

## Call for Justice, LLC—United Way 2-1-1 Training Paper

### Session 11: Criminal Law 101

April 18 and 19, 2013: Sellano Simmons, Esq., principal of The Law Firm of Sellano L. Simmons, PLLC, Minneapolis

#### Featured Speaker's Topic

This month, Sellano Simmons, a private practice lawyer and contract attorney with the Hennepin County Public Defender Office, will help us to better understand criminal law.

#### How Does Criminal Law Differ from Civil Law?

As we learned way back in Session 1, criminal law differs from civil law in many respects, **the most important being that one's personal liberty is at risk in the criminal context**. This means that people found guilty (or arrested with the belief they are guilty) may go to jail or prison.

Civil disputes, in contrast, involve money or one's right to something—no one will be locked up in jail or prison as the result of a civil dispute (note: the one exception [there are always exceptions!] is if a person is guilty of contempt of court in any dispute—criminal or civil).

Another difference is that the **United States Constitution** (and state constitutions to a lesser extent) applies to criminal proceedings. Thus, entitlement to a jury trial, protection against self-incrimination (e.g. the right not to testify), and the prohibition against cruel and unusual punishment are *rights* guaranteed by the Constitution. There is no civil version of the Constitution (at least to the extent of criminal protections). Thus, in civil cases, anyone can be forced to testify—where they are subject to impeachment and incriminating statements.

For persons convicted of crimes, the existence of a criminal record may be a major impediment to obtaining a job or place to live. These problems don't usually arise from a civil case—even for the loser in a lawsuit. (Again, there are exceptions like an eviction from rental housing or a judgment for a bad debt—those may impact a person's ability to rent or get credit.)

In short, criminal law has many different rights and risks associated with it. We're delving into this area because of how important an arrest or criminal conviction may be to a 2-1-1 caller.

#### Criminal Arrest

Recall also that civil cases start with some kind of incident or dispute (such as a car accident), which is followed up with one person serving a complaint. In turn, the other party to the

dispute must serve an answer. After that, the civil case is on its way to some kind of resolution (usually with one party paying the other party some amount of money).

In contrast, underlying a criminal cases is a criminal act, such as a robbery, break-in or something even worse. A police officer usually makes an arrest, acting upon probable cause that someone committed a crime, sometimes by directly observing the crime take place and at other times by hearing about it from a witness. Otherwise, an arrest can be made via an arrest warrant, something which a judge signs after he/she has been advised of facts supporting the warrant's issuance. **It is this arrest that starts the criminal process.**

At the time of an arrest, a person is to be advised of his/her **Miranda rights**. This includes being advised of the right to remain silent; that anything he/she says can and will be used against him/her; that the arrested person (called a "defendant") has the right to have an attorney present during questioning; and if he/she cannot afford a lawyer, that the court will appoint one.

**RED FLAG: Sometimes people who are suspected of committing a crime are first "questioned" by police without being arrested. For people considered indigent, the local Public Defender will provide counsel in these types of situations (see below). For people who can afford an attorney, referrals to the Hennepin County Bar Association LRIS or Ramsey County Bar Association Attorney Referral Service will be good referrals. Also, see below (under Ramsey County) for Criminal Defense Services, Inc.**

### **Pretrial Release: Bail and Release on Recognizance (ROR)**

Most of the time, an arrest doesn't mean the defendant will be held in jail until the trial (which could be months—if not a year or more—away). There simply isn't enough jail space to do that; plus, holding people in jail doesn't make much sense (unless other factors are involved).

Generally, a criminal defendant must appear before a judge or judicial officer within 36 hours of the arrest, or the next business day if a weekend. At that point, the judge/judicial officer will review the charges against the defendant and make a determination about whether the defendant is a flight risk (e.g. whether he/she will fail to appear for future hearings and a trial) or a danger to the community. Assuming not, the defendant may be released on their own recognizance (ROR) without requiring that the defendant post bail or bond (a promise to appear backed by the deposit of some money) with the court.

If bail is set, the defendant can pay the entire amount of the bail or get a bail agent (bail bondsman) and pay a percentage (10 percent) of the total amount. The bail agent charges the defendant a separate fee for fronting the money with the court. If the defendant appears at all hearings and the trial as required, the bail money is then refunded (less what is owed to the bail agent).

If the defendant is retained in custody, an arraignment will occur within 36 hours of the arrest. At the arraignment, the judge will review the charges against the defendant, ask if he/she understands them, and inquire about private counsel or whether the defendant qualifies for a court-appointed attorney (this assumes the offense could involve jail time). Bail can be reset or the defendant could be released ROR at this time.

### **Plea Bargaining Process**

Plea bargaining is the process of negotiating a guilty plea in exchange for a lesser charge or a reduced sentence to avoid a trial and possibly a harsher penalty. The great majority of criminal cases are resolved in this manner. If every criminal defendant wanted a trial, there's no way there would be enough judges or lawyers to conduct the trials.

### **Pre-Trial Hearings**

After the arraignment, a defendant can request a "Rasmussen hearing" (named after a case in which the Minnesota Supreme Court excluded certain evidence from trial because the police violated a defendant's rights in the way a search was conducted or arrest made) to determine if the charges should be dismissed. Defendants can also request an "Omnibus hearing," which is a determination about whether the police had sufficient probable cause (e.g. a reasonable suspicion of a crime having been committed—the police aren't allowed to simply stop anyone for no reason at all) to make an arrest. If not, the arrest will be deemed improper and the charge will be dismissed—even if, in the end, the defendant actually did commit the crime. (We know, it sounds crazy to release a guilty person, but the entire system is built around the idea of the police "following the rules." If they fail to do that, then everyone—not just criminals—is at risk.)

### **Trials and Sentencing Process**

Felony trials use 12 jurors, while cases involving jail time of less than one year use only 6 jurors. A defendant can waive a jury trial and simply have a judge hear the evidence and decide about guilt or innocence. (This is called a "bench trial.")

At any trial (jury or bench), the prosecution (e.g. the state or city/town/county in which the crime was committed) has the **burden of proving a defendant guilty beyond a reasonable doubt**. "Reasonable doubt" means that via a trial, the prosecution showed that the defendant actually committed a crime such that there could be no "reasonable doubt" in the mind of a "reasonable person" that the defendant is guilty. There can still be doubt, but only to the extent that it would *not* affect a reasonable person's belief regarding whether or not the defendant is guilty (such as jurors might doubt some facts about *how* the crime was committed, but don't doubt *who* committed the crime).

No defendant can be compelled to testify or offer any evidence during his/her criminal trial. In fact, the defendant often doesn't testify; instead, the defense attorney questions witnesses in an attempt to draw out contradictions or gaps in the evidence—all with the aim of showing that the prosecution hasn't proven its case "beyond a reasonable doubt."

At the conclusion of the case, the jury considers the evidence and returns a verdict, which must be unanimous to convict. If there's not unanimity (for example 10-2 voting for guilty), the jury will be deemed "deadlocked." At that point, the prosecution can either retry the defendant or it can dismiss the case.

If a defendant is either found or pleads guilty, a judge usually orders a "pre-sentence investigation" by a probation officer or substance abuse counselor. A written report follows the investigation—where factors such as the defendant's childhood, personal life, and addiction issues are detailed. In some instances, the judge can take those factors into account when he/she decides on the type (prison or probation) and length of sentence. Felonies are determined according to established state guidelines. A sentence could be probation, community service, stay of sentence, prison or jail time, a fine, or a combination thereof.

### **Details about Public Defenders in Minnesota**

In 1963, the United States Supreme Court decided Gideon v. Wainright which recognized that the **right to a fair trial** requires providing an indigent person accused with counsel at the state's expense.

Minnesota responded to this Constitutional mandate by creating the Board of Public Defense, a state agency, which provides public defenders to indigent accused people in each of Minnesota's 87 counties. **The state is divided into ten judicial districts; each of these districts has at least one full time Public Defender office.** Each district's activities are supervised by a Chief Public Defender who is appointed by the Board.

A judge will appoint a defendant a Public Defender attorney only if:

- The defendant is under age 18, or
- The defendant is an adult and the judge determines that the defendant cannot afford to hire a private attorney.

Ordinarily, Public Defenders are appointed when a person appearing in criminal court cannot afford to hire an attorney. A defendant can request a Public Defender at any time, but it is best to do so as soon as the first court appearance. In some locations, there is a financial inquiry that occurs before the first court hearing; in other locations, the inquiry occurs in court. Minnesota law sets out the types of court hearings in which a person has a right to appointment of a public defender.

Sometimes, before a person is arrested, that person will face interrogation or other police procedures that may affect the accused person's rights. In those instances, it's possible to request a public defender to represent the accused. The accused needs to contact the Public Defender's office serving the county in which the interrogation will take place to arrange for a Public Defender to be present for the interrogation.

Public Defenders don't get involved in civil matters (recall that these include divorces, landlord-tenant matters, employment discrimination disputes, personal injury lawsuits and disputes over contracts).

**RED FLAG: The criminal/civil dividing line dictates where referrals go. If the caller is asking about a matter involving the police or possible jail or prison, then it's automatically a criminal matter and something to refer to the resources listed in this training session. We know the 2-1-1 I&R people know this, but the general community (which will have access to this paper via our website) may not.**

## 1. Other Public Defender Options

There are four Public Defense Corporations (PDCs) that provide representation in certain circumstances and locations. **Public defense corporations** are non-profit groups created in the 1970s and 1980s as alternatives to the then county-based public defender system. They were created because of a desire to further protect the legal rights of those considered to be disadvantaged in the traditional criminal justice system, primarily people of color and minority ethnic heritage. The corporations provide quality, independent criminal and juvenile defense services to such groups, who otherwise would need public defense services.

The **Legal Rights Center** (LRC) is located in Minneapolis and primarily serves residents of Hennepin County; however, given that the LRC is well known across the state by the American Indian community, its attorneys may go to other counties to represent Native Americans. **Contact information:** [www.legalrightscenter.org](http://www.legalrightscenter.org) (612)337-0030, 1611 Park Ave. S, Minneapolis.

The **Indian Legal Assistance Program** (ILA) is located in Duluth. ILA provides legal services for felony, gross misdemeanor, and petty misdemeanor cases. The office serves the following counties: St. Louis, Carlton, Lake, Cook, Aitkin, Mille Lacs, Pine, Crow Wing and Morrison. It also serves the Bois Forte Reservation Tribal Court and Fond du Lac Tribal Court. **Contact information:** <http://www.pubdef.state.mn.us/indianlegal>. (218)727-2881, 107 West First Street, Duluth.

The **Neighborhood Justice Center** (NJC) is located in St. Paul. The core service of the NJC is the provision of criminal and juvenile public defense representation in Ramsey County and the east metro. **Contact information:** [www.njcinc.org](http://www.njcinc.org). (651)222-4703, 500 Laurel Ave., Saint Paul.

The **Regional Native Public Defense Corporation** (RNPDC) serves members of the White Earth and Leech Lake Reservations. RNPDC serves members in Beltrami, Cass, Clearwater, Hubbard, Itasca, and Mahnommen counties. **Contact information:** [www.rnpdc.org](http://www.rnpdc.org). (218) 339-5680, 232 2<sup>nd</sup> St. N.W., Cass Lake.

## A Few Words about Criminal Expungement

Expungement is the process of going to court to ask a judge to **seal** a court record. It is important to note that **an expunged record is NOT destroyed**. The police, FBI, immigration officers, and other public officials may still see sealed court files for certain purposes.

Usually, people ask for an expungement when they have been denied a job, housing, or a professional license because of their criminal background. Many government offices keep criminal records, including, but not limited to:

- courts have records of all cases filed with the court;
- police keep records of arrests and investigations;
- prosecutors have records of criminal cases;
- agencies like the Dept. of Human Services may keep records; and
- law enforcement agencies (police, State Patrol, etc.) send records to the MN Bureau of Criminal Apprehension ("BCA"). The BCA is a common place for people to do background checks. If a criminal case ends in a conviction, records kept by other government offices, such as the BCA, might not get sealed through an expungement action. Getting an expungement also might not help someone from being disqualified to work as a caregiver by the MN Dept. of Human Services.

### 1. Types of Cases that May Be Expunged

- **Criminal case ended *"in the defendant's favor"***

Minnesota law allows expungement of a court record if the **outcome** is **"in the defendant's favor."** Even if a person is found "not guilty" in a criminal case, government offices may still have records about that case. For example, if someone is arrested and charged, but the prosecutor later decides to dismiss the case, the defendant may ask for an expungement. Also, if a person never entered a guilty plea and successfully completed a pre-trial "diversion program," that person may also qualify for an expungement.

- **Criminal case ended *"NOT in the defendant's favor"***

Expungement of a **conviction (e.g. a case "not in the defendant's favor")** is possible, but not **granted very often**. Also, if someone pled guilty and received a **"Stay of Imposition"** or a **"Stay of Adjudication"** and the charge was later dismissed, this is still considered a conviction for

expungement purposes. With the exception of certain juvenile and drug court cases, a guilty plea at any point in the case means the outcome was not "in the defendant's favor."

**RED FLAG: Criminal laws are very complicated, and knowing when an outcome is "in your favor" can be difficult to figure out. If the caller has any questions about whether his/her case was resolved in his/her favor, they need to talk to court administration or a lawyer.**

**Serious crimes** like murder, aggravated assault, driving while intoxicated, and sex offender crimes are **never expunged**. Convictions of minor crimes may be expunged only if the person can show to have made real changes in his/her life **and** that it is very unlikely that he/she will commit another crime.

For cases that ended "**not in the defendant's favor**," the law limits the judge's power to expunge only the court's records. If someone pleads guilty or is convicted, the court can only order the court's records sealed. This means that the MN Bureau of Criminal Apprehension ("BCA") will still have a record of the case, and the public can see this record. There is **one exception to this rule**: if not expunging the record violates a person's **constitutional rights**, the court can order the BCA and others to seal records of a conviction.

## 2. No Guarantee of Expungement

**There is no guarantee that anyone will obtain an expungement.** An applicant for expungement must complete the paperwork **and** convince the judge that, on balance, the benefit to receiving an expungement is more than the disadvantage it would be for the public to not have access to the subject criminal record. This generally means the applicant will have to prove that:

1. The applicant has been denied work, housing, or a professional license because of their record;
2. Sealing the criminal record will not negatively affect public safety; **and**
3. The applicant has rehabilitated him/herself.

Expungement involves a lot of paperwork and attention to detail, and **it takes at least 4 months** to complete the process. For anyone seeking an expungement, it is highly recommended that they consult an attorney.

## 3. The Court Hearing

In most instances, the applicant must go to a hearing in court to ask for expungement. At the hearing, the applicant will have an opportunity to tell the judge why the expungement is necessary. The government office involved in the original criminal charge (such as the prosecutor's office) has the right to object to an expungement. An objection does not mean that the expungement will be denied.

## 4. Arrest Records Only

For persons who were only arrested but **not charged** with a crime, there will not be a court record for that event. Law enforcement agencies and the BCA, however, may have records of the arrest. There is a **non-court process** for sealing arrest records.

## **LEGAL RESOURCES for CRIMINAL DEFENDANTS**

### **Hennepin County**

1. **Hennepin County Public Defender: 612-348-7530 (8-4:30) 701 Fourth Avenue South Suite 1400 Minneapolis, MN 55415**

#### **Locations:**

##### **Adult Division**

701 Fourth Avenue South  
Suite 1400  
Minneapolis, MN 55415

##### **Juvenile Division**

525 Portland Avenue South  
Suite 1000  
Minneapolis, MN 55415

2. **Legal Rights Center: 612-337-0030, 1611 Park Ave. S, Minneapolis. Hours of Operation: 9:00 a.m. - 5:00 p.m. weekdays (discussed above). Closed on federal holidays**  
**Intake: Every Tuesday, 10:00 a.m. – noon**  
**Somali-speaking Intake: Every Tuesday 2:30-4:30 at Bryant Coyle Center**  
**English Only Intake: Every Wednesday 10:00-11:00 at American Indian Center and 4:00-5:00 at Pillsbury House**  
**Spanish Only Intake: Every Thursday 2:00-4:00 at CLUES in Minneapolis**

3. **Minnesota Federal Public Defender**

**United States Courthouse**  
**300 South Fourth Street, Room 107**  
**Minneapolis, MN 55415**  
**612-664-5858, 612-664-5850 Minneapolis**

4. **Misdemeanor Defense Project: The Hennepin County Bar Association arranges for an attorney to be present at each of the four courthouses (downtown Minneapolis, Brooklyn Center, Edina and Minnetonka) during the misdemeanor arraignment hours. The HCBA attorney provides information about how misdemeanor court works and as well, provides brief legal advice; however, the attorney won't provide full representation unless**

specifically retained. Call the HCBA Lawyer Referral and Information Service for more information. 612-752-6666.

5. HCBA Lawyer Referral and Information Service for criminal defense attorneys where the caller isn't indigent.

DEAD END: The University of St. Thomas Law School operates the Interprofessional Center for Counseling and Legal Services which has a Misdemeanor Clinic that provides legal services to defendants facing misdemeanor charges. However, they do not accept walk-ins or people asking for direct services. Instead, the IPCLS only takes referrals from other agencies.

### Ramsey County

1. Ramsey County Public Defender: Second District Management Office 101 E. Fifth St. Suite 1808 St. Paul, MN 55101 Phone: 651-757-1600 Fax: 651-215-0673; Maplewood Satellite Office 2050 White Bear Avenue Maplewood, MN 55109 Phone: 651-266-1991 Fax: 651-266-1994
2. Neighborhood Justice Center: [www.njcinc.org](http://www.njcinc.org), 651-222-4703, 500 Laurel Ave., Saint Paul (discussed above).
3. Criminal Defense Services, Inc.: [www.criminaldefenseservices.org](http://www.criminaldefenseservices.org), 651-757-1650, 101 East First Street, Suite 1808, St. Paul, MN 55101. Criminal Defense Services, Inc. (CDSI) is a non-profit organization operating exclusively in Ramsey County, Minnesota that provides legal services to serve poor and low-income criminal defendants. The types of cases CDSI attorneys handle are limited to:
  - Petty misdemeanors
  - Misdemeanors
  - Gross misdemeanors
  - Certain low-level felony offenses

CDSI has a panel of dedicated attorneys consisting of approximately 20-25 private attorneys who volunteer as a community service. The attorneys are assigned to appear at arraignments in Room 131A of the Ramsey County Courthouse, the Ramsey County Law Enforcement Center, and Ramsey County's Suburban Courthouse in Maplewood. The attorneys work with the accused who do not qualify for the public defender; there are specific financial guidelines to determine who qualifies for these services. Those who qualify to become CDSI clients pay a reduced rate for legal representation. Part of the fee goes to the organization and the

attorney also gets a portion. The fee is well below the private rate that an attorney would otherwise charge.

4. **Ramsey County Courthouse, Law Library, Room 1815, 15 Kellogg Blvd West, Saint Paul MN 651-266-8391**: hosts a criminal expungement forms clinic in the law library the 2<sup>nd</sup> and 4<sup>th</sup> Thursday of the month from 1PM-3PM for Ramsey County residents.
5. **Ramsey County Bar Association Attorney Referral Service** where the caller isn't indigent.

#### **Fallback Referrals**

Be sure to give out the **LawHelpMN.org** and **Court Self-Help Centers** as fallback referrals, especially for information relating to criminal expungements, victim's rights, and a host of other matters relating to the broad category of "criminal law."