

From Arrest to Appeal:  
*A Guide to*  
*Criminal Cases in*  
*The New York*  
*State Courts*



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# Section 1

## ***The New York State Unified Court System***

### **The Courts and Judiciary of New York State**

The Unified Court System (UCS) consists of all of the courts in New York State. The Office of Court Administration (OCA), the administrative arm of the UCS, is responsible for the financing and management of these courts.

The Chief Judge of the Court of Appeals, as the state’s highest judicial officer, oversees the operations of the UCS, and appoints a Chief Administrative Judge of the Courts who supervises the standards, administrative policies, and the operation of the trial courts of New York State.

The UCS is divided into the following courts:

#### **Appellate Courts**

*Court of Appeals:* The Court of Appeals is the highest court in the state. As the state’s court of last resort, the Court of Appeals hears appeals from the Appellate Division of the Supreme Court. The court has seven judges, six associate judges and the chief judge. Court of Appeals judges are appointed for 14-year terms by the governor who must make an appointment from a list of seven “well-qualified” candidates submitted by the bipartisan 12-member Commission on Judicial Nominations. The New York State Senate must also confirm the nomination.

*Appellate Division of the Supreme Court:* The Appellate Division hears civil, criminal, and family court appeals. There are four Appellate Divisions of the Supreme Court, one in each of the state’s four judicial departments. Appellate Division judges are appointed by the governor. In each judicial department, prior to appointment, candidates are screened by judicial screening committees also appointed by the governor. The governor may select a candidate deemed highly qualified by the committee but is not obligated to do so. The judges for the Appellate Divisions must be selected from among elected Supreme Court judges.

*Appellate Term of the Supreme Court:* Appellate Terms of the Supreme Court exist in the First



and Second Departments to hear appeals from civil and criminal cases originally heard in the Civil and Criminal Courts of the City of New York. In the Second Department, the Appellate Term also has jurisdiction over appeals from civil and criminal cases originating in District, City, Town and Village courts. The Chief Administrative Judge appoints the judges of the Appellate Term from among sitting Supreme Court judges.

## **Trial Courts**

*Supreme Court:* The Supreme Court is a statewide trial court that has the broadest jurisdiction of any court. The Supreme Court hears civil and criminal cases, but not claims against the state (see Court of Claims). It is the only court that handles divorces, annulments, and separations. Supreme Court justices are elected for 14-year terms.

*Family Court:* The Family Court, present in every county in New York State, hears cases involving children and families including child custody and support, neglect and abuse, juvenile delinquency, family offenses (i.e. domestic violence), and paternity. The Family Court does not decide divorce, annulment, or separation proceedings (see Supreme Court above). In New York City, pursuant to an executive order, the Mayor appoints Family Court judges from a list of candidates submitted by the Mayor's Advisory Committee on the Judiciary. In all other counties, Family Court judges are elected. All Family Court judges serve 10-year terms.

*Surrogate's Court:* The Surrogate's Court handles all cases involving wills, estates, and property of deceased persons, and guardianships. The court shares authority with the Family Court in adoption cases. Surrogate Court judges are elected for 10-year terms in most of the state (14-year terms in New York City).

*County Court:* The County Court hears felony cases and civil cases involving claims of \$25,000 or less. Each county, excluding the five counties of New York City, has a County Court. The County Courts in the Third and Fourth Departments hear appeals from cases originating in the City, Town and Village courts, although they primarily function as trial courts. County Court judges are elected for 10-year terms. In some rural upstate counties, County Court judges serve simultaneously as the local Family Court judge and/or the local surrogate.

*Court of Claims:* The Court of Claims is the exclusive forum for civil claims brought against the State of New York or its state agencies. The governor appoints the judges of the Court of Claims from a list submitted by a state judicial screening committee for 9-year terms.

## **Local Courts**

*City Courts:* A City Court exists in every city in the state excluding New York City, and hears both civil and criminal cases. Its criminal caseload includes misdemeanors, violations, traffic offenses, and the preliminary stages of felonies. The City Court hears civil cases involving amounts up to \$15,000, small and commercial claims, and disputed traffic tickets. City Court judges are elected to 10-year terms.

*New York City Courts:* : The Criminal Court of the City of New York hears misdemeanors, other violations, and the preliminary stages of felony cases. The mayor appoints Criminal Court judges

from a list of candidates submitted by the Mayor’s Advisory Committee on the Judiciary for 10-year terms.

The Civil Court of the City of New York hears all cases involving amounts less than \$25,000. It includes a Housing Part, which hears landlord and tenant matters, and a Small Claims Part that hears claims for amounts less than \$3,000. Civil Court judges are elected to 10-year terms.

*District Courts:* The District Court exists only in Nassau and Suffolk counties and hears misdemeanors, violations, the preliminary stages of felony cases, civil cases involving amounts up to \$15,000, landlord and tenant matters, commercial cases, and small claims cases. The District Court also hears traffic misdemeanors. Judges are elected to 6-year terms.

*Town and Village Justice Courts:* Town and Village Courts hear misdemeanors, violations, traffic offenses, and the preliminary stages of felony cases when the offense was committed within the town’s or village’s geographic boundaries. The Town and Village Courts also hear civil cases involving amounts up to \$3,000, landlord and tenant matters, and small claims cases. Judges, who do not have to be attorneys, are elected to 4-year terms.

# NEW YORK STATE CRIMINAL COURTS

## Appellate Courts

### Court of Appeals

New York State's court of last resort, hears appeals from the Appellate Division of the Supreme Court.

### Appellate Division of the Supreme Court

Hears appeals from judgments or orders of the Supreme Court, the Family Court, and the Appellate Terms of the Supreme Court and the County Courts.

### *Appellate Terms of the Supreme Court First and Second Judicial Departments*

In the First Department, the court hears appeals from criminal cases originating in the Criminal Court of the City of New York. In the Second Department, this court also has jurisdiction over appeals from criminal cases originating in District, City, Town and Village Justice Courts.

### County Courts

Hear appeals from cases originating in the City, Town and Village Justice Courts (except in the First and Second Judicial Departments.)

## Trial Courts—Felony Cases

### Supreme Court

Has broad authority over all categories of case, including civil and criminal matters. Its Criminal Term handles felony matters although criminal matters involving felonies outside New York City are generally heard in the County Courts.

### County Courts

Authorized to handle the prosecution of all crimes committed within the particular county where located. However, these courts generally hear only felony matters.

## Trial Courts—Misdemeanor and Violations

### NYC Criminal Court

Has authority over all misdemeanors and minor offenses committed within New York City. Also handle preliminary proceedings in felony matters, after which the case is transferred to the Criminal Term of the Supreme Court.

### City Courts

Handle all Penal Law and City Code misdemeanors and minor offenses committed within regional boundaries. Also handle arraignments and preliminary proceedings in felony matters as well as Vehicle and Traffic law misdemeanors.

### District Courts

Found only in Nassau County and western towns of Suffolk County. Have criminal jurisdiction over misdemeanors and lesser offenses. Also, conduct arraignments and preliminary hearings in felony matters and hear Vehicle and Traffic Law misdemeanors and traffic infractions.

### Town and Village Justice Courts

Handle the prosecution of misdemeanors and violations committed within the boundaries of a particular town or village. Also, conduct arraignments and preliminary hearings in felony matters and hear Vehicle and Traffic Law misdemeanors and traffic infractions.

# Section 2

## An Introduction to Criminal Cases in New York State Courts

### Criminal Offenses

A criminal offense is an act that violates the New York State Penal Code. An offense falls into one of three different categories (Violation, Misdemeanor, or Felony) and each category is divided into different classes depending upon the severity or seriousness of the crime. Each class carries a different possible sentence. For additional information on sentencing, see Section 5.

Offense	Definition	Abbreviation	Class	Possible Sentence
<b>Violation</b>	A relatively minor offense punishable by up to 15 days in jail. <i>i.e. trespassing, disorderly conduct</i>	Vlt	None	Up to 15 days in jail
<b>Misdemeanor</b>	A crime punishable by up to 1 year in jail. <i>i.e. prostitution, petty larceny, making graffiti</i>	Misd	A B Unclassified	Up to 1 year in jail Up to 3 months in jail 3 years of probation
<b>Felony</b>	The most serious crimes, punishable by more than 1 year in prison. <i>i.e. Murder, rape, arson, robbery, bribery of a public servant</i>	Fel	A-I, II B C D E	Life imprisonment* Up to 25 years Up to 15 years Up to 7 years Up to 4 years

\*The 2004 Rockefeller Drug Law Reform law eliminated life sentences for A-I and A-II drug felonies.

## **Criminal Jurisdiction in Criminal Cases**

*Misdemeanors and Violations:* In most counties in New York State, City and Town and Village Courts hear misdemeanor and violation cases as well as traffic offenses. There are several notable exceptions. In Nassau County and the majority of Suffolk County, the District Court hears these cases. In New York City, these cases are heard by the Criminal Court of the City of New York.

*Felonies:* In most counties in New York State, the County Court hears all felony cases. However, the preliminary stages of felony cases, such as arraignment, are heard in the City, Town and Village, or District courts. In New York City and Westchester County, felony cases are handled in the Criminal Term of the Supreme Court. The Criminal Court of the City of New York hears the preliminary matters in felony cases in New York City while the City Courts hear the preliminary stages of felony cases in Westchester County.

## **Public Access and Recording**

*Public Access to Court Proceedings:* All criminal proceedings are held in courtrooms that are open to the public, except grand jury proceedings to which only grand jurors, prosecutors, and in limited circumstances, defense attorneys, and the defendant are admitted.

*Recording of Court Proceedings:* Court reporters are present in most courtrooms (excluding town and village courts which are not courts of record) to keep a record of all proceedings. Upon request of a party or the judge, the court reporter can prepare a transcript of the proceeding. Anyone can buy a copy of the transcript unless it is ordered sealed by the court.

*Cameras in the Courtroom:* Section 52 of New York State's Civil Rights Law, enacted in 1952, banned cameras from the courtroom. From 1987-1997, the ban was lifted temporarily for an experimental trial period. When the law allowing cameras in the courtroom expired and was not re-enacted, cameras were again prohibited in courtrooms.

*Public Access to Court Records:* The New York State Unified Court System (UCS) currently provides public access to court records not restricted by statute or court rule at the courthouse or County Clerk's office which maintains court records for Supreme and County Courts. The court may charge for copying the file.

The UCS currently makes certain trial court information (i.e., lists of case name, party and attorney names, judges) available via the Internet free of charge. Judges' calendars, information about future court appearances, and selected decisions may also be available online.

# Section 3

## *Who's Who in the Courtroom*

### **Judges and Judicial Hearing Officers**

*Judge:* The judge is in charge of the courtroom and the proceedings. Judges preside over trials, listen to witnesses, examine evidence, decide legal questions that arise during the proceedings, determine the outcome of non-jury cases, and issue any necessary orders. They also sentence convicted defendants and accept guilty pleas.

*Judicial Hearing Officer (JHO):* A former or retired judge appointed by the Chief Administrative Judge to conduct pre-trial hearings and other pre-trial proceedings. Generally, the JHOs submit reports to the judge presiding over the case containing factual findings and legal conclusions from the proceedings and based upon those conclusions, he or she recommends a disposition in the matter. The judge can then accept or reject the recommendation.

### **Court Personnel**

*Court Clerk:* The court clerk is responsible for supervising other court personnel, preparing court orders for signature, scheduling cases, as well as handling the court's case files and other records. The court clerk will also swear in witnesses and call forth cases on the docket.

*Court Reporter:* The court reporter uses a stenographic machine to keep a written record of all court proceedings. Court reporters will also prepare transcripts of the proceedings upon request.

*Court Officer:* Uniformed court officers are responsible for providing courthouse security, maintaining order in the courtroom, safeguarding all people in the courtroom, and transporting defendants from holding cells to the courtroom. In counties outside of New York City, sheriffs may be responsible for transporting defendants.

*Court Interpreter:* The court provides interpreters to translate the proceedings for those involved in a case who do not speak English or are hearing impaired.

## Legal Personnel

Prosecuting Attorney/Prosecutor/Assistant District Attorney: The lawyer from the state or District Attorney's office, who prosecutes criminal cases on behalf of the people of the State of New York.

Defense Attorney: The lawyer who represents the defendant in a criminal case. The defense attorney may be assigned by the judge at no charge to the defendant if the defendant is unable to afford an attorney, or be retained privately by the defendant for a fee.

## Others

Complainant: The alleged victim of the crime who brings the facts to the attention of the police or the prosecuting attorney.

Defendant: The person accused of criminal conduct.

Grand Jury: A group of 16 to 23 citizens who hear the prosecutor's evidence against the defendant and decides whether there is enough evidence to issue an indictment. Grand jury proceedings are closed to the public, although defendants have the right to testify before the grand jury, request witnesses to testify on their behalf, and have an attorney present during their testimony.

Jury: A body of citizens selected according to the law, sworn to decide questions of fact, and to return a verdict in the case submitted to them. In a felony case, a jury consists of 12 jurors. In a misdemeanor case, the jury consists of 6 jurors.

Probation Officer: An officer of the city's or county's Department of Probation whose duties include investigating and preparing pre-sentence reports for the judge and supervising defendants placed on probation.

Witness: A person who testifies as to what he/she has seen, heard, or otherwise observed pertaining to the case.

# Section 4

## *Legal Representation and Assistance*

### **Defendant's Right to an Attorney**

The New York State Constitution guarantees individuals the right to counsel at arraignment and at every subsequent stage of criminal proceedings. However, in many counties, a defendant may not have an attorney present at the initial appearance unless he or she has hired an attorney prior to this appearance.

During grand jury proceedings, any person appearing as a witness who has signed a waiver of immunity, including the defendant, has a right to have an attorney present during his or her testimony. However, during grand jury proceedings, attorneys may only act as advisors and otherwise may not take part in the proceedings.

If an individual cannot afford an attorney, the court can appoint an attorney from the Legal Aid Society, another legal services agency, or through the Assigned Counsel Plan (often referred to as "18-b" in reference to the section of New York State's County Law through which the plan was created). "18-b" attorneys are private lawyers who are reimbursed by the localities for their services. Alternatively, in some counties, attorneys from the Public Defender's Office may represent indigent defendants.

Defendants also have the right to act as their own attorneys, although this is not recommended. If a defendant is dissatisfied with his or her appointed attorney, he or she may ask the judge, with good reason, to appoint a new attorney.

### **Client Rights and Attorney Responsibilities**

There are certain rights and responsibilities inherent in the client-attorney relationship, including the following:

- The client decides whether he or she wants to testify and makes the final decision about disposing of a case or plea bargaining.
- The attorney must represent the client zealously and to the best of the attorney's ability.



- The attorney is obligated to keep the confidences and secrets of the client.
- The attorney is not obligated to accept a case if there is a conflict of interest or it is not possible to have a working relationship with the client. However, in the case of assigned counsel for indigent defendants, the court decides whether to remove an attorney from a case if a conflict of interest arises or it is impossible for the attorney to have a working relationship with the client.
- The client is responsible for maintaining contact with the attorney, informing the attorney of any changes in the client's contact information, and for responding promptly to the attorney's request for information.
- In case of a privately retained attorney, the client is entitled to be charged a reasonable fee, and to have all charges, fees, and bills explained from the beginning of the case.
- The client is entitled to continuous updates regarding the status of the case, and to have questions and concerns answered promptly.

# Section 5

## ***Criminal Justice Process: From Arrest to Appeal***

### **STEP 1: ARREST, COMPLAINT, AND BOOKING PROCEDURES**

#### **Arrest**

A criminal case usually begins with an arrest by a police officer or other law enforcement officer. An officer may arrest an individual if the officer witnesses a criminal act being committed or if there is reasonable cause to believe that the individual being arrested has committed a criminal act. If an individual is being arrested in his or her home, the police must have an arrest warrant unless exigent circumstances exist which require the officer to act immediately. However, if the officer has reasonable cause to believe that a family offense has occurred, the officer must arrest the alleged offender even if the officer does not have an arrest warrant.

*Appearance Ticket:* An individual accused of committing a violation may be arrested, but not held in jail. Instead, the individual will be issued an appearance ticket, and then released from custody. In New York City, this is known as a desk appearance ticket, or DAT. An appearance ticket is a written notice to appear in criminal court on a particular date. An individual issued an appearance ticket may be released without bail, or the desk officer in charge at the police station or jail may require payment of pre-arraignment bail before releasing the individual.

#### **Start of a Criminal Action**

A criminal case may begin with the filing of a felony or misdemeanor complaint, or an information by a prosecutor or a police officer, or an indictment by a grand jury.

In New York City, the arresting officer and/or the complainant will speak with an assistant district attorney who decides whether there is enough evidence to file charges and bring the case to court. If so, a formal complaint or information is filed by the district attorney's office. The formal complaint and the defendant's criminal record, if one exists, must be produced at arraignment. The defendant must be present at the arraignment as well.

Outside of New York City, the district attorney's office is rarely involved in the complaint process. Instead, complainants with the assistance of local officers file complaints directly with the court. If the defendant is not already in custody, the court will issue an arrest warrant authorizing the police to arrest the defendant or a summons directing the defendant to appear in court on a particular date.

## **Booking**

Following an arrest, detained defendants are booked at a local police station or other booking facility. During the booking process, fingerprints and photographs are taken of the accused. The collected data is then sent to the New York State Division of Criminal Justice Services' computerized criminal record index where a rap sheet, or fingerprint report, is compiled which shows the accused person's prior criminal record, if one exists.

Following booking, the arrested person is held in custody until appearing before a judge for arraignment. Persons held in jail until the arraignment usually must be brought before a judge within 24 hours.

*Interview with Police Officer or New York City Criminal Justice Agency (CJA) Staff:* In New York City, a staff member of the Criminal Justice Agency (CJA) interviews the accused person prior to the defendant's first court appearance. The interviewer collects information about the person's occupation, residence, and family status, and tries to verify this information with third parties, such as a relative or neighbor. Outside of New York City, a police officer or law enforcement officer usually conducts this interview. This information is then given to the judge, who uses it to determine whether to set bail, release the defendant on his/her own recognizance, or keep the defendant in custody. The prosecutor and defense attorney also receive this information prior to the arraignment. Statements made by the defendant during the interviewing process may be used against him or her in court.

## **STEP 2: ARRAIGNMENT, BAIL AND PLEA BARGAINING**

### **Arraignment**

The defendant is brought before a judge in the local criminal court for arraignment, usually within 24 hours of arrest. At the arraignment:

- The defendant is notified of the formal charges filed against him. The defendant's attorney is given a copy of the charges. If the defendant wants a copy of the formal charges, the attorney can provide one.
- The defendant is informed of the right to counsel. If the defendant cannot afford an attorney, an attorney will be assigned for the entire case at the state's expense. If the defendant plans to hire an attorney but has not done so at the time of arraignment, an attorney will be assigned for the arraignment only.
- If charged with a felony, the defendant is informed, within 144 hours of arrest, of the right to a preliminary hearing or a grand jury indictment.
- The defendant may enter a plea of guilty.
- The defendant is informed of whether any incriminating statements were made

- to the police, and whether witnesses identified him or her.
- The defendant may serve written notice upon the prosecutor of the defendant's intention to testify on his/her behalf before the grand jury.

Arraignment proceedings generally conclude in one of the following ways:

- The case is dismissed.
- The defendant pleads guilty to a violation or a misdemeanor and is immediately sentenced or the case is adjourned for sentencing at a later date.
- The judge releases the defendant on his or her own recognizance (ROR) pending the next court date.
- The judge remands, or holds the defendant in custody, without bail until the next scheduled court appearance.
- The judge sets bail and adjourns the case.
- The judge may issue a temporary order of protection for the defendant to stay away from any victims or witnesses until the end of the case.

## **Bail**

Bail is an amount of money or other form of security that is required by the judge as a guarantee of the defendant's appearance in court on a designated future date. When setting bail, the judge may consider the following factors:

- The length of the defendant's residence in the county.
- The defendant's employment and educational history.
- The defendant's past criminal record.
- The defendant's record of past compliance with court orders.
- The presence of prior bench warrants for failure to appear in court on prior criminal cases.
- The strength of evidence against the defendant in the current case.
- The sentence, which could be imposed, if the defendant is convicted.

The defendant's attorney usually asks the judge to also consider the defendant's community ties.

Bail may be posted in cash by the defendant or by bond through a bail bondsman for a fee. Once bail is posted, the defendant is released from custody unless the prosecutor challenges the defendant's release in which case a bail source hearing is held.

If a defendant is released either on his or her own recognizance or on bail, he or she is informed that failure to appear for future court appearances may result in a bench warrant being issued for his or her arrest. In addition, if the defendant has posted bail, the bail may be forfeited or not returned if he or she fails to appear.

The defendant is also informed that if he or she fails to appear that the case may proceed without the defendant present and he or she may be convicted and sentenced. This is referred to as "trying the chair."

The defendant is also informed that a violation of a temporary order of protection, if one was issued at the arraignment, may result in arrest, stricter bail conditions, or the defendant being remanded to custody. New charges may also be brought against the defendant.

### **Plea Bargaining**

Plea-bargaining is a process by which the prosecutor and defense attorney negotiate to dispose of a case, usually by reducing the charge and thereby the sentence involved. This process may begin as early as arraignment or even before the arraignment. Generally, the prosecutor will ask the defendant to plead guilty to a lesser charge in order to avoid being tried on a more serious charge, or to plead guilty to one of multiple charges to avoid being tried on all the charges. In this process, the prosecutor controls the sentence. However, at any point prior to sentencing, the defendant may plead guilty to the highest charge or all charges to avoid a trial, even if the prosecutor does not agree.

If the defendant agrees to plead guilty, the judge must determine whether or not the defendant is voluntarily pleading guilty and knowingly giving up the right to a trial. If the defendant is pleading guilty to a misdemeanor, the sentence may be imposed immediately, or there may be an adjournment for a pre-sentence investigation report prepared by the Probation Department and submitted to the judge. Following a guilty plea in a felony case, there must be an adjournment for the pre-sentence investigation report prior to sentencing.

## **STEP 3: POST-ARRAIGNMENT PROCEEDINGS**

### **Misdemeanor Cases**

Following arraignment, a defendant who is unable to post bail may be held in jail for 5 days from the day of arraignment. If the 5 day period ends on a weekend, the possible release date will be Friday. During this time, the prosecutor must convert the misdemeanor complaint to an information. Unlike the complaint, an information requires that a person who has first-hand knowledge of the facts swear to the accuracy of the information under oath. If the time limitation is not met by the prosecutor, the defendant must be released from custody although the case is not dismissed. The defendant must still return to court on a specified future date.

### **Felony Cases**

At a defendant's arraignment on a felony complaint, a judge may set a bail condition. If the defendant is unable to post the money required by the bail condition, he or she will remain in jail for 144 hours from time of arrest. During this period, the prosecutor must conduct a preliminary hearing before a judge or must obtain an indictment of the defendant by the grand jury. If neither a preliminary hearing nor indictment occurs, then the defendant must be released from custody, unless the prosecutor can establish a good cause exception to extend the time limitation.

### **Preliminary Hearing**

During the preliminary hearing, both the prosecution and defense present their arguments, and the

prosecutor may call witnesses to testify as well as present physical evidence. The defense attorney may cross-examine the prosecution's witnesses and question the evidence. The defendant can waive the right to a preliminary hearing resulting in the case being sent directly to the grand jury.

In most counties in New York State, including New York City, preliminary hearings are rare. Generally, prosecutors proceed directly to the grand jury rather than have a preliminary hearing. However, if the prosecutor is unable to present the case within the aforementioned time requirements, a preliminary hearing is held to determine if there is enough evidence to proceed. If so, the prosecution has 45 more days in which to present the case to a grand jury for indictment.

## **Grand Jury**

The grand jury consists of 16 to 23 citizens chosen on a countywide basis to determine whether sufficient evidence exists to indict a defendant on a felony charge. Grand juries also investigate criminal conduct and allegations of a public official's neglect of office or misconduct, and issue reports that may serve as the basis for disciplinary action against the public official.

*Proceedings:* Grand jury proceedings are secret and closed to the public. However, defendants have the right to testify before the grand jury with an attorney present and request witnesses to testify on their behalf. Defense attorneys, however, are not permitted to speak to the grand jury, object to the prosecutor's questions, or consult or talk with their client inside the grand jury room within the hearing of the grand jury. Although judges (along with prosecutors) act as advisors to the grand jury, judges are never present in the grand jury room during proceedings.

All witnesses who testify before the grand jury are immune from prosecution, unless they sign a waiver of immunity. A witness who has signed a waiver of immunity has the right to have an attorney present in the grand jury room under the same conditions as a defendant's attorney.

*Grand Jury Decisions:* If at least 12 grand jurors determine that there is enough evidence to send the case to trial, an indictment will be filed containing the felony charges voted on by the grand jury. The grand jury may decide that there is insufficient evidence that a felony was committed, but that there is sufficient evidence that a misdemeanor was committed. In that case, the grand jury may reduce the charge and direct the prosecutor to file an information with the local criminal court charging the defendant with a misdemeanor. If there is not reasonable cause to believe that the defendant committed any offense, the court must dismiss the charges and release the defendant from custody. This is called voting a no true bill.

*Waiver of Indictment:* The defendant can waive his or her right to a grand jury hearing. This is known as a waiver of indictment. In that case, the prosecutor will file a superior court information (SCI) which is a written document containing the felony (and, in some cases misdemeanor) charges against the defendant. A SCI has the same force and effect as an indictment. The defendant may plead guilty to the charge or charges contained in the SCI.

## **Post-indictment Arraignment**

Following an indictment by the grand jury, a second arraignment must take place in the County Court or the Criminal Term of the Supreme Court where the felony case will be tried. Similar to

the arraignment in the local criminal court, the defendant is informed of the formal charges contained in the indictment and the defendant enters a plea of guilty or not guilty. In addition, the conditions of bail may be reviewed and plea-bargaining may take place. If the defendant pleads not guilty, the case will be adjourned and a future court date will be scheduled.

#### **STEP 4: PRE-TRIAL PROCEEDINGS AND HEARINGS**

##### **Discovery**

Discovery is the process by which the prosecutor or the defense attorney gathers information concerning the opposing lawyer's case. During discovery, the defense attorney can request any written record or oral statement made by the defendant during the course of the criminal investigation; the transcript of the defendant's testimony from grand jury proceedings; the results of any physical and mental examination of the defendant; and forensic test results.

##### **Pre-Trial Motions**

A motion is a request by either the prosecutor or the defense attorney to have the court take a specific action in a case. Hearings may be held before trial to determine whether motions should be granted. Generally, pre-trial motions must be made within 45 days of arraignment, although the judge can extend this time limit if there is good cause.

A judicial hearing officer (JHO) may take testimony at a pre-trial hearing but does not make the final decision on the motion. Instead, the JHO submits a report to the judge presiding over the case containing factual findings and legal conclusions about the motion. The judge uses the JHO's report, the record of the motion hearing, and other evidence presented to make a ruling on the motion. The judge can accept or reject the JHO's finding.

The following are common pretrial hearings requested by defendants, and often referred to as suppression hearings:

**Mapp Hearing:** Mapp hearings are held on motions to suppress physical evidence on the grounds that the police seized the evidence during an illegal search.

**Huntley Hearing:** Huntley hearings are held on motions to suppress a defendant's statement on the ground that it was illegally obtained. A lawyer may argue that the statement was made involuntarily due to pressure, tricks, threats, or physical abuse; or that the defendant was not properly advised of the right to remain silent and the right to counsel; or that the statement was the product of an illegal arrest.

**Wade Hearing:** Wade hearings are held on motions to suppress proof of an out of court police arranged identification of the defendant. Grounds for this motion include that the lineup was held in an illegal or suggestive manner.

**Dunaway Hearing:** A Dunaway hearing, which is always held in conjunction with a Mapp, Huntley, or Wade hearing, is held on a motion to suppress proof that the police obtained from an illegal arrest.

If the evidence is suppressed, the prosecutor will not be able to introduce the evidence while presenting his or her direct case during trial. In addition to the suppression hearings, the defense attorney may request that the judge review the grand jury proceedings to determine if the prosecutor presented enough evidence to support the filing of an indictment on the charges and that the integrity of the grand jury was not impaired by the prosecution's presentation of evidence. If the judge determines that there was insufficient evidence, the charges may be dismissed or reduced. Under certain circumstances, the prosecutor may represent the charges again.

## **STEP 5: TRIAL AND POST TRIAL HEARINGS AND MOTIONS**

If the defendant does not plead guilty at any subsequent stage, there will be a trial after the pre-trial motions and hearings are completed. At trial, either a judge or a jury determines whether the prosecution has proven that the defendant is guilty of the charges beyond a reasonable doubt. A defendant has a right to a jury trial in all felony cases and in all misdemeanor cases that carry a potential sentence of 6 months or more in jail. A defendant may waive his/her right to a jury trial in writing and be tried by a judge, which is known as a bench trial.

In all felony cases, except homicides, the prosecution must be ready for trial within 6 months of the filing of the felony complaint. The prosecution must be ready within 90 days of the filing of a misdemeanor complaint for class A misdemeanors; within 60 days for class B misdemeanors; and within 30 days for a violation. If the prosecution does not adhere to these time limitations, the defense may file a motion to dismiss the case. In calculating these time limitations, certain periods of time are excluded by statute which means that the case will usually be tried at a date beyond these time limits. There are also statutory time limits regarding the length of time that a defendant may be held in custody awaiting trial.

### **Jury Trial**

Jury selection, also known as voir dire, is the first stage of a jury trial. Prior to juror selection, each county sends juror qualification questionnaires and later summonses to prospective jurors randomly chosen from lists of registered voters, licensed drivers, state and local taxpayers, recipients of public assistance benefits and recipients of state unemployment benefits. It is also possible to volunteer for jury service. This group of potential jurors is known as the jury pool.

In a criminal case, the judge, the prosecuting attorney, and the defense attorney question potential jurors to determine whether they can be fair and impartial in the case. After questioning members of the jury pool, the attorneys inform the judge regarding which prospective jurors they wish to excuse from the case.

When an attorney challenges the inclusion of a prospective juror because the attorney believes that the person could not render an impartial verdict based on the evidence, this is known as a challenge for cause. The judge must agree that the juror is biased before a challenge for cause is granted.

Both the prosecution and the defense may also dismiss a potential juror without cause. This is known as a peremptory challenge. In New York State, each side is allowed to make from 10 to 20 peremptory challenges for the 12 regular jurors, and 2 challenges for each alternate



juror. Peremptory challenges cannot be used to excuse a juror on the basis of race, ethnicity, religion, gender, or sexual orientation. After each round of challenges, new potential jurors replace the excused prospective jurors, and the questioning process is repeated until a full jury has been selected.

In a Class A misdemeanor trial, the jury consists of 6 jurors, with one or two alternate jurors. In a felony case, the jury consists of 12 jurors, with as many alternate jurors as are needed depending on the length of the trial. Class B misdemeanors and violations are tried by a judge without a jury. Once the jurors are approved by both sides, the jurors are sworn.

### **Preliminary Instructions**

The judge delivers preliminary instructions to the jury explaining their duties, trial procedure, and the basic principles of law.

### **Opening Statements**

After the jury has received its instructions, the prosecutor delivers an opening statement to the jury explaining how the prosecution intends to prove the defendant's guilt. Next, although he or she is not required to do so, the defense attorney may give an opening statement.

### **Presentation of Evidence**

*Prosecutor's Case:* The prosecution will present evidence in the form of testimony from witnesses under oath as well as physical evidence, or exhibits. The defense attorney may cross-examine, or question the prosecutor's witnesses.

*Defense's Case:* Following the presentation of the prosecution's case, the defense may present the defense's case. If the defendant chooses to present a defense, he or she may call witnesses on his or her behalf. These witnesses can be cross examined by the prosecutor. The defendant may also introduce physical evidence, or exhibits, as part of his or her case. The defendant has a right to testify or not testify. If the defendant does testify, the judge may allow the prosecutor to question the defendant about previous convictions, if they are relevant to the defendant's credibility.

*Rebuttal:* After the defense case is completed, the prosecutor may then seek to offer evidence in rebuttal, or response to the defense's evidence. In a rare case, the defense may then seek to offer evidence to rebut the prosecution's rebuttal evidence.

*Judge's Role:* During the presentation of evidence, the judge takes notes, makes rulings of law, and clarifies issues for the jury. The judge also answers the jury's questions during deliberation.

### **Summation**

After all evidence has been presented, the defense may deliver a summation, or a closing statement to the jury. The prosecutor must then deliver a summation. The summations review the evidence and present arguments based upon the evidence in the case to try to persuade the jury to convict or acquit the defendant.

## **Jury Charge and Deliberation**

The judge charges, or delivers instructions, to the jury about what law to apply and how to carry out its duties. After receiving their instructions, the jury deliberates, or considers the evidence that has been presented to them, to determine whether or not the prosecutor has proven the defendant's guilt beyond reasonable doubt. Deliberations occur in private in a closed room, and continue as long as is necessary to reach a verdict.

In New York State, sequestration of a deliberating jury is no longer mandatory. If at the close of the business day, there is no verdict, the jurors are released and instructed to return to the court the following day to resume deliberations. Only in very rare cases, at the discretion of the trial judge, are jurors kept overnight until a verdict is reached.

## **Verdict**

In a criminal case, only a unanimous vote by the jury results in a verdict on any crime charged. If a jury reaches a verdict on some charges but deadlocks on others, the trial judge may allow the jury to report the partial verdict. If a jury cannot reach a unanimous verdict on any charges, it is referred to as a "hung jury." In the case of a hung jury, the judge may declare a mistrial, and the prosecution will consider whether or not to re-try the case.

If the defendant is acquitted or found not guilty, he cannot be retried again in a state court for the same charge or charges. If the defendant is convicted or found guilty, the case is adjourned for sentencing, and the judge will immediately set a date for sentencing or other pre-sentence proceedings. The judge may also sentence a defendant at the time of conviction if a pre-sentence report is not required or has already been received (see Step 6). However, the defendant may still request an adjournment prior to sentencing.

## **Post-Trial Motions**

Prior to sentencing, the defense may make a motion to set aside the verdict. If the judge decides to do so, some or all of the charges may be dismissed, or a new trial may be ordered.

## **Other Post-Trial Proceedings**

After a conviction of a defendant who has a previous felony conviction within the prior ten years, the court clerk arraigns the defendant as a predicate or violent predicate if the prior felony committed was violent in nature. The convicted defendant is asked to admit or deny that he or she was convicted for the prior offense and has no constitutional challenge to that prior conviction. If the defendant denies that he or she is a predicate offender then a hearing on his or her status as a predicate and/or as a violent predicate is held.

## **Bench Trial**

In a bench trial, or a non-jury trial, in addition to ruling on all questions of law, the judge examines the evidence presented, and reaches a verdict on the defendant's guilt or non-guilt. In Class B misdemeanors or if the parties consent, a judicial hearing officer can conduct a misdemeanor trial.

A bench trial is conducted in much the same way as a jury trial. At the judge's discretion, the prosecution and defense may deliver opening statements. The order in which evidence is presented is the same as in a jury trial. As with opening statements, the judge may allow summations or closing statements. The final step in a bench trial is for the judge to consider whether the evidence is legally sufficient to find the defendant guilty.

## **STEP 6: SENTENCING**

### **Pre-Sentencing Report and Memos**

Most felony convictions require that a pre-sentence report be prepared by the Department of Probation before a sentence can be imposed. This report informs the judge about the defendant's background, possible mitigating circumstances of the crime, the likelihood of a successful probationary sentence, and suggested programs for rehabilitation. The judge is not obligated to follow any of the report's recommendations. The pre-sentence report requirement can be waived if the sentence will be satisfied by time already served; if a probation sentence is to be imposed; or if a report had been prepared in the preceding 12 months.

The defense lawyer and prosecutor may also prepare pre-sentencing memos to aid the judge in determining a sentence.

### **Victim Impact Statement**

New York State law allows victims of felonies or their families to address the court on the impact that the crime had on them. The defense is then generally able to question the victim following the statement. Under certain circumstances outlined in section 380.50 of the state's criminal procedure law, the defendant's attorney may request an adjournment to present a written rebuttal or submit written questions for the judge to ask the victim. If the judge chooses not to ask the submitted questions, he or she must indicate, on the record, the reason for that decision. If the victim does not appear to make a statement at the time of sentencing, the victim waives his or her right to make a statement. This waiver does not delay the proceedings or affect the validity of a conviction, judgment or order.

### **Sentences**

The sentence a defendant receives depends on a variety of factors including the seriousness of the charges, the defendant's past convictions and the circumstances of the crime or crimes. The following is a list of common dispositions, or sentences, for a convicted defendant in a criminal case:

- ***Conditional discharge:*** The defendant is released under certain conditions such as making restitution, entering a program such as a drug, anger management, vocational or GED program, or paying a fine. If any of the conditions are violated, the defendant may be re-sentenced to a jail or prison term.
- ***Fine:*** Generally, when a fine is imposed, the defendant has the alternative of paying the fine or serving a specified amount of time in jail. A fine may also be imposed with a conditional discharge, probation, or imprisonment sentence.

- ***Imprisonment:*** The defendant is confined to a prison or jail for a specified amount of time.
- ***Probation:*** The defendant will be supervised by the Department of Probation for a number of years and may be required to comply with certain conditions such as making restitution, entering a program such as drug rehabilitation, anger management, vocational or GED program, or paying a fine.
- ***Restitution:*** A defendant is ordered to compensate the victim for a loss resulting from the crime. Restitution is generally ordered as a condition of probation or a conditional discharge.
- ***Unconditional discharge:*** The defendant is sentenced and released without the judge setting any conditions on his or her release.

***Determinate and Indeterminate Sentences:*** A defendant may receive a determinate or indeterminate sentence based upon the offense. If a determinate sentence is imposed, the defendant is sentenced for a fixed length of time. However, if an indeterminate sentence is imposed, the defendant is sentenced to a minimum and maximum term (ex. 7 to 10 years) with the exact term usually determined by the defendant's conduct in prison or jail and/or his or her compliance with sentencing conditions.

### **Other Sentencing Circumstances and Factors**

***Split sentence:*** A sentence in which part of the sentence is served in jail and the rest is served on probation. The following is a common split sentence:

- ***Imprisonment plus probation:*** The defendant serves 6 months or less for a felony, or 60 days or less for a misdemeanor, and is then released on probation to be supervised by the Department of Probation for a number of years under certain conditions.

***Concurrent and Consecutive Sentences:*** If the defendant is currently serving another sentence, or has been convicted of more than one offense or on more than one indictment, he may receive concurrent sentences (which will run simultaneously) or consecutive sentences (which run one right after the other). A combination of concurrent and consecutive sentences may also be imposed.

***Repeat Offenders:*** A predicate felon is a person convicted of a felony within 10 years of a previous felony conviction. There is a sharp increase in the minimum sentence that a judge may impose on a predicate felon. A persistent felony offender is a person found guilty of a felony after two or more previous felony convictions. After a hearing, judges have the discretion to sentence persistent felony offenders to life imprisonment regardless of the usual sentence for the crime.

***Persistent Violent Felony Offenders:*** First-time violent offenders may be sentenced to from 1 to 25 years depending on the class of violent felony committed. Second-time violent offenders may be sentenced to from 3 to 25 years. Third-time violent felons are deemed persistent felony offenders and may be sentenced to life imprisonment.

*Sentencing in Drug Cases:* Enacted in 1973, the Rockefeller Drug Laws require judges to give certain drug offenders mandatory minimum sentences regardless of their background, character, role in the offense, or threat to society. Under these laws, the ability of judges to send appropriate offenders into treatment is limited.

In December 2004, a Rockefeller Drug Law Reform Bill was enacted which among its provisions created three categories of drug offenders in each class of felony drug offense with each category having its own sentence range. The Reform Bill also eliminated mandatory life sentences for Class A-I and A-II drug felonies and doubled the weight threshold for Class A-I and A-II drug felony possession of heroine, and certain other narcotics. In addition, a first time offender convicted on a class C, D, or E felony will be sentenced to one year or less in jail. In August 2005, the Rockefeller Drug Laws were further amended to allow drug offenders serving 7 years to life on A-II felonies to petition for release after serving 3 years of their original sentence.

*Sentencing in Death Penalty Cases:* The death penalty was reinstated in New York State in 1995 for first-degree murder with aggravated circumstances. Under this statute, a conviction for murder in the first degree carries a sentence of death or life imprisonment without parole, with certain mitigating factors and aggravating circumstances to be considered during the sentence phase of the proceedings. On June 24, 2004, the New York State Court of Appeals declared the current state death penalty statute unconstitutional. While the state legislature considers the re-enactment of the statute, no one currently on death row may be executed, nor may the prosecution seek the death penalty in any current cases.

### **New York State DNA Databank and Qualifying Offenses**

The New York State DNA Databank was created in 1994. Offenders convicted of certain qualifying offenses must, after sentencing, provide a DNA sample for inclusion in the databank. The list of designated offenses was expanded in December 1999 and again in July 2004. The list of designated offenses currently includes violent felonies, sex crimes, felony crimes of terrorism, felony hate crimes, and other specified felonies. Any offender convicted in a New York State court who is required to register as a sex offender must provide a DNA sample for inclusion in the databank.

### **New York State Sex Offender Registry**

In 1996, a Sex Offender Registry was established within the New York State Division of Criminal Justice Services:

- 1) requiring sex offenders to register with the State; and,
- 2) as a means of providing information to the public about certain sex offenders living in their communities.

An individual is designated a sex offender based on a conviction for a sexual offense or an attempt to commit such an offense and is required to register. Registration is also required for those individuals convicted in another jurisdiction if the offense is equivalent to a New York State registerable offense. Additionally, any person convicted of a registerable offense who is incarcerated or under parole or probation supervision is included in the Sex Offender Registry.

## **Mandatory Surcharge, Crime Victim Assistance Fee and Other Fees**

In New York State, a fee referred to as a mandatory surcharge is imposed upon a defendant when he or she has been convicted of an offense. This surcharge is separate and distinct from any fine which the court may have imposed. A crime victim assistance fee is also imposed upon a defendant who is convicted of a felony, misdemeanor, or violation.

A defendant convicted of a sex offense, must pay a sex offender registration fee, and depending on the offense, a DNA databank fee.

### **STEP 7: APPEAL**

In all cases, the defendant has the right to an appeal after sentencing. In some cases where a defendant has pled guilty, he or she may have waived the right to appeal certain issues. However, even in these cases, defendants have the right to appeal at least some issues to the appellate court.

#### **The Appeals Process**

In order to appeal a conviction, the defendant must file a notice of appeal within 30 days of the date he or she was sentenced. An attorney is not under an obligation to file an appeal unless the defendant has requested that he or she do so. The appellate attorney will order a transcript of the trial, hearing or plea proceeding in order to prepare a written brief that includes all of the arguments in the appeal. Once the brief is submitted to the appellate court, the prosecutor responds with a brief and the appellate attorneys may be asked to make an oral argument.

There are only two grounds on which a sentence may be appealed. One, the sentence is invalid as a matter of law. For example, the defendant received a longer sentence due to a prior conviction, but there was actually no prior conviction. Two, the defendant claims that the sentence was harsh or excessive.

The defendant may request he or she be released from prison pending the decision of the appellate court, which is known as an application for a stay of execution of sentence. Persons convicted of Class A felonies may not request a stay.

In some cases, the prosecutor may appeal the decision in the case. This is known as a People's appeal. In this case if the People are successful, the charges may be reinstated and the case returned to the trial court so the prosecution can proceed. The prosecutor may not appeal an acquittal.

#### **Filing of an Appeal**

According to New York State Criminal Procedure law:

- An appeal of a Supreme Court judgment or sentence must be taken to the Appellate Division of the judicial department in which it was entered.
- An appeal of a County Court judgment or sentence must be taken to the Appellate Division of the judicial department in which it was entered.

- An appeal of a local Criminal Court judgment or sentence must be taken to the County Court of the county in which it was entered, if the criminal court is outside of New York City.
- An appeal of a New York City Criminal Court judgment or sentence must be taken to the Appellate Term of the judicial department in which it was entered. (In New York and Bronx counties, appeals go to the Appellate Term of the First Department; in Richmond, Kings, and Queens counties, appeals go to the Appellate Term of the Second Department.)

The Court of Appeals is the state's highest court and once it makes a decision or ruling the appeals process is over within the State of New York. The only other avenue for a direct appeal is to the United States Supreme Court.

### **Possible Outcomes of an Appeal**

The appeals process may result in the following:

- *Affirmance*: The appellate court upholds the conviction, finding that guilt was proven beyond a reasonable doubt, a fair trial was received, or that the guilty plea was properly taken. Defendants have a limited right to seek a further appeal in the New York State Court of Appeals. However, the Court of Appeals may refuse to review the case or affirm the conviction.
- *Reversal*: The appellate court may reverse the conviction. Following a reversal, the case may be dismissed, the guilty plea may be vacated, or a new trial or hearing may be ordered.
- *Modification*: The appellate court may change the sentence or charge and/or may return the case to a trial court to have a hearing on specific issues in the case.

# Section 6

## Juveniles in the Criminal Justice Process

Children between the ages of 7 and 19 who commit acts that would normally be considered criminal offenses if committed by adults may be classified into three different categories:

**Juvenile Delinquent:** A juvenile, a child who is at least age 7 but under age 16, who has committed a crime is considered a juvenile delinquent and his or her case is heard in the Family Court. These cases are known as “D petitions” in Family Court. Dispositions in the Family Court may include treatment, confinement, probation, restitution, and conditional discharge.

**Juvenile Offender:** A young person between the ages of 13 and 15 who is alleged to have committed one of the following felonies—murder, manslaughter, assault, sexual assault, attempted murder, burglary, arson, or kidnapping—can be treated as a juvenile offender. These cases may be handled in the Criminal Term of the Supreme Court or County Court where the juvenile is tried as an adult. However, in response to a motion by the alleged juvenile offender or after arraignment, and in certain cases with the consent of the district attorney’s office, the criminal court judge may determine that it is in the interest of justice to remove, or transfer the case to Family Court. In Family Court, these felonies are known as “designated felony acts,” or “E petitions.” The judge may make a dispositional order of restrictive placement in a secure facility to resolve such cases.

**Youthful Offender (Y.O.):** A young person between the ages of 14 and 19 who has committed a crime may be treated as a youthful offender in the Criminal Court, the Criminal Term of the Supreme Court or County Court as a way of removing the stigma of a felony conviction in his or her future. Youthful offender status results in the following: the juvenile’s records are sealed; the Y.O. adjudication is not regarded as a felony conviction and therefore does not disqualify the person from public employment or licensing; the maximum sentence that may be imposed is reduced; and the juvenile may be sent to a state youth facility for incarceration rather than prison.



In order to qualify as a youthful offender, the defendant must meet the following conditions:

- The defendant must plead guilty to, or be convicted of, any crime except an A-I or A-II felony (unless the defendant pleads down to a Class B felony), rape in the first degree, a criminal sexual act in the first degree, aggravated sexual abuse or a violent felony in which a deadly weapon was used
- The defendant may not have been previously convicted or sentenced for a felony
- The defendant may not have previously received youthful offender adjudication
- The defendant may not have previously been found to be a juvenile delinquent based on a designated felony act petition filing in the Family Court.

# Section 7

## Specialized Courts

### **Integrated Domestic Violence Court (IDV)**

The Integrated Domestic Violence Court is based on the one-family-one-judge model. In New York State, the issues that arise in a domestic violence case may not fall under one court's jurisdiction. Therefore, the various aspects of one case could be heard in the Family, Criminal, and/or Supreme Court. This can be unduly burdensome on litigants and the courts, requiring additional time and expense and increasing the likelihood of conflicting orders and decisions. As a result, the IDV court assigns all aspects of a domestic violence proceeding to a single judge. This judge is informed on every aspect of the case and can order integrated social services. The overall goals of the IDV court are to improve court efficiency, allow for a more informed judicial decision-making process, promote greater victim safety by eliminating conflicting orders, and improve services delivered to domestic violence victims and their children.

### **Drug Court**

Drug courts, first established in New York State in 1995, link non-violent addicted offenders to judicially-monitored drug treatment instead of incarceration. The drug court judge closely monitors the offenders' cases and the offenders receive either a series of rewards for adhering to the court's conditions, or receive sanctions for not adhering to these conditions. Successful defendants may have their criminal charges dismissed or reduced. Those who fail to meet the conditions are sentenced to jail or prison. Drug courts have reduced recidivism for drug offenses in New York State by 29%.<sup>1</sup>

<sup>1</sup>Michael Rempel, Dana Fox-Kralstein, Amanda Cissner, Robyn Cohen, Melissa Labriola, Donald Farole, Ann Bader, and Michael Magnani (2003), *Executive Summary, The New York State Adult Drug Court Evaluation: Policies, Participants, and Impacts*, Center for Court Innovation.

## **Midtown Community Court**

Established in 1993 as a neighborhood-based arraignment court, the Midtown Community Court handles defendants accused of low-level, quality of life crimes in the Times Square area. Rather than sentencing low-level offenders to fines, or time served, both of which have been ineffective deterrents to quality of life offenses, the Community Court works with an advisory board of local residents and merchants to develop work projects in the neighborhoods where the crimes were committed. Defendants are sentenced to work projects such as caring for street trees, removing graffiti, cleaning subway stations, and sorting recycling. Sentences begin immediately to ensure they are completed. Additionally, the court connects defendants to drug-treatment, health care, education, job training, and on-site social services to address the roots of low-level street crime and help defendants end their criminal behavior. Thus, the court works to make the justice system more accessible and visible to the local community, while simultaneously connecting offenders to treatment, prevention, and education programs to prevent recidivism and improve the quality of life of the community.

## **Red Hook Community Justice Center and its Youth Court**

Started in June 2000, the Red Hook Community Justice Center in Brooklyn is the nation's first multi-jurisdictional community court. At Red Hook, a single judge hears cases that, under ordinary circumstances, would go to three different courts—Civil, Family and Criminal. The goal is to offer a coordinated approach to community problems. The Red Hook judge has an array of sanctions and services at his or her disposal, including community restitution projects, on-site job training, drug treatment and mental health counseling.

At the Red Hook Justice Center, young people who have committed low-level offenses may be removed from the formal juvenile or criminal justice system, and placed into a community-based Youth Court. A teenager who has committed a low-level crime such as theft, alcohol or drug use, vandalism, criminal mischief, disorderly conduct, assault, traffic offenses, truancy, trespassing, or school violations must first admit responsibility for the offense to police, a probation officer, or a judge. With parental permission, the offender will then appear for a hearing before a court of his or her peers. Peers, other teenagers who have completed a special training program, serve as judge, prosecutor, defender, clerk, and jurors. After evaluating the evidence, the court imposes a rehabilitative sentence that can include community service, victim restitution, and/or service to the Youth Court in the future.

# Glossary

**18(b) Attorney:** See Assigned Counsel.

**Accused:** A person charged with a crime.

**Acquittal:** A legal determination, usually by jury verdict, that an accused person is not guilty of a charge against him or her.

**Adjourn:** To recess or postpone a case.

**Adjournment in Contemplation of Dismissal (ACD):** A postponement of a case that will result in the dismissal of the case if the defendant complies with conditions established by the court for a set period of time.

**Adjudicate:** To hear and resolve a case.

**Affirm:** To confirm or uphold a conviction which had been appealed.

**Alternate Juror:** An individual selected to act in the place of a juror if the juror cannot perform his or her duties.

**Appeal:** A request by a defendant who has been convicted to have a higher court review, and possibly, reverse the decision of a lower court.

**Appearance Ticket:** A notice issued by a police officer or other law enforcement officer in certain misdemeanors and violation cases requiring an arrested person to appear in court on a particular date.

**Appellate:** Refers to, or related to, an appeal (i.e. appellate court).

**Arbitration:** A method of dispute resolution involving one or more neutral third parties, usually chosen by the disputing parties, whose decision is legally binding.

**Arraignment:** The first court appearance for a person charged with a crime, during which the person is informed of the charge or charges against him or her and enters a plea.

**Arrest:** The taking of a person into custody by a law enforcement officer. An officer may arrest an individual for a felony or misdemeanor not committed in the officer's presence or without a warrant if there is reasonable cause to believe that the individual being arrested committed the crime. If an individual is being arrested in his home, the police must have an arrest warrant, unless the officer has reasonable cause to believe that a family offense has occurred or other exigent or emergency circumstances exist.

**Arrest Warrant:** A court order directing a law enforcement officer to arrest and bring to court a particular individual.

**Assigned Counsel:** An attorney assigned by a judge to represent a defendant who cannot afford to hire legal counsel. Also referred to as I8(b) or panel attorneys, they are chosen from a list of lawyers previously approved by the Appellate Division of the Supreme Court in each judicial department.

**Assistant District Attorney (ADA):** A lawyer from the county District Attorney's office who prosecutes criminal cases on behalf of the people of the State of New York. *See also Prosecutor.*

**Bail:** Money or other security required by a court in exchange for the release of a person in custody to assure his or her appearance at future court proceedings.

**Bail Bondsman:** An individual who posts a bond for a defendant in the amount required for bail in exchange for a fee. The defendant or someone on his or her behalf must provide the bondsman with a fee and property or cash which represents a portion of the bail set by the judge.

**Bench Trial:** A trial conducted with the judge serving as the finder of fact in place of a jury. In a bench trial, the judge decides the questions of fact as well as the questions of law.

**Bench Warrant:** An order of a judge to law enforcement officers to arrest an individual who has failed, without excuse, to attend a scheduled court appearance or disobeyed other court orders.

**Booking:** The processing of an accused person by a law enforcement agency or other criminal justice agency following an arrest. *See "Step 1: Arrest, Complaint, and Booking Procedures" in Section 5 of this guide for more information.*

**Brief:** A written statement of the legal and factual arguments in a case.

**Charge:** The accusation made against a defendant.

**Challenge:** A party's request that a judge disqualify a potential juror from becoming a juror on a particular case.

**Challenge for Cause:** A party's challenge to seating a juror that is supported by a specified reason, such as bias or prejudice. *See also Peremptory Challenge.*

**Complainant:** An alleged victim of a crime who swears out a complaint or testifies before the grand jury accusing a particular person of committing a criminal act.

**Complaint:** Written charge accusing a person of a crime.

**Community Dispute Resolution Centers (CDRC):** The organizations that provide litigants with an alternative means (including mediation, arbitration, and/or group facilitation) to resolve a dispute without filing a complaint or petition in the courts.

**Concurrent Sentence:** Two or more sentences imposed upon a defendant that a judge orders to run at the same time.

**Conditional Discharge:** A sentence imposed by a judge which mandates certain conditions on the defendant such as participation in a drug treatment program or refraining from criminal conduct.

**Consecutive Sentence:** Two or more sentences imposed upon a defendant which the judge orders to run one after the other.

**Conviction:** The judgment or finding that a person is guilty of a crime.

**Court Clerk:** A court employee responsible for supervising court personnel as well as handling the court's records and files.

**Court Interpreter:** A court employee who translates proceedings from English to another language when defendant or witnesses do not understand

English or are hearing impaired, and also translates from another language into English when a defendant or a witness does not speak English or is hearing impaired.

**Court Officer:** A court employee who is responsible for providing court security, maintaining order in the courtroom, and transporting defendants from holding cells to the courtroom.

**Court Reporter:** A court employee who is responsible for keeping a written record of all court proceedings and preparing transcripts of the proceedings upon request.

**Crime Victim Assistance Fee:** A fee imposed by New York State upon a defendant who is convicted of a felony, misdemeanor, or violation.

**Criminal Justice Agency (CJA):** A New York City agency that interviews defendants after arrest and makes recommendations concerning bail.

**Criminal Offense:** An act that violates the Penal Law passed by the New York State Legislature. Offenses can fall into three different categories: Felony, Misdemeanor, or Violation.

**Criminal Procedure Law (CPL):** A set of laws that specifies the procedures to be followed in criminal cases in New York State.

**Cross-examination:** The questioning of witnesses by the opposing attorney.

**Custody:** The detention of an accused or convicted person.

**Defendant:** The person accused of or convicted of committing a criminal offense.

**Defense Attorney:** The lawyer who represents the defendant in a criminal case. The defense attorney may be assigned by the judge at no charge to the defendant if the defendant is indigent or retained privately by the defendant for a fee.

**Designated Felony:** An act committed by a person age 13, 14, or 15, which if committed by an adult, would constitute one of the following crimes: murder, kidnapping, arson, assault, manslaughter, rape, criminal sexual acts, or robbery.

**Detention:** To hold or confine an accused person prior to trial or plea.

**Direct Examination:** The questioning of a witness by the attorney representing the party for whom the witness is testifying.

**Discovery:** A process by which attorneys gather information concerning the opposing lawyer's case.

**Disposition:** The final settlement or determination of the case.

**District Attorney:** A county official whose office represents the People of the State of New York in criminal prosecutions.

**Division for Youth (DFY):** The state agency that maintains secure and non-secure detention facilities for the placement of juveniles. It also oversees the certification and operation of certain juvenile detention facilities.

**Docket:** A schedule of pending cases.

**Drug Court:** A specialized court that hears cases involving non-violent drug offenders who are sentenced to rehabilitation programs under the supervision of this court. *See Section 7, "Specialized Courts."*

**Dunaway Hearing:** A hearing held, in conjunction with a Mapp, Huntley, or Wade hearing, on a motion to suppress other evidence that the police obtained from an allegedly illegal arrest.

**Exhibit:** The physical evidence presented by the prosecution or defense in support of their case during a trial or in support of a motion.

**Family Court:** A court located in every county in

New York State, which hears cases involving children and families including child custody and support, neglect and abuse, juvenile delinquency, family offenses (i.e. domestic violence), and paternity.

**Family Offense:** One of the following acts when committed against a family member by a family member or former spouse: disorderly conduct; harassment; aggravated harassment; menacing; reckless endangerment; assault, attempted assault; or stalking.

**Felony:** A criminal offense that is punishable by a prison sentence of more than one year.

**Fingerprint Report:** A written record of an arrested person's prior criminal record, if one exists. Includes fingerprints and other biographical data. Commonly referred to as a rap sheet or NYSID sheet.

**Fine:** A sum of money paid by a convicted defendant as part of his/her sentence as a penalty for the crime committed.

**Grand Jury:** A group of citizens who hear evidence and vote whether to issue an indictment against the defendant in felony cases.

**Hung Jury:** A jury that is unable to reach a unanimous verdict, which often results in a mistrial.

**Huntley Hearing:** A hearing held on a motion to suppress a statement made by a defendant on the grounds that it was illegally obtained.

**Incarceration/Imprisonment:** Confinement of an individual to prison or jail.

**Indictment:** The written accusation voted by a grand jury charging the defendant with the commission of a crime, usually a felony.

**Indigent Defendant:** A person who cannot afford to hire a lawyer, who is eligible to receive the assistance of a court-appointed attorney.

**Information:** A verified written accusation by a

person that charges the defendant with the commission of an offense. An information can provide the basis to commence prosecution.

**Integrated Domestic Violence Court (IDV):** A specialized court that hears all aspects of domestic violence cases based on a one-family-one judge model. See Section 7, "Specialized Courts."

**Judicial Department:** The Appellate Division of the Supreme Court is divided into 4 judicial departments, each consisting of 4 or 5 judges. Each department has jurisdiction over a different part of New York State.

**Judicial Hearing Officer (JHO):** A former or retired judge assigned to conduct pre-trial hearings and other pre-trial proceedings who submits a report to the judge presiding over the case containing factual findings and legal conclusions from those proceedings. Under certain circumstances, a JHO can conduct bench trials in misdemeanor cases.

**Judge:** A public official appointed or elected to hear witnesses, examine evidence, decide legal questions that arise during proceedings, determine the outcome of cases, and issue orders for the resolution of cases.

**Jurisdiction:** A court's power to decide a case.

**Jury:** A group of citizens selected according to state law who are sworn to deliver a verdict in a case based on the evidence and the law presented to them.

**Jury Deliberation:** The process of evaluating and discussing evidence by which a jury reaches a verdict.

**Jury Instruction:** The guidelines given to the jury at the conclusion of the presentation of evidence at trial and prior to deliberation by the judge about the law that governs the case.

**Jury Pool:** A group of potential jurors randomly selected from lists of registered voters; licensed

drivers; state and local taxpayers; recipients of public assistance benefits; recipients of state unemployment benefits; and volunteers.

**Jury Trial:** A trial in which a jury, not the judge, determines factual issues and reaches a verdict.

**Juvenile:** An individual who has not yet reached the age established by law at which one should be treated as an adult by the criminal justice system.

**Juvenile Delinquent:** A person at least age 7, and younger than age 16, who has committed an act which would constitute a crime, if committed by an adult. Juvenile delinquency cases are handled in the Family Court.

**Juvenile Offender:** A person aged 13, 14, or 15 who commits certain designated felony acts that are adjudicated in a criminal court.

**Law Guardian:** An attorney assigned by the court to represent a juvenile in the Family Court.

**Legal Aid Society:** An organization providing government-funded legal services to indigent defendants.

**Mandatory Surcharge:** A fee imposed upon a defendant when he/she has been convicted of an offense which is separate and distinct from any fine which the court may impose.

**Mapp Hearing:** A hearing held on a motion to suppress physical evidence on the grounds that the police seized the evidence during an illegal search.

**Mediation:** A method of alternative dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable disposition.

**Midtown Community Court:** A neighborhood-based arraignment court dealing primarily with low-level, quality of life offenses. *See Section 7, "Specialized Courts" for more information.*

**Misdemeanor:** A criminal offense punishable by a sentence of more than 15 days and up to one year in jail.

**Mistrial:** A trial ended by a judge due to procedural errors or misconduct during the proceeding or a hung jury.

**Modification:** An appellate court changes or modifies the sentence or charge.

**Motion:** A written or oral request that a court take a particular action.

**Motion Hearing:** A hearing to decide whether to grant a particular request made to the court.

**New York Division of Criminal Justice Services (DCJS):** A multi-functional criminal justice support agency that is the central repository for juvenile and adult fingerprint records. Fingerprints along with arrest information are stored in the DCJS's Computerized Criminal History (CCH) database.

**Notice of Appeal:** A document filed with a court stating that the defendant intends to appeal the trial court's decision.

**Opening Statement:** A statement given by attorneys at the outset of the trial to provide the jury or judge with a preview of the case including the evidence to be presented.

**Partial Verdict:** A verdict in which a jury finds a defendant guilty or not guilty on some charges and has no unanimous finding on other charges.

**Penal Law/Code:** The state's criminal laws, which consists of a list of all offenses and their possible punishments.

**Peremptory Challenge:** A lawyer's request to dismiss a potential juror without any legal reason during jury selection. Such a challenge may not be used to discriminate on the basis of race, ethnicity, or gender.



**Persistent Violent Felony Offender:** A person who is convicted of a violent felony after having been previously convicted of two or more violent felonies in the prior ten years.

**Plea:** A defendant's answer of "guilty," or "not guilty" to criminal charges.

**Plea-Bargaining:** The process by which the prosecutor and defense attorney negotiate the disposition of a case. Generally, the defendant pleads guilty to a lesser charge or to one of multiple charges in exchange for dismissal of some charges or a lesser sentence.

**Pre-arraignment Bail:** A sum of money that an arrested person may be required to pay in order to be released from custody prior to arraignment.

**Predicate Felon:** A person convicted of a felony after having previously been convicted of a felony within the prior ten years.

**Preliminary Hearing:** A hearing to determine if there is sufficient evidence to prosecute a defendant for a felony.

**Preliminary Instructions:** The instructions regarding trial procedures given to a jury by the judge at the start of a trial.

**Pre-sentence Investigation Report:** A probation officer's report on the defendant's background conducted at the request of the court prior to sentencing.

**Pre-trial Conference:** A meeting between opposing attorneys to discuss the evidence and issues that will be tried. Frequently such conferences result in the case being resolved without a trial.

**Pre-trial Motion:** A request by either the prosecutor or the defense attorney that the court take a specific action in a defendant's case. Pre-trial motions must generally be made within 45 days of arraignment.

**Probation:** A court ordered sentence that places a convicted person under the supervision of a probation officer for a definite period of time instead of sending him or her to jail or prison.

**Probation Department/Department of Probation:** The local (county or city) agency that is responsible for the supervision of convicted criminal defendants.

**Probation Officer:** An officer of the Department of Probation who prepares pre-sentencing reports and supervises defendants placed on probation.

**Prosecutor:** A lawyer who represents the people of the State of New York in criminal cases. This lawyer is often from a county District Attorney's office and is referred to as an assistant district attorney (ADA).

**Rap Sheet:** A written record of an arrested person's prior criminal history, if one exists. It is based on a fingerprint comparison. It also contains biographical data, aliases, and prior and current bench warrants.

**Reasonable/Probable Cause:** The standard of proof that must be met for a police officer or law enforcement officer to arrest a person without a warrant. Reasonable cause to believe that a person has committed an offense exists when a person of ordinary intelligence, judgment and experience based on the facts or evidence presented believes that it is reasonably likely that a criminal offense was committed and that such person committed it.

**Reasonable Doubt:** A doubt of guilt for which a person can give a reason. In criminal cases, "beyond a reasonable doubt" is the standard used by a jury to decide whether a defendant is guilty.

**Rebuttal:** The evidence offered by the prosecution in response to the defendant's direct evidence.

**Recidivism:** To lapse into a previous pattern of criminal activity or behavior.

**Rehabilitation:** The process of restoring a convicted offender to a constructive place in society by some form of vocational, correctional, or other training.

**Release on Own Recognizance (ROR):** The release of a defendant without bail, pending a trial or other action.

**Removal:** The transfer of a juvenile offender case from Criminal Court to Family Court.

**Restitution:** Compensation for the loss caused to another, which is sometimes ordered as a condition of probation or a conditional discharge.

**Reversal:** An appellate court overturns a conviction or decision of a lower court resulting in the case being dismissed, or a new trial or hearing in most cases.

**Second Violent Felony Offender:** A person who stands convicted of a violent felony (other than a Class A-I felony) after having previously been convicted of one or more violent felonies within ten years of the present conviction.

**Sentence:** The punishment imposed by the court on a criminal defendant after he or she is found guilty.

**Sequestration:** The separation or isolation of a jury during the deliberations.

**Split Sentence:** A sentence in which part of the time is served in jail and the balance on probation.

**Standard of Proof:** The level of proof required in a specific case, such as "beyond a reasonable doubt" in criminal cases.

**Summation:** The closing argument made to the jury before it deliberates by both the prosecution and the defense in which each side recaps the evidence in their favor. The prosecution must present a summation. The defense may make a summation.

**Summons:** A notice requiring an individual to appear in court.

**Superior Court Information (SCI):** A written document containing the felony and/or misdemeanor charges against the defendant filed

by the district attorney with a superior court when the defendant waives his or her right to a grand jury hearing.

**Suppression Hearing:** A pre-trial hearing in which a defendant seeks to prevent certain types of evidence from being presented at trial on the grounds that it was illegally obtained. See also pre-trial motions.

**Temporary Order of Protection:** A court order requiring the defendant to stay away from the complainant until the criminal case is resolved.

**Term:** The periods during which a court conducts its business.

**Testimony:** The evidence that a competent witness gives under oath at trial, or in a deposition.

**Transcript:** The official written record of all court proceedings that is recorded by a court reporter.

**Trial:** A legal proceeding in which evidence is presented to a judge or jury who then returns a verdict based on that evidence.

**Trial Court:** The court where the evidence is first presented and considered.

**Unconditional Discharge:** The release of a defendant without any conditions. However, the discharged person will have to pay a fine or make restitution, as well as pay a surcharge or a crime victim's assistance fee.

**Verdict:** The decision of a jury or a judge in a trial determining whether the prosecutor has proven every element of the crime charged beyond a reasonable doubt. In a criminal case, the verdict is the jury or judge's finding of guilt or non guilt.

**Victim Impact Statement:** A statement from the victim or the victim's family made during sentencing proceedings to inform the judge of the impact of the crime on the victim and the victim's family.

**Violation:** An infraction that is punishable by up to 15 days in jail and/or a fine. A violation is not a crime.

**Voir Dire:** The jury selection part of a trial.

**Wade Hearing:** A hearing held on a motion to suppress an identification of the defendant on the grounds that an out of court police arranged identification procedure was illegal or suggestive.

**Waiver of Immunity:** A written document signed by a person who is a witness in a grand jury or other proceeding agreeing to waive his privilege against self-incrimination.

**Waiver of Indictment:** A written document signed by the defendant agreeing to waive his right to a grand jury hearing.

**Witness:** A person who testifies as to what he has seen, heard, or otherwise observed pertaining to the case.

**Youth Court:** A specialized court, staffed by trained young people, who hear cases involving low-level juvenile offenses. See Section 7 of this guide for more information.

**Youthful Offender:** A person charged with a crime alleged to have been committed when he or she was at least 14 years old and less than 19 years old. A youthful offender has already been found guilty in a criminal court and is afforded, in the interest of justice, special treatment by a Criminal, County or Supreme Court judge to remove the stigma that often accompanies a felony conviction. "Y.O." adjudication is not a conviction and does not disqualify a person from public employment or licensing. The youth's records are sealed.

# Appendix I:

## Abbreviated Listing of Penal Law Sections of Some Offenses

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#100 Criminal Solicitation	100.00 Criminal Solicitation 5th Deg. 100.05 Criminal Solicitation 4th Deg. 100.08 Criminal Solicitation 3rd Deg. 100.10 Criminal Solicitation 2nd Deg. 100.13 Criminal Solicitation 1st Deg.	Vlt A Misd E Fel D Fel C Fel
#105 Conspiracy	105.00 Conspiracy 6th Deg. 105.05 Conspiracy 5th Deg. 105.10 Conspiracy 4th Deg. 105.13 Conspiracy 3rd Deg. 105.15 Conspiracy 2nd Deg. 105.17 Conspiracy 1st Deg.	B Misd A Misd E Fel D Fel B Fel A-I Fel
#115 Criminal Facilitation	115.00 Criminal Facilitation 4th Deg. 115.01 Criminal Facilitation 3rd Deg. 115.05 Criminal Facilitation 2nd Deg. 115.08 Criminal Facilitation 1st Deg.	A Misd E Fel C Fel B Fel
#120 Assault and Related Offenses	120.00 Assault 3rd Deg. 120.01 Assault of a Child by a Child Day Care Provider 120.03 Vehicular Assault 2nd Deg. 120.04 Vehicular Assault 1st Deg. 120.05 Assault 2nd Deg. 120.10 Assault 1st Deg. 120.11 Aggravated Assault upon Police Officer 120.12 Agg. Assault upon person younger than 11 120.13 Menacing 1st Deg. 120.14 Menacing 2nd Deg. 120.15 Menacing 3rd Deg. 120.16 Hazing 1st Deg. 120.17 Hazing 2nd Deg. 120.20 Reckless Endangerment 2nd Deg. 120.25 Reckless Endangerment 1st Deg. 120.30 Promoting a Suicide Attempt 120.45 Stalking in the 4th Deg. 120.50 Stalking in the 3rd Deg. 120.55 Stalking in the 2nd Deg. 120.60 Stalking in the 1st Deg.	A Misd E Fel E Fel D Fel D Fel B Fel B Fel E Fel E Fel A Misd B Misd A Misd Vlt A Misd D Fel E Fel B Misd A Misd E Fel D Fel

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#125 Homicide, Abortion, and Related Offenses	125.10 Criminally Negligent Homicide 125.12 Vehicular Manslaughter 2nd Deg. 125.13 Vehicular Manslaughter 1st Deg. 125.15 Manslaughter 2nd Deg. 125.20 Manslaughter 1st Deg. 125.25 Murder in 2nd Deg. 125.27 Murder in 1st Deg. 125.40 Abortion 2nd Deg. 125.45 Abortion 1st Deg. 125.50 Self-Abortion 2nd Deg. 125.55 Self-Abortion 1st Deg. 125.60 Issuing Abortifacient Articles	E Fel D Fel C Fel C Fel B Fel A-I Fel A-I Fel E Fel D Fel B Misd A Misd B Misd
#130 Sex Offenses	130.20 Sexual Misconduct 130.25 Rape 3rd Deg. 130.30 Rape 2nd Deg. 130.35 Rape 1st Deg. 130.40 Criminal Sexual Act 3rd Deg. 130.45 Criminal Sexual Act 2nd Deg. 130.50 Criminal Sexual Act 1st Deg. 130.52 Forcible Touching 130.53 Persistent Sexual Abuse 130.55 Sexual Abuse 3rd Deg. 130.60 Sexual Abuse 2nd Deg. 130.65 Sexual Abuse 1st Deg. 130.67 Aggravated Sexual Abuse 2nd Deg. 130.70 Aggravated Sexual Abuse 1st Deg. 130.90 Facilitating a Sex Offense with a Controlled Substance	A Misd E Fel D Fel B Fel E Fel D Fel B Fel A Misd E Fel B Misd A Misd D Fel C Fel B Fel  D Fel
#135 Kidnapping, Coercion, and Related Offenses	135.05 Unlawful Imprisonment 2nd Deg. 135.10 Unlawful Imprisonment 1st Deg. 135.20 Kidnapping 2nd Deg. 135.25 Kidnapping 1st Deg. 135.45 Custodial Interference 2nd Deg. 135.50 Custodial Interference 1st Deg. 135.55 Substitution of Children 135.60 Coercion 2nd Deg. 135.65 Coercion 1st Deg.	A Misd E Fel B Fel A-I Fel A Misd E Fel E Fel A Misd D Fel

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#140 Offenses Involving Damage to and Intrusion Upon Property	140.05 Trespass 140.10 Criminal Trespass 3rd Deg. 140.15 Criminal Trespass 2nd Deg. 140.17 Criminal Trespass 1st Deg. 140.20 Burglary 3rd Deg. 140.25 Burglary 2nd Deg. 140.30 Burglary 1st Deg. 140.35 Possession Burglar's Tools 140.40 Unlawful Possession Radio Device	Vlt B Misd A Misd D Fel D Fel C Fel B Fel A Misd B Misd
#145 Criminal Mischief and Related Offenses	145.00 Criminal Mischief 4th Deg. 145.05 Criminal Mischief 3rd Deg. 145.10 Criminal Mischief 2nd Deg. 145.12 Criminal Mischief 1st Deg. 145.14 Criminal Tampering 3rd Deg. 145.15 Criminal Tampering 2nd Deg. 145.20 Criminal Tampering 1st Deg. 145.25 Reckless Endangerment of Property 145.30 Unlawfully Posting Ads 145.40 Tampering with Consumer Products 2nd Deg. 145.45 Tampering with Consumer Products 1st Deg. 145.60 Making graffiti 145.65 Possession of graffiti instruments	A Misd E Fel D Fel B Fel B Misd A Misd D Fel B Misd Vlt A Misd E Fel A Misd B Misd
#150 Arson	150.01 Arson 5th Deg. 150.05 Arson 4th Deg. 150.10 Arson 3rd Deg. 150.15 Arson 2nd Deg. 150.20 Arson 1st Deg.	A Misd E Fel C Fel B Fel A-I Fel
#155 Larceny and Theft	155.25 Petit Larceny 155.30 Grand Larceny 4th Deg. 155.35 Grand Larceny 3rd Deg. 155.40 Grand Larceny 2nd Deg. 155.42 Grand Larceny 1st Deg.	A Misd E Fel D Fel C Fel B Fel

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#156 Offenses Involving Computers	156.05 Unauthorized Use of Computer 156.10 Computer Trespass 156.20 Computer Tampering 4th Deg. 156.25 Computer Tampering 3rd Deg. 156.26 Computer Tampering 2nd Deg. 156.27 Computer Tampering 1st Deg. 156.30 Unlawful Duplication Comp. Material 156.35 Criminal Possession Computer Material	A Misd E Fel A Misd E Fel D Fel C Fel E Fel E Fel
#158 Welfare Fraud	158.05 Welfare Fraud 5th Deg. 158.10 Welfare Fraud 4th Deg. 158.15 Welfare Fraud 3rd Deg. 158.20 Welfare Fraud 2nd Deg. 158.25 Welfare Fraud 1st Deg. 158.30 Criminal Use of Public Benefit Cards 2nd Deg. 158.35 Criminal Use of Public Benefit Cards 1st Deg. 158.40 Criminal Possession of Public Benefit Cards 3rd Deg. 158.45 Criminal Possession of Public Benefit Cards 2nd Deg. 158.50 Criminal Possession of Public Benefit Cards 1st Deg.	A Misd E Fel D Fel C Fel B Fel A Misd E Fel E Fel D Fel C Fel
#160 Robbery	160.05 Robbery 3rd Deg. 160.10 Robbery 2nd Deg. 160.15 Robbery 1st Deg.	D Fel C Fel B Fel
#165 Other Offenses Related to Theft	165.00 Misapplication of property 165.05 Unauthorized Use of a Vehicle 3rd Deg. 165.06 Unauthorized Use of a Vehicle 2nd Deg. 165.07 Unlawful Use of Secret Scientific Material 165.08 Unauthorized Use of a Vehicle 1st Deg. 165.09 Auto Stripping 3rd Deg. 165.10 Auto Stripping 2nd Deg. 165.11 Auto Stripping 1st Deg. 165.15 Theft of Services 165.17 Unlawful Use of Credit, Debit or Public Benefit Card 165.20 Fraudulently Obtaining Signature 165.30 Fraudulent Accounting 165.35 Fortune Telling 165.40 Criminal Possession Stolen Prop. 5th Deg. 165.45 Criminal Possession Stolen Prop. 4th Deg. 165.50 Criminal Possession Stolen Prop. 3rd Deg. 165.52 Criminal Possession Stolen Prop. 2nd Deg. 165.54 Criminal Possession Stolen Prop. 1st Deg. 165.71 Trademark Counterfeiting 3rd Deg. 165.72 Trademark Counterfeiting 2nd Deg. 165.73 Trademark Counterfeiting 1st Deg.	A Misd A Misd E Fel E Fel D Fel A Misd E Fel D Fel A Misd A Misd A Misd A Misd B Misd A Misd E Fel D Fel C Fel B Fel A Misd E Fel C Fel

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#170 Forgery and Related Offenses	170.05 Forgery 3rd Deg. 170.10 Forgery 2nd Deg. 170.15 Forgery 1st Deg. 170.20 Poss. Forged Instrument 3rd Deg. 170.25 Poss. Forged Instrument 2nd Deg. 170.30 Poss. Forged Instrument 1st Deg. 170.40 Criminal Possession Forgery Devices 170.45 Criminal Simulation 170.47 Criminal Possession Anti Security Item 170.55 Unlawfully Using Slugs 2nd Deg. 170.60 Unlawfully Using Slugs 1st Deg. 170.65 Forgery of Vehicle ID No. 170.70 Illegal Possession of Vehicle ID 170.75 Fraudulent Making of an Electronic Access Device 2nd Deg.	A Misd D Fel C Fel A Misd D Fel C Fel D Fel A Misd B Misd B Misd E Fel E Fel E Fel  D Fel
#175 Offenses Involving False Written Statements	175.05 Falsifying Business Records 2nd Deg. 175.10 Falsifying Business Records 1st Deg. 175.20 Tampering Public Records 2nd Deg. 175.25 Tampering Public Records 1st Deg. 175.30 Offering False Instrument 2nd Deg. 175.35 Offering False Instrument 1st Deg. 175.40 Issuing False Certificate 175.45 Issuing False Financial Statement	A Misd E Fel A Misd D Fel A Misd E Fel E Fel A Misd
#176 Insurance Fraud	176.10 Insurance Fraud 5th Deg. 176.15 Insurance Fraud 4th Deg. 176.20 Insurance Fraud 3rd Deg. 176.25 Insurance Fraud 2nd Deg. 176.30 Insurance Fraud 1st Deg. 176.35 Aggravated Insurance Fraud	A Misd E Fel D Fel C Fel B Fel D Fel
#178 Criminal Diversion of Prescription Medications	178.10 Criminal Diversion of Prescription Medications and Prescriptions in the 4th Deg. 178.15 Crim. Div. of Prescription Med. and Prescriptions in the 3rd Deg. 178.20 Crim. Div. of Prescription Med. and Prescriptions in the 2nd Deg. 178.25 Crim. Div. of Prescription Med. and Prescriptions in the 1st Deg.	A Misd  E Fel  D Fel  C Fel



SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#180 Bribery Not Involving Public Servants	180.00 Commercial Bribing 2nd Deg. 180.03 Commercial Bribing 1st Deg. 180.05 Commercial Bribe Receiving 2nd Deg. 180.08 Commercial Bribe Receiving 1st Deg. 180.15 Bribing a Labor Official 180.25 Bribe Receiving by Labor Official 180.40 Sports Bribing 180.45 Sports Bribe Receiving 180.50 Tampering Sports Contest 2nd Deg. 180.51 Tampering Sports Contest 1st Deg. 180.52 Impairing Pari Mutuel Bet System Integrity. 2nd Deg. 180.53 Impairing Pari Mutuel Bet System Integrity 1st Deg. 180.55 Rent Gouging 3rd Deg. 180.56 Rent Gouging 2nd Deg. 180.57 Rent Gouging 1st Deg.	A Misd E Fel A Misd E Fel D Fel D Fel D Fel E Fel A Misd E Fel E Fel D Fel B Misd A Misd E Fel
#185 Fraud on Creditors	185.00 Fraud in Insolvency 185.05 Fraud Involving Security Interest 185.10 Fraudulent Disposition of Mortgage Property 185.15 Fraudulent Disposition Property Subject to Conditions of Sales Contract	A Misd A Misd A Misd  A Misd
#190 Other Frauds	190.05 Issuing a Bad Check 190.20 False Advertising 190.23 False Impersonation 190.25 Criminal Impersonation 2nd Deg. 190.26 Criminal Impersonation 1st Deg. 190.27 Criminal Sale of Police Uniform 190.30 Unlawfully Concealing Will 190.35 Misconduct by Corporate Official 190.40 Criminal Usury 2nd Deg. 190.42 Criminal Usury 1st Deg. 190.45 Possession Usurious Loan Records 190.50 Unlawful Collection Practices 190.55 Making False Statement of Credit Terms 190.60 Scheme to Defraud 2nd Deg. 190.65 Scheme to Defraud 1st Deg. 190.70 Scheme to Defraud State by Unlawfully Selling Prescriptions 190.78 Identity Theft 3rd Deg. 190.79 Identity Theft 2nd Deg. 190.80 Identity Theft 1st Deg.	B Misd A Misd B Misd A Misd E Fel A Misd E Fel B Misd E Fel C Fel A Misd B Misd A Misd A Misd E Fel  A Misd A Misd E Fel D Fel

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#195 Official Misconduct and Obstruction of Public Servants	195.00 Official Misconduct 195.05 Obstruct. Gov. Admin. 2nd Deg. 195.06 Killing or Injuring Police Animal 195.07 Obstruct. Gov. Admin. 1st Deg. 195.10 Refusing to Aid Police Officer 195.11 Harming animal trained to aid person w/ a disability 2nd Deg. 195.12 Harming animal trained to aid person w/ a disability 1st Deg. 195.15 Obstructing Firefighting Operations 195.16 Obstructing Emergency Medical Services 195.20 Defrauding the Government	A Misd A Misd A Misd E Fel B Misd  B Misd  A Misd A Misd A Misd E Fel
#200 Bribery Involving Public Servants	200.00 Bribery of a Public Servant 3rd Deg. 200.03 Bribery of a Public Servant 2nd Deg. 200.04 Bribery of a Public Servant 1st Deg. 200.10 Bribe Receiving 3rd Deg. 200.11 Bribe Receiving 2nd Deg. 200.12 Bribe Receiving 1st Deg. 200.20 Rewarding Official Misconduct 2nd Deg. 200.22 Rewarding Official Misconduct 1st Deg. 200.25 Receiving Reward for Misconduct 2nd Deg. 200.27 Receiving Reward for Misconduct 1st Deg 200.30 Giving Unlawful Gratuities 200.35 Receiving Unlawful Gratuities 200.45 Bribe Giving for Public Office 200.50 Bribe Receiving for Public Office	D Fel C Fel B Fel D Fel C Fel B Fel E Fel C Fel E Fel C Fel A Misd A Misd D Fel D Fel
#205 Escape and Other Offenses Related to Custody	205.05 Escape 3rd Deg. 205.10 Escape 2nd Deg. 205.15 Escape 1st Deg. 205.16 Absconding from Temp. Release 2nd Deg. 205.17 Absconding from Temp. Release 1st Deg 205.18 Absconding from Furlough Program 205.19 Absconding from Community Treatment Facility 205.20 Promoting Prison Contraband 2nd Deg. 205.25 Promoting Prison Contraband 1st Deg. 205.30 Resisting Arrest 205.55 Hindering Prosecution 3rd Deg. 205.60 Hindering Prosecution 2nd Deg. 205.65 Hindering Prosecution 1st Deg.	A Misd E Fel D Fel A Misd E Fel A Misd E Fel A Misd D Fel A Misd A Misd E Fel D Fel

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#210 Perjury and Related Offenses	210.05 Perjury 3rd Deg. 210.10 Perjury 2nd Deg. 210.15 Perjury 1st Deg. 210.35 Making Apparently Sworn False Statement 2nd Deg. 210.40 Making Apparently Sworn False Statement 1st Deg. 210.45 Making Punishable False Written Statement	A Misd E Fel D Fel A Misd E Fel A Misd
#215 Other Offenses Related to Judicial and Other Proceedings	215.00 Bribing a Witness 215.05 Bribe Receiving by Witness 215.10 Tampering with a Witness 4th Deg. 215.11 Tampering with a Witness 3rd Deg. 215.12 Tampering with a Witness 2nd Deg. 215.13 Tampering with a Witness 1st Deg. 215.14 Employer Penalizing Witness 215.15 Intimidating Victim or Witness 3rd Deg. 215.16 Intimidating Victim or Witness 2nd Deg 215.17 Intimidating Victim or Witness 1st Deg. 215.19 Bribing a Juror 215.20 Bribe Receiving by Juror 215.23 Tampering with a Juror 2nd Deg 215.25 Tampering with a Juror 1st Deg. 215.28 Misconduct by a Juror 2nd Deg. 215.30 Misconduct by a Juror 1st Deg. 215.40 Tampering with Physical Evidence 215.45 Compounding a Crime 215.50 Criminal Contempt 2nd Deg. 215.51 Criminal Contempt 1st Deg. 215.52 Aggravated Criminal Contempt 215.55 Bail Jumping 3rd Deg. 215.56 Bail Jumping 2nd Deg. 215.57 Bail Jumping 1st Deg. 215.58 Fail. Respond to Appearance Ticket 215.60 Criminal Contempt of Legislature 215.65 Criminal Contempt of Temporary State Commission 215.66 Criminal Contempt of Commission on Judicial Conduct 215.70 Unlawful Grand Jury Disclosure 215.75 Unlawful Disclosure of Indictment 215.80 Unlawful Disposition of Assets Subject to Forfeiture	D Fel D Fel A Misd E Fel D Fel B Fel B Misd E Fel D Fel B Fel D Fel D Fel B Misd A Misd Vlt A Misd E Fel A Misd A Misd E Fel D Fel A Misd E Fel D Fel Vlt A Misd A Misd  A Misd E Fel B Misd A Misd



SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#230 Prostitution Offenses	230.00 Prostitution 230.03 Patronizing a Prostitute 4th Deg. 230.04 Patronizing a Prostitute 3rd Deg. 230.05 Patronizing a Prostitute 2nd Deg. 230.06 Patronizing a Prostitute 1st Deg. 230.20 Promoting Prostitution 4th Deg. 230.25 Promoting Prostitution 3rd Deg. 230.30 Promoting Prostitution 2nd Deg. 230.32 Promoting Prostitution 1st Deg. 230.40 Permitting Prostitution	B Misd B Misd A Misd E Fel D Fel A Misd D Fel C Fel B Fel B Misd
#235 Obscenity and Related Offenses	235.05 Obscenity 3rd Deg. 235.06 Obscenity 2nd Deg. 235.07 Obscenity 1st Deg. 235.21 Disseminating Indecent Material to Minors 2nd Deg. 235.22 Disseminating Indecent Material to Minors 1st Deg.	A Misd E Fel D Fel E Fel D Fel
#240 Offenses Against Public Order	240.05 Riot 2nd Deg. 240.06 Riot 1st Deg. 240.08 Inciting to Riot 240.10 Unlawful Assembly 240.15 Criminal Anarchy 240.20 Disorderly Conduct 240.21 Disruption, or Disturbance of Religious Service 240.25 Harassment 1st Deg. 240.26 Harassment 2nd Deg. 240.30 Aggravated Harassment 2nd Deg. 240.31 Aggravated Harassment 1st Deg. 240.35 Loitering 240.36 Loitering 1st Deg. 240.37 Loitering for the Purpose of Engaging in Prostitution 240.40 Appearance in Public Under the Influence of Narcotics or any Substance Other than Alcohol 240.45 Criminal Nuisance 2nd Deg. 240.46 Criminal Nuisance 1st Deg. 240.50 Falsely Reporting an Incident 3rd Deg. 240.55 Falsely Reporting an Incident 2nd Deg. 240.60 Falsely Reporting Incident 1st Deg. 240.61 Placing a False Bomb or Hazardous Substance 2nd Deg. 240.62 Placing a False Bomb or Hazardous Substance 1st Deg. 240.63 Placing a False Bomb in a Sports Stadium or Arena, Mass Transportation Facility or Enclosed Shopping Mall 240.65 Unlawfully Preventing Public Access to Records	A Misd E Fel A Misd B Misd E Fel Vlt A Misd B Misd Vlt A Misd E Fel Vlt B Misd A Misd  Vlt B Misd E Fel A Misd E Fel D Fel  E Fel D Fel  D Fel Vlt

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#245 Offenses Against Public Sensibilities	245.00 Public Lewdness 245.01 Exposure of a Person 245.02 Promoting Exposure of a Person 245.05 Offensive Exhibition 245.11 Public Display of Off. Sexual Mat.	B Misd Vlt Vlt Vlt A Misd
#250 Offenses Against the Right to Privacy	250.05 Eavesdropping 250.10 Poss. Eavesdropping Devices 250.15 Failure to Report Wiretapping 250.20 Divulging Eavesdropping Warrant 250.25 Tampering w/Private Communications 250.30 Unlawfully Obtaining Communications Information 250.35 Failure to Report Criminal Communication 250.45 Unlawful Surveillance 2nd Deg. 250.50 Unlawful Surveillance 1st Deg.	E Fel A Misd B Misd A Misd B Misd B Misd B Misd E Fel D Fel
#255 Offenses Affecting the Marital Relationship	255.00 Unlawfully Solemnizing Marriage 255.05 Unlawfully Issuing Dissolution Decree 255.10 Unlawfully Procuring Marriage License 255.15 Bigamy 255.17 Adultery 255.25 Incest	A Misd A Misd A Misd E Fel B Misd E Fel
#260 Offenses Related to Children, Disabled Persons, and Vulnerable Elderly Persons	260.00 Abandonment of Child 260.05 Non Support of Child 2nd Deg. 260.06 Non-Support of a Child 1st Deg. 260.10 Endangering Welfare of Child 260.20 Unlawfully Dealing w/Child 1st Deg. 260.21 Unlawfully Dealing w/Child 2nd Deg. 260.25 Endangering Welfare of Incompetent or Physically Disabled Person 260.32 Endangering the Welfare of an Elderly Person 2nd Deg. 260.34 Endangering the Welfare of an Elderly Person 1st Deg.	E Fel A Misd E Fel A Misd A Misd B Misd  A Misd  E Fel  D Fel
#263 Sexual Performance by a Child	263.05 Use of Child in a Sexual Performance 263.10 Promoting Obscene Performance by Child 263.11 Possessing an Obscene Sexual Performance by a Child 263.15 Promoting Sexual Performance by Child 263.16 Possession of a Sexual Performance by Child	C Fel D Fel E Fel D Fel E Fel

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#265 Firearms and Other Dangerous Weapons	265.01 Criminal Possession Weapon 4th Deg. 265.02 Criminal Possession Weapon 3rd Deg. 265.03 Criminal Possession Weapon 2nd Deg. 265.04 Criminal Possession Weapon 1st Deg. 265.05 Unlawful Possession Weapon by Person under 16 years of age 265.06 Unlawful Possession Weapon on School Grounds 265.08 Criminal Use of a Firearm 2nd Deg. 265.09 Criminal Use of a Firearm 1st Deg. 265.10 Manufacture, Transport, Disposition, and Defacement of Weapons 265.11 Criminal Sale of Firearm 3rd Deg. 265.12 Criminal Sale of Firearm 2nd Deg. 265.13 Criminal Sale of Firearm 1st Deg. 265.14 Criminal Sale of Firearm w/aid of minor 265.16 Criminal Sale of Firearm to Minor 265.17 Criminal Purchase of a Weapon 265.25 Certain Wounds to be Reported 265.26 Burn Wounds to be Reported 265.35 Prohibited Use of Weapons	A Misd D Fel C Fel B Fel  Juv. Del.* Vlt C Fel B Fel  A Misd D Fel C Fel B Fel C Fel A Misd A Misd A Misd A Misd A Misd
#270 Other Offenses Related to Public Safety	270.00 Fireworks 270.05 Unlawfully Possessing Noxious Material 270.10 Creating a Hazard 270.15 Refusing to Yield a Party Line 270.20 Unlawful Wearing of a Body Vest	B Misd B Misd B Misd B Misd B Misd
#275 Offenses Related to Unauthorized Recording	275.05 Manufacture of Unauthorized Recording of Sound 2nd Deg. 275.10 Manufacture of Unauthorized Recordings of Sound 1st Deg. 275.15 Unauthorized Recording of a Performance 2nd Deg. 275.20 Unauthorized Recording of a Performance 1st Deg. 275.25 Advertisement or Sale of Unauthorized Recordings 2nd Deg. 275.30 Advertisement or Sale of Unauthorized Recordings 1st Deg. 275.32 Unauthorized Operation of a Recording Device in a movie theater 275.35 Failure to Disclose Origin of Recording 2nd Deg. 275.40 Failure to Disclose Origin of Recording 1st Deg.	A Misd  E Fel A Misd E Fel  A Misd  E Fel  Vlt A Misd E Fel

\*Juvenile Delinquent

SECTION # and TYPE OF OFFENSE	OFFENSES	CLASS
#460 Enterprise Corruption	460.20 Enterprise Corruption ( <i>Organized Crime Control Act</i> )	B Fel
#470 Money Laundering	470.05 Money Laundering 4th Deg. 470.10 Money Laundering 3rd Deg. 470.15 Money Laundering 2nd Deg. 470.20 Money Laundering 1st Deg. 470.21 Money Laundering in Support of Terrorism 4th Deg. 470.22 Money Laundering in Support of Terrorism 3rd Deg. 470.23 Money Laundering in Support of Terrorism 2nd Deg. 470.24 Money Laundering in Support of Terrorism 1st Deg.	E Fel D Fel C Fel B Fel  E Fel  D Fel  C Fel  B Fel
#485 Hate Crimes Act 2000	485.05 Hate crimes 485.10 Sentencing	See Act for Sentencing Guidelines
#490 Terrorism	490.10 Soliciting or Providing Support for an Act of Terrorism in the 2nd Deg. 490.15 Soliciting or Providing Support for an Act of Terrorism in the 1st Deg. 490.20 Making a Terroristic Threat 490.25 Crime of Terrorism 490.30 Hindering Prosecution of Terrorism 2nd Deg. 490.35 Hindering Prosecution of Terrorism 1st Deg. 490.37 Criminal Possession of a Chemical Weapon or Biological Weapon 3rd Deg. 490.40 Criminal Possession of a Chemical Weapon or Biological Weapon 2nd Deg. 490.45 Criminal Possession of a Chemical Weapon or Biological Weapon 1st Deg. 490.47 Criminal Use of a Chemical Weapon or Biological Weapon 3rd Deg. 490.50 Criminal Use of a Chemical Weapon or Biological Weapon 2nd Deg. 490.55 Criminal Use of a Chemical Weapon or Biological Weapon 1st Deg.	D Fel  C Fel D Fel Sentences C Fel B Fel  C Fel  B Fel  A-I Fel  B Fel  A-II Fel  A-I Fel



# Appendix II:

## From Arrest to Appeal: Misdemeanors and Violations

### Complaint:

A prosecutor or a police officer may file a misdemeanor complaint against the defendant. An arrest warrant may be issued if the defendant is not already in custody.

OR

### Arrest:

Defendant taken into custody. If a violation was committed, the defendant may be issued an appearance ticket to appear in court on a particular date and is released from custody.

### Booking:

If not issued an appearance ticket, the defendant is fingerprinted, photographed, and a rap sheet is prepared. In NYC, the Criminal Justice Agency interviews the defendant and prepares a bail recommendation.

### Arraignment:

Defendant appears before a judge and is informed of the formal charges against him. An attorney is assigned to the defendant, if he/she cannot afford to hire a lawyer. Bail may be set. In violation and misdemeanor cases, the defendant may plead guilty and be sentenced. Plea-bargaining commences.

### Information:

The prosecutor must convert the misdemeanor or violation complaint into an information, a sworn non-hearsay statement with a written accusation formally charging the defendant.

### Trial\*

#### Class A Misdemeanors:

Class A misdemeanor cases may be tried before a six person jury. The defense and the prosecution argue their cases and present evidence. The jury deliberates to determine the verdict, or the guilt or non-guilt of the defendant.

#### Class B Misdemeanors and Violations:

Class B misdemeanor cases and violations may be tried in a "bench trial." The defense and the prosecution argue their cases and present evidence to a judge who serves in place of jury, who determines the defendant's guilt or non-guilt.

### Sentencing:

If the defendant is found guilty and convicted, the judge will consider certain factors pertaining to the defendant and the case and then impose a sentence as prescribed by the law for the offense committed.

### Appeal:

A defendant has 30 days in which to file an appeal to modify or reverse the conviction.

\*Trials for misdemeanors are not very common. Misdemeanor cases are usually resolved through plea-bargaining.

# Appendix III:

## From Arrest to Appeal: Felonies

### **Complaint:**

A criminal case may begin with the filing of a felony complaint by a prosecutor, a police officer, or with an indictment from a grand jury. An arrest warrant may be issued if defendant is not already in custody.

OR

### **Arrest:**

Defendant is taken into custody and a felony complaint is filed with the Criminal Court if it had not been filed prior to arrest.

### **Booking:**

Defendant fingerprinted, photographed, and rap sheet prepared. In NYC, the Criminal Justice Agency interviews the defendant and prepares a bail recommendation.

### **Arraignment:**

Defendant appears before a judge and is informed of the formal charges against him. Bail may be set. The defendant is assigned an attorney if he/she cannot afford to hire one. The defendant decides whether or not he/she wishes to appear as a witness on his /her behalf before the grand jury.

### **Preliminary Hearing:**

A judge determines whether there is probable cause that a felony was committed and that the defendant, based upon the evidence, committed it.

### **Grand Jury Proceedings:**

A grand jury determines whether or not there is enough evidence to indict a defendant, using the same standard as in a preliminary hearing, and send the case to trial.

### **Pre-trial Proceedings:**

If the defendant is indicted, pre-trial proceedings commence, including discovery and suppression hearings. Plea bargaining takes place.

### **Trial:**

A jury of 12 is selected. The defense and the prosecution argue their cases and present evidence. The jury deliberates to determine the verdict, or the guilt or non-guilt of the defendant.

### **Sentencing:**

If the defendant is found guilty, the judge will consider certain factors pertaining to the defendant and the case and then impose a sentence as prescribed by the law for the offense committed.

### **Appeal:**

A defendant has 30 days in which to file for an appeal to modify or reverse the conviction.

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Hon. Jonathan Lippman and Hon. Ann Pfau, *Structure of the Courts*, Office of Court Administration

Hon. Judith S. Kaye, *Criminal Justice System Handbook*, New York State Unified Court System, <http://www.nycourts.gov/litigants/crimjusticesyshandbk.shtml>

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New York State Assembly, <http://assembly.state.ny.us>

New York State Bar Association (2001), *The Courts of New York: A Guide to Court Procedures, with a Glossary of Legal Terms*.

New York State Division of Criminal Justice Services, <http://criminaljustice.state.ny.us>

New York State Unified Court System, <http://www.nycourts.gov>

Shalley & Murray, *After Conviction in New York, What are the Options?*  
<http://www.queensdefense.com>

# Other Resources

American Judicature Society, <http://www.ajs.org>

Association of the Bar of the City of New York, <http://www.abcny.org>

Center for Court Innovation, <http://www.courtinnovation.org>

New York State Assembly, <http://assembly.state.ny.us>

New York State Bar Association, <http://www.nysba.org>

New York State Office of Court Administration, <http://www.courts.state.ny.us/home.htm>

New York State Unified Court System, <http://www.nycourts.gov>

Office of the Attorney General of New York State, <http://www.oag.state.ny.us>

US Department of Justice, <http://www.usdoj.gov>

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