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## A Guide to Minnesota Criminal Procedures

### What's the difference between felonies, gross misdemeanors, misdemeanors and petty misdemeanors?

Under Minnesota law, felonies are crimes punishable by more than one year in prison. Gross misdemeanors are crimes punishable by up to one year in jail and/or a fine of up to \$3,000. Misdemeanors are crimes punishable by up to 90 days in jail and/or a fine of up to \$1,000. Petty misdemeanors are deemed non-criminal violations of the law punishable by a fine of up to \$300.

### What's the difference between a DUI and a DWI?

DUI means driving under the influence. DWI means driving while intoxicated. These are two different ways to violate Minnesota's prohibition against impaired driving. A person is guilty of driving under the influence (DUI) if his or her consumption of alcohol impaired his or her ability to operate a motor vehicle. A person is guilty of driving while intoxicated (DWI) if his or her alcohol concentration is measured at .08 or more, as disclosed by a breath, blood or urine test, within two hours of driving, operating, or physically controlling a motor vehicle.

### What should I do if I am arrested for a crime?

First, do not resist the arrest. Under Minnesota law, you do not have the right to resist an arrest - even an illegal one. Second, do not make any statements to the police. Anything you say, can and will be used against you in court. The safest thing to say is that you want to speak to a lawyer. If the officer persists in efforts to question you, simply repeat these four magic words: "I want a lawyer." Then, as soon as a telephone is made available to you, contact us at 952-466-6718. We are available 24 hours a day, 7 days a week.

### What should I do if I am charged with a crime?

Call us immediately at 952-224-0182 to schedule a free initial consultation. You should not try to represent yourself on criminal charges, even if you are a lawyer. As the old saying goes, a lawyer who represents himself has a fool for a client.

### What obligations do I have to speak to law enforcement authorities?

You are under no obligation whatsoever to speak to law enforcement authorities. If you choose to speak to them, however, you are obligated to speak truthfully. If it can later be shown that you provided false information to law enforcement authorities, you could be charged with making false statements to them or aiding an offender to escape arrest or prosecution. Your wisest course of action is to tell the officers that you'd like to consult with an attorney first and call us immediately at How much will legal representation cost me?

Every case is different. Therefore, no competent attorney can accurately set a fee without first conducting an initial consultation, during which the lawyer learns from the client all the facts and circumstances involved in the client's particular case. For a free initial consultation call us at 952-466-6718.

Most reputable criminal defense lawyers in the Twin Cities charge "flat" fees, which entitle the client to representation through trial. These fees, typically required to be paid in full in advance of representation, do not go up or down depending upon the number of hours the lawyer works on the case ("hourly" fees), or whether the case is dismissed or resolved through plea negotiations prior to trial ("split" fees). Flat fees for representation through trial usually do not include representation on appeal.

Like most service industries, you usually get what you pay for when it comes to legal representation. Quality representation in criminal cases

costs thousands of dollars. The more serious or complicated the case, the higher the fee. Fees for representation in serious felonies (cases in which a prison sentence is likely upon a conviction) are normally higher than fees for representation in lower level felonies (cases in which a probationary sentence is likely upon conviction), which are higher than fees for gross misdemeanor representation, which are higher than fees for misdemeanor or petty misdemeanor representation. Fees for representation in federal cases are often higher than fees for representation in state court cases.

While you can find cut-rate lawyers who charge less, both your liberty and your future are far too important to cut corners on legal fees. You will likely be dissatisfied with the representation you receive if you hire the cheapest lawyer you can find. To the extent financially possible, you should hire the attorney with whom you feel the most comfortable and in whom you have the most confidence.

### **What is precharge representation?**

Precharge representation is aimed at trying to prevent you from being charged with a crime. Typically, people do not seek representation in criminal cases until they are charged. Sometimes, however, if you are aware that you are a suspect in a pending criminal investigation, a lawyer can keep you from being charged with a crime or prevent you from being charged with a more serious offense. If you are ultimately charged, the lawyer may be able to arrange for a voluntary surrender so you avoid being arrested and having to post bail to secure your release pending trial. In a precharge situation, a lawyer functions as a buffer between his or her client and the investigating and prosecuting authorities. If you have reason to believe that you are a suspect in a pending criminal investigation and would like to discuss precharge representation, call us at 952-466-6718.

### **How is bail typically posted?**

In Minnesota, there are two common ways to post bail. The first is known as "cash" bail. It requires you to post the bail amount in cash. If you fail to appear in court as ordered or otherwise violate the conditions of your release, your bail can be forfeited and you lose the entire amount of cash bail posted. If you make all your court appearances and do not otherwise violate the conditions of your release, at the conclusion of your case you are entitled to a refund of your entire cash bail, less any fines, fees and/or restitution ordered by the court. The other way to make bail is through a "bail bond," posted by a bail bondsman. Typically the way this works is you pay the bail bondsman 10% of the bail amount and sign an agreement to pay the remaining 90% only if your bail is forfeited for failing to appear in court as ordered or otherwise violating the conditions of your release. At the conclusion of your case, if your bail has not been forfeited, you do not have to pay the remaining 90% of your bail amount but you do not receive a refund of the 10% you paid.

### **How long will it take for my case to go through the court system?**

The length of time it will take for your case to go through the court system depends on several factors including whether you are charged in federal or state court, what county you are charged in, whether you are charged with a felony, gross misdemeanor, misdemeanor or petty misdemeanor, and whether your case is dismissed, resolved through plea negotiations, or proceeds to trial. It may require only a single court appearance or a series of appearances. Most cases are disposed of within two to three months. Final disposition of more serious or complicated cases may take more than one year.

### **What happens at an initial appearance?**

While some differences exist between metro and greater Minnesota counties, basically four things happen at an initial appearance in felony and gross misdemeanor cases. First, the court ensures that the defendant has received a copy of the complaint (a formal written document setting forth what the defendant is charged with) and understands what he or she is charged with. Second, the court determines whether the defendant has retained a private attorney, wants a public defender to be appointed, or intends to represent himself or herself. Public defenders are appointed to represent only those defendants who are financially eligible (unable to hire a lawyer). A defendant is entitled to at least one continuance of an initial appearance for purposes of hiring a lawyer. Third, the court determines whether the defendant wants an omnibus hearing scheduled and, if so, whether the defendant wants a "speedy" omnibus hearing (one scheduled within 28 days of the initial appearance). Finally, the court sets conditions of release which can include bail.

### **What happens at an arraignment?**

An arraignment is the first appearance on misdemeanor and petty misdemeanor cases in Minnesota state courts. At the arraignment, a defendant enters a plea of guilty or not guilty. Typically, if a defendant pleads guilty at an arraignment, the court will proceed to sentencing. If the defendant pleads not guilty in a misdemeanor case, a pretrial conference is scheduled. If a defendant pleads not guilty in a petty misdemeanor case, a court trial is scheduled. Because incarceration is not a possible sentence, there is no right to a jury trial in petty misdemeanor cases.

In misdemeanor cases, a financially eligible defendant can request a public defender be appointed to represent him or her. Because incarceration is not a possible sentence in petty misdemeanor cases, public defenders are not appointed but defendants can hire their own lawyers in such cases.

If you are charged with a misdemeanor by a ticket, citation, or tab charge, you can request a formal complaint (a written document detailing the charges) at your arraignment. If you are in custody, the prosecution has 48 hours from the time of your demand to file a complaint. If you are not in custody, the prosecution has 30 days from the date of your demand to file a complaint. If no complaint is filed within these timeframes, the charges against you are dismissed.

### **What happens at an omnibus hearing?**

According to the Minnesota Rules of Criminal Procedure, at an omnibus hearing the court determines: (1) the constitutional admissibility of evidence derived from searches, seizures, interrogations and identification procedures; (2) whether probable cause to proceed to trial exists (whether it is probable that the defendant committed the crimes charged in the complaint); and (3) other constitutional, evidentiary, or procedural issues capable of disposition prior to trial. Due to the size of their caseloads, however, various Twin Cities metropolitan counties have modified omnibus hearings into simply probable cause determinations with all other issues reserved for determination immediately before trial.

### **What happens at a pretrial conference?**

A pretrial or settlement conference affords your attorney an opportunity to meet with the prosecutor in your case and attempt to resolve your matter without a trial. Ultimately, it is the client - not the lawyer - who determines whether a case proceeds to trial or is resolved through plea negotiations.

### **What happens at a trial?**

After litigating any pretrial motions, lawyers select a jury to hear the case. Through a process known as voir dire, the judge and the lawyers question potential jurors about their ability to be fair and impartial in the particular case. Jurors who do not meet that standard are excused for cause. The lawyers may also excuse a certain number of jurors peremptorily for no reason at all.

After a jury is selected, the lawyers make opening statements designed to preview the evidence the jury will hear during the trial. The prosecutor makes his or her opening statement first. The defense attorney then either makes an opening statement, reserves the right to make an opening statement until after the prosecution rests its case in chief, or waives the right to make an opening statement.

The prosecution then presents its case in chief by calling its witnesses and asking them questions on direct examination. When the prosecutor finishes asking a prosecution witness questions, the defense attorney can ask the witness questions on cross-examination. When the defense attorney finishes asking questions on cross-examination, the prosecutor can ask the witness follow-up questions on redirect examination, after which the defense attorney can ask additional follow-up questions on re-cross examination. This process continues until there are no further follow-up questions to be asked.

After the prosecution presents all of its evidence in its case in chief, it rests. The defense then has an opportunity to call defense witnesses who testify on direct examination and are subject to cross examination by the prosecutor. It is important to remember that the defendant has no obligation to testify or to call any witnesses on his or her behalf. The defendant is presumed innocent and the prosecution has the burden of proving guilt beyond a reasonable doubt to a unanimous jury.

After the defense rests its case in chief, the prosecution may present a case in rebuttal by calling rebuttal witnesses. After the prosecution rests its case in rebuttal, the defense may present a case in rebuttal by calling its own rebuttal witnesses.

After both sides finally rest, the prosecution makes a closing argument to the jury. The defense attorney then makes a closing argument after which the prosecution may make a rebuttal argument. The judge then instructs the jury on the law and the jury retires for deliberations and, if possible, renders a verdict.

### **What happens on an appeal?**

A person convicted of a crime has a right to appeal that conviction to an appellate court. The facts that can be considered on appeal and the issues that can be raised on appeal are limited to those presented in the trial court. Appellate courts generally do not reevaluate factual issues; instead they focus on legal issues, such as whether a defendant's statutory, constitutional or procedural rights were violated, and whether the evidence presented at trial was admissible.

If an appellate court affirms a conviction, the defendant can seek further review by the supreme court. Such review is discretionary, however, meaning a defendant has no right to have the supreme court review his or her case. If the appellate court reverses a conviction, it can either discharge the defendant (meaning the case is over) or remand the case for retrial.

### **What is post-conviction relief?**

Petitions for post-conviction relief or a writ of habeas corpus are ways a person can challenge the legality of a conviction or sentence after an unsuccessful appeal or after the time to appeal has expired. Frequently, these challenges involve matters outside the trial court record, such as newly discovered evidence or ineffective assistance of counsel. Generally, issues either raised on direct appeal, or known but not raised on direct appeal, cannot be raised collaterally on a petition for post-conviction relief.

### **What is an implied consent hearing?**

Minnesota's implied consent law permits the revocation of a person's driver's license if the person either refuses to submit to testing or submits to a breath, blood, or urine test disclosing the presence of a controlled substance (other than marijuana) or an alcohol concentration of .10 or more (.08 or more as of August 1, 2005). This license revocation is completely separate from any related criminal prosecution. In order to challenge the legality of this license revocation, you must file a petition for judicial review within 30 days of the date of the notice of revocation. Failure to do so waives your right to challenge the revocation and ensures that this alcohol-related driving violation will remain on your driving record forever, regardless of the outcome of any related criminal prosecution.

If you file a petition within 30 days, Minnesota law currently entitles you to a hearing before a district court judge (without a jury) within 60 days of filing the petition. At that hearing, the Commissioner of Public Safety is represented by the Minnesota Attorney General's Office. Witnesses testify under oath at that hearing and are subject to cross-examination. Issues typically litigated at implied consent hearings include the legality of the stop and arrest, the adequacy of the advisory of rights and obligations under the implied consent law, vindication of the right to consult with an attorney prior to making a testing decision, the accuracy and reliability of the test results, and whether the petitioner refused to submit to testing.

If the judge rescinds the revocation, your privileges to drive are reinstated. If the judge sustains the revocation, you can appeal that order to the Minnesota Court of Appeals.

### **What is expungement?**

Under current Minnesota law, most expungement remedies are limited to a sealing of judicial records relating to arrest, indictment or information, trial, and dismissal or discharge. Generally, if charges are dismissed prior to a finding of probable cause, the prosecuting authority declined to bring any charges, or a grand jury did not return an indictment against an arrested person, he or she is entitled to the return of identification data (including fingerprints, mug shots and booking information). If all pending actions or proceedings were otherwise resolved in the petitioner's favor (dismissed after a finding of probable cause or an acquittal on all counts), there is a presumption that the records should

be sealed. If, however, a petitioner was convicted of a crime or even admitted committing the crime (in some cases), there is a presumption that the records should not be sealed. These competing presumptions play a significant role in the court's balancing the interests of the public and public safety with the petitioner's interests.

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Map and Directions

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