

**ALL ABOUT YOUR
CRIMINAL CASE**

Prepared By

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INJURY CLAIMS * CRIMINAL DEFENSE

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A criminal charge can be one of most devastating events of a person's life. The threat of jail or probation and the maze of the criminal process can be a nightmare to the person unfamiliar with the process.

At Titus & Murphy we help persons who are accused of crimes deal with police, prosecutors, the courts, and all the paperwork necessary for you to receive fair treatment and a just result. We have prepared these materials to help you understand the process we must go through in handling your criminal case.

Please read it, keep it and read it again and again. It should help you with information, instructions and hopefully ease your fears as we work your case to conclusion.

Remember, the information in these materials is generic in nature to all cases, but each case is different, based on the particular facts. How your case fits in these concepts will be the responsibility of you and your lawyer.

UNDERSTAND YOUR RIGHTS:

What is the process to expect in my criminal case?

In New Mexico, criminal cases may take one of five tracks:

- 1) Citations in Municipal Court;
- 2) Misdemeanor case filed in Magistrate Court;
- 3) Felony case filed in Magistrate Court;
- 4) Misdemeanor or felony (usually DUI) filed directly in District Court; or
- 5) Grand Jury Indictment filed in District Court.

The process to resolution of your case will take one of these five tracks, which will proceed as follows:

1) Citations in Municipal Court:

For offenses committed within the boundaries of a city, the Municipal Court* has jurisdiction to hear traffic cases, including non-felony DUI's, domestic violence cases and or petty misdemeanors.

For most traffic citations, there is a penalty assessment schedule of fines for certain traffic offenses. Other non-traffic offenses have maximum penalties of 90 days in jail and/or a \$300 fine.

Municipal courts have no civil jurisdiction to decide disputes between two private persons. All Municipal court cases will be City of (Name of City) vs. Defendant.

Trial must commence in the Municipal Court within six (6) months of the offense. Any party unhappy with the outcome of the Municipal trial may appeal within fifteen days to the District Court and have a second evidentiary trial as if the Municipal trial had never happened.

2) Misdemeanor Cases filed in Magistrate Court:

A misdemeanor case is one that has a maximum penalty 364 days in the county jail and/or a \$1000.00 fine. Offenses or any combination of offenses where the most serious one is a misdemeanor may be filed directly in Magistrate Court, who will conduct the trial.

Again, the trial must commence within six (6) months of arraignment on the charge. If possible punishment is over six months in jail, you may have a trial by jury if you request one. If multiple counts exist, the judge may sentence on each charge either consecutively (stacking one after the other) or run them concurrently (jail time on each count runs at the same time). If consecutive sentences add to more than 364 days, the sentence may be the department of corrections (penitentiary). Any sentence may be suspended or deferred and

you be placed on probation through the State Adult Probation Office under any conditions the Court deems appropriate.

Any party unhappy with a Magistrate Court sentence after a trial may appeal within fifteen (15) days and have a new evidentiary trial in District Court: (Note: No appeal is possible if you plead guilty. It is only a sentence after a trial that may be appealed.)

3) Felony case filed in Magistrate Court:

A felony is a criminal charge that has a possible punishment of more than one year. Conviction of a felony causes a person to lose citizenship rights to vote and to possess a firearm. All felony cases that go to trial must have a trial held in District Court. A pre-trial screening hearing must be held at the beginning of the case. This may be done in one of two ways - by preliminary hearing or grand jury indictment. The District Attorney chooses which track is taken by where they file the case.

If the felony case is filed in Magistrate Court, you are entitled to a preliminary hearing to be held by the magistrate judge without a jury-within 10 days of arraignment if you are in jail or within 60 days if you are not in jail.

The preliminary hearing is not a trial. No jury will decide the case. The prosecutor does not need to prove guilt beyond a reasonable doubt. The burden is one of probable cause to believe that: 1) a crime has been committed and 2) the defendant charged probably committed the crime. Stated another way, the magistrate, only determines if it is reasonable for you to stand trial in District Court.

You may waive your preliminary hearing or require the state to produce witnesses to establish probable cause. If a hearing is held and probable cause is not found, you will be discharged. This means the case could be refiled.

If you waive prelim or the judge finds probable cause after a hearing, the case will be bound over to the District Court and the Magistrate Court's jurisdiction ends.

Once a bind-over is filed in District Court, you will be called before the District Court for Arraignment. At Arraignment, you will be read the charges against you and ask if you plead guilty or not guilty.

Unless an acceptable plea bargain has been reached beforehand, we will plea you not guilty. This Arraignment starts time limits to begin.

Trial by a jury must be held within six (6) months of this date of arraignment unless time is extended by the Chief Judge of the District.

Motions must be filed within twenty (20) days of arraignment. Motions to Suppress evidence based on constitutional violations must be filed within this twenty day period.

If an acceptable plea bargain can be arranged, you will be called back to the court for change of plea. Any plea bargain will be in writing which you must agree to, sign the papers which reflect the "deal." Before the Court will accept a plea, he will ask you in open court as to whether you understand the deal and also what rights you give up by pleading guilty. These rights include:

1. The right to trial by jury, if any;
2. The right to the assistance of an attorney at all stages of the proceeding, and to an appointed attorney, to be furnished free of charge, if the defendant cannot afford one;
3. The right to confront the witnesses against him and to cross-examine them as to the truthfulness of their testimony;

4. The right to present evidence on his own behalf, and to have the state compel witnesses of his choosing to appear and testify;
5. The right to remain silent and to be presumed innocent until proven guilty beyond a reasonable doubt.

Before accepting your plea the Court will ask you what you did that you're pleading guilty to. You must admit you committed the crime you are pleading guilty to or the Court will not accept your plea.

If an acceptable plea bargain cannot be reached we will go to trial before a jury with all your rights intact.

If you are found guilty of a felony, the possible sentences are based upon the degree of felony:

31-18-15. Sentencing authority; noncapital felonies; basic sentences and fines; parole authority.

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

- (1) for a first degree felony, eighteen years imprisonment;
- (2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;
- (3) for a second degree, nine years imprisonment;
- (4) for a third degree felony resulting in the death of a human being, six years imprisonment;
- (5) for a third degree felony, three years imprisonment; or
- (6) for a fourth degree felony, eighteen months imprisonment.

B. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

- (1) for a first degree felony, fifteen thousand dollars (\$15,000);
- (2) for a second degree felony resulting the death of a human being, twelve thousand five hundred dollars (\$12,500);
- (3) for a second degree felony, ten thousand dollars (\$10,000);
- (4) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000); or
- (5) for a third or fourth degree felony, five thousand dollars (\$5,000).

These basic sentences may be increased by one-third if aggravated circumstances, suspended in whole or part, or deferred for a period on certain conditions before being imposed. If you are found guilty of multiple counts, they may be imposed consecutively or concurrently at the judge's discretion. If you have prior felony convictions, you will be sentenced to the following additional years:

- a. 1 year for 1 prior conviction;
- b. 4 years for two prior convictions; or
- c. 8 years for 3 or more prior convictions.

The "bitch" as it is called, must be served and cannot be suspended.

The Court will not allow a "deal" which "guarantees" a certain sentence except in exceptional circumstances. A finding of guilt normally allows the judge to sentence within the range allowed by law.

Appeals are not allowed if you plea guilty. Appeals after a jury trial are limited to legal arguments if an error was made at the trial. No new trial is allowed unless ordered by a Court of Appeals.

4) Misdemeanor or felony (usually DUI) filed directly in District Court:

Sometimes, misdemeanors or felonies may be filed directly in District Court. Usually the only cases which the Prosecutor files directly in District Court are DUI Cases and their attendant traffic offenses. The District Court may hold misdemeanor trials under the same rules as the Magistrate Court. If a felony is filed directly in District Court, you still are entitled to a preliminary hearing with all rights described in track number 3) above. The District Judge will hold the preliminary hearing and then keep the case to preside over the jury trial on any counts he finds probable cause of a crime.

A DUI filed in Magistrate or District Court can be punished up to:

Basic Sentence						Aggravated
DUI Offense	Jail (time must be served)	Fines	Revocation		Other	ADWI (Aggravated DWI)
			Admin.	Criminal		
1st misdemeanor (§66-8-102E)	90 days max. Mandatory 48 hours if offender fails to comply with sentence	\$500 max.	Under 21:6 Mo. 21 or older 90 days refusal: 1 year	1 year	MANDATORY: DWI school and screening IF ORDERED BY COURT: community service, treatment	MANDATORY: Additional 4B hours jail if convicted of ADWI (§66-3-1020)
2nd misdemeanor (§66-8-102F)	MANDATORY: 72 hours Max. 364 days Mandatory 7 days if offender fails to comply with sentence	MANDATORY: \$500 Max. \$1000	1 year	1 year	MANDATORY: 48 hours community service (§66-8-102E); and screening; IF ORDERED BY COURT: Treatment	MANDATORY: Additional 96 hours Jail if convicted of ADWI
3rd misdemeanor (§66-8-102F)	MANDATORY: 6 months Max. 18 months §31-18-15A(4)	Max. \$5000 §31-18-15D(3)	1 year	10 years (If offender is convicted of DWI 3 times in 10 years) §66-5-5D	MANDATORY: Screening IF ORDERED BY COURT: Treatment	
4th or subsequent felony (4th degree) (§66-8-102G)	MANDATORY: 6 months Max. 18 months (§31-18-15D(S))	Max. \$5000 §31-18-15D(3)	1 year	10 years (If offender is convicted of DWI 3 times in 10 Years) §66-5-5D	MANDATORY: Screening IF ORDERED BY COURT: Treatment	
DRIVING white revoked for DWI (§66-5-39)	MANDATORY; 7 days Max. 364 days	MANDATORY: \$300 Max. \$1000		1 year	30 days immobilization of vehicle driven by offender (§66-5-39B)	

For any DUI conviction, you must have an interlock device for at least one year. If one prior – two years; if two priors – three years; if three prior convictions then you must have an interlock to drive for the rest of your life.

5) Grand Jury Indictment filed in District Court

For felony cases, the District Attorney may avoid the preliminary hearing stage by presenting your case to a Grand Jury. If the Grand Jury indicts you, the law substitutes the indictment for a preliminary hearing. You will be called after indictment to arraignment before a District Judge for the initial plea. Once arraigned, the procedure is exactly as described in track 3) above.

What can I do about the police violating my right?

Some cases may be dismissed by Suppression of Evidence for Violation of Constitutional rights.

Some possible violations are:

- 1) 5th Amendment Right to Silence and 6th Amendment Right to Counsel: Many clients say "they didn't read me my rights." Most people know from TV that police should in most circumstances "read them rights." Miranda v. Arizona requires police who intend to question you after are you in custody to "read you your rights." If you are not in custody or if you volunteer statements those rules do not apply.

- 2) 4th Amendment searches: generally searches must have a warrant unless they meet one of six exceptions:
 - (1) plain view;
 - (2) probable cause plus exigent circumstances;
 - (3) search incident to lawful arrest;
 - (4) consent;
 - (5) hot pursuit; and
 - (6) inventory searches.

Not only should you be aware of these rights, but you should expect that they not be violated.

If you suspect a violation by the police, document your experience as much as possible. Start and keep a diary of all events. Save a copy of all applicable documents, etc. Get the names and addresses of all possible witnesses.

If you have any questions about this or any other rights, please do not hesitate to ask for further advice.

RECAP OF INSTRUCTIONS TO CLIENTS

1. TALK TO NO ONE - Do not talk to anyone about your case except one of the lawyers or investigators in our office. You should always require identification so that you are sure who you are talking to. Don't even talk to your own family or any witnesses about your case without notifying us so that we may be present if we desire. We will generally want these statements taken in our office.
2. RECORDS OF QUESTIONS OR ISSUES - Please keep a daily or weekly diary or record of your questions or possible issues. This can be very helpful when, you talk to us about your case.
3. WITNESSES - Furnish to us immediately the correct names, addresses, and telephone numbers of any and all witnesses you may learn of.
4. PHOTOGRAPHS - Send us the negatives and prints of any photographs pertaining to your case which you or any of your friends have taken.
5. If you have an alcohol or drug problem which lead to your criminal behavior, you should be evaluated and begin same treatment immediately. Judges are impressed by people who recognize problems and try to do something about it without being ordered to do so. Evaluators you may contact are:

Bonham & Associates
205 N. Auburn
Farmington, NM
(505) 564-3733

Southwest Behavioral
501 N. Airport Dr.
Farmington, NM
(505) 327-5080

6. If victim restitution needs to be paid, please start forwarding monies to our trust account for payment restitution. This is most important in property claims.