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CRIMINAL COURT IN MINNESOTA:
Understanding the Process so You can Sleep at Night

When you or a loved one is accused of a crime, your whole world can be turned upside down. There is a lot at stake, from your criminal record to your freedom, your reputation, your job and ability to earn money for your family, as well as the stress that the entire process puts on you. We also understand the fear of the unknown, like how the process works. We like sharing this information because we believe helping you become informed has two benefits. First, by understanding how the process generally works, you can sleep a little easier at night because you have less fear of the unknown. Second, when you understand the process, you are more able to make important decisions in your case with your lawyer. We hope you find this information to be useful both before your case begins as well as to refer back to as your case makes its way through the process.

Please take note that this free booklet is for Minnesota state court cases, not federal cases. The process is entirely different for federal cases, so if you or a loved one are facing a federal case, please ask us for our free Federal Process booklet. If you are unsure if you're being charged with a federal crime or a state crime, you can look at the Summons and Complaint or Indictment. If the plaintiff is the State of Minnesota, then you are being charged with a state crime. If the plaintiff is the United States of America, then you are being charged with a federal crime.

THE BEGINNING

In Minnesota, there are a few ways to be charged with a crime. The first way is to be given a ticket or "citation." The second way is to be arrested and held in jail. The third way is to be mailed a Summons and Complaint. The last (and most uncommon) way is to be indicted by a Grand Jury.

You may be surprised to learn that in most criminal cases, the police reports and other prosecution evidence (called "Discovery") are not ready or available before or at the first hearing. This is another reason why pleading guilty early can be dangerous, because sometimes the police reports have information that may help get the case thrown out or charges lowered. The rules do not require the prosecution to have all of the evidence ready by the first hearing.

If the Person IS IN Jail (if they are NOT in jail skip to the next heading)

There are two goals if someone has just been arrested and put in jail. First, we want to protect them from making their case worse. If a person has been arrested and is in jail, you should be aware that their phone calls to you are being recorded and monitored by the prosecution and police. Therefore, it is usually beneficial NOT to talk about the facts of

the case over the phone with the suspect while they are in jail. We have had many cases in court where the prosecution brings jail phone recordings to trial and attempts to use them against the defendant. So be aware that your conversations with them are recorded and it's generally best not to discuss the facts of the case over the jail phones.
The second goal is to get them out of jail as quickly and cheaply as possible. Sometimes that can be done in a matter of hours. Sometimes it takes days. We discuss that below.

If you have a loved one that has been arrested, you should talk to an experienced criminal defense lawyer as soon as possible. We are trained to protect the accused and are aware of methods, when possible, to help them get released from jail. In addition, in many cases it is beneficial to have a lawyer and their investigator begin an investigation as soon as possible so that any defenses to the case are preserved and fully developed before evidence and witnesses go missing or memories fade. For example, sometimes witnesses are only in town for a short time, or they are later pressured not to testify. Other times evidence goes away or crime scenes change. The sooner we can go gather information, the better we can protect the person that has been arrested.

If a person is arrested without a warrant, then they usually have to be formally charged within 36 or 48 hours of the arrest, excluding the day of the arrest, weekends, and holidays. For example, if your family member is arrested on a Saturday, the 36 or 48 hour limit does not begin until Monday at 12:01 a.m., which means that they could be held until Tuesday at noon (for 36 hours) or even until 11:59 p.m. (for 48 hours). because weekends do not count towards the time computation.

If your loved one is not charged within the time limit, then they must be released from jail unless an arrest warrant or "body only" hold is issued by a judge.

If your loved one is charged <u>while they are in jail</u>, then their first hearing will be a "bail hearing, also called a Rule 5 hearing. The purpose of the bail hearing is for judge to inform the defendant of the charges and his/her rights. At that hearing, the judge has a few options. The judge can:

- Set the defendant free on their "own recognizance." This means the defendant promises to come back to court for their next hearing without any other rules.

- Set "conditional release." This means that the judge will let them out without any bail as long as the defendant follows certain conditions. Some examples of conditions are no alcohol or drug use and random testing, no contact with the alleged victim, or no possession of firearms or weapons.

- Set bail. This means that a judge sets a dollar amount for bail. Sometimes a judge with give a defendant an option of "bail with conditions." For example, the defendant would have the option of posting $10,000 with conditions like remaining drug and alcohol free with random alcohol and drug testing or no contact with the alleged victim in an assault case. The judge will then also set "unconditional bail in a higher amount, for example $10,000 with conditions or or the alternative of

posting $50,000 bail with no conditions. A lawyer can help advocate for lower bail amounts and reasonable conditions, if desired.

To reach their decision, a judge considers a number of factors. They include but are not limited to the defendant's prior criminal record, their ties to the community, the severity of the alleged crime, and the defendant's financial status.

If the Person is NOT in Jail

In many cases, a defendant is not arrested. Rather, they are given a ticket at the scene, or mailed a Summons and Complaint or citation and given a court date. If you have received a ticket or Complaint in the mail, then you usually will not have to worry about bail being set. You may still have to deal with conditions for release, as discussed above.

If you are not in jail, then your first court hearing is called an "Arraignment" or "First Appearance." The purpose of the hearing is for court to inform you of the charges against you and your rights, like your right to remain silent and your right to have an attorney.

One common myth is that a court case only lasts one hearing. While that happens sometimes, it is generally not a good idea to plead guilty at the first hearing. This is because the evidence, including the police reports, usually have not yet been provided to defense counsel, and there is usually no opportunity to fully investigate the case and prepare all potential defenses in time. Dedicated defense lawyers will usually advise their clients to plead not guilty or not to enter a plea at the first hearing. This is because it is too early for defense counsel to properly advise the defendant on the strengths and weaknesses of their case without reviewing all the evidence the prosecutor has, and to conduct our own investigation.

Many people are worried that it will be held against them if they plead "not guilty" at the first hearing. In the majority of situations, the answer is no. Judges and prosecutors do not hold it against a defendant for pleading not guilty at the first hearing, in fact, they generally expect that to happen if you have a good defense lawyer. You always have the right to change your plea to guilty later in the process, but once you plead guilty, it is very difficult to withdraw your guilty plea. As always, you should discuss this decision with an experienced criminal defense lawyer.

Part of the procedure is slightly different depending on whether the most serious charge is a Misdemeanor, Gross Misdemeanor, or Felony. Assuming you choose to plead not guilty in the beginning, the following is the common path a case takes when we represent a client:

Misdemeanor: We usually will enter a plea of Not Guilty and schedule the next hearing, which is called the Pretrial. In most jurisdictions and for most misdemeanor charges, you may not need to appear at the first hearing if you have a lawyer. In those particular cases, we will ask you if you want to sign a "Waiver of Presence" and allow us to appear and enter a not guilty plea for you. This will not be held against you. We will then schedule the next court appearance on your behalf and let you know when your next court date is. You will be required to appear at all subsequent hearings. Do not assume that you do not have to go to your first hearing. Rather, you should assume you have to go unless you have signed a Waiver of Presence and your lawyer has told you that you do not need to attend.

Gross Misdemeanor and Felony: You must attend the first hearing if you are charged with a gross misdemeanor or felony. The judge and your lawyer will go over your rights with you, let the judge know that you understand the trial rights and that you have reviewed the complaint, and then will schedule the next hearing date. If release conditions were previously set, your lawyer can ask the judge to reconsider those conditions if appropriate. If release conditions were not previously set, the judge may address them at this hearing. You must appear at all future hearings.

If for some reason you choose to plead guilty at the first hearing, then you will either be sentenced that same day, or you will be given a "sentencing" date to return to court.

If you do not plead guilty at the first hearing, then your case will keep going, as discussed below.

THE SECOND HEARING: PRETRIAL / OMNIBUS

In Minnesota, different counties have slightly different procedures. So the information below is generalized for what is most common.

The second hearing may be called a "pretrial," or "omnibus," or "Rasmussen" hearing.

Depending on when the Discovery comes in (sometimes it's weeks or months before the pretrial/omnibus, other times it is only days before), at or before the Pretrial / Omnibus hearing, your lawyer should discuss the strengths and weaknesses of your case based on the alleged evidence provided by the prosecutor, your version of the events, and our investigation of the case as well as any other helpful evidence. You should ask your lawyer for a copy of your discovery so you are aware of what law enforcement and witnesses are saying happened. Your lawyer should have no problem giving you a copy of all of the discovery or at least making it available for your review.

The purpose of a pretrial hearing is for the court to see if the case can settle, and, if not, to see if there are issues that the defense and prosecution disagree about that can be resolved early (such as whether the prosecution should have to reveal additional evidence to the defense) so the case can keep moving efficiently.

Sometimes there is still evidence that is missing from the case or other barriers to settlement. If that happens, the pretrial hearing could be "continued" for another pretrial date, or it could keep proceeding to the next step.

A good lawyer should be prepared for the pretrial hearing by being familiar with the file. This means being aware of any missing evidence, when possible, as well as potential legal defenses available to you.

In most situations, your lawyer will receive an offer from the prosecutor to settle your case. The offer usually comes at the Pretrial / Omnibus hearing. Your lawyer should relay the offer to you and make a recommendation based on all of the evidence, any defenses available, and your wishes. You have an option to counteroffer, but the prosecution has the right to reject your counteroffer. Sometimes they accept it, sometimes they don't. Your lawyer should counsel you regarding how reasonable the offer is (sometimes they are, sometimes they aren't), and discuss the potential advantages / disadvantages of accepting the offer (pleading guilty) or rejecting the offer. You and your lawyer should also discuss the strengths and weaknesses of your case. You then have a decision to make:

1. If you decide the offer is a suitable resolution, you can accept the offer and plead guilty the same day.
   If you plead guilty, this may be your last criminal court appearance *or* you may have to return for sentencing;

   OR

2. You decide the offer is not best possible resolution considering the facts of your case. Many cases do not resolve at the pretrial because the offer is not good enough or because you are innocent. In other words, if the offer is to plead guilty and serve the same sentence that the judge would give you even if you lost at trial, then there is little incentive to plead guilty. If you reject the offer, you will be assigned another court date. The next court date could be a Rasmussen/Contested Omnibus or a Settlement Conference or a Trial date.

RASMUSSEN/CONTESTED OMNIBUS
(also called Evidence Suppression Hearing)

If your case is not resolved at the Pretrial / Omnibus hearing another hearing will be scheduled. If evidentiary or constitutional issues exist, we will schedule an evidence suppression hearing. Depending on the level of offense, this hearing will be called a Rasmussen hearing (Misdemeanor) or a Contested Omnibus (Gross Misdemeanor or Felony).

Here are some examples of what we mean by "evidentiary or constitutional issues." Let's say the police have you in custody and they start asking you questions without reading you the Miranda warning. Your lawyer could ask for a hearing to throw your statement to police out of evidence because the police violated the Constitution when they did not advise you of your rights before you talked to them. Another example is if the police pull you over without a traffic violation occurring. Your lawyer could argue that police violated the constitution when they pulled you over without a "reasonable, articulable suspicion." Other common issues for Rasmussen/Contested Omnibus hearings include searches without a search warrant, whether there is probable cause for arrest, whether a photo or in-person lineup for identification is admissible in evidence, and whether the defense is entitled to any extra evidence it is seeking that the government or other entities are not agreeing to give to the defense. There are many other issues, these are just a few examples.

> **Rasmussen**: The Rasmussen hearing may be scheduled in advance of trial or actually may take place on the "trial" date, depending on the county. However, the evidence suppression arguments will take place prior to going to trial. The court schedules the hearing on the calendar with people who are ready for trial. No trial will occur until the evidentiary issues are addressed.
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> **Contested Omnibus**: The Contested Omnibus hearing will have a date scheduled specifically to address evidentiary issues. Some counties have it on the day of trial, and other counties have it weeks prior to trial.

At the hearing, you will have another opportunity to plead guilty. The offer may have changed, for the better or worse, or remained the same from the prior hearing. Each case is unique in that sense.

The purpose of the Rasmussen or Contested Omnibus hearing is to challenge the admissibility of evidence and to ask a judge to decide if any of your constitutional rights were violated in your case, and then to ask for the evidence to be suppressed or for charges to be dismissed. There is a difference between the two. Let's say for example that the judge agrees that your statement to police needs to be thrown out of evidence because it violated Miranda. If the prosecution has other strong evidence that you committed the alleged crime, then your case probably will not be thrown out, but your chances are trial may be much better than if your incriminating statement stayed in evidence. Other times, if the judge throws out evidence, your whole case will be thrown out. For example, if your incriminating statement is the only good piece of evidence the prosecution has, and now they can't use it, then your case may be dismissed. Or if the judge rules that police violated the constitution when they pulled you over, then they may not be able to use the evidence they found in your car when they searched it, so your case can be thrown out. Each case is unique.

Sometimes evidence or a case will be thrown out. Other times the judge will rule that the constitution was not violated. The judge's ruling sometimes helps clarify your decision on whether to keep going with your case and go to trial, or if it makes sense to settle and plea to some charge. Your lawyer should explain the options again after the judge makes their decision.

How does a Rasmussen/Contested Omnibus hearing work? The jury will not be present. The judge, prosecutor, you and your attorney, and any witnesses will all be there. The prosecutor will call their witnesses first. The officer(s) will testify regarding the evidence at issue. The prosecutor occasionally has additional witnesses. Your defense attorney will have an opportunity to cross examine all of the prosecutor's witnesses to challenge their credibility and knowledge / understanding of the evidence at issue. After all of the prosecutor's witnesses are done testifying, then your lawyer can call witnesses to testify. In addition, you have a right to testify, or you can choose not to testify. Any testimony at the Rasmussen/Omnibus hearing cannot be used against the you at trial, unless you commit perjury or change your story at trial. The prosecutor will have an opportunity to cross examine all defense witnesses. The decision on what, if any, witnesses to call for the defense, including whether you testify or not, is an important one and must be made on a case-by-case basis. Your lawyer should advise you of the pros and cons prior to the hearing as well as after the prosecution finishes with their witnesses at the hearing. Having an experienced lawyer makes a difference for these situations.

After testimony has concluded, the judge will either (1) have the attorneys argue their respective positions, or (2) have the attorneys submit written arguments. The judge can either A) make their decision right away, or B) take the matter "under advisement" and make their decision several weeks later, usually in writing. Your lawyer will get a copy of the decision and will let you know when it comes. This is another good time to decide whether a trial or plea is your best option.

TRIAL

If the judge does not dismiss the entire case after the Rasmussen/Contested Omnibus hearing, a trial will be scheduled. You have the right to a trial to the judge or to a jury (6 jurors for Misdemeanor / 12 jurors for Felony). You are presumed innocent and you have the right to remain silent throughout the trial or to testify for yourself. The prosecutor must prove you guilty beyond a reasonable doubt.

A lot of work goes into preparing for a trial. This is another place where having an experienced defense attorney makes an enormous difference. The reality is that most defense attorneys have only taken a handful of cases to trial. Having a defense attorney that has taken many cases to trial helps because the attorney is in a better position to be sharp on their trial skills and has probably encountered several odd issues that seem to pop up in trials. It is safe to say that hardly any trials go 100 percent according to the script. Experience helps a lawyer expect the unexpected as well as being able to adapt to and positively respond to surprises.

For jury trials, the trial begins with any "motions in limine." These are motions that the prosecutor, your defense lawyer, or both may bring in order to set the ground rules for the trial and any other evidentiary issues remaining. After that, jury selection (called Voir Dire) happens. Picking a jury of your peers is not what it sounds like. The reality is that jury selection means getting rid of the worst jurors for your case, and beign left with the rest. The defense can make 5 strikes without cause, the prosecution gets 3.

After jury selection, each side can make opening arguments, which preview the evidence the jury will see, so the jury gets an overview of the case.

The prosecution then begins their "case in chief" where they present witnesses and evidence to prove each element of each charge. One by one, they call their witnesses to testify on the stand. The defense gets to cross examine each witness, attempting to create reasonable doubt.

When the prosecution is done presenting evidence, it will "rest." At that time, your lawyer may bring a "motion for acquittal" on some or all of the charges. These are difficult to win, but they are successful sometimes. If the judge agrees, then your charge will be taken away from the trial. If there are other charges still surviving, then the trial keeps going but only for those other charges.

You have a right to present your defense to the jury. Sometimes you and your lawyer will decide that no defense is necessary because you believe there is already reasonable doubt. Other times, you may choose to call witnesses to testify in your defense. The prosecutor gets to cross examine your witnesses. In addition, you can testify or remain silent. If you testify, the prosecutor will get to cross examine you, and some evidence in your case may be admissible to the jury if you testify whereas it may be confidential if you do not testify. Your lawyer will discuss that with you in advance.

After the defense is done, then the defense rests. The prosecution then can try to call any "rebuttal" witnesses if they have any. The judge will decide if the prosecution can do this. After that, the prosecutor and defense lawyer make closing arguments, and then the judge instructs the jury on the law and the rules of deliberation. The jury then goes to the jury room, selects a foreperson, and begins deliberations. To be convicted, you must be found guilty beyond a reasonable doubt by every single juror. If even one juror does not think you are guilty, then you cannot be found guilty and you will not be convicted. If you are convicted, you have the right to ask the judge to overrule the jury's verdict. You also have the right to appeal your case.

WHAT ELSE HAPPENS?

There is a lot more that goes into a case than what is written above. Each phase takes good preparation by your lawyer. In addition, in most instances, you can be doing things to help your situation. An experienced lawyer can and should help develop a customized roadmap for you of things you can do to help your situation. This can make a difference for plea negotiations, trial testimony, and any sentencing options a judge may have. It can also help put your life in a better place, regardless of how your court case pans out. That is important for you and your family and is often overlooked by many lawyers.

FOR MORE HELP

Remember, the information above is just a basic summary of the criminal court process in Minnesota. Every case is unique, and there are too many fact-specific variables to cover

every situation in one document. Therefore, this information should not be relied upon for legal advice. The best thing you can do to protect yourself is to consult with an experienced criminal defense lawyer that has a history of successful trial and negotiated results. We also recommend finding a lawyer that cares not only about your court case, but your life outside of the courtroom as well. The more we can do to put your life in a better place, the better. Finally, we believing that the more you know, the better off your case can be. That is why we share this information with you, and we hope you find it to be helpful, and hope you can sleep a little better by understanding the process. If you would like more help with your case, please contact us to set an appointment: Ryan Pacyga Criminal Defense 612-339-5844 or visit our website at www.ArrestedMN.com

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