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CONTRACTS

LAW

COMMON LAW AND UCC: ARTICLE 2

The U.S. Constitution, specifically the Bill of Rights, is the source for criminal procedure law. It originally created for the purpose of limiting the federal government exclusively and not for limiting state government.

THE AGREEMENT PROCESS

OFFER

1. Prior to any arrest, police must have probable cause to believe that a crime has been committed and must be acting lawfully at the time.
2. A "false or misleading arrest" conducted in a suspect's home require a valid arrest warrant [§§87(a)(20), (21)].
3. Police or enforcement agents made in a public place can be with or without a warrant [§§87(a), (20)].
4. False or misleading arrests without a warrant can only be for offenses committed in the officer's presence.

POLICE STATION WORKEING

1. Suspects file an "accusation, booking, photo, and pertinent information, such as date of birth, social security number, and address."
2. Pursuant to a "bailiff arrest," an arrested person and belongings are subject to an inventory search conducted with "marked inventory procedure" [§§87(a), (20)].
3. If an arrestee is being placed in the jail population, the arrestee can be strip searched, even if the arrestee is not a minor offense [§§87(a), (20), §18 of Chester Freeholders of the City of Burlington].
4. Police experts are submitted with a request for prosecution.

STANDING CHARGES

1. Prosecutor has discretion to "upgrade, down upgrade, or downgrade the charges imposed or to add or remove any criminal filing charges."
2. If there is sufficient evidence, prosecutor files a criminal complaint.

FIRST APPEARANCE

1. **Arraignment:** the defendant is charged with the offense(s) and the date(s) of the offense(s) before a magistrate or judge.
2. **Confession Clause:** After being informed of a defendant's constitutional rights, the defendant may waive his/her right to remain silent and confess.
3. **Waiver:** following a criminal arrest, within a maximum of 48 hours, the arrestee is taken for a hearing before a magistrate or judge and advised of *Mathen v. Pugh*, *Ct. of Appeals, 2d Cir.*
4. **McLaughlin:** The right to counsel and/or informed appointment of counsel.
5. **Bail:** Arrest is set or the defendant is released on either own recognizance.
6. **Right to counsel and/or informed appointment of counsel:** If the arrestee is unable to pay the bail, the arrestee may be held until the date set down at subsequent court proceedings.
7. **Hearing:** One is set at preliminary hearing.

PRELIMINARY HEARING

1. Live witness, prosecutor, and defendant with counsel are present.
2. Magistrate determines whether there is probable cause sufficient to believe the suspect committed the crime and to hold the case over for trial.

ACCEPTANCE

1. Indictment:

1. A grand jury hearing is an oral presentation of evidence by the prosecutor to the grand jury.
2. The grand jury decides to indict or not indict.
3. If the grand jury decides to indict, sufficient probable cause to support the charge, the prosecutor prepares and files an indictment with the trial court.
4. If the grand jury fails to find sufficient probable cause to support the charge, no indictment is issued.
5. A defendant charged with a federal felony may only be tried pursuant to a grand jury indictment.

2. Information:

1. A grand jury hearing is an oral presentation of evidence by the prosecutor to the grand jury.
2. The grand jury decides to indict or not indict.
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4. If the grand jury fails to find sufficient probable cause to support the charge, no indictment is issued.
5. A defendant charged with a federal felony may only be tried pursuant to a grand jury indictment.

3. The 8th A. right to speedy trial attaches:

1. A trial appearance before magistrate/judge when defendant learns charge against him/her is officially filed in court.
2. The trial date is set.
3. Starts the limitation period for the initiation of adversary proceedings that trigger attachment of the 8th A. right to trial.

ARRAIGNMENT

1. Defendant: the defendant pleads guilty, no contest (not guilty), or not guilty to the information or indictment.

2. The 8th A. right to counsel attaches:

1. A formal appearance before magistrate/judge when defendant learns charge against him/her is officially filed in court.
2. Starts the limitation period for the initiation of adversary proceedings that trigger attachment of the 8th A. right to trial.

PRIVACY

1. Defendant: the defendant pleads guilty, no contest (not guilty), or not guilty to the information or indictment.

2. The 8th A. right to speedy trial attaches:

1. A trial appearance before magistrate/judge when defendant learns charge against him/her is officially filed in court.
2. Starts the limitation period for the initiation of adversary proceedings that trigger attachment of the 8th A. right to trial.

3. The 8th A. right to speedy trial attaches:

1. Prosecutor has discretion to "upgrade, down upgrade, or downgrade the charges imposed or request additional investigation prior to filing charge."
2. If there is sufficient evidence, prosecutor files a criminal complaint.

CONSIDERATION

1. Prosecutor's duty to disclose: to include documents, tangible objects, and lists of witnesses the prosecutor intends to call at trial.

2. The 8th A. right to speedy trial attaches:

1. A speedy trial applies to federal prosecutions and to state prosecutions by the 10th A. Due Process Clause.
2. "Grand cause commitment" are allowed upon case finding [§§87(a), (20)].
3. Defendant may prospectively waive speedy trial rights "for all time" [§§87(a), (20)].

3. TRIAL

1. Jury Trial: Defendant's right of trial by jury is limited by the prosecutor's right to waive trial by jury.

2. Defendant's duty to disclose: is more restricted than prosecutor's disclosure when notice is given after the trial starts.

3. Right to a speedy trial:

1. The 8th A. gives the defendant the right to confront the witness against him/her.
2. Applies to the states by way of the 14th A.
3. Defendant defendant's right to be present at trial.
4. The 8th A. right to a speedy trial attaches [§§87(a), (20), §18 of Chester Freeholders of the City of Burlington, 2d Cir.]
5. Defendant's right to cross examine witness.

4. Cross-examination: Otherwise admissible hearsay offered against defendant may still be excluded under 8th A. Confrontation Clause grounds if the hearing evidence is "both true and reliable." Inadmissible hearsay evidence does not violate the Confrontation Clause [§§87(a), (20)].

5. Right to a speedy trial: Defendant's right to a speedy trial attaches if the hearing evidence is true and reliable.

6. Indictment:

1. After a finding of probable cause at the preliminary hearing, prosecutor prepares and files an indictment charging the defendant with the trial court.
2. If the grand jury decides there is sufficient probable cause to support the charge, the prosecutor prepares and files an indictment with the trial court.
3. If the grand jury fails to find sufficient probable cause to support the charge, no indictment is issued.
4. If the grand jury fails to find sufficient probable cause to support the charge, no indictment is issued.
5. A defendant charged with a federal felony may only be tried pursuant to a grand jury indictment.

7. The 8th A. right to speedy trial attaches:

1. Prosecutor has discretion to "upgrade, down upgrade, or request additional investigation prior to filing charge."
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Book Information

Paperback: 6 pages

Publisher: Barcharts; Lam Rfc Cr edition (November 2016)

Language: English

ISBN-10: 1423233077

ISBN-13: 978-1423233077

Product Dimensions: 0.2 x 8.5 x 11 inches

Shipping Weight: 1.6 ounces (View shipping rates and policies)

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