

CPL ARTICLE 210: SUPERIOR COURT PROCEEDINGS

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Only Grand Jury Indictments and D.A.'s Superior Court Informations may be used to prosecute Superior Criminal Court actions.

Defendant **MUST** appear at arraignment after filing. If defendant is in custody of sheriff due to order of local criminal court on felony complain: Superior court must order production, on 2 days notice to any attorney who has filed a notice of appearance for defendant in either court.

If defendant was bailed out by local criminal: Superior directs appearance on notice to defendant; attorney; surety; and and/or bail poster. If defendant fails to appear, Court may forfeit bail and issue a bench warrant. Upon arrest, if Superior Court not in session, defendant is taken to detention facility until next court day.

If defendant was never held locally: Superior **MUST** file indictment under seal, and issue Superior Court warrant of arrest. However IF D.A. requests, AND Superior Court is satisfied that defendant will appear: **MAY** issue summons OR direct D.A. to notify defendant.

Superior Court warrants of arrest are issued to any police agency having jurisdiction over the geographic area where defendant may be found; and IF Superior Court so provides, can then be delegated to another officer/agency as necessary. Superior Court warrant can be executed anywhere in the state. Upon arrest, police **MUST** process/fingerprint defendant, then bring him before the issuing court. If delegate arrests, must bring to addressee for transport to Court. If Court not in session, then to local detention facility until next business day.

Upon arraignment: defendant must be informed of charges by Court or in presence, D.A. must furnish copy of instrument.

Court must inform Defendant of right to counsel: for adjournment to obtain; for free communication (also to inform relative/friend of arrest); free counsel if indigent. If defendant chooses to be arraigned without counsel, he doesn't waive attorney for the future; and Court must inform him that he can exercise the right later on.

Defendant can only proceed pro se if Court is satisfied that he is doing so knowledgeably; else lawyer **MUST** be present.

Unless case is immediately disposed of, defendant **MUST** plea; Court must also secure defendant: Release on own Recognizance; bail; or commit.

HIV:

Upon any rape: victim can apply for HIV testing of defendant in writing to Court before instrument filing, or up to 48 hours after (for good cause, Court can allow later); but must in any case be within 6 months of the date of crime commission.

If victim is minor/incompetent: representative may file.

Request must state that: applicant is victim of specified crime by defendant; applicant was offered pre- and post- test counseling by public health officer, advising limitations of test, scientific risk assessments, & need for victim to undergo testing as well.

Court may hold hearing only to determine if applicant was victim, and/or if follow-up is medically appropriate.

Court must provide any such request to defendant & counsel, and shall so order when would benefit victim medically or psychologically.

Medical benefit = when testing would provide relevant information for decision regarding treatment.

Testing order shall designate state/county/local public health officer. Test must be conducted within 48 hours of order; if defendant not tested in that period, Court must re-order. Results are NOT disclosed to the Court, but communicated only to the applicant, as well as defendant at own request.

Re-disclosure only to: victim (if not original applicant); and victim's immediate family, guardian, physicians, attorneys, medical or mental health providers; also past and future sexual partners at risk.

Victim may also apply in writing any time during case - before final disposition - for follow up testing, as long as still less than 6 months since crime. Court must provide requests to defendant & counsel; and shall order if medically appropriate = enough time after offense to qualify under Health Commissioner's rules. Absent extraordinary circumstances, only 1 follow-up allowed.

All HIV related papers are sealed; and proceedings held in-camera.

No information discovered herein can be used in any related criminal or civil proceeding; except to prosecute perjury by a witness.

Failure to comply with HIV provisions do not affect validity of criminal action itself.

DISMISSAL:

After arraignment, defendant can motion for dismissal in writing and on notice to the People, any facts must be sworn to; People MAY file answer with Court, must then also serve defendant. Court may grant on any of the following grounds:

Indictment - or Grand Jury proceedings - defective; Grand Jury evidence legally insufficient; defendant has immunity; previous prosecution for same charges (double jeopardy); untimely (statute of limitations); no speedy trial; jurisdictional impediment; interests of justice.

Court may grant without hearing if grounds are supported, or deny without hearing if no valid grounds are alleged. Else MUST hold hearing, defendant has burden to prove by preponderance.

Defective indictment = allegations don't demonstrate jurisdiction; invalid/unconstitutional statute. However not defective if error can be cured.

Defective Grand Jury proceedings = jury illegally constituted; less than 16 members total; fewer than 12 concurring; defendant not allowed to testify.

If Grand Jury proceedings alleged to be defective must first have motion for Court & defendant to examine Grand Jury stenographic minutes so as to see if lesser charge be supported. Court must examine minutes unless good exists otherwise; Court may only allow parties to view relevant testimony records on notice to D.A., so as to assist in deciding application.

Ruling determining inspection motion must be on record, and is not reviewable on appeal; if no reason to believe evidence insufficient, can either deny or reserve decision pending examination.

Regarding legally insufficient evidence: if Court finds that lesser charges would be supported, can proceed on those reduced crimes; except that petty offense charge must be filed as Prosecutor's Info in lower criminal court. Court shall state reasons on record, and reconsider securing order as necessary.

Motions must be made within 45 days of arraignment; except speedy trial must be before plea or commence of trial. All issues should be raised at once, else may be summarily denied later.

Regarding dismissals for defectiveness/legally insufficient evidence: cannot be re-filed unless Court authorizes on People's application. If Court does not authorize, must order release from custody or exoneration of bail. If re-submission allowed, must secure until: D.A. declines to re-submit, or Grand Jury dismisses; then must release defendant / exonerate bail.

Such securing order otherwise expires in 45 days unless Court then extends to a designated date so People have more time. However even if it expires, People can still re-submit charges. If defendant is later re-arraigned on new instrument, another securing order is made.

JUVENILES:

If dismissed a charge against a juvenile, MUST remove any joined crimes (for which not criminally responsible by infancy) to Family Court as delinquent. If dismissed entire indictment: can either allow re-submission to Grand Jury, or MAY allow Family Court filing if reason to believe delinquent act was committed (must specify which one[s])

Order reducing charge, directing Prosecutor's Info, or dismissing a count of a Murder 1 indictment is stayed for 30 days unless People waive.

Before expiration, People can accept Court's order by filing reduced instrument. Or can re-submit charges to Grand Jury (Court can allow later than 30 days on good cause), and stay continues until new determination. But if again dismissed, cannot be submitted another time. People can also appeal order, which also continues the stay. Order otherwise takes effect after 30 days if People do nothing.

Dismissal in interests of justice = seriousness and circumstances of offense; extent of harm; evidence of guilt (even if inadmissible); history/character of defendant; law officer misconduct; effect of imposing sentence; impact of dismissal on community safety, public confidence in judicial system; IF Court finds appropriate: victim's attitude. Court or People may also motion; Court must state reasons on record.

Either Defendant or Court can - after arraignment - motion to remove juvenile case to Family Court in interests of justice. However D.A.'s consent necessary for the following acts: Murder 2; Rape/Criminal Sex Act 1; Armed Felony; also must have mitigating circumstances (e.g. defendant only a minor participant [no pun intended]), or some defect of proof, to be removed. Any evidence not privileged may be introduced; defendant's testimony can't be later used, except to impeach. Both Court & D.A. must state reasons for removal on record.

ACD:

If only arraignment charges certain marijuana crimes under PL article 221 - if defendant motions before plea or commencement of trial - Court can either Adjourn in Contemplation of Dismissal, or else straight dismiss in furtherance of justice.

If only charge is misdemeanor, before trial commencement / guilty plea: either People, Defendant, or Court may motion on consent of both Defendant and People to ACD.