

CPL ARTICLE 200: INDICTMENT.

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The term "Indictment" herein includes Superior Court Information as well as Grand Jury action.

An Indictment from a Grand Jury - or a Superior Court Information by a District Attorney - is filed with a Superior Court.

Indictments must charge at least one crime, may also charge related offenses.

An offense (including petty) may be joined with a crime when based upon the same criminal act or transaction; or where two such transactions, where proof on one is material & admissible on the other; or where defined by similar statutory law; or where each is joinable to a third transaction (and such cases may also be further "chained").

However, such joined offenses may be tried separately where: a) one has more proof, and jury won't be able to consider the cases separately; b) defendant will testify on one case, but must refrain on the other [such info to be provided by defendant's counsel either orally on record or in writing; but MAY be ex-parte, in-camera, and sealed, subject to Court's unsealing, and shall NOT be used to impeach the defendant].

Court can consolidate trial of otherwise joinable offenses, even when they be contained in indictments which also charge *non*-joinable counts.

Joining is generally discretionary; however if offenses result from the same transaction, Court **must** comply with defendant's request to join (EXCEPT: for "good cause"). If the same transaction - or one in which proof will be admissible on another - even acts for which a defendant would not be responsible due to infancy because he was under 16 when committed can be so joined.

Indictments can charge only one offense per count (no "duplicitous" charges). A single charge for an offense which has multiple subdivisions - each potentially supported by the facts - which fails to specify the designated act, shall be deemed a "duplicitous" count.

Multiple defendants may be joined, where: a) all charges against each are identical; b) acts arose out of single scheme/plan or criminal transaction [for purposes of enterprise corruption, includes counts otherwise chargeable against a defendant, even if not prosecutable; and if each defendant can be linked at least one other]. Court may sever joined defendants, or try separately. A Court can also consolidate for trial any joinable offenses in separate indictments against different defendants.

An Indictment shall specify:

- 1) name of court where filed;
- 2) title of action (and state if defendant is Juvenile Offender);
- 3) separate counts;
- 4) that grand jury or district attorney "accuses" defendant of each designated charge;
- 5) that acts were committed in the designated county;
- 6) date on or about which occurred **or**; period of such time;
- 7) concise factual statement supporting every count, NOT evidentiary allegations;
- 8) if Armed Felony, specify implement;
- 9) if Hate Crime, so indicate;
- 10) for Terrorism, charge intimidation/coercion/murder/assassination/kidnapping.

Indictment must have signature of District Attorney; plus Grand Jury foreman **OR** Acting foreman, **EXCEPT**: if "Reduced".

Even for basis of "up-grading" offense count, may NOT indicate prior convictions (however such must still be proven before Grand Jury to result in indictment charge). If a statute name makes reference to prior conviction, count must make use of an improvised title [**NOT** apply to "escape"].

For any count based upon a prior conviction: Court shall arraign defendant on district attorney's "Special Information", *after* commencement of trial, but before close of People's case. Such arraignment **without** jury. Defendant must be advised of rights; if then admits prior offense = deemed established, and not submitted to jury (nor any lesser-included offense thereof). If the defendant denies the prior offense, charge shall be proven before the jury; EXCEPT: for a charge of Murder 1, only addressed **IF** defendant first found guilty of causing death. If defendant remains mute, deemed denial.

If basis for charge is that victim is "for-hire" vehicle operator: defendant arraigned on such Special Info before commencement of trial. An admission constitutes establishment of charge only for sentencing purposes (and only if defendant be convicted thereupon). If defendant denies, People must prove before jury; jury only makes determination after conviction.

For a Child Sex Assault, where victim under 15 (unless such age be an element of the charge itself): arraignment on Special Info either prior to trial, **OR after** commencement, but before People's close. An admission is an establishment for **ALL subsequent** purposes, and shall NOT bar People from raising issue at trial. If defendant denies, D.A. must prove "beyond reasonable doubt"; and jury only determines **AFTER** conviction. Any such determination is binding on all future proceedings unless vacated/reversed.

For Enterprise Corruption - or possession of Chemical/Biological weapon - District Attorney may provide a Statement concurring with the Grand Jury as regards such charge.

Any time before **OR** during trial, Court can direct amended indictment on People's request upon notice to defendant. Only allowed to cure defects/errors of proof (time/place/names

etc...); where NOT change the "theory" of the case. Defendant's request for more time to prepare thereupon **must** be granted.

Indictment can NOT be amended to change: theory of evidence presented to grand jury; failure to charge/state an offense; legal insufficiency; or **mis**-joinder of counts/defendants.

A "Superseding" indictment may be filed any time before trial commences or defendant pleads guilty: all duplicate counts on original instrument are dismissed upon arraignment of the second; any others remain outstanding.

Bill of Particulars may be demanded by defendant without leave of court, upon service of request to prosecutor within 30 days of arraignment (or if defendant then requested counsel, from first appearance by such attorney). Request must be made before trial commences. However the Court **may** direct compliance with an un-timely request which could not have been made earlier.

The People are NOT required hereby to divulge how they intend to prove the case, need only provide any factual info pertaining to a charge not already outlined in indictment. Prosecutor may also refuse any demanded info by writing and stating the "reasonable grounds" therefor. If district attorney then be compelled by order of court on pre-trial motion to comply: proceedings STAY until Bill served/filed.

The court may issue a "Protective Order" on motion (including its own, or that of any affected person) requiring defendant's attorney to exclusively possess certain info on client's behalf [and not divulge].

Prosecutor can amend a Bill without leave of court **before** trial commences. Also during trial - with permission - on good faith, and only if not prejudice defendant; defendant's request for an adjournment for further preparation on such grounds **must** be granted.