

## Criminal Terminology

Criminal prosecutions usually begin with the arrest of a suspect by a police officer, or by the filing of a formal action in court and the issuance of an arrest warrant or summons. A person who is arrested is taken to a police precinct and processed. The processing of an arrested individual consists of taking personal data and, where required, the individual is fingerprinted.

### Arrest

The word "booked" has entered common parlance as the thing done to arrested persons. Actually, the "booking" is an entry in an arrest record and a minor part of the processing. Accusatory instruments including information's, misdemeanor complaints, simplified traffic information's and felony complaints are also prepared in the station house by police personnel. A detective will be assigned to cases where investigations are needed. In addition to the traditional duties of investigation, detectives play a vital role in pure evidence gathering and preparing a case for trial. Detectives interview and interrogate arrested persons and witnesses to procure statements concerning the criminal incident. After processing, a person is either detained or released on bond (bail) or Appearance ticket for a court appearance that day or the next, depending upon the time processing is completed.

### Accusatory Instruments

Informations are sworn statements charging offenses of less than felony grade. The Information or supporting depositions annexed to it supply allegations to each element of the crime on personal knowledge, (for example an information charging unauthorized use of an automobile, will have statement sworn to by a policeman indicating the defendant operated a motor vehicle. Attached will be a supporting deposition of the vehicle's owner indicating that no person had permission to so use the vehicle). Misdemeanor Complaint is simply an allegation made on hearsay (Example - the information alluded to above would be a misdemeanor complaint if the deposition of the vehicle's owner was not attached). A person may only be held five days on such a misdemeanor complaint, and unless he waives, he cannot be forced to trial on such an instrument. Simplified Information is a very short Information charging a misdemeanor offense or less, for example: a traffic ticket

Prosecutor's Information is a written accusation filed by the District Attorney, either at the discretion of a Grand Jury, the direction of a local criminal court, or at the District Attorney's own instance.

Felony Complaint is a complaint charging a felony. It commences the proceeding, but no person may be tried for a felony except by the indictment of a Grand Jury or Superior Court Information (if the defendant waives indictment).

### Arraignment

An arraignment is merely a formal reading of the accusatory instrument. Many times but not always, bail is set at the arraignment as well. Provision is made to give the defendant an opportunity to get a lawyer or appointment of one. The Defendant is also given statutory warnings as to counsel, etc.

Usually persons arraigned on a misdemeanor charge or less will have their case adjourned to a second arraignment. This gives the defendant an opportunity to hire an attorney and to have him or her present at the arraignment.

After arraignment, misdemeanor cases are then adjourned for conference with the Assistant District Attorney who is handling the case. At the conference the attorney will try to negotiate a favorable plea agreement. If one can not be negotiated the Court will set dates for motions and preparations for trial will begin.

Felony cases go from arraignment to a felony conference. There the Judge, Assistant District Attorney and defense counsel will discuss the strengths and weaknesses of the case. If the Assistant District Attorney and defense counsel reach an agreement the Judge must find it acceptable. If no agreement can be reached dates for motions will be set and preparations for trial will begin.

### Conference

Misdemeanor cases are conferenced with a view toward disposition. The plea bargaining process commences. If no disposition is reached, the case is adjourned, motions are made and further plea bargaining takes place.

Usually after one or more adjournments, a case is assigned to a trial part. Depending on the nature of the case, there may be pre-trial hearings on Constitutional issues (confessions, searches, identification and wiretap.)

In general, persons charged with a misdemeanor are entitled to trial by a six-member jury.

### Trial

The PEOPLE (state) examine prospective jurors.

The Defendant examines prospective jurors.

PEOPLE exercise challenges to excuse jurors (each side has 3 Preemptory challenges)

Defendant exercises challenges to excuse jurors.

The Jury is sworn.

PEOPLE open. (Outline case they intend to prove).

Defendant opens, if he wishes.

PEOPLE call witnesses - defendant cross-examines them.

PEOPLE rest case.

Defendant calls witness, if he wishes - PEOPLE cross-examine.

Defendant sums up.

PEOPLE sum up.

The judge charges the jury - (explains the legalities of the case).

Jury deliberates and returns verdict.

\*Appeals from these proceedings go to the Appellate Term of the Supreme Court.

## Felonies

In Felony cases that are still at the lower Court level, (City, Town, etc.) a defendant is entitled to a preliminary hearing within 120 hours of the time when the defendant was placed in confinement (arrested), or 144 hours if a Saturday, Sunday or legal holiday occurs during the confinement.

A preliminary hearing is a hearing before a lower Court judge to determine whether or not there is reasonable cause to believe that the defendant committed a felony and therefore should be held for the action of the grand jury. It is at this time that the defense may elect to waive the preliminary hearing and send the case up to County Court.

Note: It is important to understand that if the defendant goes ahead with a preliminary hearing and prevails, i.e. the complaint is dismissed, the Grand Jury may still hear evidence and indict the defendant on those same charges.

The Grand Jury may hear evidence against persons held for its action by the Court. In addition, a felony prosecution may first begin by the presentation of a case to the Grand Jury.

The Grand Jury consists of up to 23 persons selected=">Arraignment on Indictment

&nbsp;traffic ticket

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