

# County Attorney Legal Glossary

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#

**36 Hour Rule** - A person who has been arrested with or without a warrant must be brought before a judge within 36 hours after being detained. The time does not include the day of arrest in criminal cases nor does it include Sundays and holidays. Juvenile rules exclude Saturdays, Sundays and holidays, but include the day of arrest.

**48 Hour Rule** - A ruling from the United States Supreme Court that within 48 hours of a person being arrested, a judge must decide if there is probable cause to believe the accused committed a crime and if the person should continue to be held. The time begins to run as soon as the arrest is made and weekends and holidays are not excluded. Arrests made pursuant to a warrant are not subject to the rule because a judge has already ruled on probable cause.

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A

**Arraignment (child)** - The hearing in which a juvenile admits or denies the charges identified in the petition. A child may choose to take three days in order to meet with a public defender before admitting or denying the charges.

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B

**Bench Warrant** - A court order instructing law enforcement officers to take a person into custody when the person fails to appear in court. The judge orders the defendant's arrest from the bench.

**Burden of Proof** - The prosecution must prove the defendant guilty. The burden of proving the case is on the state. The defendant does not have to prove their innocence

**Beyond a Reasonable Doubt** - The standard the prosecution must meet in order to get a conviction. The jury instructions state that proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable

doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

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C

**Certification Proceedings** - A procedure wherein it is decided if a child should face charges as an adult. Once certified to adult court a child has all the due process rights an adult does including the right to a jury trial. A 16 or 17 year old child who is charged with murder in the first degree will have all proceedings in adult court without going through the certification process.

**Child in Need of Protection or Services (C.H.I.P.S.)** - These are cases that involve the welfare of children including child neglect, abuse, dependency, truancy, and runaways. Children under the age of 10 who commit crimes will be petitioned to court as C.H.I.P.S. with the intent to treat the child's behavior as a family systems problem.

**Complaint**- The written document issued by the prosecutor and filed in district court which contains a description and summary of the alleged criminal act committed by the defendant and the charges.

**Conditions of Release** - The requirements the judge places on the accused in order to release the accused. Examples include such things as no use of alcohol or drugs, no contact with certain people, chemical assessment, no driving, attend school, etc. If an accused violates a condition of release, the court may issue an arrest warrant or a law enforcement officer may arrest the accused without a warrant.

**Court Designation:** The child was age 14-17 at the time of the offense and the prosecutor moves the court to certify the child to adult court. The court may designate the proceeding as Extended Jurisdiction Juvenile Proceedings (E.J.J.) rather than certify the child to adult court. The court must make a finding that public safety is not served by designating the proceeding solely a juvenile matter.

**Court Trial** - A trial without a jury in which the judge decides the guilt of the accused. All trials in juvenile delinquency cases are court trials except in Extended Jurisdiction Juvenile Proceedings (E.J.J.) trials where there is a jury trial. A defendant may waive the right to a jury trial and have a court trial. This is a right of the defendant and the state has no right to waive or demand a jury trial.

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## D

**Delinquent Act-** An act alleged to have been committed by a child 10 years of age or older, which if committed by an adult would be considered a criminal act.

**Detention Hearing** - A hearing which must occur before the court within 36 hours of when a child has been arrested and held in detention. A determination is made as to where the child will be held pending the next hearing date.

**Discovery-** The exchange of information by the prosecution and defense. The prosecution is required to inform the defense of trial and grand jury witnesses, statements of the defendant and witnesses, documents and tangible objects such as grand jury transcripts, police reports, photographs, results of tests and examinations, and exculpatory information. The defense is required to inform the prosecution of documents, tangible objects, results of tests and examinations which the defense intends to use at trial, statements of defense and prosecution witnesses who are to testify, and defenses to be used including alibi, self-defense, mental illness, entrapment, etc.

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## E

**Extended Jurisdiction Juvenile Proceedings (E.J.J.)** - - If the child pleads guilty or is found guilty by a court or jury (a child has the right to a jury trial in these proceedings) the child is placed on a dual probation. The child may be placed on juvenile probation until age 21 and the court will impose certain conditions which the child shall abide by. The child shall also receive an adult sentence with a stay of execution. The six factors the court must take into consideration when determining whether a child shall proceed by E.J.J. or certification are:

- The seriousness of the offense;
- The culpability of the child including any planning the child did or any mitigating circumstances which may exist;
- The child's prior delinquency record;
- The child's programming history including the child's placements and willingness to participate in past programming;
- The adequacy of the punishment or programming available in the juvenile system;
- The dispositional options available for the child.

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**Felony** - A crime for which a sentence of imprisonment for more than one year may be imposed.

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**Grand Jury** - A body of citizens whose duties consist of determining whether probable cause exists that a crime has been committed by a suspect and whether an indictment should be entered against that suspect for such a crime. If the grand jury determines that probable cause does not exist, it returns a no bill. The grand jury consists of at least 16 people and not more than 23. The grand jury may hear more than one case. In order to indict, 12 or more jurors must concur. A prosecutor may call a grand jury for three reasons:

1. In order to try someone for murder in the first degree, there must be an indictment.
2. Controversial cases may be presented to learn what the community feels should happen.
3. When witnesses (not the suspect) refuse to talk to law enforcement, they can be compelled to testify under oath. A witness who wants a lawyer present when they testify must waive immunity from self-incrimination. A judge is not in the room. The prosecutor calls the witnesses and asks the questions. The suspect does not have the right to be present or have an attorney cross examine witnesses. The jurors may ask questions of the witnesses and they may name whom they want to testify.

**Gross Misdemeanor**- Any crime which is not a felony or a misdemeanor. A crime in which the maximum penalty is one year in jail and/or \$3000 fine.

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**Indictment**- The written document issued by the Grand Jury stating its finding of probable cause. The form looks very similar to a complaint and has the same information on it.

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## J

**Jury Trial** - A trial in which a jury of 12 (felony trials) or six (misdemeanor or gross misdemeanor trials) community members decides the guilt of the accused. Their decision must be unanimous.

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## M

**Misdemeanor**- A crime for which a sentence of not more than 90 days and/or a fine of not more than \$1000 is imposed.

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## N

**No Contact Order** - A court order in a criminal or juvenile proceeding in which the defendant is ordered not to contact the victim and/or witnesses. This is usually ordered at the [Rule 5 hearing](#) for adults or detention hearing for juveniles. Violation of the order may result in stricter conditions of release being placed on the accused.

**Non-Presumptive Certification:** The child is age 14-17 and is alleged to have committed a serious felony. The court conducts a hearing and the burden is on the prosecution to show that:

- the court may certify the child to adult court if the prosecutor proves by clear and convincing evidence that certification would serve public safety; or
- the court may find that public safety would be served with [Extended Jurisdiction Juvenile Proceedings \(E.J.J.\)](#) proceedings and so designate the matter; or
- the court might let the matter proceed as a delinquency proceeding.

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O

**Omnibus Hearing** - A hearing to determine if there is probable cause and to decide the admissibility of evidence (usually on constitutional grounds such as the admissibility of a confession or the validity of a search warrant).

**Order for Protection** - A court order which orders an accused abuser to have no contact with the victim. This is obtained in a civil action brought by the victim in which a prosecutor's office has no part. Violation of the order is a crime.

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P

**Petit Jury** - The ordinary jury for the trial of a civil or criminal action; so called to distinguish it from the grand jury. There are 12 members for felony trials and 6 for misdemeanor and gross misdemeanor trials. The decision of the jury must be unanimous. Usually a trial will have more than the required number of jurors which are called alternates. After the judge has given final instructions, the alternates will be told they are no longer needed and are dismissed from serving any further.

**Petition**- The written document issued by the prosecutor and filed in juvenile court which contains a description and summary of the alleged delinquent act committed by the child and lists the charges.

**Petty Offense** -

- An act illegal for a child to commit which would not be illegal for an adult. Examples are curfew violations, first or second time underage drinking, possessing alcohol underage, possessing a small amount of marijuana or drug paraphernalia and using or possessing tobacco.
- A misdemeanor level offense if the juvenile has not previously committed a misdemeanor, gross misdemeanor or felony offense.

Prostitution, assault in the 5th degree, domestic assault, arson in the 3rd degree, negligent fire, dangerous weapons, and indecent exposure are misdemeanor exceptions which cannot be considered petty offenses. The Court may not place a child out of the home as a disposition for a petty offense.

**Petty Offense/Petty Misdemeanor** - An offense prohibited by statute, which does not constitute a crime and which a sentence of a fine of not more than \$300 may be imposed

**Presumptive Certification:** The juvenile was 16 or 17 at the time of the alleged felony offense and either the offense would result in a presumptive commitment to prison under the Minnesota sentencing guidelines or the child committed the felony while using, brandishing, displaying, threatening, or otherwise using a firearm. A hearing is held and the burden is on the juvenile to show public safety is served by proceeding with an [Extended Jurisdiction Juvenile Proceedings \(E.J.J.\)](#) rather than referring the child straight to adult court. If the court certifies the child, the case proceeds through the adult court process. If the court does not certify, the child is automatically sent through the E.J.J. prosecution process.

**Pre-Disposition Report-** Also known as a social history, this contains much of the same information as a pre-sentence investigation for an adult including the juvenile's past offenses and recommendations from the probation officer as to what the court should do with the child.

**Presumptive Sentence** - The prison sentence called for by the [Sentencing Guidelines](#).

**Prosecutor/County Attorney/City Attorney** -

- The prosecutor is the representative for the State of Minnesota who makes the charging decision and presents evidence to prove a crime was committed by the accused.
- The county attorney prosecutes all juvenile cases and all adult felonies committed in the County of Anoka.
- The city attorney prosecutes all misdemeanor and gross misdemeanor offenses committed by adults in that city.

**Prosecutor Designation:** The child was age 14-17 at the time of the offense and the offense would be a presumptive commitment to prison for an adult or the child used a firearm during the commission of a felony. The prosecutor has the sole discretion to designate the matter an [Extended Jurisdiction Juvenile Proceedings \(E.J.J.\)](#) prosecution and once the prosecutor has done so by written petition the matter proceeds in this manner.

**Prosecutor-Requested Court Designation:** The child was age 14-17 at the time of the offense and the prosecutor moves the court to designate the proceeding as [Extended Jurisdiction Juvenile Proceedings \(E.J.J.\)](#). A hearing is held by the court wherein the prosecutor must show by clear and convincing evidence (a lower standard than proof beyond a reasonable doubt) that designating the proceedings as an E.J.J. proceeding serves public safety.

**Public Defender** - A licensed attorney appointed by the court at public expense to legally represent and advocate for the accused.

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## R

**Rule 5 Hearing** - A hearing which must occur before the court within 36 hours (excluding Sundays and holidays) of when an adult has been arrested in which it is determined if the defendant is handicapped in communications; the defendant is given his rights; it is determined if the public defender should be appointed; and bail and/or conditions of release are set. No plea is entered in felony and gross misdemeanor cases at this hearing.

**Rule 8 Hearing** - The first hearing in which the defendant may enter a plea of guilty or not guilty. Many times a plea is not entered and an [Omnibus Hearing](#) is set. The judge may continue or revise the conditions set for the defendant's release by the court previously at the bail hearing.

**Rule 20: Mental Competency Examination** - Upon a motion from the prosecutor or defense or upon its own, the judge may order the defendant or child to undergo a mental examination. One purpose may be to determine if the defendant lacks sufficient ability to consult with defense counsel or is incapable of understanding the proceedings or participating in the defense. The other purpose is to determine if the defendant was mentally ill or deficient at the time the crime was committed.

**Rules of Juvenile Procedure**- A set of rules drafted by a committee named by the Minnesota Supreme Court (consisting of judges, lawyers, probation officers, court administrators, etc.) which states how juvenile cases (both delinquency and [Child in Need of Protection or Services \(C.H.I.P.S.\)](#) ) are to be handled in Minnesota courts. The rules govern everything from what is in the petition to how an appeal is perfected. The Supreme Court adopted the rules after a public hearing. The committee continues to meet and the rules are periodically changed.

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**Sentencing Guidelines**- A grid system based on offense severity and the criminal history of the defendant which guides the judge in determining a sentence. The purpose is to provide uniformity in sentencing. When the guidelines are not followed, the court must state its reasons for giving a more or less severe sentence than called for by the guidelines.

**Sex Offender Assessment**- Anyone convicted of a sex offense must undergo a comprehensive assessment to determine the extent and severity of his/her sexual behavior.



**Statutory Maximum Sentence** - The prison sentence and fine set forth in the statutory definition of a particular crime. The statutory maximum defines whether an offense is a felony, gross misdemeanor or misdemeanor. The statutory maximum is listed on the complaint or indictment so that one who is not knowledgeable about the system may assume that the statutory maximum is the sentence the defendant will get.

**Stay of Adjudication** - A sentence in which the court finds that the prosecution abused its discretion when the matter was charged and orders that the adjudication not be entered. There is no statutory authority for a stay of adjudication, but the Minnesota Supreme Court has found that the trial court has the inherent power to order the stay.

**Stay of Adjudication (child)**- The court is allowed by statute to withhold the entry of the adjudication for up to two 90 day periods in delinquency matters and one 90 day period in [Child in Need of Protection or Services \(C.H.I.P.S.\)](#) matters if it is the best interests of the child to do so. The court may place the child on probation and set the conditions of probation during this period.

**Stay of Execution** - A sentence in which the court orders a specific period of prison time for the defendant and places the defendant on probation with terms of probation. The defendant is not sent to prison unless the terms of probation are violated and the court orders the sentence executed.

**Stay of Imposition**- A sentence in which the court orders the defendant placed on probation with terms of probation and then reserves imposing imprisonment unless the defendant fails probation. If the defendant successfully completes probation, the conviction becomes a misdemeanor for purposes of the defendant's criminal record.

**Summons**- Notice with a date and time of hearing from the court administrator stating that a person is to appear in court.

**Suspended Sentence** - The court has the option of imposing the maximum sentence allowed by law, but then ordering that only part of it be carried out. For example, on a first time DWI, the court may order a \$1000 fine, but suspend \$400 of it if the offender agrees to perform 40 hours of community service work and commit no new offenses for one year. If the offender fails to comply with these lesser sanctions, the court has the option to lift the suspension and require the offender to pay the remainder of the fine.

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**Trial**- A hearing in which the guilt of the accused is determined by either a jury or a judge.

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W

**Warrant** - Court order instructing law enforcement officers to take a person into custody.

**Work Release** - For those offenders sentenced to a county jail or workhouse who are employed or employable, and do not pose a threat to the public safety, the sheriff or facility administrator can allow them to be released from the facility in order to continue their employment. The inmates return to and remain in the facility at the end of each workday and on weekends. These inmates are generally charged a fee to pay the costs of their room and board in the facility while on work release. The Minnesota Department of Corrections also has a work release program for some of its inmates who are nearing their release from prison.

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