

TAKING YOUR OMAHA DUI CASE TO JURY TRIAL

If a Dismissal of Your Omaha DUI Charges Is Not Forthcoming You May Decide to Take Your Case in Front of a Jury in the Hope of Being Exonerated



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If you have been charged with driving under the influence in Omaha you could be facing serious penalties if convicted. Many of those potential penalties are non-judicial in nature, such as increased insurance premiums, loss of employment opportunities and disciplinary action if you hold a professional license. Avoiding a conviction is the only sure way to avoid these penalties. An experienced Omaha DUI defense attorney may be able to get the charges dismissed prior to trial if the facts support a dismissal; however, if a dismissal is not forthcoming you may decide to take your case in front of a jury in the hope of being exonerated. Ultimately, the decision to try your case to a jury is a decision you alone can make after lengthy consultation with your attorney. For now, a basic understanding of the jury trial process may be helpful.

THE RIGHT TO TRIAL BY JURY

In the United State we have a number of rights that are guaranteed to us as if we are accused of a criminal offense. Most of those rights are found in the Bill of Rights, or the first ten Amendments to the United States Constitution. Because the U.S operates under a federalist system of governance, the individual state constitutions often mirror the rights found in the U.S. Constitution. The Sixth Amendment to the U.S. Constitution is where your federal right to trial by jury is found and states, in pertinent part:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed...”

At the state level, Article I, Section 6 of the Nebraska State Constitution reads:

“The right of trial by jury shall remain inviolate, but the Legislature may authorize trial by a jury of a less number than twelve in courts inferior to the District Court, and may by general law authorize a verdict in civil cases in any court by not less than five-sixths of the jury.”

Your right to trial by jury is a fundamental right in the United States; however, it is important to remember that it is your right, meaning you can exercise it or waive it. When a defendant is faced with a serious crime the court typically presumes that the defendant wishes to exercise the right to a trial by jury. Therefore, if you plan to waive your right to a jury trial you will need to do so in front of the judge. The judge must be convinced that you have made a knowing and voluntary waiver of your right to a trial by jury. Waiving your right to a jury trial is done for one of two reasons. The first reason is that you have reached a plea agreement with the State of Nebraska. Because a plea agreement requires you to plead guilty a trial is not necessary. The second possibility is that you have decided to let a judge decide your fate instead of a jury. Referred to as a “bench trial”, this

type of trial does not use a jury. Instead, the judge hears all of the evidence and decides whether you are guilty or not guilty.

SELECTING THE JURY – VOIR DIRE

On the day of trial a jury must be selected to hear your case. Known as “voir dire”, selecting the jury is almost as important as preparing your defense. Remember, these six or 12 people will decide your fate. Potential jurors are randomly selected from the voter registration, state identification, or driver’s license records for the county where the trial is to take place. In theory, these people will represent a “jury of your peers”. In reality, the final jury may, or may not, be made up of people like you. Both your attorney and the prosecuting attorney will have the opportunity to try and shape the final jury in an effort to impact the final outcome of the case. This is done through the use of “challenges”.

A “challenge” asks the court to excuse a prospective juror from the jury pool. Both sides are allowed to question prospective jurors in an effort to determine if they want to juror to remain on the jury. If either side wishes to excuse a juror based on the answers to those questions a “challenge” must be used to excuse the juror. A challenge can be for cause or can be a “peremptory” challenge. Challenges for cause must be based on a legal reason that prohibits the juror from serving, such as bias or knowledge of the case or parties to the case. The judge must be convinced that cause exists to excuse the juror. The number of challenges for cause is unlimited.

“Peremptory” challenges do not require a reason. This is your opportunity to shape the final jury by excusing jurors whom you feel will not be sympathetic to you and your case. The number of peremptory challenges, however, is limited. Cases where the crime for which the defendant is charged is punishable by death or life in prison allow each side 12 peremptory challenges. For offenses punishable by more than 18 months in prison but less than life the number of peremptory challenges is six. For all other cases only three peremptory challenges are allowed.

Prospective jurors will continue to be brought in to replace those who have been excused as a result of a challenge by either side. Once both sides have used up all of their challenges the remaining individuals become the final jury.

THE TRIAL

A jury trial begins with both sides giving an opening statement. Essentially, this provides the jury with a glimpse of what that side believes the evidence will show. The evidentiary stage is next. Because the State of Nebraska has the burden of proving you guilty beyond a reasonable doubt, the prosecution always goes first. The prosecutor will call witnesses and introduce evidence. Your attorney will have the opportunity to cross-examine all of the State’s witnesses. When the State is finished it is your turn. Again, because the State bears the burden of proving your guilt you are not required to present any evidence at all. Sometimes it is actually

best not to present any defense if the State's case is particularly weak. This is a strategic decision that must be made with your attorney. If you do decide to present a defense your attorney will call witnesses and introduce evidence just like the State did. The prosecutor will have the opportunity to cross-examine your witnesses as well, including you should you decide to testify on your own behalf. Whether or not you testify is also a strategic decision that must be made with the assistance of your attorney. Although defendant's frequently want to "tell their side", allowing a defendant to testify is risky because it opens the door for the prosecutor to make the individual look bad in front of the jury in many cases. After your side is finished the prosecutor and your attorney will give a closing argument – one last chance to sway the jury.

THE VERDICT

After closing arguments the judge will give the jury their jury instructions.



The jury will then leave the room to begin deliberations. In a criminal prosecution the jury must reach a unanimous verdict, meaning that all of the jurors must vote to convict you for a guilty verdict to be returned. If the jurors are unable to agree on a verdict after

much deliberation, the verdict could be a "hung jury". In short, this means

that the case has no conclusion. The charges remain pending and the State of Nebraska must then decide whether to re-try you or not.

IS A JURY TRIAL IN YOUR BEST INTEREST?

It cannot be stressed enough that only an experienced Omaha DUI defense attorney can help you decide whether a jury is in your best interest. The facts and circumstances of your case, your own criminal history (or lack thereof), the demographics of your county, and even the small idiosyncrasies of the court system where your case is pending will all play a part in deciding whether a jury trial is a good idea. Juries can be unpredictable. A plea agreement provides you with a known outcome;



however, a jury trial could provide you with a much better (or much worse) outcome. Your Omaha DUI defense attorney can provide you with guidance and advice based on previous experience with similar juries in similar prosecutions. This advice is invaluable when making the tough decision to exercise your right to a trial by jury or

waive it.

If you have been charged with a DUI in Omaha, Nebraska and are considering a trial by jury it is imperative that you consult with an

experienced Nebraska DUI defense attorney early on in the prosecution to ensure that your rights are protected throughout the proceedings.

REFERENCES

Nebraska Judicial Branch, [Jury Service](#)
Center for Criminal Justice Advocacy, [Jury Selection](#)
Nebraska Legislature, [Nebraska State Constitution](#)

About the Author



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For almost two decades Nebraska attorney Thomas M. Petersen of Petersen Law Offices has been defending individuals charged with driving under the influence, or DUI. As a result of his dedication to defending his clients, Attorney Petersen was recently selected as one of the top 50 DUI attorneys in Nebraska. If you have been charged with an Omaha, Cass County, or Sarpy County, Nebraska,

contact the Nebraska DUI team today by calling 402-513-2180 or by filling out our online contact form for a free evaluation of your case.



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