

January 14, 2010

## **Pre-Indictment Delay: How Long is Too Long in New Mexico?**

There are often delays in indictment on felony cases in Albuquerque, and throughout New Mexico. We often get questions regarding the legality of the delay in indictment following the first appearance.

When a felony action is commenced in Albuquerque, the case typically begins in the Metropolitan Court on a first appearance. During the first appearance, the court will address the statement of probable cause. The burden for probable cause is pretty low at this stage. The statement of probable cause need only establish that a crime was committed and that logically a jury could find the defendant guilty based upon that statement if true.

It is rare that the court would find probable cause lacking. In cases where probable cause is found, the Albuquerque Metropolitan Court judge will first address bond. Assuming that bond has been satisfied, the judge will set 60 day conditions of release. These conditions are fairly routine such as no further violations of the law, no contact with the alleged victim, no return to the scene of the crime, no deadly weapons, no drugs or alcohol, and no leaving the County without approval of the Court.

Many people accused of crimes believe that once the 60 days is up, the State is barred from taking the case to grand jury. That is not the case. The only consequence of failing to take the case to grand jury within the 60 day conditions of release is that those conditions lapse. The State is still free to bring the charges at a later date, and unfortunately for the defendant over whom the charges are hanging, often a much later date.

The only deadlines for getting the case to grand jury and formal charges filed is the statute of limitations. The statute of limitations for criminal cases in New Mexico are quite lengthy as set forth in by statute as follows:

- Capital or 1st degree violent felony - no limitation,
- 2nd degree felony - 6 years from the date of the crime,
- 3rd or 4th degree felony - 5 years from the date of the crime,

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- • Misdemeanor - 2 years from the date of the crime, and
- • Petty Misdemeanor - 1 year from the date of the crime.

These deadlines are pretty lengthy so that a delay generally does not mean much regarding the intentions of the District Attorney. However, in less serious cases, no news is good news. In the meantime, if you are in this situation, you should keep your head down and avoid any contact with law enforcement. This means at a minimum staying out of trouble. It would be unfortunate to raise a red flag on an old case due to subsequent violations of the law.

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