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The Criminal Process

The Stop:

You may be stopped for questioning by the police. A stop is not the same as an arrest because, although you may be detained, you are not moved to a different location. During a stop the police officer may ask you questions, but you have the right to refuse to answer

Searches:

Search Warrants

A search warrant authorizes police to conduct a search of a specific, place such as your residence. In order for a warrant to be issued by a judge, they must have probable cause.

Probable cause to search means that: it is more likely than not that the specific items to be searched for are connected with criminal activities and those items will be found in the place to be searched.

Warrantless Searches

The general rule is that warrants are required for searches. But search warrants are not required for the following:

Searches incident to arrest: Police officers are permitted to search your body and/or clothing for weapons or other contraband when making a valid arrest.

Automobile searches: If you're arrested in a vehicle, the police may search the inside of the vehicle. To perform a complete search of the vehicle (such as in locked glove compartments, for example), probable cause is necessary.

Exigent circumstances: Searches may be conducted if there are "exigent circumstances" which demand immediate action, such as to avoid the destruction of evidence.

Plain view: Police do not need a search warrant when they see an object that is in plain view of an officer who has the right to be in the position to have that view.

Consent: If you consent to a search of your body, your vehicle, or your home, police are not required to have a warrant. You aren't required to consent to any police searches

The Arrest:

In order to be arrested, there must be probable cause. This means that there must be a reasonable belief that a crime was committed and you committed the crime. An arrest warrant is not necessary.

After you're placed under arrest, you are protected by constitutional rights. Two important rights to be aware of is first the right to remain silent and second the right to have an attorney. After your arrest, you aren't required to say anything else to police or investigators, until you have an attorney present. You must be given the opportunity to contact an attorney.

CHECK OUT THESE LOCAL BUSINESSES:



Miranda Rule

Under the Miranda Rule, if you are in police custody you must be informed of specific constitutional rights before interrogation begins. Those rights are as follows:

- The right to remain silent
- The right to have an attorney present during questioning
- The right to have an attorney appointed if you are unable to afford one

Most people are not aware that your Miranda rights do **not** have to be read until you are taken into custody. That means that you can be questioned by the police before being taken into custody and anything you say at that point can be used against you later in court.

The Booking Process:

After you are arrested, the police will bring you to the police station for the booking process. You will be fingerprinted and asked a series of questions, such as your name and date of birth. You will also be searched and photographed. Your personal property such as jewelry will be catalogued and stored.

Attorney Appointment:

In North Carolina, if you cannot afford to hire an attorney, and if you are charged with a crime that is punishable by imprisonment or a fine of \$ 500 or more, an attorney will be appointed to defend you. Your entitlement to counsel begins as soon as possible after you are taken into custody.

Once a public defender has been appointed to defend you, you may ask the court to appoint a substitute attorney only for good cause. Good cause requires more than mere dissatisfaction with your appointed attorney and may include:

- 1.)A conflict of interest between you and the attorney
- 2.)Your attorney becomes ill and cannot continue to represent you
- 3.)There is reason to believe that your attorney is not providing effective assistance

The Arraignment Process:

Once criminal charges are filed, you'll make a court appearance which is known as an "arraignment." If you are incarcerated, this will usually occur within 72 hours of your arrest. During your arraignment, you'll be asked to enter a "plea" to the crime you've been charged with.

North Carolina pleas are as follows:

Guilty plea: If you plead "guilty," you're admitting to the facts of the crime and the fact that you were the one who committed that crime.

Not guilty plea: A "not guilty" plea asserts that you did not commit the crime with which you were accused. After your plea, a pre-trial or trial date will be set.

No contest plea: A "no contest" plea indicates that, while you are not admitting guilt, you do not dispute the charge. This is preferable to a guilty plea because guilty pleas can be used against you in later civil lawsuits.

"Mute" plea: In North Carolina, you may "stand mute" instead of making a plea. The court will then enter a plea of not guilty. By standing mute, you avoid silently admitting to the correctness of the proceedings against you until that point. You are then free to attack all previous proceedings that may have been irregular.

If you plead "guilty" or "no contest," there will not be a trial. You'll then be sentenced.

During the arraignment, the court will also:

- Set bail
- Refuse to set bail; or
- Release you on your own personal recognizance, which means that the court takes your word that you will appear when necessary for later court obligations

The Bail/Bond Process:

Bail" is money or property put forth as security to ensure that you'll show up for their criminal proceedings. In North Carolina, bail can be paid:

In cash

A pledge of property (if permitted in that court)

A bail bond: A professional bail bondsman is an individual whose business is to pledge his or her own property or security to guarantee the bail bond to the court.

******Please see our referral for bail bonding under our local businesses listed in the left hand column of this newsletter.**

Powell Bail Bonding is available 24 hours a day. Call (910)-762-4114.

Trial:

Many prosecutors will consider "plea agreements," although it's not legally required. If you don't reach a plea agreement with the prosecutor, your proceedings will move toward the trial stage. Usually, if you are charged with a crime punishable by six or more months of imprisonment, you have the right to a jury trial. This right may be waived by: Pleading guilty; or Choosing a bench trial (a trial in front of a judge only)

A felony is a crime usually punishable by imprisonment for more than one year. A misdemeanor, on the other hand, is usually punishable by a fine or a shorter term of incarceration. Although there are some exceptions, a felony is typically served in a prison and a misdemeanor served in jail.

The Appeal Process:

If you're found guilty after a trial, you are entitled to an appeals process. This process varies depending upon the crime, but there are always time deadlines by which you must file an appeal.

In North Carolina, you generally have 10 to 14 days after judgment to file an appeal.

There are numerous reasons for an appeal from a guilty verdict in a criminal case, including what's called "legal error." Legal error may include:

Allowing inadmissible evidence during the criminal process, including evidence that was obtained in violation of your constitutional rights

Lack of sufficient evidence to support a verdict of guilty

Mistakes in the judge's instructions to the jury regarding your case

You may also appeal due to misconduct on behalf of the jurors, or if there is newly discovered evidence to exonerate you.

If you are someone you know has been accused of committing a crime you may contact the office for an appointment. We will discuss further on how to maintain your legal rights and possibly avoid a conviction on your record.



December Events

Lighting of the World's Largest Living Christmas Tree, 80th

Join us beginning at 5:30pm for holiday entertainment provided by The Cape Fear Academy Upper School Vocal Ensemble with the tree lighting and the arrival of Santa to follow at 6pm. Santa visitation will be held for one night only this year directly following the tree lighting until 8:30pm! The Christmas Tree will remain lit from 5:30pm to 10pm through December 31, 2009. Call 910.341.7855 or visit us online at www.wilmingtonnc.gov for more information including detailed directions to the tree.

Hilton Park
407 Hilton Street
Wilmington, NC 28401
www.wilmingtonnc.gov

Visits with Santa at Mayfaire Town Center

As soon as Santa finishes his parade on November 27, he immediately moves into the Santa Village to set up residence. Once there, children can visit him and get their photos taken by a professional photographer (Grins 2 Go). Santa welcomes children, adults, pets and anyone with a holiday spirit! The Santa Village will be located in front of the theater next to Mayfaire's 16ft Christmas tree (on the patio). Santa Village Hours: Monday-Friday 11am-7pm; Saturday 10am-7pm; Sunday noon-6pm. Call 910.256.5131 for more information.

Mayfaire Town Center
Military Cutoff Rd
Wilmington, NC 28405
www.mayfairetown.com

1st Annual Christmas by the Sea

Beginning Friday, November 27 the Boardwalk will come alive with holiday spirit, when the 1st Annual "Lighting of Boardwalk" will occur at 8pm, following the "Lighting at the Lake". The Boardwalk oceanfront landscaped coves will come alive with merriment and decorations, thanks to local businesses and groups who have sponsored the various coves. View the decorations nightly through January 1. Festive activities will then be held every Friday and Saturday through December 19 from 5-8pm. Activities include: Fire Pit with Story Telling, Hot chocolate, Live Nativity Scene, Caroling, Santa (Sat only), Theatre, Choral and band performances by Ashley, Murray and CB Elementary (Sat only), Pleasure Island Drama Club, Cape Fear Roller Girls, Puppet shows, Arts & Crafts Market Area and ornament making activities for the kids. Activities and performances are FREE. Presented by the Boardwalk Makeover Group. For more information, visit

www.boardwalkmakeover.org
Carolina Beach Boardwalk

Carolina Beach, NC 28428
www.boardwalkmakeover.org

Enchanted Airlie

Enjoy beautiful holiday flowers, festive lights, live musical entertainment, and the largest display of model trains in the Southeast. Stroll through this whimsically lighted display at your own pace, soaking in the beauty. Now in its fifth season, Enchanted Airlie is open Nov 27 & 28, Dec 4, 5, 11, 12, 17, 18, 19, 21 & 22. There are two show times per evening beginning at 5 p.m. and 7 p.m. Advanced tickets are required. Call

910.798.7700 for details.
Airlie Gardens
300 Airlie Rd
Wilmington, NC 28403
www.airlegardens.org



Meet the Criminal Defense Team...

Attorney Karen F. Richards: Practicing law in the region for nearly ten years. Specializing in criminal, domestic violence, and family law defense. Karen.Richards@brockandscott.com

Attorney Roland C. Draughn: Former New Hanover and Pender County assistant District Attorney. Serving as counsel for traffic and criminal charges in Pender, Onslow, Duplin and Sampson counties. Roland.Draughn@brockandsoctt.com

Stormie Bruce: Criminal legal assistant with over eight years of experience in assisting with traffic and criminal offenses. Stormie.Bruce@brockandscott.com

If you have any questions in regards to DWI, traffic matters, criminal offenses or family law issues please contact the office at 910-452-4520 to schedule an appointment to speak about your legal needs.

If you would like to be taken off our e-mail newsletter distribution list, please contact the office or e-mail your request to:

stormie.bruce@brockandscott.com.

Do not reply to this e-mail. Thank you
