

# **CONSTITUTIONAL AND STATUTORY RIGHTS OF THE DEFENDANT**

(Source: SDCL 23A-7-4 & 23A-7-5)

1. You have the right to be represented by an attorney at all stages of these proceedings. You have the right to hire your own attorney, or if you cannot afford to hire your own attorney, one will be appointed for you by a judge. A court-appointed attorney is not a free attorney. That attorney would be paid for by this county, and then the county would hold a lien against you and any property that you own until you pay the county back for the cost of that attorney. You must repay the county for the cost of your attorney regardless of the outcome of your case, however, the repayment for your court-appointed attorney would not have to be in one lump sum because you would be allowed to make monthly payments on your debt through a payment schedule.
2. If you are charged in a complaint with a class 1 misdemeanor or a felony, you have the right to have a preliminary hearing in front of a judge. The purpose of a preliminary hearing is for a judge to decide whether the prosecutor has enough evidence to go to trial. If the judge finds at the end of the preliminary hearing that the prosecutor has presented enough evidence to go to trial, then your case would move forward to arraignment and further proceedings which could eventually include a trial. However, if the judge finds at the preliminary hearing that the prosecutor has not presented enough evidence to go to trial, then the charge against you would be dismissed. You can give up your right to a preliminary hearing and proceed without it if you choose.
3. You have the right to remain silent both in and out of court, which includes not having to give a statement to any law enforcement officer. However, you are reminded that anything you say may be used against you.
4. You have the right to a speedy public trial by a fair jury selected from this county, and at that trial the prosecutor has the burden of proving your guilt beyond a reasonable doubt. You do not have to prove yourself innocent.
5. You have the right to see, hear, and question all of the witnesses that testify against you. You also have a right to call your own witnesses, and if those witnesses will not appear in court voluntarily, you may use the judge's subpoena power to bring them into court to testify. You may testify if you wish but you cannot be forced to do so.
6. Finally, you have the right to have a reasonable bond set, and once it is paid, to be free on that bond until your case is finished. However, you are warned that your bond will be revoked if you violate the terms of it and you may be held in custody until your case is finished.

## **PLEAS ALLOWED BY THE DEFENDANT**

There are five pleas that you may make to your charge:

1. Guilty
2. Guilty but mentally ill
3. Not guilty
4. Not guilty by reason of insanity
5. No contest

If you plead guilty or no contest to your charge, you give up the above rights and a sentence will be imposed by the judge. If you plead not guilty, a trial will be scheduled for you, and a judge or jury, depending on which type of trial you choose, will decide whether the prosecutor has proven its case beyond a reasonable doubt. A no contest plea is a special type of plea that can only be entered with the permission of the judge. If you want to enter a plea involving mental illness or insanity, you must discuss that matter with an attorney as those pleas have special considerations.