

**WAIVER OF INDICTMENT;
SUPERIOR COURT INFORMATION
PROCEDURE & COLLOQUY**
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Held for Grand Jury Action ¹

Note: Waiving further action on the felony complaint in the local criminal court to the grand jury is a predicate requirement for waiving presentation to and indictment by the grand jury and proceeding by way of a superior court information.

[To Defense Counsel: Does the defendant waive further action to the grand jury?

The Court: The defendant is held for the action of the grand jury.]

Application

Defense Counsel should make the application to waive indictment and to have the defendant prosecuted by a superior court information.

The prosecutor must consent to proceeding by way of the superior court information.

If the application is premised on a plea agreement, the agreement should be placed on the record now or during the colloquy.

Introduction to Waiver

Your lawyer has said that you wish to proceed by way of a superior court information, rather than an indictment. A superior court information and an indictment are the same in that each is a written document that charges a person with a crime. The difference between the two documents is that an indictment is issued by a Grand Jury after the Grand Jury has received testimony and other evidence establishing that a person has committed a crime. A superior court information is issued by the District Attorney upon the consent of a defendant.² Do you understand?

Have you spoken with your lawyer about your case, about waiving your right to be prosecuted by an indictment, and about consenting to be prosecuted by a Superior Court Information?

Are you satisfied with the services of your lawyer?

Plea Agreement

On waiving prosecution by indictment and agreeing to be prosecuted by a superior court information,

Select applicable alternative:

you will be permitted the plea agreement which has been placed on the record.

you will be permitted to plead guilty to ___ with a sentence of ___.

Do you understand?

Waiver Form ³

If you still wish to go forward with the waiver, you must sign the waiver form here in open court in the presence of the court and your counsel.

That waiver form in essence specifies:

That you have the right to be prosecuted by an indictment;

That you waive such right and consent to be prosecuted by a superior court information;

That the superior court information will have the same force and effect as an indictment; and

That the superior court information will charge you with (specify names of crimes).

Do you understand?

Please go over the waiver form with your lawyer. If it is acceptable, sign it, and Counsel will sign as witness.

On the signing of the form:

Let the record show that the defendant is signing the form here in open court in the presence of the court and that his attorney is signing as witness.

Voluntariness

[Other than the plea agreement,] has anyone made any [other] promise, commitment, or representation of any kind to you to get you to consent to prosecution by a superior court information?

Has anyone threatened you, or forced you, or pressured you to consent against your will?

Have I, or your lawyer, or anyone else said anything to you to have you consent against your will?

Are you consenting therefore voluntarily, of your own free will and choice?

Approval by the Court ⁴

The Court, being satisfied that the waiver complies with the law, and that the defendant's waiver is knowing, intelligent and voluntary, approves the waiver, and signs the order accordingly.

1. CPL 195.10 Waiver of indictment; in general

"1. A defendant may waive indictment and consent to be prosecuted by superior court information when:

(a) a local criminal court has held the defendant for the action of a grand jury;
and

(b) the defendant is not charged with a class A felony; and

(c) the district attorney consents to the waiver."

2. CPL 200.15 Superior court information, definition

"A superior court information is a written accusation by a district attorney filed in a superior court pursuant to article one hundred ninety-five, charging a person, or two or more persons jointly, with the commission of a crime, or with the commission of two or more offenses, at least one of which is a crime. A superior court information may include any offense for which the defendant was held for

action of a grand jury and any offense or offenses properly joinable therewith pursuant to sections 200.20 and 200.40, but shall not include an offense not named in the written waiver of indictment executed pursuant to section 195.20. A superior court information has the same force and effect as an indictment and all procedures and provisions of law applicable to indictments are also applicable to superior court informations, except where otherwise expressly provided."

3. CPL 195.20 Waiver of indictment; written instrument

"A waiver of indictment shall be evidenced by a written instrument, which shall contain the name of the court in which it is executed, the title of the action, and the name, date and approximate time and place of each offense to be charged in the superior court information to be filed by the district attorney pursuant to section 195.40. The offenses named may include any offense for which the defendant was held for action of a grand jury and any offense or offenses properly joinable therewith pursuant to sections 200.20 and 200.40. The written waiver shall also contain a statement by the defendant that he is aware that:

(a) under the constitution of the state of New York he has the right to be prosecuted by indictment filed by a grand jury;

(b) he waives such right and consents to be prosecuted by superior court information to be filed by the district attorney;

(c) the superior court information to be filed by the district attorney will charge the offenses named in the written waiver; and

(d) the superior court information to be filed by the district attorney will have the same force and effect as an indictment filed by a grand jury.

The written waiver shall be signed by the defendant in open court in the presence of his attorney. The consent of the district attorney shall be endorsed thereon."

4. CPL 195.30 Waiver of indictment; approval of waiver by the court

"The court shall determine whether the waiver of indictment complies with the provisions of sections 195.10 and 195.20. If satisfied that the waiver complies with such provisions, the court shall approve the waiver and execute a written order to that effect. ..."