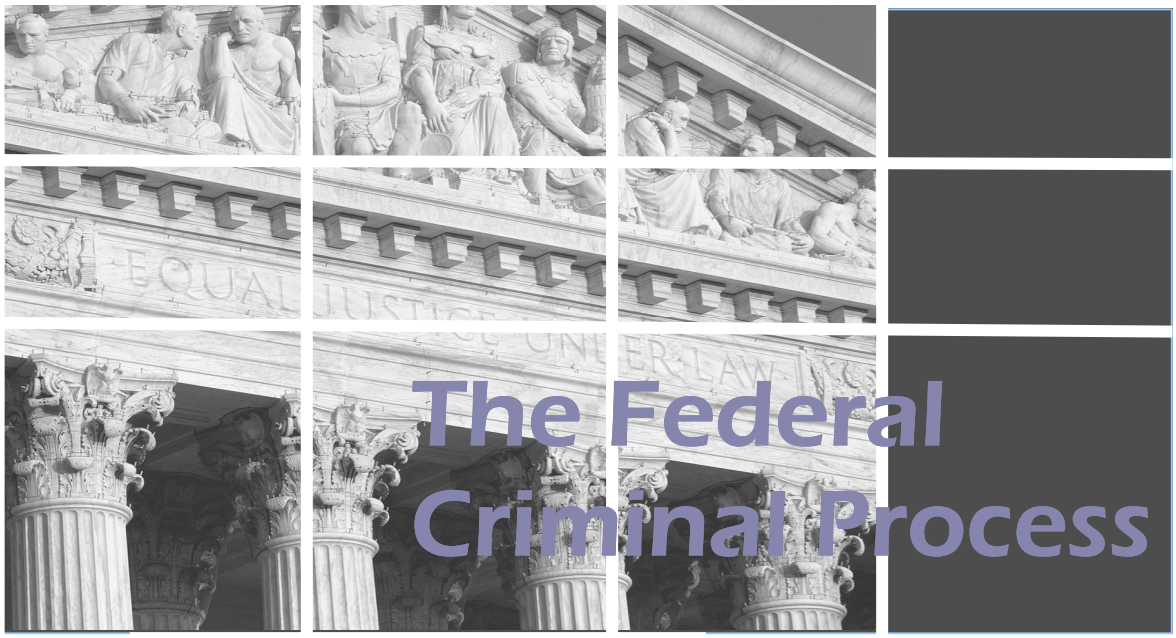
Federal
Public Defender

W.D. Michigan



The Federal Criminal Process

INTRODUCTION

The following summary of the federal criminal process is intended to provide you with a general overview of how your case will proceed. Keep in mind that this is just an overview. Each case is unique. Someone else's case may proceed differently than yours. Also, the information that follows is just general information. It is not legal advice and is not intended to take the place of advice from your lawyer.

For anyone familiar with the state system, you will notice a number of differences between the state and federal criminal justice systems. Throughout these materials, we will attempt to highlight some of these differences. Please read the following information carefully. Your lawyer will be able to answer any additional questions.

THE GRAND JURY SYSTEM

The United States Constitution requires that most federal criminal charges be reviewed by a grand jury. A grand jury consists of members of the community who listen to and examine evidence that is presented by the federal prosecutor. The grand jury works in secret. When a grand jury meets to hear evidence, the only persons in the room are the grand jury members themselves, the federal prosecutor, the court reporter, and the witness. (There is no judge and no defense lawyer present). After listening to the evidence that the government has presented, the grand jury is asked to vote on whether probable cause exists to believe that you committed a crime. If the majority of grand jurors vote that probable cause exists, the grand jury will issue written charges against you in what is called an indictment.

In state court, this "probable cause" determination is not made in secret. In state court, the probable cause hearing is known as the preliminary examination where both you and your lawyer are present. More important, your lawyer has an opportunity to cross-examine the witnesses. This is a huge advantage for defendants charged in the state system and is one of those differences between the state and federal courts that we mentioned earlier.

THE INDICTMENT

Most federal cases begin with an "indictment." What is an indictment? An indictment is the formal written statement issued by the grand jury and signed by a federal prosecutor accusing one or more people with a crime. An indictment may name just one defendant or several defendants. For example, in an indictment alleging a drug conspiracy, there may be several codefendants who are named in one indictment.

In addition, one indictment may allege several crimes; each crime is charged as a separate count. Further, not everyone named as a defendant in an indictment is necessarily named in each count. For example, there may be five people named as defendants in an indictment. All may be charged in one count alleging a drug conspiracy. However, there may be a separate count charging only one of those defendants with being a felon in possession of a firearm.

THE INITIAL APPEARANCE

Once an indictment is filed with the court, an individual named in the indictment (defendant) will either be summoned to appear in court voluntarily or arrested. Either way, the next step in the process is the Initial Appearance. At the initial appearance, you will appear before a United States magistrate judge. The magistrate judge will ask if you are the person named in the indictment. The magistrate will then advise you of the charge(s) you face; the "maximum" penalty that each charge carries; and, most important, your rights, including your right to remain silent (pay attention to that one) and your right to be represented by a lawyer.

If you want a lawyer, but cannot afford one, the court will ask you to complete a financial affidavit and determine whether you qualify for a court-appointed lawyer.

Finally, the magistrate judge will address the all-important issue of bond. In many cases, the government will ask that you be held without bond. If the government requests that you be detained (held without bond), the magistrate judge will schedule a detention hearing. Your detention hearing will usually be scheduled within a couple of days of your initial appearance. Following the hearing, the magistrate judge will decide either to detain you or allow you out on bond.

In this district, if allowed out on bond the magistrates will set an unsecured bond or a surety bond which requires you to pay should you fail to appear. Either way, you usually are not required to "post" any money. This, too, is different than state court where you are likely to be asked to post some cash.

PRE-TRIAL SERVICES INTERVIEW

Around the time of your initial appearance, you will be interviewed by a pretrial services officer. This pretrial services officer works for the court and has the job of collecting information about your background and personal history, including any criminal history, in order to make a recommendation to the court about whether you should be released on bond or be detained. Do not discuss anything about your pending case with the pretrial services officer. While it is okay to answer questions about your background, do not lie about your background. It is better not to answer a question at all than to lie.

BOND

In deciding whether you should be released on bond, the magistrate looks to The Bail Reform Act of 1984. Under the Act, the magistrate has four options. Those options include:

1.) Release you on personal recognizance – you promise to come back when called.

2.) Release you with conditions – These conditions can include being placed on electronic monitoring; setting a curfew or ordering home detention; ordering no alcohol or no drugs and drug testing; requiring you to maintain employment; specifying a residence; or placing you in a halfway house. Note: You should be aware that any time you spend at the halfway house will not be credited as time served should you ultimately be convicted and receive a sentence of imprisonment. For example, should you spend six months at the halfway house prior to your sentence and then receive a sentence of six months, you still have six months to serve.

3.) Detain you temporarily to permit revocation of conditional release, deportation, or exclusion – The Bail Reform Act provides that if you are, and were at the time of the offense, on another form of conditional release, or are not a citizen of the United States or permanent resident, and you may flee or pose a danger to any other person or the community, you shall be detained for not more than 10 working days.

4.) Detain you while you await trial — Before you are detained, you are entitled to a detention hearing.

At a detention hearing, the magistrate will be determining whether you pose a risk of flight or are a danger to the community. If you are charged with a drug dealing offense or a crime of violence and have previously been convicted of similar offenses, the law may presume that you should be detained.

It should be clear that the issue of whether you will be released on bond or detained is very different in federal court than under the rules in state court. It should also be clear that any prior criminal record will loom large to the magistrate when he/she considers whether to allow you out on bond. For example, if you have failed to appear for court appearances in the past or violated terms of release in the past, such factors will weigh against releasing you now.

THE ARRAIGNMENT

The arraignment is usually the first time that you appear in court with your lawyer. At the arraignment, you are advised of the charges that you face, the maximum penalty for each charge, and your rights, including your right to remain silent. The magistrate judge will also ask you to read and sign an "Advice of Rights" form. This form advises you in writing of all the rights that the magistrate just reviewed with you. By signing the form, you are not giving up any of your rights. You are merely indicating that the judge told you what they are.

At this point, except in rare cases, your lawyer will enter a not guilty plea for you. Pleading not guilty at this stage of the proceedings preserves your rights and cannot be held against you. If after a thorough investigation and review of the case with your lawyer, you decide to plead guilty, you will have an opportunity to do so.

THE INITIAL PRETRIAL CONFERENCE

Once you have been arraigned on an indictment, the next court proceeding is usually the Initial Pretrial Conference (IPC). In this jurisdiction the IPC is normally scheduled to take place immediately following the arraignment and requires the government and your lawyer to file an Initial Pretrial Conference Summary Statement.

The government's statement must include whether you have made any statements, describe the type of evidence the government has, whether you have any criminal history, and whether there have been or will be any scientific tests. Your lawyer's statement will include a demand for a jury trial and a demand for disclosure of evidence of certain kinds of prior acts by you that the government intends on using against you at trial. The magistrate will also set deadlines for the disclosure of information and for the filing of any pretrial motions.

FOLLOWING THESE INITIAL PROCEEDINGS

Once you have been arraigned and had your initial pretrial conference, it is time for you to work with your lawyer and the other members of your defense team to learn as much information about the case as possible. In order to give you the best advice, your lawyer needs to know all the facts. One of the biggest differences between state and federal court is that in the federal system you are entitled to see very little of the government's evidence before trial. For instance, under federal law, you are entitled to statements that you may have made to government agents, but even that provision contains exceptions. Under certain circumstances, the government doesn't even have to provide your attorney with statements you may have made. (Federal Rule of Criminal Procedure 16).

As far as obtaining witness statements, you are not entitled to any of those statements until after the witness has testified on direct examination at trial. (Federal Rule of Criminal Procedure 26.2) In state court, your lawyer often receives not just your statements but any witness statements as soon as he/she files an appearance.

With such limited discovery, it should be clear that your defense team needs your complete cooperation in order to best represent you. The investigation conducted by your defense team will be very important in building a defense. You will be the most important source of information for your lawyer and other defense team members. Be ready to provide the names and contact information of all possible witnesses. Remember, any information that you provide to your defense team is privileged.

Some clients assume that because the government has not provided any witness statements that they have no witnesses. Do not make this mistake. The government does not turn over or disclose its case because it does not have to. Again, it is up to you to help our investigators. Please do so. You need to keep in mind that when the government files charges against you they already have what they need to go to trial. With the aid of the grand jury they may have been investigating your case for years. When your lawyer and other members of the defense team are assigned your case, they may have as few as thirty days from arraignment to prepare your defense. Therefore, whatever time your defense team has to prepare has to be used effectively.

PRETRIAL MOTION HEARINGS

As more information about your case is learned, your lawyer will decide whether any pretrial motions need to be filed. Some motions can be resolved without the necessity of a hearing. Other motions, however, may require a hearing before the judge can make a decision. In some cases, a hearing that includes calling witnesses will be required. If you have questions regarding pretrial motions, you should discuss those with your lawyer.

PLEADING GUILTY OR GOING TO TRIAL

The decision whether to plead guilty or go to trial may be one of the most important decisions that you will ever make. Only you can make this decision. Your lawyer will offer you advice on what to do, but only you can decide whether to plead guilty or proceed to trial. In many cases, the decision to plead guilty comes down to potential benefits that you can receive at sentencing. As your case proceeds, your lawyer will provide you with detailed information about sentencing and the federal sentencing guidelines. If you have decided that pleading guilty is in your best interest, a change of plea hearing will be scheduled where you can enter your guilty plea. If you have decided to take your case to trial, a final pretrial conference is held and then your case proceeds to trial.

FINAL PRETRIAL CONFERENCE

If your case is going to proceed to trial, a Final Pretrial Conference (FPC) will be scheduled. This hearing is scheduled to take care of any last minute issues that need to be addressed before the trial. During the FPC, the district court judge may also review such things as jury selection, jury instructions, and exhibits.

TRIAL

In most cases where a defendant decides to proceed to trial, a jury trial is preferable. In certain cases however, it may be advisable not to have a jury trial, but instead, to have what is called a bench trial. A bench trial is where the judge decides whether you are guilty or not guilty instead of a jury. If you desire to have a bench trial, the court rules provide that (1) you must waive a jury trial in writing; (2) the government must agree; and (3) the court must approve. (Federal Rule of Criminal Procedure 23).

Jury Selection

A jury trial begins with the selection of a jury. A jury is comprised of members of the community. In a felony case, a jury is made up of twelve jurors and one or two alternates. A panel of potential jurors is selected from voter registration and drivers license lists. This group fills out questionnaires and is then questioned by the judge and in most cases the lawyers. This process of jury selection is called voir dire. Both your lawyer and the government's lawyer can challenge members of the panel and try to keep them from sitting on the jury. Potential jurors can be challenged for "cause" or by one of the lawyers using a "peremptory" challenge.

A challenge for "cause" is based on a specific reason, such as bias or prejudice of the prospective juror. A "peremptory" challenge allows the lawyers to remove a prospective juror for no specific reason, although a party cannot use such a challenge in a way that discriminates against a protected minority group. Each party is given a specific number of peremptory challenges.

Opening Statements

Once a jury is selected, the jury is sworn and given some preliminary instructions. It is now time for opening statements. An opening statement allows the lawyer for each side to give the jurors a preview of what the evidence will be. Because the government's lawyer has the burden of proof, he will go first. Following the government's opening statement, your lawyer can elect to give an opening or not.

Proof

In a criminal case, you are presumed innocent until proven guilty. The government has the burden of proving that you are guilty beyond a reasonable doubt. That is why you do not have to present any evidence or even testify at your trial. Your lawyer may decide to call witnesses on your behalf and even to offer other evidence. However, it is not unusual for a defendant to offer no evidence at trial. Even if your lawyer decides to call witnesses, only you can decide whether or not you want to testify. Your lawyer will offer you advice on whether you should testify or not, but only you can decide whether to actually take the witness stand or not.

Rules of Evidence

During the trial, the lawyers are bound by the rules of evidence. The rules of evidence determine what evidence can or cannot be introduced at trial. Sometimes after making an objection to a certain question, the judge will send the jurors out of the court room, so that the lawyers can argue over the objection without the jury hearing.

Closing Statements, Final Instructions, and Deliberations

After all of the evidence has been heard, the lawyers for both sides can present a closing argument. This is the time that your lawyer will argue why the government has failed to prove you guilty beyond a reasonable doubt.

Both before and after closing arguments, the judge will give the jurors some final instructions about the law and then send them back to the jury room to deliberate. To find you guilty of an offense, all of the jurors must find you guilty beyond a reasonable doubt.

Hopefully, if you go to trial, you will be found not guilty. If the jury is not able to reach a verdict and the court orders a mistrial, you will most likely be retried. If the jury finds you guilty, the judge will order that a presentence report be prepared and will set a date on which you will be sentenced.

SOME EXCEPTIONS

At the beginning of this handout, we pointed out that each case is different. One such difference is in how people first come before the magistrate. As noted earlier, most federal defendants appear after having been indicted by a grand jury. There are other ways for a defendant to be charged.

Complaint – A "complaint" is a statement written by a federal prosecutor accusing you of a crime. Before allowing the complaint to be filed, the judge will have reviewed it and the sworn statement of a federal agent attached to the complaint setting forth the allegations against you. After authorizing the complaint, the judge can issue an arrest warrant.

Once a defendant appears in court on a complaint, a probable cause hearing, also called a preliminary hearing, will be scheduled. A preliminary hearing must be scheduled "within a reasonable time, but no later than 10 days after the initial appearance if the defendant is in custody and no later than 20 days if not in custody." (Federal Rule of Criminal Procedure 5.1).

You may be asking yourself why are some cases initiated by a complaint instead of by an indictment? The answer is basically timing. When some crimes are committed, the alleged perpetrator is caught right away or is someone that the authorities believe needs to be apprehended immediately. In such cases, a complaint and arrest warrant will be sought because it can be done quickly. The grand jury is not always in session, so it can take much longer to obtain an indictment.

Information – An "information" is another way a defendant can be charged in federal court. Charges contained in an information have not been presented to a grand jury. The court rules provide that a defendant may waive or give up his right to be indicted. A defendant can agree to be charged by information. This typically takes place during plea negotiations where the government agrees to allow a plea to a different (less serious) charge instead of pleading to any of the indicted charges. In such a case, a defendant would plead to a charge contained in an information.

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