

MAP OF THE FEDERAL CRIMINAL PROCESS

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I. PRE TRIAL

1 BEGINNING A CRIMINAL CASE



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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.

II. TRIAL

4 RESOLVING THE CASE WITHOUT TRIAL



5 TRIAL



6 SENTENCING



4. RESOLVING THE CASE WITHOUT A TRIAL

4.1 DISMISSAL OR DIVERSION (Rule 48)

In some situations and based on different rules in different courts, the government might dismiss the case (or offer the defendant diversion, in limited situations). The Court can also dismiss the case on its own, in limited situations.

4.2 PLEADING GUILTY BY PLEA AGREEMENT (Rule 11)

A defendant who is guilty of the charges can plead guilty (and thus not proceed to trial) by entering into a plea agreement with the government.

4.3 PLEADING GUILTY WITHOUT A PLEA AGREEMENT (Rule 11)

Alternatively, a defendant can also plead guilty or no contest (and thus not proceed to trial) without entering into a plea agreement with the government.

5. TRIAL

5.1 JURY SELECTION

(Rules 23, 24, 47, and 48; 28 U.S.C. § 1870)

The members of a jury are selected through questioning by the Court (and sometimes the lawyers) in a process known as *voir dire*, or jury selection.

5.2 OPENING STATEMENTS BY LAWYERS

The opening statements to the jury offer a preview of the evidence and an overview of the case.

5.3 THE GOVERNMENT'S WITNESSES & EVIDENCE (Federal Rules of Evidence 401-404 and 611)

After the opening statements, the government presents its case by offering evidence and calling witnesses to testify and answer questions under oath, and the defendant is allowed to cross-examine each witness. The government bears the burden to prove beyond all reasonable doubt that the defendant is guilty of the alleged criminal violations.

5.4 MOTION FOR JUDGMENT OF ACQUITTAL (Rule 29)

Once the government rests its case, the defendant can submit a motion for judgment of acquittal, which asks the Court to dismiss some or all of the charges because the government failed to present evidence to support a guilty verdict.

5.5 THE DEFENDANT'S WITNESSES & EVIDENCE (Federal Rules of Evidence 401-404 and 611)

After the government presents its case, the defense may offer evidence and call witnesses to testify. If the defense calls any witnesses to testify, the government may cross-examine those witnesses. The defendant may decline to offer any evidence or witnesses. The defendant has an absolute right to decide whether or not to testify.

5.6 THE GOVERNMENT'S REBUTTAL WITNESSES & EVIDENCE

After the defense presents its case, the government may call rebuttal witnesses or present rebuttal evidence to dispute testimony or evidence presented by the defendant.

5.7 RENEWED MOTION FOR JUDGMENT OF ACQUITTAL (Rule 29)

A defendant may also renew a motion for judgment of acquittal (a motion for judgment of acquittal is set forth above in 5.4).

5.8 CLOSING ARGUMENTS (Rule 29.1)

After the evidence has been presented, the government and the defendant offer closing arguments, which summarize the evidence and testimony and seek to persuade the jury whether to find the defendant guilty or not guilty.

5.9 JURY INSTRUCTIONS (Rule 30)

Jury instructions are written instructions provided by the Court to inform the jury members of their responsibilities, how to deliberate, and the law on which they will make their decisions.

5.10 THE VERDICT (Rule 31)

The verdict is the jury's ultimate decision of guilty or not guilty; it is written by the jury on the verdict form and then announced in open court. If the jury cannot agree on a verdict, the Court may declare a mistrial, and the government may retry the defendant.

6. SENTENCING

6.1 THE PRESENTENCE INVESTIGATION REPORT (PSR) (Rule 32)

The PSR is written by a probation officer and may require an interview with the defendant. The PSR includes a description of the offense(s); describes the defendant's criminal record, finances, and general background; and recommends a sentence based upon the federal sentencing guidelines.

6.2 OBJECTING TO THE PSR (Rule 32)

Both the defendant and the government have a chance to object to the PSR by filing written objections. The Court will rule on those objections, usually before or during the sentencing hearing.

6.3 THE SENTENCING HEARING (18 U.S.C. § 3553)

At the sentencing hearing, the Court imposes a sentence and must consider the sentencing factors; at this hearing, the parties have a chance to make arguments and the defendant has a chance to talk with the judge.

III. POST TRIAL

7. ACTIVITY AFTER SENTENCING

7.1 APPEAL

(Federal Rule of Appellate Procedure 4)

Filing a notice of appeal asks the court of appeals to review the district court's decision or judgment; the court of appeals sits above the district court. The defendant has an absolute right to decide whether or not to file a notice of appeal.

7.2 CORRECTING OR REDUCING A SENTENCE

(Rule 35; 18 U.S.C. § 3582)

A sentence can be corrected (if there was a clear error based on a technical or mathematical mistake) or reduced (for certain specific and limited reasons, such as providing substantial assistance to the government or compassionate release).

7.3 CHALLENGING A CONVICTION OR SENTENCE (28 U.S.C. § 2255)

Once a conviction and sentence are final, they can be challenged for certain specific reasons, including that they violate the Constitution or federal law.

7.4 CHALLENGING AN ASPECT OF HOW A SENTENCE IS CARRIED OUT

(28 U.S.C. § 2241)

A defendant can challenge the calculation of a sentence or credits for good time served while in prison.

7.5 SUPERVISED RELEASE (18 U.S.C. § 3583)

After a person is released from federal prison, most federal sentences require a time of supervised release, in which a probation officer monitors the person to make sure they are following the requirements of the Court's sentencing order.

NOTES