

CPL ARTICLE 170: Arraignment (Local).

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These arraignment guidelines do NOT apply to corporate defendants!

Generally after an instrument is filed in a local criminal court, defendant MUST appear for arraignment; however certain specific Simplified Informations are allowed by law to dispense with this requirement.

If defendant was required to appear by issuance of a summons or appearance ticket, the Court MAY allow appearance by counsel.

At arraignment, the defendant is furnished with a copy of the instrument. Defendant must then either be informed by the Court - or the Court cause him to be so informed - of the charges; as well as his rights: defendant has the right to an attorney, including assigned counsel if indigent, except not for traffic infractions; defendant has right to adjournment to obtain counsel; defendant has right to communicate for free with an attorney, AND a relative or friend to inform them of his arrest.

Defendant must also be informed of the potential for his automobile license to be suspended if convicted of certain traffic offenses; defendant must also be informed of right to supporting deposition on simplified informations, and the right to not to be prosecuted on a misdemeanor complaint without conversion to information. Except for the proviso regarding misdemeanor complaints, any or all of these rights can be provided to the defendant in printed format.

For any traffic infraction, defendant MUST be allowed to proceed pro-se; for any other case the Court must be satisfied that defendant has the knowledge to defend himself, otherwise an attorney MUST be appointed.

Defendant can be arraigned without counsel if he waives right to an adjournment, but this does not constitute a waiver of attorney for future appearances.

Unless the Court immediately disposes of a case at arraignment, there must be a "securing order" for the defendant, either Released on Recognizance or bail. If defendant had been allowed to appear by counsel, then he MUST be RoR'd.

Defendant may not plea to a traffic offense which resulted in either death or serious physical injury until 30 days from arraignment, unless the District Attorney consents in writing.

REMOVALS:

If a case is filed in an improper local criminal court (i.e. no trial jurisdiction), such court

MUST arraign defendant. Defendant may plea and remain with that judge, else case is remitted to the proper court. Superior Court judge sitting locally can arraign, but must remit without plea.

If a proper County Court cannot proceed timely due to death of judge or inability to impanel jury (if defendant entitled), then can transfer case to City/Town/Village court for disposition.

In a city with more than 1 million people - upon motion of defendant with consent of District Attorney - case can be sent to Drug Court. Such order shall not go into effect for 5 days in case drug court will not accept, though it can take effect earlier if drug court accepts immediately. Drug Court shall notify defendant & counsel + D.A. of decision.

During local criminal court case - before guilty plea or commencement of trial - indictment charging misdemeanor can file in Superior Court, and local charges MUST terminate. D.A.'s request in local court to adjourn for purposes of filing Superior action must be granted.

If the local court grants an adjournment, D.A. must present charges to Grand Jury within designated time period, or else local case shall continue. Defendant can motion in Superior Court on notice to D.A. for a stay of local proceeding in "interests of justice"; Superior Court judge may thus order D.A. to indict. Defendant may apply within 30 days of arraignment for additional time to make the motion, and local court MUST grant adjournment.

If defendant is in custody for 45 days awaiting Grand Jury action, Superior Court must order release except where defendant caused delay or D.A. shows good cause.

Grand Jury indictment terminates local charges; so does a dismissal of the indictment. Superior Court must in such case discharge defendant from custody or bail.

Local Court MAY dismiss a case after arraignment for: double jeopardy; defects; immunity of defendant from prosecution; statute of limitations; speedy trial issues; or "furtherance of justice". Defendant's motion for dismissal shall be made within 45 days of arraignment, and prior to commencement of trial; this does not apply to speedy trial issues. Defendant shall raise all possible grounds at the same time, or else risk later filings being dismissed. Same pre-trial motion rules generally as for indictment.

Defects = facially insufficient (unless it can be amended); no jurisdiction alleged; invalid statute; if a Grand Jury directed the filing of a Prosecutor's Information without authority to do so, or if D.A. files at own prerogative but without necessary supporting facts/deposition.

Prosecutor's Information at Grand Jury direction shall be dismissed if such evidence then presented was insufficient, or proceedings were defective. This has the same effect as if an indictment was dismissed; D.A. MAY be authorized by Court to re-submit charges, otherwise is not allowed to.

Court may dismiss in "interests of justice" on its own motion - or that of either party - IF it deems it so appropriate, taking into account the victim's attitude. Interests of Justice

considerations = seriousness of crime; harm; evidence of guilt (including if otherwise inadmissible); character history; law enforcement misconduct; purpose of sentence; effect of dismissal on community welfare and public confidence in the courts.

Court can grant an Adjournment in Contemplation of Dismissal on or after arraignment, but before guilty plea or commencement of trial. Someone must motion for ACD - including the Court - and both parties need to consent. ACD can generally be up to 6 months, except for family offense = 1 year. ACD's are "*sine die*", i.e. without an actual adjourn date. Upon ACD, defendant MUST be released on own recognizance.

Possible ACD terms: temporary order of protection; emotional program for spousal abuse/family violence; dispute resolution participation; public service (only of defendant's consent); alcohol awareness program for defendant under 21 years of age.

Upon termination of ACD period without re-calendaring = dismissal "in furtherance of justice"; NOT a conviction, no disability, arrest is a nullity.

Special Marijuana ACD:

Defendant motions, D.A.'s consent NOT required; Court can ACD *or* straight dismiss. Not an option if prior ACD/Dismissal granted for same type of charge, nor if substance abuse conviction. D.A.'s consent IS required if defendant previously had another kind of conviction, or Youthful Offender finding (including for substance abuse).

ACD can include supervision. ACD period can be modified, reduced, or extended up to 12 months maximum. If no convictions: ACD case is sealed upon expiration, and arrest deemed a nullity.

Unless a case is dismissed, defendant MUST plea; except NOT to a misdemeanor complaint, unless defendant waives right not to be so prosecuted. Misdemeanor complaints must be either replaced with an Information; or else a Supporting Deposition may be deemed such in lieu thereof.

Information replacing Misdemeanor Complaint need not necessarily charge the same crime, but shall at least allege similar conduct; it may also join other offenses.

If defendant has been confined for 5 days (not counting Sunday) while awaiting still pending Information replacement: MUST be released on recognizance; except where defendant caused delay, or D.A. shows good cause why circumstances prevented timely filing.