

CRIMINAL PROCEDURE - Post Arrest and Grand Jury.

I. INTRODUCTION: After the police apprehend and put the defendant into the system, now the case of the state against the accused is taken over by the prosecutor

II. IDENTIFICATION: See next chapter: (Lineups, showups, photographed "mug shots", scientific identification and DNA, polygraphs)

III. INITIAL APPEARANCE

A. Timing:

1. without unreasonable delay.
2. federal cases, within 48 hours of arrest if arrested without a warrant, frequently both initial hearing and preliminary hearings are combined.

B. Right to Counsel:

1. Required for federal cases
2. Required for most states including Oregon

C. Purpose: Information to the accused;

1. nature of the charge
2. consequences of the hearing and future hearings
3. right to assistance of counsel. Appointment of attorney if necessary.

D. Defense Attorney: Distinguish appointed counsel, public defender, and retained counsel

E. Bail

1. Defined. Posting money or property that will be forfeit if defendant doesn't show for subsequent hearings, sufficient to persuade the court to release the defendant pending trial.
2. Judicial discretion. The accused is entitled to a hearing.

3. The constitution forbids excessive bail. The fact that a defendant can't afford it is not excessive. But the amount may be increased for a rich man. Cannot be punitive..
4. Forfeiture
5. Posting bail.
 - a) Relatives.
 - b) Bail bondsman –
 - (1) some states do not use them
 - (2) bounty hunters
 - c) Recognizance bonds

IV. PRELIMINARY HEARINGS

- A. Purpose: To determine if the government has probable cause to go forward with the case.
 1. No U.S. Constitutional requirement for a preliminary hearing
 2. Many states have a state constitutional provision requiring the hearing
- B. Timing: Federal rules
 1. The hearing is scheduled at the time of the initial appearance and is within 10 days if the defendant is locked up.
 2. Within 20 days if the defendant is free on bail.
- C. Procedure:
 1. Frequently done by a "lower" court, or a special court function or, as in federal cases, by a magistrate.
 2. government must present evidence to meet the burden of showing the defendant should face trial, by a preponderance of evidence.
 3. Relaxed rules of evidence
 4. defense attorney may cross examine with limited scope.
 5. Defendants may, but need not, testify.
- D. Utility:
 1. Defense obtains information.
 2. Prosecution sees case in action.

3. plea negotiation: bond negotiation.

E. Result of the Preliminary Hearing:

1. Case dismissed if no probable cause established.
2. Case "bound over"

V. PROSECUTORS. District Attorney.

A. Purpose: Prosecute cases. As ethical attorneys, first, bound by rules of ethics, and further bound by an oath when appointed to the office. In all cases, are to seek justice. Prosecutors have the final say on whether or not they will prosecute a case.

B. Staff: ADAs Assistant District Attorneys do all the work. May be specialized teams in large counties. May be victim-witness offices.

C. Preliminary to prosecution, investigation/indictment.

VI. INDICTMENT

A. Information / Complaint:

1. Constitutional requirement for felonies.
2. May waive indictment

B. Indictment: A sworn document drafted by the prosecutor, pronounced a "true bill" by the grand jury.

VII. GRAND JURY

A. Purpose: Ordinary citizens review the evidence to let the government go forward with a prosecution. Government must present a prima facie case. If all facts presented are accepted as true, case can go forward. If not enough such facts, case is dismissed. (No bill. Ignored.)

B. Procedure: The prosecutor appears before the grand jury

1. grand jury can question witness, as does the prosecutor
2. grand jury can subpoena witnesses
3. secret
4. no defense attorney present
5. no appeal

C. composition. Reflect the community. Traditionally, 21, but as many as 23 or as few as 16.

D. Function:

1. secret vote to determine if probable cause to believe person is guilty
2. investigation of allegations of crime
3. supervise government
4. taking testimony:
 - a) subpoena power
 - b) 5th amendment right to silence.
 - c) Privileges.
5. contempt power, only a request that a judge take action.\
6. grant of immunity

E. No rules of evidence. No cross examination. Quashing an indictment

F. Result:

1. If no bill, or indictment ignored, the case is terminated
2. If a true bill, the case is assigned to court for an arraignment.