



**LEGAL SERVICES**  
*of North Dakota*

This brochure provides general legal information, but is not intended to give legal advice or counsel on any specific legal matter. If you have a question concerning how the contents or subject matter in this brochure may affect a particular legal situation, you should seek counsel from an attorney or professional of your own choosing.

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## Who Do I Contact With Additional Questions?

Call: 1-800-634-5263  
Seniors 60+ Call: 1-866-621-9886

### Legal Services of North Dakota

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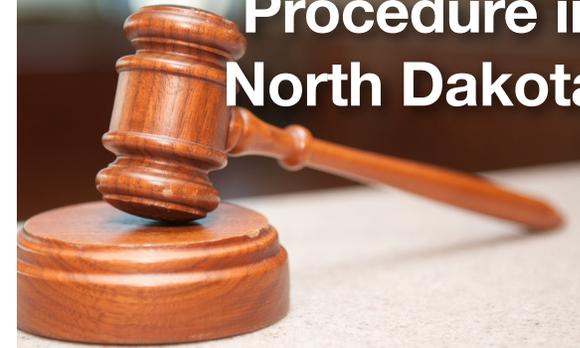
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## Criminal Court Procedure in North Dakota



General information flyer - #1000

## General Information

A misdemeanor is a crime punishable by confinement in a jail, for one year or less. A felony is a crime punishable by confinement in prison for more than one year. Each case usually begins with the police or sheriff's department gathering reports. Law enforcement will then refer a case to the State's Attorney's Office. The State's Attorney makes a decision to either decline the case or charge you with a specific crime.

If the State's Attorney decides to charge you with a crime you will likely be arrested. At your initial Court appearance, the Judge will read the charges against you, set bail, and determine the conditions, if any, upon which you may be released. In misdemeanor cases the initial appearance is also the arraignment where you enter a plea of guilty or not guilty. In felony cases, at the initial appearance, the case is set for a preliminary hearing and an arraignment.

A Preliminary Hearing is an evidentiary hearing held on felony cases. The State must prove to the Judge that enough evidence exists to believe you committed the crime for which you are charged. The State's burden of proof at a preliminary hearing is probable cause. Probable cause is a judicial decision finding sufficient evidence for the case to proceed to trial.



A preliminary hearing may be waived by the Defendant. Your attorney can advise you on whether to have the preliminary hearing or to waive it. However, the choice is ultimately yours regardless of the advice from your attorney.

In felony cases, an arraignment follows a preliminary hearing. The arraignment is a court appearance where you are formally charged with the offense and asked to enter a plea of guilty or not guilty. If you plead guilty, the Court will schedule the case for sentencing. If you plead not guilty, the court will set the case for a pretrial conference. Before the pretrial conference, the State's Attorney may send out a plea offer to your attorney, which will be forwarded to you.

### Plea Offer

A plea offer is a written agreement between the State and you where you agree to plead guilty under certain terms and conditions. Since both the State and you risk losing at trial, plea agreements are a means of arriving at a reasonable disposition without the necessity of going to trial. Your attorney will advise you on your options to accept or reject the plea agreement. Only you can decide to accept the plea agreement or to proceed to trial.

### Trial

A trial is the presentation of evidence to either a Judge or Jury for a decision of whether you are guilty "beyond a reasonable doubt" or not guilty of the crime(s) charged. If you are found guilty, you can then be sentenced for that crime by the Judge. If you are found not guilty of the crime, the charge is dismissed and you cannot be recharged. After a guilty plea has been entered either through a plea agreement or conviction by a Judge or Jury, you will be sentenced. If your case is a felony, the Court will likely order a Pre Sentence Investigation (PSI) report and sentencing will be done after the PSI is completed.

## PSI Interview

The PSI interview is conducted by a probation officer. A report is written up and a copy is given to the State's Attorney, the defense attorney and the Judge. The purpose of the PSI is to enable the Judge to learn more about you so that the Judge is better able to impose an appropriate sentence. The PSI includes information about your criminal history and personal background. The individual conducting the PSI will also contact the victim(s) of the crime to determine how he or she has been impacted by your actions. North Dakota law does not allow extra copies of the PSI report to be made so you must review the PSI with your attorney prior to sentencing. Sentencing is the hearing at which the Judge imposes a sentence. In cases involving two or more charges, the Judge can either sentence you to concurrent or consecutive sentences. Concurrent sentences run together, or are served, at the same time. Consecutive sentences run one after the other.

## Getting an Attorney

The Commission on Legal Counsel for Indigents provides attorneys to indigent (poor) persons who have been charged with crimes in ND District Courts. In order to apply for an attorney, you will need to complete an application for indigent defense services. The application is available at the Clerk of Courts' office in the county in which you have been charged. The Court will review your application, and if the case is of a type for which attorneys are provided, and if the Court finds that you are "indigent," an attorney will be provided to you by the Commission for your criminal case.