

# **Pennsylvania Criminal Procedure**

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*Criminal Procedure is the combination of laws and rules which constitute the different stages in the administration of the criminal justice system: investigation, arrest, arraignment, trial, sentencing, and imposition of penalties.*

## **Investigation**

Once law enforcement agencies become aware of the commission of a crime, they must determine whether the alleged crime actually was committed, they must collect evidence that may justify the arrest of a particular person.

## **Initiation of Criminal Proceeding**

Criminal proceedings in a court case are instituted by an arrest by police without a warrant or by the filing of a written complaint with an issuing authority, who then issues a summons or arrest warrant with the complaint. When law enforcement officers make an arrest, they take the person into custody, which means the physical detention of a person. The person is taken to a detention facility where the suspect is booked (process of registration of name, address, description, crime) fingerprints and photograph taken.

## **Summons**

The summons should be used if the most serious offense charged is punishable by no more than one year imprisonment. It is within the issuing authority's discretion to issue a summons for offenses punishable by a sentence of not more than five years.

## **Arrest Warrant**

The warrant must be accompanied by an affidavit sworn to before the issuing authority and establishing probable cause for the arrest.

Under certain circumstances police may make an arrest without prior judicial approval. An arrest may be made without a warrant for any felony if there is probable cause for the arrest. For misdemeanors, an arrest may be made if committed in the presence of the police officer making the arrest, or if authorized by statute.

## **Complaint**

The complaint is the formal institution of proceedings against a defendant in a court case. The purpose of the complaint is to give the defendant notice of the offenses charged, and to set forth the underlying factual basis for the action. The affiant will usually be a police officer, except in those counties where the District Attorney has chosen to require that all police complaints be approved by the District Attorney.

## **Offenses**

### **Summary Offense**

Summary offenses under the Crimes Code of Pennsylvania are the least serious crimes in Pennsylvania and are prosecuted under a special set of procedural rules. A summary offense carries a maximum sentence of a \$300 fine or 90 days imprisonment. (Harassment, disorderly conduct, local ordinances carrying criminal sanctions) Summary proceedings are generally instituted by serving the accused with a citation. Upon receipt of the citation, the defendant has a choice of entering a guilty plea and paying the fine, or pleading not guilty and contesting the charge at a summary proceeding. Trials in summary cases are held before the issuing authority (magisterial district judges, municipal court judges). There is no right to a jury trial. The defendant is found guilty or acquitted. If found guilty, the defendant has 30 days to file an appeal to Common Pleas Court.

### Misdemeanors

Misdemeanors are offenses punishable by fine and/or imprisonment for up to but not exceeding five years.

### Felonies

Felonies are more serious offenses which are punishable by fines and/or imprisonment for more than one year, life imprisonment, or death.

### **Bail**

Bail is initially set at the preliminary arraignment, held shortly after the arrest, and the defendant must be given "a reasonable opportunity to post bail" before being committed to jail. Bail is not to be used for punitive purposes but to ensure the defendant's appearance. Motions to reduce or modify the conditions of bail can be made. If defendant fails to appear, bail can be revoked. In the preliminary arraignment, the defendant is informed of the charges against him/her. The preliminary arraignment usually takes place in the municipal, justice, or magistrate court.

### **Counsel**

There is the constitutional right to representation by counsel. A defendant who cannot afford counsel has a right to appointed counsel in all criminal court cases and to have effective assistance. A defendant may waive counsel and has the right to proceed pro se. The court conducts a colloquy explaining the consequences of such actions and the Court must be satisfied that the defendant has made a knowing, intelligent and voluntary decision to waive counsel.

### **Preliminary Hearings**

The Preliminary Hearing is the first opportunity for the defendant to contest, in an adversary proceeding, whether there is *probable cause* that a crime was committed by the defendant.

The defendant has the right to be represented by counsel, cross-examine witnesses and inspect physical evidence against him, call witnesses on his own behalf, offer evidence on his own behalf and testify, make notes or a stenographic record of the proceeding. At the hearing, the Commonwealth must prove a prima facie case by

competent testimony: that a crime has been committed and that it is probable that the accused committed the crime.

A defendant may waive the preliminary hearing in exchange for an agreement to reduce charges or reduce bail. The preliminary hearing must be scheduled within 10 days after the arrest. A continuance can be granted upon showing of cause.

If the issuing authority determines that there is sufficient evidence to hold the defendant for trial, the case is bound over to Common Pleas Court. A motion to discharge for failure to establish prima facie case can be made orally. If a prima facie case was not established the defendant is discharged.

Grand Jury Indictments- For some cases, prosecution must be based on a grand jury's indictment. The grand jury is composed of a body of citizens who are selected from the community to investigate crimes and determine whether there is enough evidence to bring a person to trial for the violation of the law.

### **Arraignment**

The defendant is then arraigned before the trial court. It is also called arraignment on the information. The defendant is informed of the charges and asked to enter a plea of guilty or not guilty and in some instances a plea of *nolo contendere*, which does not require an admission of guilt.

### **Pre-Trial Procedures**

All proceedings before trial are called pre-trial procedures. The prosecution and the defense can file motions to resolve pre-trial issues, and often times the judge's decisions regarding motions that were filed will determine whether or not the case will proceed to trial.

The most common types of motions include: discovery and inspection of evidence, dismissal of the case, suppression of evidence, severance of parties and charges, consolidation of parties and charges, change of venue, appointment of experts, bill of particulars, request for continuances and bail and /or modifications of conditions of release.

### **Disposition of Case Other Than by Trial**

A case may be disposed of at almost any stage of the process by a change of plea where the defendant agrees to enter a plea of guilty, or *nolo contendere*.

A plea bargain is the disposition of criminal charges by agreement between the defendant and the prosecutor. Negotiations begin between the prosecutor and the defense attorney almost from the beginning of the case and a plea agreement usually consists of allowing the defendant to plead guilty to only one or some of several counts, or to plead guilty to a lesser offense and may even stipulate the length of the sentence.

Plea agreements save the state time and expense, and allow the business of the courts to proceed in a timely manner by avoiding lengthy proceedings in a majority

of cases. Therefore, the prosecution will provide defendants with an incentive (reduced charges) to enter into disposition rather than making the state prove its case by going to trial.

A written guilty plea colloquy is generally accompanied by a brief oral colloquy with the defendant to determine that the defendant intelligently participated in the preparation of the form and reviewed its contents.

- The defendant must be informed of the nature of the charges against him
- The factual basis of the plea
- The right to a jury trial
- That he/she is presumed innocent until found guilty
- The maximum permissible sentence
- That the judge is not bound by the terms of the plea agreement.

The judge accepts the guilty plea if he/she is satisfied that the defendant pleaded guilty knowingly, voluntarily and intelligently.

### **Other Non-Trial Dispositions**

The Accelerated Rehabilitative Disposition (ARD) program is the most frequently employed non-trial disposition. This program may lead to the dismissal of charges without trial. Usually, the power to recommend ARD is vested in the prosecutor. Except for the waiver of right to a speedy trial, the defendant does not waive any significant rights. Defendants are placed on pre-trial probation for a specific period of time subject to conditions the judge deems appropriate. A defendant who successfully completes the program obtains a discharge of the case.

### **Trial**

If the case has not been disposed at any phase of the pre-trial procedure, it proceeds to trial. Every individual has the constitutional right to have his/her case decided by a jury of peers (jury trial or by a judge (bench trial)

Bench trial- the judge hears the evidence, renders judgment and imposes the sentence.

Jury trial- the jury decides the facts and the judge applies the law.

Both the defense and the prosecution pick 12 jurors after questioning them on their qualifications to be fair and impartial.

Opening statements-The trial begins with the opening statement of the prosecution, which is a summary of the evidence they will present for the purpose of proving their case. The defense then can also give an opening statement or they can wait to do it after the prosecution has presented their case.

Presentation of evidence-The prosecution presents its evidence first because they have the burden of proof. Evidence consists of witness testimony and tangible evidence, (exhibits- objects, documents).

Either side may make an objection against something to be said or done because they believe that the evidence is improper or illegal. The judge will rule on the

objection by sustaining the objection or overruling the objection. If the objection was sustained it means that it was allowed, if it was overruled, it was denied. Some examples of objections are: Leading question, hearsay, if the question is irrelevant, argumentative question, repetitive question, beyond the scope, compound question.

After the prosecution has presented all the evidence in their case they rest. The prosecutor believes that they have met the burden of proof to prove the defendant guilty beyond a reasonable doubt.

The case of the defense unfolds in the same way of that of the prosecution, they may present evidence, cross-examine witnesses etc... Since the burden of proof lies on the prosecution, the defense does not have to present any evidence and the defendant does not have to take the stand.

Closing arguments-The closing arguments are the statements made by counsel to address the trier of fact. The attorneys analyze the evidence and try to convince the jury or judge on their case.

Jury instructions- After that, the judge gives the jury instructions in a process called charging the jury. These instructions are the rules of law applicable to the case. The 12 jurors are taken to a private room where they begin deliberations. The verdict must be unanimous all of the jurors must be in agreement whether the defendant is guilty or not guilty of the charges. If the jury cannot reach a unanimous verdict there is a hung jury and the judge declares a mistrial. The prosecution then may decide to try the case again.

### **Sentencing**

If the defendant is found or pleads guilty, usually the last step is sentencing. The structure of the sentence and the discretion of the judge in choosing the sentence are controlled by statute. There are sentencing guidelines that establish sentencing policies and practices. The nature of the sentence is dictated by the severity of the offense and by the prior record score. Sentences range from a fine to time in prison. Typically, a Pre-sentence Report is prepared by the Probation Department to provide the Judge with recommendations as to the appropriate sentence for a defendant.

Finally, the defendant has the right to appeal, that is, to request a higher court to review the decision of a lower court.