

Arrested During the G-20: Guide to the Rights of a Criminal Defendant

What is a preliminary hearing?

» A preliminary hearing is a proceeding held before a magisterial district justice to determine if probable cause exists to charge you with a crime. You have the right to hear the evidence against you, to cross examine the government's witness, and to testify if you choose. If the court finds no probable cause, charges may be dismissed. (However, the district attorney may re-file charges later.) At the preliminary hearing, the court can also dismiss misdemeanor — and even felony — charges and find persons guilty of summary offenses. If you are convicted of a summary offense, you have the right to appeal and have a summary trial.

What happens after the preliminary hearing?

» If the court finds probable cause, then it will send notice to the county clerk of courts who in turn will notify the district attorney. The district attorney's office will then file a formal charging document, called an "Information," with the clerk of courts. The information will specify the offenses you are charged with. At this stage, the district attorney may exercise discretion and terminate the prosecution by declining to file an "Information" or by adding or deleting charges. If the "Information" is filed, the next step is a Formal Arraignment, followed by a Pretrial Conference, and then a trial unless you waive your right to a trial by pleading guilty.

What if I do not have a lawyer?

» If you cannot afford a lawyer, you have the right to have one appointed for you. If you want a lawyer but do not have one, you should inform the judge when your case is called. You cannot be sentenced to jail unless you have been given an opportunity to be represented by a lawyer.

Do I have the right to a jury trial?

» If you plead not guilty to a misdemeanor or felony charge, you can choose to be tried by a jury of 12 citizens or by the judge alone. The trial will occur in Common Pleas Court.

If I am found guilty, can I appeal?

» If you are convicted of a summary offense by a district justice, you have the right to a summary appeal trial where you can present new evidence in the Court of Common Pleas. You must file the appeal within 30 days at the Allegheny County Court of Common Pleas. If you are convicted of a misdemeanor or felony offense in Common Pleas Court, you have the right to appeal to the Superior Court.

How do I get my arrest expunged?

» Generally, a court order is required to expunge an arrest record. If the charges against you are withdrawn or dismissed, you can ask the court to expunge your arrest.

What if the charges against me are dismissed?

» The charges against you may be dismissed outright or may be dismissed in exchange for your agreement to perform some act. For example, the prosecutor may offer to consent to the dismissal of the criminal charges

against you if you complete a certain number of hours of community service and come to court at a future date to prove that you satisfied the conditions for dismissal of the charges. If the criminal charges are dismissed in exchange for your performing some act or paying a fine, then your ability to file a lawsuit against the police claiming that your arrest or prosecution violated your civil rights may be weakened or outright blocked.

What if I feel that the police violated my constitutional rights when I was arrested?

» If you believe that you were arrested without probable cause or in retaliation for the exercise of your constitutional rights, then you can file a lawsuit against the police if your case is dismissed or you are found not guilty. Agreeing to perform an act, such as community service, or pay a fine in exchange for dismissal of the charges will likely be viewed as an admission of guilt, however, and hurt your chances of success. Therefore, if you want to file a civil lawsuit against the police for the way you were treated, you probably need to get all charges either withdrawn or dismissed outright, which may mean going through a criminal trial.

What must the government prove to convict me?

» The two most common charges are *disorderly conduct* and *failure to disperse*. In order to convict you, the government must prove (this is very important – you do not need to prove anything – the government has the burden of proof) all of the required elements of the charge.

Disorderly conduct, 18 P.S. § 5503. The government must show that you intended to cause public inconvenience, annoyance or alarm, or recklessly created a risk thereof, by doing ONE or more of the following:

- (1) engaged in fighting or threatening, or in violent or tumultuous behavior;
- (2) made unreasonable noise;
- (3) used obscene language, or made an obscene gesture (this cannot be used to punish profanity or flipping the bird); or
- (4) created a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

Additionally, since this charge was brought as a third-degree misdemeanor, the government must prove that you intended to cause substantial harm or serious inconvenience, or that you persisted in disorderly conduct after reasonable warning or request to desist.

» *Failure of disorderly persons to disperse* upon official order, 18 P.S. § 5502. The government must show that police ordered the participants and others in the immediate vicinity to disperse because they witnessed three or more persons participating in a course of disorderly conduct which causes or may reasonably be expected to cause substantial harm or serious inconvenience, annoyance or alarm. You do not need to be one of the three disorderly people; you only need to be in their vicinity. The police must then show that you refused or knowingly failed to obey such an order. The crime is a second-degree misdemeanor.

Resources

» For legal help, contact:

- » Office of the Public Defender
542 Forbes Avenue, Room 400
Pittsburgh, PA 15219
Phone: (412) 350-2401
Fax: (412) 350-2390

Email to: pdoweb@allegHENYcounty.us

Office Hours: M-F, 8:30am-4:30pm

» Municipal Courts

660 First Avenue, First Floor

Pittsburgh, PA 15219

Phone: (412) 350-6715

Hours of Operation: M-F, 8:30am-4:30pm

» Court of Common Pleas

Administration, Court of Common Pleas

300 Frick Building, 437 Grant Street

Pittsburgh, PA 15219

Phone: (412) 350-5410

Fax: (412) 350-3930

Hours of Operation: M-F, 8:30am-4:30pm

» To file a complaint about police misconduct or a violation of rights, contact:

» ACLU-PA, Western Region

313 Atwood Street

Pittsburgh, PA 15213

Phone: (412) 681-7736

Fax: (412) 681-8707

» Citizen Police Review Board

816 5th Avenue, Suite 400

Pittsburgh, PA 15219

Phone: (412) 765-8023

Fax: (412) 765-8059

www.city.pittsburgh.pa.us/cprb

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www.aclupa.org