



# Proceedings in Federal Criminal Cases: From Initiation to Indictment

The procedural requirements for the commencement of a federal criminal case vary depending on whether the defendant is arrested prior to or after the return of an indictment.<sup>1</sup> Cases in which law enforcement agencies and prosecutors proactively investigate potential offenses generally commence with the return of an indictment upon a grand jury's finding of probable cause that a federal crime was committed (or with the filing of an "information" if the penalty for the charged offense does not exceed one year).<sup>2</sup> In other cases, law enforcement may be acting in rapid response to an event, requiring that the defendant be arrested prior to an indictment being returned.<sup>3</sup> The law governing the procedures in such cases is complex and draws from both the Federal Rules of Criminal Procedure and the *U.S. Code*. The following table explains what generally happens when someone is arrested for a federal crime, the applicable rules or code provisions, and the time frame for each phase of the proceeding.

	COMPLAINT/ ARREST	INITIAL APPEARANCE	BOND/DETENTION HEARING	PRELIMINARY HEARING	INDICTMENT OR INFORMATION
Governing Law	Fed. R. Crim. P. 3, 4, 5	Fed. R. Crim. P. 5 <sup>a</sup>	18 U.S.C. § 3142 <sup>d</sup>	Fed. R. Crim. P. 5.1	18 U.S.C. § 3161(b) and Fed. R. Crim. P. 7 or 58
What Generally Happens at This Stage? 	First, complaint, affidavit, and warrant or summons are signed by judicial officer Then, defendant is arrested pursuant to arrest warrant or served with summons for initial appearance <b>OR</b> Defendant arrested without warrant	At initial appearance, judicial officer advises the defendant of certain information, including: <ul style="list-style-type: none"><li>• Pending charges</li><li>• Maximum penalties</li><li>• Right to counsel</li><li>• Right to a preliminary hearing</li><li>• Right to remain silent</li><li>• General circumstances of pretrial release</li></ul>	Judicial officer issues: <ul style="list-style-type: none"><li>• A detention order if the defendant meets condition(s) specified in statute (e.g., defendant might harm others)</li><li><b>OR</b></li><li>• A release order with conditions if such conditions will reasonably assure the defendant's appearance and safety of the community</li></ul>	Magistrate judge: <ul style="list-style-type: none"><li>• Requires defendant to appear for further proceedings if judge finds probable cause that the defendant has committed an offense</li><li><b>OR</b></li><li>• Dismisses the complaint and discharges defendant where no probable cause found</li></ul>	Grand jury returns indictment (for crimes punishable by more than one year in prison) (Rule 7) <b>OR</b> Government files information (for crimes punishable by one year or less in prison) (Rule 58)
When Does This Stage Happen? 	Arrest with Warrant: Warrant must command law enforcement officer to arrest and bring defendant before judicial officer "without unnecessary delay" (Rule 4(b)(1)(C)) <sup>b</sup>  Arrest Without Warrant: For warrantless arrest, complaint must be filed "promptly" (Rule 5(b)) <sup>c</sup>	Summons sets a date <b>OR</b> Defendant must be presented to a judicial officer "without unnecessary delay" <sup>b</sup>	Must be held immediately upon the defendant's first appearance, unless: <ul style="list-style-type: none"><li>• The defendant seeks a continuance – not to exceed 5 days unless good cause shown</li><li>• The government seeks a continuance – not to exceed 3 days unless good cause shown</li></ul>	Within 14 days after initial appearance <b>OR</b> Within 21 days if not in custody <b>OR</b> Not at all if defendant waives hearing or is formally charged by indictment/information (Rule 5.1(a))	Within 30 days from date defendant is arrested or served with a summons (60 days for a felony charge if a grand jury was not in session for the original 30-day period) <sup>e</sup>

<sup>1</sup> See generally Federal Bureau of Investigation, A Brief Description of the Criminal Justice Process, <https://www.fbi.gov/how-we-can-help-you/victim-services/a-brief-description-of-the-federal-criminal-justice-process> (last visited July 1, 2025).

<sup>2</sup> *Id.*; see also Fed. R. Crim. P. 7, 58.

<sup>3</sup> See, e.g., *United States v. Shober*, 489 F. Supp. 393, 400 (E.D. Pa. 1979) (noting indictment is "impracticable" in certain situations, as in the case of a federal agent making a warrantless arrest or where "there is a risk that a defendant will abscond or behave violently before a prosecutor can present the case to a grand jury," requiring that a complaint be filed instead).

<sup>a</sup> For procedures specific to misdemeanor offenses, see Fed. R. Crim. P. 58.

<sup>b</sup> There is no bright line rule for what constitutes "unnecessary delay." See, e.g., *United States v. Jones*, 524 F.2d 834, 840 (D.C. Cir. 1975) (charges must be dismissed where pre-arrest delay is "unreasonable and prejudicial"); *United States v. Thompson*, 772 F.3d 752, 761 (3rd Cir. 2014) (applying reasonableness test in deciding whether confession made during 6-hour delay between arrest and presentment should be suppressed).

<sup>c</sup> "Promptly" means within 48 hours. See *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 56-57 (1991).

<sup>d</sup> The statute provides for a number of conditions the judicial officer must consider, to include the nature and seriousness of the offense, weight of the evidence against the person, the person's individual characteristics, and others. 18 U.S.C. § 3142(g).

<sup>e</sup> Subsequent to the filing of the indictment/information, the defendant is arraigned under Fed. R. Crim. P. 10 and the subsequent pretrial proceedings are subject to the Speedy Trial Act, which starts the 70-day trial clock at the filing of the indictment/information OR the first appearance before an officer of the court where the charge is pending, whichever is later. 18 U.S.C. § 3161(c)(1).

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