

MAP OF THE FEDERAL CRIMINAL PROCESS

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I. PRE TRIAL

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3 ACTIVITY BEFORE TRIAL



1. BEGINNING A CRIMINAL CASE

1.1 THE CHARGES

(Federal Rules of Criminal Procedure (“Rule”) 3, 6, and 7)

Criminal charges can be brought by the government against a defendant by filing a complaint, an indictment, or an information.

1.2 THE ARREST *(Rules 4 and 9)*

A defendant can be arrested (taken into custody) before or after criminal charges are filed, and with or without an arrest warrant being issued.

1.3 THE GRAND JURY *(Rule 6)*

A grand jury includes 16–23 people who decide whether to indict a defendant; the agreement of 12 grand jurors is required for an indictment.

1.4 PROPER VENUE

(Rules 18, 20, 21, and 40; 18 U.S.C. §§ 3237–3238)

Venue refers to where (in which U.S. District Court) a criminal case is prosecuted.

2. COURT APPEARANCES BEFORE TRIAL

2.1 OBTAINING A DEFENSE LAWYER

(Rule 44; 18 U.S.C. § 3006A)

A criminal defendant has the option of hiring a lawyer, asking the Court to appoint one, or not having a lawyer and defending oneself, known as appearing pro se.

2.2 FIRST APPEARANCE

(Rules 5 and 10; 18 U.S.C. § 3501(c))

The first appearance in court must occur “without unnecessary delay;” at this appearance, the defendant is informed of the charges and advised of the right to (1) an attorney, (2) remain silent, and (3) a preliminary hearing.

2.3 THE ARRAIGNMENT *(Rules 10 and 11)*

At the arraignment, a defendant enters a plea (not guilty, guilty, no contest, or a conditional plea) to the charges.

2.4 THE PRELIMINARY HEARING

(Rule 5.1; 18 U.S.C. § 3060)

The preliminary hearing occurs within 14 days (if the defendant is in custody) or 21 days (if not in custody); this time can be extended by agreement and a preliminary hearing is not required if an indictment or information is filed.

2.5 THE DETENTION HEARING

(Rule 46; 18 U.S.C. § 3142)

If detention is an option based on the charges alleged, a detention hearing will be held. At a detention hearing, a magistrate judge will decide whether a person is released (with or without conditions) or detained while awaiting trial; this is where “bail” is determined.

3. ACTIVITY BEFORE TRIAL

3.1 EVIDENCE PROVIDED TO THE DEFENDANT

(Rules 16, 16.1, and 26.2; Brady material; 18 U.S.C. § 3500)

As set forth by the Federal Rules of Criminal Procedure and case law, the government must provide certain evidence to the defendant.

3.2 EVIDENCE PROVIDED TO THE GOVERNMENT

(Rule 16)

The defendant might have to provide certain evidence to the government.

3.3 SUBPOENAS

(Rule 17)

A subpoena is used to obtain evidence or to require a witness to testify; it has the legal force of a court order.

3.4 MOTIONS

(Rules 8, 12–14, 47, 49, and 49.1)

A party files a motion with the Court to raise certain defenses, exclude or limit evidence, request dismissal, seek separate trials, or request other relief from the Court.

3.5 NOTICES OF EVIDENCE

(Rules 12, 12.1, 12.3, 13, and 16; Federal Rule of Evidence 404(b))

Notice must be provided if a party plans to present certain types of evidence (e.g., alibi, insanity, or acting under public authority).

3.6 MONITORING THE SPEEDY TRIAL CLOCK

(18 U.S.C. § 3161)

If charged by indictment, a defendant is entitled to begin trial within 70 days of the charges being made public, but this period can be delayed for many reasons.

