



PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA

633 Indiana Avenue, N.W., Suite 1120

Washington, DC 20004

202-220-5500

This information is available online at www.psa.gov

PROCESSING ARRESTEES IN THE DISTRICT OF COLUMBIA: A BRIEF OVERVIEW

This document is intended to provide a brief overview of how an adult who has been arrested is processed through the Superior Court of the District of Columbia. It is not intended to be an exhaustive review of a process that is quite complicated given all of the intricacies involved, nor does it address how juveniles are processed. For additional information, you may contact:

**Metropolitan Police Department
Office of the General Counsel**
202-727-4129

D.C. Office of the Attorney General
Criminal Section – 202-727-3501
Juvenile Section – 202-727-3500

U.S. Attorney's Office, Intake Section
202-616-5518

**Pretrial Services Agency
for the District of Columbia**
202-220-5500

**Public Defender Service
for the District of Columbia**
202-628-1200

POLICE – CITIZEN ENCOUNTERS

Despite what many people may believe, police officers are limited in their dealings with others. For instance, they are not allowed to give a “move on order” to persons simply standing on a corner, or near a home or business, unless the person or persons are involved in an actual or threatened breach of the peace. Nor are they able to make an arrest in every situation in which they may believe a crime has been committed. As law enforcement officers, they must abide by the limits that the law places upon them, and their fellow citizens must respect those limitations.

The three types of encounters between officers and citizens are:

Contact - any encounter or conversation an officer has with a citizen who is free to leave at any time.

Stop – the brief detention of a person who the officer has reasonable suspicion to believe may have committed a crime (a FRISK, a limited

search of the person's outer garments, may occur if, and only if, the officer has a reasonable, articulable suspicion that the person stopped may be armed with a weapon).

Arrest – a seizure of a person by an officer with the intention of taking that person into custody.

An arrest may be made if the crime is being committed in the officer's presence, or if there is an arrest warrant outstanding for the person, or if the officer has PROBABLE CAUSE to believe the person has committed a FELONY (a crime for which more than one year imprisonment is the punishment) or one of a specified number of MISDEMEANORS (e.g., simple assault, unlawful entry, theft II, receiving stolen property, shoplifting, attempt theft I, attempt unauthorized use of a vehicle, unauthorized disposal of a solid waste, reckless driving, fleeing the scene of an accident, operating a vehicle while under the influence or while impaired, operating after revocation or suspension, any intra-family offense, etc.) AND the person, unless immediately arrested by the officer, may flee, may cause injury to others, or may tamper with or dispose of evidence.

PROCESSING THE ARREST

Once arrested, the person will be taken to the police station for processing. This includes the preparation of paperwork related to the incident, the interviewing of witnesses, and questioning the arrestee. If the probable cause to arrest is "negated" during the processing (such as the victim of a "crime" admitting that no crime had actually occurred), the arrestee will be released after an entry has been made in the station's DETENTION JOURNAL. No official record of the arrest will be made if an entry is made in the detention journal.

Certain minor offenses, usually traffic offenses and other "order maintenance" offenses (such as drinking in public, disorderly conduct, or urinating in public), are ones for which the arrestee may "post and forfeit" collateral (that is, pay an amount of money set by the Court) and be done with it. Once the collateral has been posted, the person is released from the station. For certain misdemeanors, the arrestee may be released on citation with a personal promise to appear in court at a later time.

For all felonies and most other misdemeanors, the arrestee will be processed, fingerprinted and photographed. The arrestee then will be taken to Superior Court the next court day (court is open every day of the year except Sundays).

THE ROLE OF THE PROSECUTOR

The Office of the United States Attorney for the District of Columbia (USAO) prosecutes many of the criminal violations occurring in the city, with some exceptions. Juveniles (persons under 18 years of age) are handled by the D.C. Office of the Attorney General (OAG) (except that the USAO may prosecute certain 16 and 17-year-olds charged with murder, first degree sexual abuse, armed robbery, first degree burglary, or assault with intent to commit one of these crimes). The OAG also prosecutes disorderly conduct, traffic violations, firearm registration violations, and other regulatory violations. Depending upon the charge for which the person has been arrested, the police officer will bring the arrest paperwork to either the USAO or the OAG for review by an "intake" prosecutor.

THE INTAKE PROCESS – "PAPERING" OR "NO-PAPERING" A CASE

As noted above, police officers often make arrests based on "probable cause," which has been defined as a "set of facts and circumstances that would lead a reasonable and prudent officer to believe that a crime has been committed and that a certain person committed it." As the term implies, it deals with "probabilities."

However, in bringing forward a prosecution of a person for having committed a crime, a prosecutor must believe that the evidence at trial will show "proof beyond a reasonable doubt" that the person charged in fact committed the offense. This is a much higher standard than "probable cause."

At intake, the prosecutor must review the evidence to see whether or not that high standard of proof is present before a decision will be made to file a charge (or "paper the case," as it is called). Some factors that go into the decision-making process include the cooperation of victims and witnesses, whether physical evidence is present or may be suppressed, and whether all of the elements of the offense charged have been met. Sometimes the prosecutor, in an exercise of discretion, may decide that the case should not be prosecuted fully through the court system (such as in a situation where there has been no real harm to a victim and the arrestee has had no prior contacts with the criminal justice system). If any of the above exist, the decision may be made to "no-paper" the case, that is, to NOT present formal charges in court. If that occurs, the defendant will be released in court once the judicial officer has called the case.

If charges are filed (that is, the case is "papered"), the prosecutor decides which is the most appropriate charge to place, given the evidence and the nature of the defendant's prior contact with the system. If misdemeanor

charges are filed, the prosecutor prepares an “information,” which informs the defendant of the charges he is facing. If a felony charge is filed, it is in the form of a “complaint,” a legal document which is sworn to, usually by the arresting officer. The officer will also prepare a sworn statement of facts about the offense for use by the court in determining whether there was “probable cause” to believe the defendant committed the crime with which he/she is charged.

For cases that are papered, the defendant will be provided with a defense attorney if he does not have one already (persons who cannot afford an attorney will have one appointed for them without charge). The defense attorney will represent the defendant during the various hearings that will take place, will provide guidance to the defendant regarding strategic decisions that need to be made, and, if the case ends up going to trial, will investigate the charges being made against the defendant in order to put forth the most appropriate defense possible. The defense attorney’s role, quite simply, is to zealously represent the best interests of the defendant.

THE DEFENDANT’S INITIAL APPEARANCE – SETTING CONDITIONS OF RELEASE

“The first great right or privilege given to a person charged with crime is that he is to be considered innocent until he is proven guilty beyond a reasonable doubt, and the burden is upon the district attorney as the representative of the people to prove the defendant’s guilt; the defendant is not bound to prove his innocence.” 53 N.Y.S. 1005 (1898) (emphasis added). Many citizens wonder why arrested persons seem to be back on the street so quickly, often before the arresting officers are finished with their paperwork; however, there is usually a good explanation for this.

As noted above, there is a presumption of innocence that begins with the person’s first appearance before the judicial officer once his/her case has been papered. If the matter is a misdemeanor, the defendant is “arraigned,” or formally notified of the charges; a trial date is often set. If it is a felony charge, the defendant is “presented” before the judicial officer and advised of the complaint. A felony requires that a “preliminary hearing” be held, at which time the court must find probable cause to believe the defendant committed the crime with which he/she is charged. In either case, the judicial officer must use the law, in this case, Title 23, Sections 1321 to 1325 of the D.C. Code, to decide whether the defendant is to be released pending his/her next court appearance, have certain conditions (such as a curfew, a “stay away” from a particular place or other person, or other condition) placed upon him/her, or that he/she should be held in jail pending the next court appearance.

Given the presumption of innocence to which every person is entitled, there is a requirement in the law that **every defendant is to be released on the least**

restrictive conditions possible, as long as the judicial officer is satisfied that the person does not pose a risk of danger to the safety of any other person or the community and is not a “flight risk” (that is, that the person will likely reappear in court when ordered to do so).

FACTORS IN THE DECISION-MAKING PROCESS

While the law provides that a defendant will presumably be released pending his or her next court appearance, there are a variety of factors that go into the decision-making process. Most defendants processed through the Superior Court are interviewed by the Pretrial Services Agency (PSA). Among its functions are the following: to corroborate the personal information provided by the defendant as to residence and employment status, to check on the existence of a prior criminal record, to administer a drug test to determine if the defendant has been using any illegal controlled substances, and to make a recommendation to the court about whether the defendant should be released pending his/her next court date, released on conditions (such as requiring drug testing every week and checking in with PSA on a regular basis), or that the defendant be held pending a hearing to determine if the defendant should be held in “preventive detention” because of the defendant’s current status within the criminal justice system or because of the nature of the offense with which he/she has been charged.

WHEN A DEFENDANT MAY BE DETAINED

According to Title 23, Section 1322(a) of the D.C. Code (the D.C. Code can now be accessed at <http://government.westlaw.com/linkedslice/default.asp?SP=DCC-1000>), a judicial officer may order a person held for up to five days if that person is charged with an offense (except First or Second Degree Murder, Assault With Intent To Kill While Armed, or post-conviction cases, which are handled separately, and will be discussed below) and was, at the time the crime was allegedly committed, on release for a felony or misdemeanor, was awaiting sentencing for any matter, or was on probation or parole, AND that the person may flee or pose a danger to any other person or the community if not detained.

According to Section 1322(b), a person may be held for a hearing within three to five days to determine if a person poses a flight risk or may endanger the safety of the community if the person has been charged with any of the following: “a crime of violence” or “dangerous crime” (as defined in Section 1331); the offense of obstruction of justice; if the person poses a serious risk of threatening, injuring or intimidating prospective witnesses or jurors; or if the person poses a serious risk of flight. If after the hearing, and after considering a

wide variety of factors spelled out in the law, “the judicial officer finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer shall order the person detained before trial.” 23 D.C. Code Section 1322(b)(2). Defendants who are detained under this Section must have their trial within 100 days of being detained.

According to Section 1325, defendants who are charged with First or Second Degree Murder or Assault with Intent to Kill While Armed shall be treated in accordance with Section 1321, unless the defendant poses a serious risk of flight or danger to any other person or the community. If he/she does, the person may be detained pending trial.

A defendant who has been detained pursuant to any of these Sections may appeal that decision to a higher court. Also, the decision to hold a person may be modified by the judicial officer at any time if the person’s circumstances change and he/she no longer poses a risk of flight or danger to the community.

WHEN A DEFENDANT IS NOT HELD PENDING TRIAL

While the above contain quite a few circumstances for which a person may be held, it is clear that the list is far from exhaustive. There are no property crimes, such as theft or stolen auto, listed as a violent crime or dangerous offense, and there are no “quality of life” or nuisance type crimes in either group. So, despite a lengthy criminal record, a defendant may not necessarily be subject to detention pending trial in his/her newest matter.

Law enforcement officials are working more with the court in devising appropriate “conditions of release” in cases where a defendant has been released into the community. “Stay away” orders, from particular places as well as persons, requests for curfew, as well as requests for continued employment or schooling are becoming more commonplace. Under the current Patrol Service Area format, the MPD officer can follow-up with the appropriate prosecutor’s office to see if the requested conditions were in fact granted by the court. If a specific condition was imposed upon a defendant, and the defendant violates it, the judicial officer may revoke that person’s release and may go so far as to find the person in contempt of court. Penalties for contempt can include a fine and/or imprisonment.

BEYOND THE PRELIMINARY STAGES

After a person’s initial appearance, one of several scenarios may happen, depending upon the charge he/she is facing and how it is resolved in court. A

defendant charged with a misdemeanor, with some exceptions, will have his/her trial heard by a magistrate judge or judge in a “bench trial,” which is a trial heard by the judicial officer without a jury. A felony requires an indictment by a Grand Jury, which will usually occur within thirty to sixty days of the person’s arrest. Felony matters are usually tried before petit juries, composed of 12 citizens (plus two alternates) selected for jury duty on a given day.

Perhaps not surprisingly, most criminal cases do not go to trial—they are either disposed of by way of a plea agreement (which usually allows for the defendant to plead guilty to a lesser offense, or to one offense out of several), or the case ends up being dismissed (sometimes because the complaining witness is no longer available to testify at trial).

If the person is acquitted, that is, found not guilty, the case is closed and the person is free from future court appearances and obligations.

If the person is found guilty of a crime, however, the court may request that a Presentence Investigation Report be prepared by the Court Services and Offender Supervision Agency (CSOSA). This gives the sentencing judge more information with which to impose an appropriate sentence on the defendant.

In Superior Court, most crimes do not carry a mandatory sentencing provision that the judge is obligated to follow in sentencing a person. Only certain offenses carry a “mandatory minimum” sentence (such as First Degree Murder, Possessing a Firearm during a Crime of Violence, or certain armed offenses); otherwise, judges have wide discretion in fixing the penalty, which can be an amount up to the maximum provided by the law. However, D.C. has instituted sentencing guidelines that judges follow in most situations (and deviations from the guidelines need to be explained by the judge at the time of sentencing). Information about the entire sentencing structure within Superior Court as well as the work being done by the D.C. Sentencing Commission may be found at <http://acs.dc.gov/>.

Most crimes subject the defendant to a potential period of incarceration and/or a fine. The sentencing judge also may impose a period of PROBATION instead of or in addition to any other sentence. The defendant must obey any conditions placed on him/her by the court or by CSOSA, which is the agency responsible for supervising probation.

If the defendant is sentenced to a period of incarceration, he/she may be eligible for parole or supervised release (depending upon when the person was sentenced) after having served a particular portion of the time imposed, and depending upon the crime committed. During this period, he/she must follow the rules set out by the United States Parole Commission or CSOSA, which is the

agency responsible for supervising parole and supervised release. Serious violations of these rules can result in the person returning to prison to complete the original sentence.

CONCLUSION

The criminal justice system can be a very complex and confusing set of laws and rules and regulations that the average citizen may feel is designed more to protect the arrested person rather than the community at large. While it may sometimes appear this way, the basic American principle that all arrested persons are presumed innocent until proven guilty remains a fundamental right that is without equal anywhere in the world. As citizens, we all have an obligation to do what is right and what is expected of us within the community. When we fail to do so, we may be caught, and we may be held accountable, and we may be punished, but not without the criminal justice system doing what is required and expected of it in safeguarding the rights and liberties of us all.

Should you ever have a question or a concern about something occurring within your neighborhood or community, or if you would simply like some additional information about how the criminal justice system works in the District of Columbia, do not hesitate in reaching out to one of the agencies listed on the front of this handout.

This information is provided as a public service by the
Pretrial Services Agency for the District of Columbia

Clifford T. Keenan, Director

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