

The Pre-Trial Process in Criminal Cases

Arrest

- With Warrant: The prosecutor presents to the judge a sworn affidavit of a law enforcement officer setting forth facts that the officer believes constitutes probable cause to believe a crime was committed and the person charged committed the offense. If the court finds that probable cause exists, the warrant is signed and filed with the Clerk of the County Court. A complaint is then filed in County Court. A warrant authorizes law enforcement to arrest the person charged.
- Without Warrant: Within 48 hours after a warrantless arrest, the arresting officer must present the court with an affidavit with a brief explanation of the basis for the arrest. The court decides based on the document alone if probable cause exists for continued detention. If not, the person is released. If probable cause is found, then a bond is set. A complaint should be on file within 24- to 48 hours of the probable cause finding.
- Once charges have been filed, the arrest warrant or probable cause affidavit will be made part of the court file and is accessible from the clerk's office or online through the JUSTICE website.

Charges in County Court

- All traffic and misdemeanor criminal charges are handled in county court.
- Most traffic offenses are non-jailable and carry a fine. A fine schedule is created by the Nebraska Supreme Court.
- Penalties for misdemeanors range from fines to a year of imprisonment, Class I being the most serious and V being the least. They are laid out in statute 28-106.
 - Class I- max 1 year in jail and/or up to \$1000 fine
 - Class II- max 6 months in jail and/or up to \$1000 fine
 - Class III- max 90 days jail and/or up to \$500 fine
 - Class IIIA- max 7 days jail and/or up to \$500 fine
 - Class IV- up to \$500 fine
 - Class V- up to \$100 fine
 - Class W- Driving under the Influence
 - 3rd offense - 90-365 days jail and \$1000 fine
 - 2nd offense - 20-180 days jail and \$500 fine
 - 1st offense - 7-60 days jail and \$500
- Traffic violations are infractions which carry fines and no jail time.

Charges in District Court

- Felony criminal charges all are handled in district court. (*See: Adult Felony Process Flowchart*) Though, judges in district court can have jurisdiction over misdemeanors or traffic cases, too, if they are filed along with felonies or if a felony is pleaded down.
- Felony offense penalties are set forth by statute into classes, ranging from IV being the least serious to Class I being the most serious. (<https://nebraskalegislature.gov/laws/statutes.php?statute=28-105>):
 - Class I-death sentence
 - Class IA- life imprisonment

- Class IB- 20 years to life imprisonment
- Class IC- 5 years to 50 years imprisonment
- Class ID- 3 years to 50 years imprisonment
- Class II- 1 year to 50 years imprisonment
- Class IIA- 0 to 20 years imprisonment
- Class III- 0 to 4 years imprisonment and 9-24 months post-release supervision, or \$10,000-\$25,000 fine or both
- Class IIIA- 0 to 3 years imprisonment and 9-18 months post-release supervision, or max \$10,000 fine or both
- Class IV- presumption of probation. If that presumption is overcome taking into consideration the factors under Neb. Rev. Stat. 29-2260, then the penalty is 0 years to 2 years imprisonment and 9-12 months Post Release Supervision, or max \$10,000 fine or both

Documents: Citation; complaint; motions; orders; pre-sentence reports; affidavits; bonds

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