerations:

- Are there facts to be presented rooted in street smarts that would be better understood by a jury than a judge?
- Because a jury trial takes days longer to try:
 - A private attorney will typically charge more for a jury trial than a waiver trial.
 - A waiver trial can be scheduled more quickly than a jury trial.
- Possible impact on Sentencing: After a jury finds a defendant guilty, the judge is more likely to follow the sentencing guidelines. After a waiver or bench trial, if the judge finds a defendant guilty, the judge has more leeway to consider mitigating factors presented during trial.