

Criminal Court System

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The following contains some pertinent information that might be of help to you as you become involved in the criminal justice system as a victim or witness.

Apprehension and Arrest of the Accused

There are three basic routes a case can take in order to be brought to court:

1. Arrest of the accused at the scene of the crime;
2. Arrest based on a warrant issued by the court in response to a sworn complaint;
3. Arrest based on indictment by a Grand Jury as the result of its investigation.

In all three instances, the evidence available must show that there is "probable cause" to believe that a crime was committed and that the person to be charged took part in committing the crime.

What is a complaint?

A complaint is a statement of facts about an alleged crime which, when filed in court formally

charges a person. Facts about a crime are submitted to the County Prosecutor's Office by a local law enforcement agency. Upon review, if the evidence is deemed sufficient for prosecution, a complaint is filed in the court.

This is the initial stage in the prosecution of a criminal matter. If there is not enough information at this time, no complaint is filed.

What is a Warrant of Arrest?

A warrant of arrest is an order signed by a judge, authorizing the police to arrest a person believed to have committed a serious crime.

Case Review and Filing of Charges by the Prosecutor

Following the arrest of the accused by the Police, the case is presented to the prosecutor. The prosecutor, as the people's representative in our system of criminal justice, has the sole responsibility for determining whether or not charges will be presented to the Grand Jury. The initial processing of the case by the prosecutor is often referred to as "screening". At this stage the case is discussed with police, evidence is reviewed and witnesses are interviewed.

The prosecutor then decides whether to do one or more of the following:

1. Charge the accused with the same charge or charges made by the police or used in issuing the arrest warrant.
2. Increase a given charge to a more serious charge, reduce the charge, or add new charges.

The accused is often charged with more than one criminal offense so the filing of charges with the court can be complex legal procedure. The prosecutor must consider all applicable laws, as well as the decisions of the State and Federal Courts.

If the prosecutor determines there is not sufficient evidence or there is no legal basis for charging the accused with a crime, the case is closed and the accused released.

What Happens to the Accused?

The person accused of the crime is now called the defendant. The defendant will make his/her first appearance before a judge soon after the arrest. The appearance is for the purpose of reviewing the amount set for bail, furnishing the defendant with a copy of the complaint, confirming legal counsel, and setting a date for hearing.

What is the Purpose of Bail?

Bail is set by the court, not by the prosecutor. It is used to assure a defendant's appearance in court. The primary factor considered by the court is whether the defendant is likely to appear for trial. Within that context the court will also take into consideration the defendant's background and the seriousness of the offense charged.

Why Would a Case Get Dismissed?

There are a number of reasons why a criminal case may be dismissed or dropped by the prosecutor or the court before trial. For example, the prosecution may decide probable cause has not been established or the defendant may make full restitution or compensation for property loss. The case may also have to be dismissed because of some technical failure of the evidence, or because the defendant cannot be found or is considered incompetent to stand trial. None of the reasons means that the witness are unimportant or unnecessary, or that their willingness to testify is not appreciated. The presence and willingness of witnesses to testify may be the deciding factor in determining what will be done in the case, particularly in getting the accused to plead guilty.

What If Someone Threatens a Witness To Drop the Charges?

Such a person is obstructing justice and may be committing a crime. Call the law enforcement officer in charge of the case. Police can ask the judge to issue a new warrant, or to revoke the defendant's bail.

What If The Defense Attorney Contacts a Witness About The Case?

You may be asked by the defense attorney to talk to him/her about the case. The witness may refuse or can talk. It is the decision of a witness.

Pleas Of Guilty

The defendant in the case may decide to plead guilty. The plea may only come at the last moment before trial, often because the defendant's attorney is hoping that a witness will not show up, or that the case will be dropped for other reasons.

What Happens In A Trial?

In a trial, the prosecutor presents the case for the State, attempting to prove beyond a reasonable doubt that the defendant did commit the crime as charged. The defendant may present his or her side through the use of an attorney.

What Do the Witnesses Do At The Trial?

As a witness for the State, they have an important part in the trial. They may be questioned by the assistant prosecutor about who they are and what they know about the case. The defendant's attorney may then cross-examine them or question them about their knowledge of the case. They may feel during the questioning that their personal motives are doubted, but the process of cross-examination is not meant as a personal attack upon them. It is to ensure that all sides of the case

are told and to establish the truth. Witnesses need NOT be present during the entire trial and will be called only when needed.

GLOSSARY

ARRAIGNMENT- Usually the following actions occur at this court event: The defendant is officially notified of the charges against him/her; the defendant is asked whether he/she pleads innocent or guilty, whether there will be trial demand and whether by jury or a trial by judge, if that is an option; and the terms of the defendant's release pending trial is set.

BAIL- Release on bond. The defendant may be released if he/she has put money or a percentage of a sum of money required by the court, formally charges a person.

COMPLAINT- A statement of facts about an alleged crime which, when filed in court, formally charges a person.

CONTEMPT OF COURT- This is an offense that can occur in one of two ways: (1) disrespect or unacceptable behavior in the presence of the court which can be punished immediately by the judge; or (2) outside the presence of the court the failure to abide by an order of the court in which a hearing will be held and unless the defendant can show cause why he/she should not be held in contempt, he/she will be sentenced.

CONTINUANCE- A postponement of a case for trial or hearing to a later date which usually can be granted only by the court.

CRIMINAL CONDUCT- The New Jersey Code of Criminal Justice, effective September 1, 1979 grades criminal conduct into first, second, third or fourth degree offenses, all requiring an indictment by the Grand Jury and entitling the defendant to a trial by jury. These offenses were previously referred to in New Jersey as misdemeanors and high misdemeanors or as

misdemeanors and felonies in other jurisdictions.

DEFENDANT- A person formally accused of a crime.

DISMISSAL- The dropping of a case by a judge sometimes at the request of the prosecutor.

DISORDERLY PERSON OFFENSE- A minor violation of the law for which a person may be jailed for no more than six months, does not require a Grand Jury indictment and is ordinarily tried in the municipal court without a jury. This class of offense is New Jersey's equivalent of what are commonly referred to as "misdemeanors" in other jurisdictions.

GRAND JURY- A body of 23 citizens which hears evidence presented by the prosecutor to determine whether there is enough evidence to justify an indictment.

INDICTMENT- A formal criminal charge made by a Grand Jury after considering evidence presented by the prosecutor. Also called a True Bill.

NO BILL- A determination by the Grand Jury that the evidence presented by the prosecution is not sufficient to justify an indictment.

OBSTRUCTION OF JUSTICE- The use of force or threat of force to influence or intimidate a juror or witness. Under N.J.'s new criminal code obstruction of justice will also be referred to as "hindering apprehension or prosecution" and carries a severe penalty.

PAROLE- The early release under conditions of supervision of a person who has been convicted of a crime, sentenced to prison and has served some of that sentence.

PERJURY- Deliberate lying under oath. Perjury is a crime of the third degree punishable by a severe penalty.

PETIT OR PETTY JURY- A jury that hears the evidence presented by both prosecution and defense at a trial, comes to a decision concerning the facts and presents a verdict of guilty or not guilty.

PERSONAL RECOGNIZANCE- The method by which an arrested person is released on his/her word that he/she will return at the designated time for further court appearance.

PLEA- When the defendant is asked by the judge whether he/she wishes to admit guilt or to deny it and go to trial on the charges. The answer is the plea which may be either guilty or not guilty.

PLEA BARGAINING- A necessary aspect of the criminal justice process which promotes the speedy disposition of cases without the necessity of trial. Usually, the defendant will plead guilty to SOME of the charges with the prosecutor often recommending a certain sentence and/or the dismissal of other charges. The goal of the prosecutor in plea bargaining is to try to achieve approximately the same result as would have occurred if the defendant had been convicted after trial.

PROBATION- The release under "good behavior" of a person convicted of a crime as an alternative to imprisonment.

SUBPOENA AD TESTIFICANDUM- A written official summons to appear in court to give testimony under possible penalty of law for failure to appear.

SUBPOENA DUCES TECUM- subpoena that directs the witness to bring to court certain named documents or other evidence.

TRUE BILL- A formal criminal charge made by a Grand Jury after considering evidence

presented by the prosecutor. Also called an indictment.

Consequences of a Criminal Guilty Plea

1. You will have to appear in open court and tell the judge what you did that makes you guilty of the particular offense(s)
2. Do you understand that if you plead guilty:
 - a. You will have a criminal record
 - b. You may go to Jail or Prison.
 - c. You will have to pay Fines and Court Costs.
3. If you are on Probation, you will have to submit to random drug and urine testing. If you violate Probation, you often go to jail.
4. In indictable matters, you will be required to provide a DNA sample, which could be used by law enforcement for the investigation of criminal activity, and pay for the cost of testing.
5. You must pay restitution if the court finds there is a victim who has suffered a loss and if the court finds that you are able or will be able in the future to pay restitution.
6. If you are a public office holder or employee, you can be required to forfeit your office or job by virtue of your plea of guilty.
7. If you are not a United States citizen or national, you may be deported by virtue of your plea of guilty.

8. You must wait 5-10 years to expunge a first offense. 2C:52-3
9. You could be put on Probation.
10. In Drug Cases, a mandatory DEDR penalty of \$500-\$1,000, and lose your driver's license for 6 months - 2years. You must pay a Law Enforcement Officers Training and Equipment Fund penalty of \$30.
11. You may be required to do Community Service.
12. You must pay a minimum Violent Crimes Compensation Board assessment of \$50 (\$100 minimum if you are convicted of a crime of violence) for each count to which you plead guilty.
13. You must pay a \$75 Safe Neighborhood Services Fund assessment for each conviction.
14. If you are being sentenced to probation, you must pay a fee of up to \$25 per month for the term of probation.
15. You lose the presumption against incarceration in future cases. 2C:44-1
16. You may lose your right to vote.

The defense of a person charged with a criminal offense is not impossible. There are a number of viable defenses and arguments which can be pursued to achieve a successful result. Advocacy, commitment, and persistence are essential to defending a client accused of a criminal offense.

Jail for Crimes and Disorderly Conduct:

If someone pleads Guilty or is found Guilty of a criminal offense, the following is the statutory Prison/Jail terms.

NJSA 2C: 43-8 (1) In the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;

(2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;

(3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;

(4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.

2C:43-3 Fines have been increased recently! 2C:43-3. Fines and Restitutions. A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:

a. (1) \$200,000.00 when the conviction is of a crime of the first degree;

(2) \$150,000.00 when the conviction is of a crime of the second degree;

b. (1) \$15,000.00 when the conviction is of a crime of the third degree;

(2) \$10,000.00 when the conviction is of a crime of the fourth degree;

c. \$1,000.00, when the conviction is of a disorderly persons offense;

d. \$500.00, when the conviction is of a petty disorderly persons offense;

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