

Federal Laws vs. State Laws

Federal laws, or statutes, are created by the United States Congress to safeguard the citizens of this country. Some criminal acts are federal offenses only and must be prosecuted in Federal District Court. Other criminal acts are offenses under both federal and state law; so, in those cases, federal and state prosecutors must decide if the offender should be tried in Federal District Court or Rhode Island State Court.



Felony or Misdemeanor

Criminal acts fall into two categories: felonies and misdemeanors. Felonies are offenses that may result in prison sentences of more than one year, while misdemeanors carry sentences of one year or less. The United States Congress sets the penalties for all federal criminal acts. Thus, Congress decides which criminal acts are felonies and which ones are misdemeanors. The State legislature makes those determinations for criminal acts that violate state law.

When Someone is to be Charged with Committing a



Federal Crime...

1. Complaint and Arrest Warrant

Law enforcement obtains a Warrant for Arrest of the alleged offender.

The warrant is based on a Complaint or an Indictment (see below) filed with the Federal District Court. An Affidavit, signed by a law enforcement officer, usually accompanies the Complaint. The Affidavit explains the crime committed as well as the alleged role of the accused in that crime. In other words, the Affidavit is used to establish probable cause that the accused committed the crime.



2. Initial Appearance

As soon as practicable after arrest, the alleged offender must be granted an Initial Appearance before a Magistrate Judge. The Magistrate Judge advises the accused of his or her rights and determines if he or she has the financial ability to hire an attorney or if a public defender must be appointed. The Magistrate Judge also sets release conditions, including any bond. At the same time, a federal prosecutor, known as an Assistant United States Attorney, may ask that the defendant be detained.

3. Detention Hearing If the alleged offender is detained, a Detention Hearing must be held within three working days. The time frame may be extended for good cause. At that hearing, the Magistrate Judge listens to evidence about the accused's risk of flight and/or danger to the community. The Magistrate Judge then considers the information and determines if the accused should be detained or may be released pending trial.



4. Preliminary Hearing Within ten days of arrest on a Complaint, the accused has the right to a Preliminary Hearing, during which an Assistant

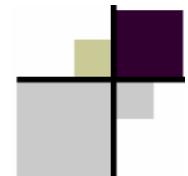


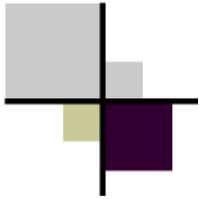
U.S. Attorney may offer testimony to establish probable cause, and the defense attorney may provide witness evidence on behalf of the accused. If the Magistrate Judge overseeing the hearing finds sufficient probable cause as to the commission of the crime as well as the accused's role in it, the accused is bound over for further proceedings by a grand jury. Note - if the grand jury returns an Indictment against an alleged offender before arrest is made, a Preliminary Hearing is not necessary.

5. Grand Jury The final decision to prosecute a federal criminal case rests with a grand jury. A federal grand jury is comprised of randomly selected citizens from across the judicial district. (This judicial district encompasses the entire State of Rhode Island.) Those selected to serve, or work, on the grand jury do so for a few days each month for approximately one year, after which a new grand jury is selected by the Federal District Court. Each grand jury is made up of 23 people, 16 of whom must be present to conduct business.



6. Indictment Sought Instead of filing a Complaint, or after filing a Complaint, Assistant U.S. Attorneys appear before the grand jury to establish probable cause that a particular person committed a federal felony. They do this by calling witnesses and presenting evidence gathered by law enforcement officers or obtained with Grand Jury Subpoenas. Defense attorneys are not allowed to appear before the grand jury; the accused does not need to testify before the grand jury; and the work of the grand jury is to be kept secret.





7. Indictment Returned If a grand jury decides the evidence presented establishes probable cause, it issues an Indictment against the accused. At least 12 jurors must vote to indict. The Indictment is called a True Bill. If the grand jury does not find sufficient probable cause, it returns a No Bill. In a misdemeanor case, or in a felony case where the accused has waived indictment and has agreed, instead, to plead guilty, the matter is not presented to the grand jury. In those instances, an Information, which is a document outlining probable cause, is filed with the Federal District Court.

8. Arraignment Within ten days from the time an Indictment or Information has been filed and an arrest has been made, an Arraignment must take place before a Magistrate Judge. During an arraignment, the accused, now called the defendant, is read the charges against him or her and advised of his or her rights. The defendant also enters a plea of guilty or not guilty. A trial date may be selected and a schedule set for motion hearings, which may include in-court arguments as to suppression of evidence, etc. Note, the Federal Speedy Trial Act dictates that the defendant has the right to trial within 70 days from his or her initial appearance in Federal District



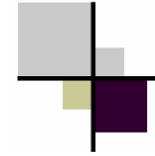
Court.

9. Plea Agreement Defendants are presumed innocent until they admit guilt or are proven guilty. If a defendant pleads not guilty, a trial takes place unless a Plea Agreement can be reached between the Assistant U.S. Attorney and the defense attorney. In those instances, the defendant must offer a change of plea before a Federal District Court Judge, who needs to approve of the terms of the Plea Agreement.



10. Trial A trial may be heard before a jury of citizens selected at random from across the judicial district and overseen by a Federal District Court Judge. At trial, the Assistant U.S. Attorney must—and the defense attorneys may—call witnesses and present evidence. (The government has the burden of proving the elements of the offense beyond a reasonable doubt.) Afterwards, the jury must unanimously decide the verdict. If the defendant is found not guilty, he or she is released. If he or she is convicted, however, the pre-sentencing process begins. A defendant may choose to have a judge hear the case without a jury and rule on their guilt or innocence.

11. Pre-Sentencing After the entry of a guilty plea or a finding of guilt at trial, the Federal Probation Office collects information about the defendant and crime victims and supplies that information, along with a recommendation for sentence, to the Federal District Court Judge as part of a Pre-Sentence Investigation Report.



12. Sentencing Approximately eight weeks after the entry of a guilty plea or a finding of guilt at trial, the Federal District Court Judge imposes sentence. The sentence may include incarceration in a federal prison; a term of supervised release, formerly called probation; the imposition of a monetary fine; and/or an Order of Restitution directing the defendant to pay to crime victims money lost or expenses incurred due to the offense.

13. Appeal The defendant may appeal either the finding of guilt or the sentence or both. To do so, he or she must file with the sentencing court a Notice of Appeal within ten days from the sentencing, or Judgment, date. Note, if the defendant pled guilty, generally only the sentence may be appealed. Also, sometimes, the defendant gives up, or waives, the right to appeal in the Plea Agreement.

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