

CPL ARTICLE 180: Felony Complaint.

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Upon arraignment for a felony complaint, defendant is informed of the charges and furnished with a copy. The only question for the local criminal court is whether or not to hold defendant for a Grand Jury.

Defendant has the same rights accorded under other local instrument arraignments, including counsel.

Unless the felony complaint be dismissed, the Court MUST issue some securing order, including commitment.

In a Town, Village or City Court: the defendant must be arraigned. Then the charges can either be reduced to misdemeanor/petty offense - Court can go to disposition upon filing of Information or Prosecutor's Information - or else MUST remit the case to Superior Court. If a Superior Court judge is sitting locally, can ONLY arraign, then MUST remit.

In a city with more than 1 million people, removal to Drug Court is also an option, under the same conditions as for an Information.

Defendant may waive local hearing upon the felony complaint, in which case he remains held while the papers (order, complaint, supporting deposition, documents, etc...) are transmitted to Superior Court. The local action stays technically pending until received.

Even without a hearing though, the Court may inquire as to the appropriateness of dismissing the felony charges in favor of an Information; though can only question the defendant on his own consent.

If there is no reason to believe a felony was committed, but some other offense was, then the Court can order a reduction in charges and the filing of an Information.

If there is reason to believe that both felony and misdemeanor/petty offense were committed, Court MAY reduce *IF* D.A. consent, AND in interests of justice.

If defendant is being held for a Grand Jury, but no action has yet been taken, the District Attorney can make ex parte application to the Superior Court to return the matter to local jurisdiction for additional consideration, this is the event that the felony complaint has some defect, or in the interests of justice.

Class A Felony (except P.L. 220 controlled substances), or Armed felony may NOT be so reduced!

If the facts alleged in the felony complaint are sufficient to support lesser charges, it can be administratively converted to an Information; otherwise a new instrument must be filed. Charges and defendants can be joined. the felony complaint must be dismissed, and the defendant re-arraigned on the new charges.

If the defendant had NOT waived the hearing upon the felony complaint - and the Court did not reduce/dismiss the charges - the hearing is as follows:

Court MAY exclude public on defendant's application, and can then also order no disclosure of the proceedings.

D.A. MUST appear on behalf of the People. Defendant MUST be present. Court MUST read the charges, unless defendant waives. Witnesses for either side MUST be placed under oath, unless their testimony at trial would be allowed unsworn.

People MUST present witness(es)/evidence, Defendant may cross-examine. Defendant MAY testify on own behalf. Court MUST allow defendant to present witnesses and/or evidence.

Evidence must be non-hearsay; however expert reports may be introduced unless the Court decides them insufficient, then the author can be called as a witness, sworn in, and can be cross-examined.

The burden of degree is "reasonable cause to believe".

Felony complaint hearing should be conducted in a single session; but if adjourned, no more than one day absent good cause shown.

If there's no reason to believe the defendant committed any offense, the charges are dismissed and the defendant either discharged or exonerated of bail.

If the defendant is a juvenile: if there's reason to believe the youth committed a crime but is not responsible due to age, then the Court MUST remove the case to Family Court as a delinquency after ordering the specific acts found. Similarly, if the District Attorney requests removal of any juvenile felony complaint, Court SHALL so order.

However, the following acts must have mitigating circumstances (e.g. defendant only a minor participant [no pun intended]), or some defect of proof, to be removed: Murder 2; Rape/Criminal Sex Act 1; Armed Felony.

If juvenile defendant has been held by a local criminal court on a felony complaint, and the hearing has not been finally determined yet, defendant may move in Superior Court for removal to Family Court. Superior Court judge shall sit locally to decide the motion. At such removal hearing any non-privileged testimony is allowed,

even hearsay. Defendant may testify, and his words may only be used later for the sole purpose of impeaching him. If motion is denied, no further application is allowed.

Upon any removal determination, the Court shall record the reasons therefor on the record; if D.A.'s consent is required, that must also be given on the record.

If removal is ordered, the local action terminates; no new action for these charges may later be maintained in any criminal court.

If any defendant be held by a local criminal court on a felony complaint without hearing commencing for more than 120 hours (144 if including weekends, holidays), then he MUST be released unless he caused it or the D.A. shall show good cause why circumstances prevented timely hearing; or else D.A. can file certification of indictment or Grand Jury direction for Prosecutor's Information.

Except for homicides: after felony complaint hearing and hold for Superior action, if no Grand Jury proceeding within 12 months of arraignment - or it was disposed of without indictment - then either defendant, D.A., local Court (or Superior if then pending) may motion in writing to terminate the felony complaint prosecution.

Forms for the motion are established by the Chief Administrator in consultation with the Director of the Division of Criminal Justice Services [DCJS], as well as the various organizations representing prosecution and defense counsel. Upon the motion filing, Court fixes date for hearing and notice shall be at least 30 days beforehand.

If both sides consent - consent deemed given if no opposition notice filed - then case SHALL be terminated. If D.A. opposes and Court denies motion, it cannot be renewed for 6 months.

Otherwise the Court MAY defer determination for 45 days. If Grand Jury acts within that period, then the motion is deemed denied; if it fails to however, the motion MUST be granted unless the D.A. can show good cause by written notice to the defendant at least 5 days prior to the deadline.

The time spent determining the motion does NOT stop the clock on speedy trial!

Even if lower criminal court dismisses the felony complaint, D.A. can still file an indictment later. If D.A. indicates intention to do so as time of dismissal, Court shall stay sealing for up to 30 days.