



MINNESOTA JUDICIAL TRAINING UPDATE



WARRANTLESS ARRESTS AND DETENTIONS: 36 & 48 HOUR RULES

This Update Is Designed As A "Quick Judicial Reference Guide" On When And Under What Circumstances The 36-Hour And 48-Hour Rules Apply Following The Warrantless Arrest And Continued Detention Of An Adult Suspect.

(See Example Charts: pages 2-4)

- 1) **QUESTION: WHAT IS THE 36-HOUR RULE?** Whenever an adult suspect is taken into custody following a warrantless arrest, he/she must be brought before a judge or judicial officer without unnecessary delay and in any event, not more than 36 hours after arrest. In misdemeanor cases, a defendant who is not brought before a judge within the 36-hour limit must be released upon citation, as provided in Rule 6.01, *subd. 1*. However, "for cause shown" an extension of time may be ordered by the court pursuant to *Rule of Criminal Procedure 34.02*. The Rule applies to all Misdemeanor, Gross Misdemeanor or Felony warrantless arrests of an adult, regardless of whether a complaint or affidavit has been signed. *Rule of Criminal Procedure 4.02, Subd. 5*.

Note: Adult v. Juvenile: This update does NOT include juvenile arrests. The 36 hour rule for juvenile arrestees is significantly different than for adults. See *Juv. Rule of Delinquency Proced. 5.07, Subd 1*.

- a) **TIME COMPUTATION** In calculating the 36-hour rule for arrested adults, the clock always starts ticking at midnight (at the end of the day of arrest) and always ends at 12 o'clock noon, but you do NOT count the following days:

THE DAY OF ARREST

or

SUNDAYS

or


LEGAL HOLIDAYS

NOTE: ARRESTS BY WARRANT: If the arrest is pursuant to a warrant, then the same 36 hour rule applies, BUT the manner in which the 36 hours is computed is different. For example, although you still do not count the day of arrest, you DO count all other days, including Saturdays, Sundays and legal holidays. However, if the 36 hour time period ends on a weekend or legal holiday (when court is not in session) the arrested person must be brought before a judge "as soon as a judge is available". *Rule 3.02, Subd. 2*.



EXAMPLES OF 36-HOUR RULE: The clock always starts ticking at midnight following the day of arrest and always ends at noon. You do not count the day of Arrest, Sundays or Legal Holidays.

(midnight) ——— 36 hours ———> (appear in court)

Monday Arrest	Monday	Tuesday	Wednesday
	ARREST OCCURS 		Noon 
Tuesday Arrest	Tuesday	Wednesday	Thursday
	ARREST OCCURS 		Noon 
Wednesday Arrest	Wednesday	Thursday	Friday
	ARREST OCCURS 		Noon 
Thursday Arrest	Thursday	Friday	Saturday
	ARREST OCCURS 		Noon 



 **Note: For Adults:** Defendant’s that are arrested on Thursdays will have to appear before a judge sometime on Friday.

Note: For Juveniles: Remember, this update does NOT include juvenile arrests. The 36 hour rule for juvenile arrestees is set out in *Juv. Rule of Delinquency Proced. 5.07, Subd 1.*



Friday Arrest	Friday	Saturday	Sunday	Monday
	ARREST OCCURS 		Don't Count Sundays	Noon 

(midnight) ————— 36 hours —————> (appear in court)



Saturday Arrest

Saturday	Sunday	Monday	Tuesday
ARREST OCCURS 	Don't Count Sundays		Noon 

Sunday Arrest

Sunday	Monday	Tuesday
ARREST OCCURS 		Noon 

Legal Holidays

Friday	Saturday	Sunday	Monday Legal Holiday	Tuesday
ARREST OCCURS 		Don't Count Sundays	or Legal Holidays	Noon 

2) **QUESTION: WHAT IS THE 48-HOUR RULE?** Whenever a person (adult or juvenile) is arrested without a warrant (Misdemeanor, Gross Misdemeanor or Felony), he/she may not be detained longer than 48 actual hours from the time of arrest unless a complaint has been signed by a judge or judicial determination has been made that probable cause exists for continued detention. If probable cause is not found, the arrested person must be immediately released. *County of Riverside v. McLaughlin, 111 S.Ct. 1661 (1991); Rule of Criminal Pro. 4.03 Subd 1.*

a) **TIME COMPUTATION** The clock on the 48-hour rule starts ticking as soon as the suspect is arrested and runs continuously for the next 48 hours. There are no exclusions in computing the 48-hour time limit. You count every day, including the day of arrest, weekends, and legal holidays, etc. (See Chart – next page)

NOTE: UNREASONABLE DELAYS: The probable cause determination must occur without unreasonable delays but in no event later than 48 hours after the arrest. The 48 hours may be extended “post facto” if the state proves a “bona fide emergency or other extraordinary circumstance”. However, even a probable cause determination made within 48 hours may be too late if there has been an unreasonable delay. *Ibid.*

EXAMPLE OF 36 v. 48 HOUR RULE: Adult suspect arrested Friday at 9 a.m.



a) **36-hour rule:** Friday morning 9:00 a.m. arrest = Defendant must appear before a judge by Monday at noon (end of 36 hours excluding day of arrest and Sunday).

b) **48-hour rule:** Friday morning 9:00 a.m. arrest = Defendant must be released by 9:00 a.m. Sunday morning (end of 48 hours) unless Defendant’s continued detention is authorized by a judge.

NOTE: 36 and 48 hour rules are separate and distinct and both must be complied with.

3) **QUESTION: WHAT IF THE 36 OR 48 HOUR RULE IS VIOLATED?** A violation of the 36 or 48 hour rule does NOT automatically result in sanctions such as suppression of evidence and/or statements. The decision whether to suppress evidence and/or statements made while in custody in violation of either rule should be determined on a case-by-case basis, taking into consideration the four “WIBERG” factors noted below:

In *State v. Wiberg*, 296 N.W.2d 388 (Minn. 1980), as a consequence for violating the prompt arraignment rule, the court ordered suppression of statements made prior to arraignment. The court identified the following considerations: (1) How reliable the evidence sought to be suppressed is; (2) Whether the delay was intentional; (3) Whether the delay compounded the effects of other police misconduct; (4) The length of the delay.

In the *Wiberg* case, there was NO evidence showing the delay was not unreasonable, and the violation compounded prior state misconduct.

Additional Sources: **48 Hour Rule** = Atwater v. City of Lago Vista, 121 S.Ct 1536 (2001); State v. Askerooth, 681 N.W.2d 353 (Minn. 2004); Powell v. Nevada, 114 S.Ct. 1280 (1994); **36 Hour Rule** = State v. Pierce, 347 N.W.2d 829 (Minn. Ct. App. 1984); State v. Meyer, 316 N.W.2d 545 (Minn. 1982); State v. Case, 412 N.W.2d 1 (Minn. Ct. App. 1987); State v. Jackson, 469 N.W.2d 457 (Minn. Ct. App. 1991), affirmed 472 N.W.2d 861 (Minn.); **Rules of Criminal Procedure** = 3.02 subd 2, 4.02 subd 5, 4.03 subd 1, 34.02; Chelsey Abrahamson, U of M Extern.