



MARTINE LAW TRAINING UPDATE



WARRANTLESS ARRESTS & DETENTIONS 36 & 48 Hour Rules

This update is designed as a **“Quick Attorney 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, they **MUST** be brought before a judge or judicial officer without unnecessary delay and in any event, not more than 36 hours after arrest. A defendant who is not brought before a judge within the 36-hour limit must be released! This mandatory release, however, does not bar the state from later charging the defendant. The 36-hour rule applies to all adult defendants held in custody after a warrantless arrest for a misdemeanor, gross misdemeanor, or felony. *Minn. R. Crim. P. 4.02, subd. 5(1)*. However, under *Minn. R. Crim. P. 34.02*, the court may, “for cause shown,” extend the 36-hour time limit.

Adult v. Juvenile: This update does NOT include juvenile detentions. The 36-hour rule for juvenile detainees is significantly different from adults. *See Minn. R. Juv. Del. P. 5.07, subd. 1.*

36-HOUR TIME COMPUTATION:

In calculating the 36-hour rule for warrantless arrests of adults, the clock always starts ticking at midnight (at the end of the day of arrest) and the 36th hour always ends at 12 o'clock noon. You do NOT count the following days:

The Day of Arrest

or









Sundays

or

Legal Holidays



NOTE – ARRESTS ON COMPLAINT/WARRANT: The 36-hour rule also applies when a person is arrested on a complaint and warrant, but the time computation is calculated differently. You still do not count the day of arrest, but you do count all other days, including Saturdays, Sundays, and legal holidays. If the 36-hour period ends on a weekend or legal holiday when court is not in session, the defendant must be brought before a judge “as soon as a judge is available.” *Minn. R. Crim. P. 3.02, subd. 2.*

EXAMPLES OF 36-HOUR RULE FOR WARRANTLESS ARRESTS



	(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 







Thursday Arrests: Adult defendants that are arrested on Thursdays will have to appear before a judge sometime on Friday.

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

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

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

	Sunday	Monday	Tuesday
Sunday Arrest	ARREST OCCURS 		Noon 

	Friday	Saturday	Sunday	Monday Legal Holiday	Tuesday
Legal Holidays	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), they 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 (adult or juvenile) must be immediately released. *County of Riverside v. McLaughlin*, 500 U.S. 44, 111 S. Ct. 1661, 114 L. Ed. 2d 49 (1991); Minn. R. Crim. P. 4.03, subd. 1.

48-HOUR 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 – below)

NOTE: UNREASONABLE DELAYS: Under *County of Riverside v. McLaughlin*, a judicial probable cause determination within 48 hours of a warrantless arrest will “as a general matter” satisfy the Fourth Amendment. However, even a determination made within 48 hours can violate the rule if the defendant proves the delay was unreasonable. If the hearing occurs more than 48 hours after arrest, the delay is presumptively unreasonable, and the burden shifts to the State to show a bona fide emergency or other extraordinary circumstance caused the delay. *McLaughlin*, 500 U.S. at 45–46.

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

	(midnight) —————→ (appear in court)			
	Friday	Saturday	Sunday	Monday
a) 36-Hour Rule	ARREST OCCURS			Noon
			Don't Count Sundays	
b) 48-Hour Rule	9:00 a.m.		9:00 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 continuous 48 hours) unless Defendant's continued detention is authorized by a judge following a judicial determination of probable cause.

NOTE: Although the 36- and 48-hour rules are separate, they both MUST be followed.

3) Question: What if the 36 or 48 Hour Rule is Violated?

A violation of the 36- or 48-hour rule does not automatically require sanctions such as suppression of evidence or statements. Whether to suppress evidence or statements obtained while the defendant was held in violation of either rule is a case-by-case determination guided by the four *Wiberg* factors. *See also State v. Waddell*, 655 N.W.2d 803, 812 (Minn. 2003).

In *State v. Wiberg*, 296 N.W.2d 388, 393 (Minn. 1980), the Minnesota Supreme Court ordered suppression of statements made prior to arraignment for violating the prompt-arraignment rule, and identified four considerations: (1) the reliability of the evidence sought to be suppressed; (2) whether the delay was intentional; (3) whether the delay compounded other police misconduct; and (4) the length of the delay.

Who Has the Burden of Proof?

- **36-hour rule (Minn. R. Crim. P. 4.02):**
 - State has the burden to justify any delay beyond 36 hours (good cause), by preponderance.
 - Defendant has the burden, by preponderance, to show that a violation plus the *Wiberg* factors justify suppression/dismissal—no automatic remedy.
- **48-hour rule (Minn. R. Crim. P. 4.03 / *McLaughlin*):**
 - Within 48 hours: defendant must prove, by preponderance, that the delay was unreasonable.
 - After 48 hours: delay is presumptively unreasonable; State bears the burden, by preponderance, to prove a bona fide emergency or other extraordinary circumstance.

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