

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Felony Criminal Process: Pre-Indictment**

The felony process can be pretty confusing for accused persons in Albuquerque and throughout New Mexico. In addition, the process differs from county to county. The process below applies to the process followed by the district attorney's office in Albuquerque.

A felony criminal action may begin with an arrest or a felony warrant. If you are arrested, you are taken into custody until your first appearance or until you are able to post bond. If you are able to post bond, then you are released pending the first appearance which will generally occur within a few days of your release.

If you are unable to post bond, then the prosecutor must take the case to the grand jury within 10 days of arrest. Failure to bring the case to grand jury within 10 days will result in release from custody. It does not mean the case goes away. It simply means that the State must release you from custody pending the grand jury investigation.

If you are able to post bond, the case will be set for first appearance. At the first appearance, the prosecutor will present a statement of probable cause outlining the charges against you. The statement of probable cause requires no presentation of evidence. The defendant may dispute probable cause but again the statement is taken at face value and the statements very rarely fail to state adequate probable cause for the arrest. It is simply a statement of the case by the prosecutor or the arresting officer. These are taken at face value by the judge.

Assuming the judge finds probable cause, the judge will then set conditions of release and bail. The conditions of release for felony cases typically include the following terms:

1. The defendant may no possess firearms or dangerous weapons,
2. The Defendant will not return to the location of the alleged incident,
3. The Defendant will not possess or consume alcohol/illegal drugs or enter liquor establishments,
4. The Defendant will not violate federal, state or local criminal law,
5. The Defendant notify the Court of any change of address,
6. The Defendant will not leave the jurisdictional county of the court,
7. The Defendant will maintain contact with his or her attorney,
8. The Defendant will have no contact with the alleged victim or any witnesses,
9. The Defendant will no drive without a valid license.

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The conditions of release continue for 60 days or until the date of arraignment if the Defendant is eventually indicted. This does not mean the case goes away after 60 days if the prosecutor has not indicted the Defendant by that time. It simply means the conditions of release lapse.

The prosecutor has very liberal time limits on obtaining the indictment. The only limitation is set by the statute of limitations which are very long in criminal cases. On rare occasions, a Motion to Dismiss for pre-indictment delay may be filed but these are very difficult to win.

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