

# What to Expect: The Legal Process for Criminal Charges in Minnesota

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*Listed below are the basic steps and some general information concerning dealing with criminal charges in the State of Minnesota:*

## **Arrest**

A law enforcement officer may arrest a person if he or she has probable cause to believe that a person has committed a specific crime. When an arrest is made, the person accused of a crime may be ticketed and released, or taken into custody and transported to the police station. At the police station they are fingerprinted and booked.

## **Filing a Complaint**

The Summons and Complaint is mailed to the Defendant. This document will inform the person of the charges. There are four levels of offenses in Minnesota.

- *Petty Misdemeanor* – Examples of petty misdemeanors include minor traffic offenses such as speeding. A person will not serve jail time if they are convicted of a petty misdemeanor. The maximum penalty is a \$300 fine. Typically, a formal Complaint is not issued in petty misdemeanor cases. Instead, the person receives a ticket. A petty misdemeanor is not a criminal offense.
- *Misdemeanor* – Examples of misdemeanor cases include: disorderly conduct, thefts of \$500 or less where a dangerous weapon was not involved, first time DWI where the reading was .08 or more but less than .20, and first time 5<sup>th</sup> degree assault. The maximum penalty for a misdemeanor is 90 days in jail and/or a \$1000 fine. Typically, a formal Complaint is not issued in misdemeanor cases. Instead, the person receives a ticket, also called a tab charge. If the Defendant wants a formal Complaint from the prosecutor, either he or his lawyer (if he is represented by an attorney), must request a formal Complaint.
- *Gross Misdemeanor* – Examples of some gross misdemeanors include but are not limited to: first time DWI with test result .20 or more, some repeat DWI offenses, fifth degree criminal sexual conduct, and certain theft charges where a dangerous weapon was not used and the amount of the alleged theft was more than \$500 but not more than \$1,000. The maximum penalty for a gross misdemeanor is one year in jail and/or a \$3000 fine.
- *Felony* – Examples of felonies include: murder, armed robbery, most drug offenses, most criminal sexual conduct offenses, criminal vehicular operation where there was substantial or great bodily harm to another person, a fourth DWI offense within a period of 10 years, and theft where the amount of the alleged theft is over \$1,000. The maximum penalties for a felonies range from a year and a day in prison up to life imprisonment, depending on the type case. Maximum fine amounts also vary based on the severity level of the alleged offense.

## **Sentencing Guidelines**

The State of Minnesota has developed sentencing guidelines for felony level offenses which take into account the severity level of an offense as well as the Defendant's prior criminal history, called the criminal history score. The Sentencing Guidelines Grid lays out this information in a grid format with the severity level of the offense on the left hand side (vertical axis) of the grid and the Defendant's Criminal history score on the top side (horizontal access) of the grid. The grid will tell a Defendant the presumptive sentence in his or her case, however, the court may consider aggravating as well as mitigating circumstances in determining the sentence in a particular case.

A person accused of a felony level offense should consult with an attorney regarding the penalties that could be imposed in his or her particular case were he or she to be convicted.

## **Bail Hearing**

If the person is taken into custody remains in jail, he or she must be brought in front of a judge to determine the conditions of his or her release. At the Bail Hearing, a Judge will determine if a Defendant will be released on his own recognizance (ROR) with the promise that he will appear in court.

Alternatively, the judge may decide that a person is a flight risk and/or that he or she is a danger to the public safety *as well as* weigh other factors in determining that a certain bail amount be set in a particular case. As a general rule, it is a very good idea for a Defendant to arrange to have a lawyer present at the bail hearing if possible so that the attorney can argue for a lower bail or that the defendant be released on his own recognizance.

Timing of the Bail hearing: Under the Minnesota Rule of Criminal Procedure, a defendant shall be brought before a judge or judicial officer without unnecessary delay and in any event, not more than 36 hours after the arrest. However, this **36 hour rule** is does not include: the date of arrest, Sundays, or other legal holidays. For example, it is common that a person arrested on a Saturday morning would not have his bail hearing until Tuesday morning by noon although this is more than 36 hours after he was arrested because the 36 hours did not begin to run until Monday morning at midnight. The only bright spot here is that a person is entitled to credit against his sentence for all time spent in custody. In some cases an attorney may be able to help a Defendant get released before a formal bail hearing is held. So, an attorney should be consulted as soon as possible.

## **Arraignment**

At this stage, the Defendant attends an arraignment, which is also called the Initial Appearance, where the Judge or an attorney reviews the Complaint with the Defendant and explains the right to have an attorney for representation, and, most importantly, his right to have a jury trial in any criminal case in which jail time *could be* imposed. If it has not already been done, a bail amount and/or other conditions of release may be set at the Arraignment hearing or the Judge may instead decide to release the Defendant on his or her own recognizance (ROR) with the promise that he or she appear at the next scheduled court date. Unless the defendant pleads guilty at the Arraignment, the Judge will set a future court date for defendant to come back to court to attempt

to settle the case. The second appearance is scheduled generally one month to six weeks after the Arraignment.

### **Discovery**

After the Arraignment, the Defendant's attorney will serve a formal request for Discovery in the case. Upon request, the County Attorney's Office must give the attorney all the documentation that they have in their possession that relates to the Defendant's case. This documentation generally includes the police reports, transcripts of any tapes of statements that were made by the defendant or other witnesses during the initial investigation and any videos or recordings that were obtained at the time of arrest. Generally, there is a small out of pocket copying and processing cost associated with obtaining these reports which must be paid before the police reports, copies of statements and other discovery material will be provided.

### **Settlement**

The next is the settlement phase. There are several different types of hearings at this stage and the Defendant may need to attend more than one hearing depending on the case. Many cases are settled at this stage. The types of hearings that the Defendant may be required to attend are:

- Omnibus Hearing – A hearing to attempt to settle the case and/or litigate legal issues and motions.
- Contested Omnibus Hearing – A hearing to contest the admissibility of evidence at trial that Defendant and his or her attorney believe was obtained in an unlawful or improper manner. A defendant *will need to* consult with an attorney to determine what the relevant law is and whether it would be worthwhile to contest the admissibility of a particular piece of evidence.
- Pre-Trial Hearing – this hearing is an opportunity for the attorneys to discuss the facts of the case and attempt to resolve the case prior to trial.

### **Trial**

If no resolution has been reached during the settlement phase, the case will then be set for a court or jury trial. In misdemeanor and gross misdemeanor cases a defendant is allowed a six person jury trial or, instead, a trial to a judge which is called a court trial. Felony cases allow a defendant to have a twelve person jury trial or a court trial. The defendant is allowed to choose if he or she would like a jury trial or a court trial. If the defendant wishes to waive or give up his right to a jury trial, and have a court trial instead, this must be done on the record in open court.

### **Sentencing**

If at any time the Defendant pleads guilty, or is found to be guilty after a trial, a Sentencing Hearing will be held. Depending on the severity of the offense, sentencing may be done right away after the plea is entered, or on a different day after a pre-sentence investigation has been completed by probation.

Sentences can include: jail or prison time, sentence to service work for the county, being subject to electronic home monitoring, being required to perform community service work, pay fines and/or restitution, and being on probation or parole for a period of time, as well as other conditions that would be set by the judge and/or the probation or parole officer acting under the direction of the judge. *Examples of some other conditions* that might be set on a particular defendant include: obtaining a chemical dependency assessment and then attending classes or

chemical/alcohol dependency treatment, obtaining an anger management assessment and then attending anger management classes, completing a victim impact panel sponsored by MADD or a similar group, being required to remain law abiding and having no same or similar offenses for the period of probation, being subject to random testing at the direction of probation, and/or following other rules to be determined by the Judge or the defendant's probation officer. The Defendant may also lose his or her driving privileges, or the right to possess a firearm for a period of time as a result of a criminal conviction.

**Note that the above list** is not exclusive as the court or the probation department may impose other conditions that are not listed above as part of a Defendant's sentence relating to the specific circumstances of that particular offense.

**DISCLAIMER:** The above information is deemed to be true and accurate. However, the law is constantly changing and evolving and the above information is intended only to be a basic primer regarding the steps involved in responding to charges in a criminal matter in Minnesota. A person charged with a crime should consider the above information to be one source of information, but will also need to seek out other sources of information and to obtain specific information about the crime with which he or she has been charged. The above information is **not intended to be a substitute** for consulting with an attorney about the law and the procedures relevant to a any specific case. **Any person who is charged with a criminal offense is advised to consult with an attorney to obtain advice regarding his or her specific legal situation.**