

Criminal Defendant Rights

Hello. You are here today because you have been charged with a crime. My job is to tell you about your rights. But before I explain your rights, let me tell you about what to expect.

If you are charged with a misdemeanor, at the hearing today you will be told about the charges against you and the maximum penalties that can go with those charges. You will also be told about any mandatory minimum penalties which must be applied if you either plead guilty or are convicted. Then the Judge will ask you if you wish to plead guilty or not guilty, and you will tell the Court which choice you have made. I will explain shortly more about what the choices may mean to you.

The hearing will work a little differently if you were charged with a felony. If you have been charged with a felony, the hearing today will be the first of several hearings. The Judge will not ask you to plead guilty or not guilty today. You will only be given a date for the next hearing, called the preliminary hearing. The preliminary hearing is not to prove whether you are guilty or not guilty of the charges against you. Instead, the prosecutor, who represents the State of North Dakota, must show the Court that it is more probable than not that a crime occurred and that you committed the crime. If the prosecutor presents enough evidence to suggest that it is more probable than not that you committed the crime, or if you voluntarily agree that a preliminary hearing does not need to be held in your case, then you will have to plead guilty or not guilty to the charges.

So, basically, today's hearing will work like this. Your name will be called and you will step forward. The charges against you will be read and you will be told what the maximum possible penalties are for those charges. You will also be told if there are any mandatory minimum penalties that go with those charges. If you have been charged with a misdemeanor, the Judge will then ask you to enter a plea of guilty or not guilty. If you have been charged with a felony, you will be given a date for your next hearing. At the end of your hearing the Judge will address whether any conditions, which might include the posting of money, are necessary to make sure that you will attend all of your future court appearances.

Now let me tell you about your rights.

- ◆ You have the right to hear the charges against you and the penalties that go with those charges.
- ◆ You have the right to be present in court when any essential proceeding happens in your case.

- ◆ You have the right to reasonable delays of scheduled events when necessary to prepare your defense.
- ◆ You have the right to be released from jail under reasonable terms and conditions to ensure that you return to court when expected.
- ◆ You have the right to a speedy public trial.
- ◆ You have the right to have a lawyer advise you before making any statements, answering any questions or at any time when events happen relating to your case. For some crimes the law allows you to have a lawyer even if you do not have enough money to pay for a lawyer. For those crimes, if you are not able to pay a lawyer to help you without excessive financial hardship, the Judge will appoint one who is paid at public expense. Such a lawyer is called a public defender. However, you may be required to repay all or part of the cost of the attorney's fees if you are convicted.
- ◆ You are considered innocent of the charges unless and until the State can prove that you are guilty beyond a reasonable doubt.
- ◆ You have the right to a jury trial if you plead not guilty. If you are tried by a jury, all the jurors must agree that you are guilty before you can be convicted. You can also request not to have a jury trial and have a Judge decide your case, but the prosecutor and the Judge must agree with your request.
- ◆ You have the right to confront and ask questions of witnesses that the prosecutor may call against you.
- ◆ You have the right to compel witnesses to testify on your behalf by using the subpoena powers of the State of North Dakota.
- ◆ You have the right to remain silent and not to testify on your own behalf. If you choose not to testify, it cannot be used against you in any way.

Those are your basic rights. Now let me explain what happens if you plead guilty.

If you plead guilty, either today or at a later date, you give up all of those rights that I have just explained, including the right to trial by jury, the right to confront witnesses, and the right to remain silent.

You may have been given a prosecutor's recommendation as to your sentence if you plead guilty. You should know that the Judge does not have to follow the prosecutor's recommendation. The Judge remains free to impose whatever sentence the Judge believes is just, which may be more strict or harsh than what the prosecutor recommended. If the Judge does not follow the prosecutor's recommended sentence, you will **not** be allowed to withdraw your plea of guilty.

There are several special types of situations that have additional consequences for you if you plead guilty or are found guilty. Please listen carefully.

If you are not a citizen of the United States and you plead or are found guilty of a crime, you could be deported. You have the right to notify and talk with the consulate of your country of origin, and you should consult with a lawyer that understands immigration law before you enter a plea of guilty, if this is a concern to you.

If you are convicted of a felony, or of certain misdemeanors committed while using or possessing a firearm or other dangerous weapon, or if you are awaiting trial on felony charges, or if you are subject to a domestic protection or no contact order, or if you have been convicted of domestic violence, the law may restrict or forbid you from possessing or obtaining firearms or ammunition.

If you are convicted of a felony, or a sex crime, or certain crimes against a child, then you will have to provide a sample of your blood or other body fluids. The sample will be analyzed and your DNA information will be included in law enforcement computerized databases. If you are convicted of a sex crime or certain crimes against a child, you will also have to register as an offender.

If you are currently on probation and you are convicted of a crime, it is possible that your probation will be revoked and you could be re-sentenced for that crime.

If you are convicted of a crime that caused damage to a person or property, the Judge can order you to pay restitution to the person you injured or harmed.

If you plead guilty or are found guilty, the State Legislature requires the Court to impose certain fees. When the charges and possible penalties are explained to you, you will also be told the amount of fees that apply to your type of case.

If you apply for a public defender, there will be a charge for processing the application.

These are important things to remember as we begin our proceedings today. Thank you for listening.

In the courtroom, either the Judge or the clerk will call your case. When your case is called, please step forward for your appearance.