

Chapter 1

Criminal Justice System For Adults in NYS

TYPES OF CRIMINAL CHARGES IN NEW YORK STATE

A **Violation** is an offense other than a traffic infraction for which a sentence to a term of imprisonment of up to 15 days may be imposed (New York State Penal Law, Article 10). It is the least serious type of proscribed activity and encompasses such offenses as harassment, trespass, and disorderly conduct. A person arrested for committing a violation may be taken into custody but will usually be issued an appearance ticket indicating the time and place that he must appear in court. A violation is **not** a crime.

A **Misdemeanor** is an offense other than traffic infraction of which a sentence in excess of 15 days but not greater than one year may be imposed (New York State Penal Law, Article 10). A misdemeanor is a crime. Petit larceny, criminal mischief in the fourth degree and assault in the third degree all fall into this category. Misdemeanors are grouped into one of three classes: Class A, Class B, or Unclassified. Upon conviction of a Class “A” misdemeanor, a court may sentence an individual to a maximum of one year in jail or three years probation. In addition, a fine of up to \$1,000 or twice the amount of the individual’s gain from the crime may be imposed. Offenders found guilty of Class “B” misdemeanors face maximum penalties of up to three months imprisonment or one year probation. In addition, a fine of up to five hundred dollars or double the amount of the defendant’s gain from the commission of the crime may be imposed. An unclassified misdemeanor is any offense not defined in the Penal law (other than a traffic violation) for which a sentence of imprisonment of greater than 15 days but not in excess of one year may be imposed.

A **Felony** is an offense for which a sentence to a term of imprisonment in excess of one year may be imposed (New York State Penal Law, Article 10). A felony is a crime. There are five categories and two subcategories of felonies (A-I, A-II, B, C, D, and E) ranging from the most to least serious in terms of severity of offense and the degree of potential punishment incurred. The penalty can vary from a term of probation to life imprisonment. In addition, the Penal Law authorizes the imposition of a fine not exceeding the higher of \$5,000 or double the amount of the defendant’s gain from commission of the crime.

In the Penal Law’s description of each crime, the “degrees” of an offense determine the seriousness of the offense. For example, burglary in the third degree is a Class D felony and burglary in the second degree, the more serious offense, is a Class C felony.

LAW ENFORCEMENT AGENCIES

The law enforcement function is organized at three levels: local, state and federal.

Local Law Enforcement: Local police agencies are organized at the municipal level (city, town and village) and county level (sheriff’s patrol and, in a few instances, county police agencies). There are approximately 500 local police agencies in New York State. As a general rule, police agencies are responsible for the enforcement of New York State’s Penal law, Traffic law and local ordinances within the geographic boundaries served by a particular police agency. *(See page 1–10 for a description of local detention facilities (lockups) that may be operated under police jurisdiction.)*

State Law Enforcement: The New York State Police is the principal statewide police organization having responsibility for the enforcement of the State’s penal and traffic laws. In those cases where the commission of crimes crosses jurisdictional boundaries, state and local police agencies may join their resources in the investigation of criminal matters.

Federal Law Enforcement: The enforcement of federal laws is a responsibility that is shared by a number of federal agencies; however, the enforcement of those laws that are commonly referred to as crimes (e.g., bank robbery, interstate transportation of stolen property) is the responsibility of the Federal Bureau of Investigation.

COURT JURISDICTION

Local Criminal Courts: In general, the term local criminal court means a district court, the New York City criminal court, a city court a town court or a village court. Some local criminal courts are also referred to as simply “justice courts.” Local crim-

inal courts have trial jurisdiction of all offenses other than felonies. If a person has been arrested on a felony charge, the case will ultimately be transferred to a superior court unless the charge is reduced to a misdemeanor or a violation.

Superior Courts: This term refers to supreme and county courts. Supreme courts handle mostly civil disputes, and a limited number of felony cases. Superior courts have exclusive trial jurisdiction of felonies, and may also try misdemeanor cases. If a defendant charged in an indictment with a felony or misdemeanor is also charged with a violation, that charge too may be tried in a superior court.

Federal Courts: These courts have jurisdiction over all cases involving conduct that congress either regulates (e.g., interstate commerce) or forbids (e.g., espionage).

PROSECUTION AND DEFENSE FUNCTIONS

Prosecution: The prosecution function is organized at three levels: county, state and federal. At the county level, the office of district attorney, an elected office, prosecutes all alleged violations of the penal law that take place within a county and consequently this office is responsible for prosecuting the vast majority of all criminal offenses. The Office of State Attorney General, also an elected post, represents the State's interests in such diverse areas as consumer fraud, environmental protection and organized crime. When the Attorney General successfully prosecutes in these and other areas, criminal sanctions are often imposed on the convicted offenders.

At the federal level, the U.S. Attorney General is appointed by the President and is responsible for prosecuting all alleged federal crimes. This task is carried out through the offices of United States Attorneys, located in each federal district throughout the nation.

Defense: By law, each county in the State of New York must have a plan to provide counsel to persons who are financially unable to retain counsel. The plan may provide for representation by a public defender, by a private legal aide society or bureau, by a panel consisting of private counsel (Section 18B of the County Law of NYS) or by a combination of any of the foregoing. Counsel must be provided to anyone charged with an offense, other than a traffic infraction, for which a sentence to a term of imprisonment is authorized upon conviction.

COMPETENCY TO PROCEED AND THE "INSANITY DEFENSE"

Once a person has been arraigned, questions may arise regarding the defendant's mental status. Such questions arise in one of two principal contexts: **the defendant's competency to proceed and the defendant's mental status at the time of the offense.**

Competency refers to the person's current mental state. The issue of competency can be raised at any time prior to the point that the defendant is sentenced.

With regard to competency, a defendant may be declared an "incapacitated person" and unfit to proceed on the grounds that the individual "as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense" ([Criminal Procedure Law, Section 730.10](#)). Being incapacitated is a condition that must be present at the time of the legal proceeding. These persons can be transferred to a psychiatric hospital for treatment and may be returned to stand trial once their competence has been restored.

In sharp contrast to competency, **the insanity defense focuses on the defendant's mental state at the time of the crime, a prior event.** It is an affirmative defense, meaning that the defendant has the burden of establishing the defense by a preponderance of evidence. According to Section 40.15 of the New York State Penal Law, a person is not criminally responsible for conduct if "at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either:

- | the nature and consequence of such conduct; or
- | that such conduct was wrong."

An individual must be competent to stand trial before evidence of insanity can be presented to the court.

THE CRIMINAL JUSTICE PROCESS FROM ARREST THROUGH SENTENCING

*(See diagram on page 1-14,
The New York State Criminal Justice System.)*

Arrest: The criminal justice process begins when a person is arrested. A police officer may apprehend and take into custody a person who commits a violation, misdemeanor or felony in the police officer's presence. New York law also allows a police officer to make an arrest for a felony not committed in his or her sight and without a warrant whenever the officer has "reasonable grounds" to believe that a felony has been committed and that the defendant is the person who has committed the crime. Generally the police are required to obtain an arrest warrant before arresting an individual in his or her home.

Booking: Booking is the administrative record of an arrest. It is a three step procedure which involves: (1) fingerprinting the accused; (2) submitting the accused's fingerprints to New York State's computerized criminal record index; and (3) obtaining a copy of the accused prior criminal record, if such a record exists.

Once an arrest has been made, the accused is brought by the arresting officer to a booking facility. Outside New York City, the booking facility may be a local police station in the case of cities, a town or village police station, a state police barracks, or a county sheriff's office, depending upon where the arrest occurred and which law enforcement agency made the arrest. In New York City, all prisoners are booked at a facility known as Central Booking.

In New York City, almost all arrested persons are interviewed at Central Booking by a staff member of the Criminal Justice Agency (CJA). The interviewers from CJA obtain information on the defendant's occupation, residence, family status and, whenever possible, verify such information through third party contacts: relatives, neighbors or employers. This information is made available to the judge, the prosecutor, and the defense attorney at the defendant's arraignment in criminal court. *(See section on Arraignment for a fuller discussion of the use of CJA reports at arraignment).* Agencies like CJA are located in other areas of the State, e.g., Buffalo and Rochester.

Options at Booking: On a charge of a misdemeanor or violation, a local police department, pursuant to guidelines, has the authority to release an accused either before or immediately after booking. The accused may be required to post pre-arraignment bail (also known as station house bail) to secure later court appearance. Such an accused is

given an Appearance Ticket (also known in New York City as a Desk Appearance Ticket or DAT). Unless released on an Appearance Ticket, the accused is brought to a local criminal court by the arresting officer at the completion of the booking process. As a safeguard against illegal detention in jail, the law requires that the arrested person be promptly arraigned before a judge. If the arrest is made on a weekend, the person may have to be detained at a police lockup for as long as 48 hours before a judge becomes available.

Complaint: The criminal complaint serves as the basis for the commencement of criminal proceedings and is prepared by the arresting officer or by the complainant (i.e., victim of the alleged crime) and filed with a local criminal court which accuses one or more persons with the commission of an offense.

In New York City, the arresting officer escorts the accused to the court building after the booking process is completed. There, the officer and/or the complaining witness (victim) speak to an Assistant District Attorney from the District Attorney's office. *(NOTE: in some counties of New York City, the District Attorney interviews the arresting police officers and complaining witnesses at the Central Booking facility.)* The Assistant District Attorney decides whether it is appropriate to send the case to court. If so, a formal complaint against the accused is filed in a local criminal court by the District Attorney's office on behalf of the People of the State of New York. This written document must be processed along with the defendant's criminal history (called a NYSID report or "rap sheet") before the defendant can be arraigned.

Outside New York City, the District Attorney is not an integral part of this process and the arresting officer and/or complaining witness (victim) may prepare and file the complaint directly with the local criminal court. The District Attorney receives a copy of the formal complaint, usually at arraignment.

Arraignment: The accused is brought before a judge in the local criminal court for arraignment. Counsel is appointed to represent the defendant at arraignment unless the defendant can afford a lawyer and the lawyer is present.

Ordinarily, the arraignment marks the first time in the criminal justice process in which the accused appears before a judge. At the arraignment proceeding the accused is:

- 1 informed of and given a copy of the formal charges against him or her;

- | informed of his or her right to counsel and, if necessary, assigned counsel for the purpose of arraignment;
- | informed of the right to a preliminary hearing, if charged with a felony; and
- | asked to enter a plea of guilty or not guilty, if charged with a misdemeanor or violation.

Although all of the above-listed events take place at the arraignment, you may find it difficult to follow the proceedings if you are sitting in the arraignment part of your local criminal court. There are several reasons why this occurs. Most defendants choose to waive a formal public reading of the charges against them. Often, if the courtroom is crowded and there is no microphone in use, the noise level makes it difficult to hear what is happening. Also, the large number of defendants being arraigned in a busy urban area often means that each case receives no more than two or three minutes of attention.

Options at Arraignment: If the case is not resolved by the defendant pleading guilty to the crime as charged or to a lower charge, (*See chapter on Plea Bargaining*), or by the charges being dismissed, the judge must decide whether the defendant will be released on his or her own recognizance (ROR) pending the next court date, or whether bail will be required. (*NOTE: The judge may also decide in some cases to remand the defendant, i.e., require the defendant to be held in custody without bail.*) Bail is an amount of money or other form of security which is sometimes required by the judge as a guarantee of the defendant's reappearance in court on a designated date. The amount and form of bail set by the judge depends on the circumstances of the case. Bail may be posted in cash or through the services of a bail bondsman who charges a fee (established by statute) and who, in most cases, requires collateral. Once bail has been posted, the defendant is released from custody.

In deciding whether to establish bail and the amount, the judge is required by the law to consider the factors such as the defendant's community ties, length of residence in the county, employment and educational history, past criminal record, record of past compliance with an order of the court, strength of the evidence against the defendant in the current case, and the sentence which could be imposed if the defendant is convicted.

In New York City and other localities which have pre-trial release programs, the judge has the benefit of information obtained (often verified) by such agencies about the defendant's reliability. These reports include information regarding

the defendant's community ties, length of residence in the county, employment and educational history.

Plea Bargaining: If you are observing arraignments in your local criminal court, you may see the defense lawyer and the prosecutor conferring with the judge either at the judge's bench or in the judge's chambers. Often the defense and/or the prosecutor are exploring the possibility of resolving the case by having the defendant plead guilty to a less serious charge. This process, known as plea-bargaining, has become the rule rather than the exception in many of the courts of New York State. Plea bargaining generally entails:

- | negotiation about the reduced charge to which the defendant would plead guilty; and/or
- | in misdemeanor cases, sentence bargaining (i.e. negotiating for a less severe sentence in a local court; and/or
- | in felony cases, negotiation about whether the District Attorney will make a specific sentence recommendation to the judge.

There are many reasons why plea-bargaining may be appropriate, from either the prosecution or the defense perspective. For example, plea-bargaining may be warranted as a means of shielding the victim of a crime from the trauma of public testimony or as an appropriate disposition for a first offender. The following statistics help to shed light on another reason why plea-bargaining occurs. In 1998, there were 62,944 felony indictments and Supreme Court informations in New York State, but only 3,354 trials (5%). In order to try all those indicted, the court system would require massive increases in funding to pay for more court facilities, judges, prosecutors, clerks, court officers, court reporters and jurors.

Before accepting a plea of guilty, the judge must determine that the defendant is voluntarily pleading guilty and knowingly giving up the right to a trial. The defendant should admit his or her guilt, and promises made to the defendant should appear on the record. If the plea is to a misdemeanor, sentence may either be imposed immediately or there may be an adjournment for a pre-sentence investigation report by the Probation Department. On a plea of guilty to a felony, there must be an adjournment for such a report prior to sentence.

As a general rule, a plea of guilty to a felony can be taken only in a superior court (*See page 1-6*), although there is a procedure involving the waiving of indictment and pleading guilty to a superior court information which can take place in a local criminal court. Guilty pleas to misdemeanors may be taken either in a superior court or a local criminal court.

Preliminary Hearing: The purpose of a preliminary hearing is to determine whether there is reasonable cause to believe that a felony was committed and that it was committed by the defendant. If such reasonable cause is found, the defendant may be confined in custody pending grand jury action.

In New York City, the usual practice is for prosecutors to proceed directly to the grand jury, avoiding the need for a preliminary hearing. Such hearings are more common outside the City of New York.

In New York State, a defendant held on bail or remanded on a felony charge must be released from custody within a specified time unless either afforded a preliminary hearing or a statement is filed by the prosecutor indicating that the grand jury has voted an indictment. The specified time in question is 120 hours from arraignment or 144 hours if there is an intervening Saturday, Sunday or a legal holiday. The right to a preliminary hearing may be waived.

A failure of the prosecutor to comply with these time limitations in the absence of good cause for such failure will result in the defendant's release from custody. These time limitations are contained in Section 180.80 of the Criminal Procedure Law. Hence, at the arraignment, reference will frequently be made to the "one eighty-eighty day." That is, of course, a reference to the day by which the prosecutor must either have obtained an indictment or be ready to proceed with a preliminary hearing.

Holding a Defendant on a Misdemeanor Charge: The accusatory instrument charging a defendant in a local criminal court may be either a **complaint** or an **information**. Both are, in effect, affidavits. The difference is that an information is sworn to by a person who has first-hand knowledge of the facts, while a complaint, in whole or in part, is based upon facts learned from another.

In New York State, if a person is held in custody on a misdemeanor complaint, the prosecutor has five days from the arraignment (not including Sunday) to convert the complaint to an information (by obtaining affidavits from those with first-hand knowledge). If this time limitation is not met, the defendant must be released from custody. As this time limitation is contained in Section 170.70 of the Criminal Procedure law, such day of release will frequently be referred to as a defendant's "one seventy-seventy day."

Motions and Discovery Proceedings: A motion is a request by either the defense or the prosecutor to have the

court take some action in a particular defendant's case. Some motions are procedural, such as a motion to adjourn the case or to delay sentencing. With few exceptions, the defense has 45 days to make its substantive motions. New York practice calls for an "omnibus" written motion, which will include requests to discover information about the People's case and, possibly, to suppress certain evidence. When evidence is illegally obtained, for example, such evidence is not admissible at trial. The defense lawyer will seek to exclude evidence, and a hearing to decide the motion may be held before trial.

Examples of motions you may hear in court include:

- | **A motion to suppress physical evidence** on the grounds that it was seized during an illegal search by the police (a Mapp or Dunaway hearing);
- | **A motion to suppress a statement** made by the defendant on the grounds that it was illegally obtained (a Huntley hearing). The lawyer may argue that the defendant acted involuntarily due to pressure, tricks, threats, or physical abuse, or that the defendant was not properly advised of his or her right to remain silent and the right to counsel (called Miranda warnings) or that the statement was the product of an illegal arrest; and
- | **A motion to suppress proof of an identification of the defendant** on the grounds that the lineup or showup was held in an illegal or suggestive manner or where it is alleged that the identification was a product of an illegal arrest (a Wade hearing).

Grand Jury: The grand jury is a panel of 23 persons (a quorum consists of 16 persons) chosen on a county-wide basis. The grand jury serves two functions, one judicial and the other investigative. In its judicial capacity, the grand jury hears evidence presented by the District Attorney and determines whether sufficient evidence exists to charge a particular defendant with a particular felony.

Grand jury proceedings are closed to the public and the secrecy of such proceedings is strictly maintained. Ordinarily while the grand jury is in session, the only people present are the Assistant District Attorney, the jurors themselves, court personnel and witnesses who may be called to give evidence. Any person who appears as a witness and has signed a waiver of immunity has a right to an attorney. Although the attorney may act as an advisor to his or her client, the attorney may not otherwise take part in the proceedings.

After hearing evidence, the grand jury may issue (return) a “**true bill**” if at least twelve jurors decide the case is strong enough to indict the defendant. The foreman of the grand jury then files the indictment with the superior court.

If the grand jury decides that there is not sufficient evidence to justify a felony charge, but there is enough to believe a misdemeanor was committed, it can direct the District Attorney to file a prosecutor’s information with the local criminal court.

If the Grand jury decides that insufficient evidence to justify any charge was presented, it can vote a “**no bill**” and dismiss the charge.

In its other capacity, the grand jury has investigative powers which allow it to investigate alleged misconduct or neglect of office by a public servant. After hearing evidence, the grand jury may file a report with the court which impaneled it with a finding as to whether such misconduct or neglect has occurred. If accepted by the court, the grand jury’s report may serve as the basis for removal or disciplinary action against the named official.

Superior Court: The first procedural step following indictment by the grand jury or the defendant’s consent to the filing of a superior court information, is arraignment in the court that tries felonies.

Superior courts now operate on the Individual Assignment System (IAS). In this system, one judge handles a particular case from inception to conclusion, with assignment of the case to a particular judge accomplished in a neutral manner. Depending upon the county, such assignment may precede or follow arraignment on the indictment in the Superior Court.

Following assignment, the parties and judge may enter into plea bargaining. If such bargaining fails to result in an agreement, motions will be made and decided and a trial date will be fixed.

Trials: A trial is the process by which it is determined whether the charges made against the defendant are established by proof of guilt beyond a reasonable doubt. A defendant has a waivable right to jury trial in all felony cases and in those misdemeanor cases in which a sentence of more than six months may be imposed. A trial before a judge without a jury is known as a bench trial.

A jury in a misdemeanor case consists of six persons with one or two alternates. A jury in a felony case consists of twelve persons with up to four alternate jurors. The names of prospective jurors are chosen from lists of registered voters, licensed drivers and recipients of state income tax forms (County Jury Commissioners may supplement these lists with names from other sources).

In general, **the order of a jury trial** is as follows:

1. The jury is selected and sworn after both the prosecutor and the defense lawyer have had an opportunity to question the prospective jurors regarding their qualifications to serve as jurors, a process which is called “voir dire.” Each side is allowed to challenge the qualifications of a prospective jury member.
2. The judge delivers preliminary instructions to the jury.
3. The prosecutor delivers an opening statement to the jury.
4. The defendant’s lawyer may deliver an opening statement to the jury.
5. The prosecutor offers evidence in support of the charges against the defendant.
6. The defendant’s lawyer may offer evidence in defense.
7. The prosecutor may offer evidence in rebuttal to the defense evidence, and the defense may offer evidence in rebuttal to the prosecutor’s rebuttal evidence.
8. At the conclusion of the evidence, the defense may deliver a summation to the jury.
9. The prosecutor may then deliver a summation to the jury.
10. The judge delivers a charge (legal instructions) to the jury.
11. The jury retires to consider the evidence and, if possible, render a verdict. In criminal cases, the jury must be unanimous in order to reach a verdict of guilty to a charge.

Sentencing: The defendant's final appearance in the trial court will be for the purpose of sentencing. All felony convictions require a presentencing report prepared by the Department of Probation. **The judge may, however, order a presentence investigation and report at any time during the trial process for misdemeanors as well as felonies.** The reports provide the judge with information on the defendant's background, possible mitigating circumstances involved in the crime, the likelihood of successful probation and suggested programs of rehabilitation. The judge is under no legal obligation to follow the Probation Department's recommendation.

The Penal Law of the State of New York allows **ten possible dispositions for a convicted defendant:**

1. An Unconditional Discharge
2. A Conditional Discharge
3. A Fine
4. A Conditional Discharge plus a Fine
5. Probation
6. A Fine plus Probation
7. Imprisonment
8. Imprisonment plus a Fine
9. Imprisonment (six months or less for a felony; 60 days or less for a misdemeanor), plus Probation
10. Imprisonment (for 60 days or less) plus Conditional Discharge.

The law now provides that the court may direct restitution to the victim in addition to any other sentence imposed upon the defendant.

Under New York law, there are provisions for increased penalties for persons convicted of a second or third felony offense. A person convicted of a felony after a previous felony conviction within the preceding ten years (excluding times of incarceration) is known as a **predicate felon or a predicate violation felon** (if both the current and prior felonies are designated as violent felonies by the penal law). A predicate felon or a predicate violent felon must be sentenced to state prison with a sentence of which the minimum must be one-half of the maximum. A non-predicate felon sentenced to state prison will usually receive a sentence of which the minimum is one-third of the maximum. The minimum sentence for a predicate violent felon is greater than the minimum for a predicate felon which is in turn, greater than the minimum for a non-predicate felon.

Persons with two or more prior felony convictions may be sentenced as **persistent felony offenders** (discre-

tionary) or **persistent violent felony offenders** (mandatory). Such sentences carry maximums of life imprisonment as well as substantial minimum sentences.

Probation is judicial disposition in which the convicted offender's freedom in the community is continued subject to the supervision of a probation officer and to conditions imposed by the court (e.g., maintain employment, make restitution, or stay away from certain people or places). If a probationer fails to honor the mandated provisions, the probation officer can file a violation of probation and recommend that probation be revoked. The probationer will then be ordered to appear in court for a hearing to determine whether he violated a condition of his probation. If it is determined that he has, the court may impose a sentence of incarceration.

New York State law requires county governments and the City of New York to operate probation departments and to provide various state-mandated services that are related to the sentencing function. Standards promulgated by the state require specific education and training for probation officers and regulate the conduct of pre-sentence investigations, the content of presentence reports, and the manner in which probation supervision is provided.

In most New York State counties, intensive supervision probation is also available for felony convicted offenders. The reduced probation caseloads and greater frequency of contact distinguishes this form of probation from regular probation. In selected cases, intensive supervision probation may be appropriate for persons with mental illness who may otherwise face incarcerative sentences.

Parole: Parole is a state operated process directed by the Parole Board by which felony offenders in state prisons return to the community under the supervision of a parole officer. Felony offenders may return to the community in the following ways:

1. Inmates convicted of non-violent felonies may be considered for an early release to the community to serve the remaining portion of their sentence after serving one-third of their sentence. Inmates make an initial appearance before the Board of Parole two months before their eligibility date. The Board has the power and duty to determine which inmates are released and to establish the time of release and the conditions of post/release supervision. Inmates denied release will reappear before the Board for consideration at a later date.
1. Inmates denied release by the Board may earn time allowances (good time) of up to one-third of the maxi-

imum term of imprisonment for good institutional behavior. When the good time earned is equal to the unserved portion of the maximum term, the inmate may be released on **conditional release**. Good time allowances do not affect the minimum term of imprisonment but does provide for possible release after serving two-thirds of the sentence.

- l Inmates who have been denied release from the Board and have not earned good time, will be released from state prison after serving the maximum term.

Inmates who are granted release by the Parole Board or conditionally released must serve the remainder of their sentence under the supervision of a parole officer. Parole Officers are unique in that they are both peace officers and caseworkers who provide supervision and support services to parolees. Parole Officers are the bridge between the newly released individual and the community. They coordinate the delivery of available services, help to motivate and guide parolees and report on their progress. Parole Officers can revoke parole for violations of conditions or release and return the parolee to custody (usually in county jail) pending preliminary and final hearings before a Parole Board. Research indicates that in New York State the possibility of being granted parole was reduced if an inmate had an episode of inpatient psychiatric care while incarcerated. (Townsend, 1989).

Jenna's Law: Eliminates discretionary parole for first time violent felony offenders and requires inmates to serve a period of post release supervision following release from a determinate sentence. (Penal Law §60.12, 70.00, 70.08, 70.45 and CPL §380.50, effective with respect to crimes committed on or after 9/1/98.)

There are four significant features of the law:

1. **Restructuring of sentences for persons convicted of violent felony for the first time:** Indeterminate sentences are eliminated; parole in current form is abolished; judges are forced to impose a fixed term of years as sentence; individuals are required to serve 6/7 of their term.
2. **Sentencing of domestic violence victims:** Court is permitted to be more lenient with domestic violence victims who are convicted of attacking their abusers; court can impose indeterminate sentence in many cases.
3. **Post release supervision:** After serving determinate sentence, inmate must serve a period of "post release supervision"; post release supervision must

be completed before determinate sentence can be fulfilled; defendants convicted of a violent felony who have been convicted of a past violent felony are subject to a five year period of post-release supervision.

4. **Notification of crime victims:** In cases of violent felony or felony under Article 125 of Penal Law, victim can demand that he or she be notified of the escape, absconding, discharge, parole, conditional release or release to post-release supervision of offender. (Source: Gould's "Criminal Law and Procedure Reporter," Vol 9, No. 1, Fall, 1998).

Youthful Offender: A judge may find that it is in the interest of justice for a youth between the ages of 14 and 19 to receive what is known as Youthful Offender treatment. To be eligible, defendants must **not:**

- l Be pleading guilty to or be convicted of a crime punishable by death or life imprisonment;
- l Be pleading guilty to or be convicted of a violent felony where they were armed with a deadly weapon or display what appeared to be a gun;
- l Have previously been convicted of a felony;
- l Have previously received a Youthful Offender felony adjudication; or
- l Have a previous juvenile delinquency finding against them based on a Family Court Act "designated felony."

The benefits of Youthful Offender status are:

- l A record as a Youthful Offender rather than as a person convicted of the actual crime;
- l The defendant may be sent to a special state institution rather than prison;
- l Adjudication as a Youthful Offender does not count as a predicate felony conviction for the predicate felony laws;
- l The maximum sentence which can be imposed is reduced.

If the conviction is for a misdemeanor and the defendant, who is between the ages of 14 and 19, has no previous convictions or has not been previously found to be a Youthful Offender, the court must find the defendant to be a Youthful Offender.

Juvenile Offender: In response to public concern about a perceived increase in crimes committed by youths, the New York State Legislature provided, as part of the violent felony offender legislation passed in 1978, that youths between the ages of 13 and 15 could be held criminally

responsible for certain serious crimes. Under this legislation, “**Juvenile Offenders**” are prosecuted in the criminal courts. Juvenile Offenders are defined as:

- | 13, 14 and 15 year olds who commit acts constituting murder in the second degree; or
- | 14 and 15 year olds who commit acts constituting kidnapping in the first degree, arson in the first or second degree, assault in the first degree, manslaughter in the first degree, rape in the first degree, sodomy in the first degree, aggravated sexual abuse, burglary in the first or second degree, robbery in the first or second degree, or attempt to commit murder in the second degree or kidnapping in the first degree.

The law provides that under certain circumstances juvenile offender cases can be transferred to the Family Court instead for processing as juvenile delinquency cases. The District Attorney recommending removal of the action to the Family Court after indictment must submit a written memorandum setting forth the reasons and the judge must accept these reasons. In practice, since the law was passed in 1978, 69% of all juvenile offender cases commenced in New York City were either removed to Family Court, dismissed, or not prosecuted by the District Attorney’s office. New York City has had almost 87% of the juvenile offender arrests in New York State.

ALTERNATIVES TO INCARCERATION PROGRAM

In New York State, there are a broad range of existing alternatives to incarceration programs providing supervision and a range of services. These programs exist at different points in the criminal justice process and vary from community to community. However, Alternatives to Incarceration Programs are frequently operated by private, not-for-profit agencies or are located within an existing criminal justice agency (e.g., probation departments that operate pretrial release programs, sheriff’s departments that operate community service sentencing programs).

Described below are the major categories of alternatives to incarceration programs available in New York State. While several jurisdictions possess all of the models described, even the sparsely populated counties of New York State often possess one or more program models.

Pretrial Release Services: Pretrial release programs provide the courts with a viable alternative to money bail by identifying those defendants who are likely to appear in

court as required. These programs gather and evaluate information about each defendant (e.g., a defendant’s community ties) and provide this information to the courts, thereby enabling the courts to release defendants who would otherwise be detained. Through the assistance provided to the courts by these programs, defendants may be released on recognizance (ROR) or released with court-ordered conditions. This latter form of release holds promise for defendants with a history of mental illness or other individuals with treatment needs. Commonly regular visits to a therapist or mental health clinic is made a condition of pretrial release; this requirement will continue until case disposition.

Defender-Based Advocacy Programs: Defender-based advocacy programs work closely with defense attorneys in intervening on behalf of criminal defendants. By evaluating defendant’s personal circumstances (e.g., need for treatment), preparing reports and memoranda and, in some cases, arranging for a defendant’s participation in treatment programs, defender-based advocacy programs facilitate pretrial release, plea bargaining and non-incarcerative dispositions, and prepare alternative sentencing proposals. These programs may be known by other titles such as Public Defender’s Program, Client-Specific Planning, and may be based in Public Defender’s Offices or private law offices.

Day Reporting Centers: These programs provide a structured, supervised and service enhanced approach to maintaining criminal justice clients in the community. Individual participation ranges from a brief, daily visit to day-long attendance and the level of service provided varies according to the needs of each client. Day reporting programs provide a regimen that falls between jail and intensive probation supervision. Although this intermediate sanction should not be confused with traditional day treatment programs this program model’s capacity for the coordination of service delivery suits it to the forensic mental health client.

Community Service Sentencing: Community service sentencing programs provide an alternative form of punishment for offenders who would otherwise be sanctioned through the use of imprisonment or some other form of punishment. Offenders are placed in not-for-profit or public agencies where they work for a specified number of court ordered hours or days. Careful selection of offenders, in combination with appropriate treatment and community support systems, make this intermediate sanction suitable for some offenders with mental illness.

Local Conditional Release Commission: As a result of a statute enacted in 1989, all New York State counties now possess a Local Condition Release Commission (LCRC) that has responsibility for reviewing applications for local conditional release made by offenders sentenced to jail. To be eligible for local conditional release, an offender must be sentenced to ninety days or more and must serve at least sixty days of that sentence. In reviewing applications for local conditional release, the LCRC may consider proposals for treatment (e.g., outpatient treatment, or participation in a community-based mental health residence) in lieu of incarceration. Offenders who are released under the terms of this statute are subject to a mandatory one year term of probation and any treatment conditions are made a special condition of that probation.

Other Alternative Programs: Across New York State, a variety of other programs serve criminal justice clients who, in the absence of these programs would otherwise likely be confined in jail or prison. Some of these programs are formally established for this purpose and serve exclusively a clientele who are incarcerated bound. TASC (Treatment Alternative to Street Crime) programs provide alternatives to incarceration, and may serve persons with mental illness. Other examples of such programs include domicile restriction or house arrest programs (some of which use electronic surveillance equipment to ensure compliance) and special offender treatment programs (e.g., sex offender treatment, residential and transitional programs and programs for women and youthful offenders). Other programs serve a broad range of clientele, including those who are involved with the criminal justice system.

POLICE LOCKUPS AND COURT PENS

Police Lockups are local detention facilities used to hold individuals 16 years of age or older who have been arrested but not yet arraigned. Detainees are usually brought to a lockup to be booked and interrogated immediately following arrest, or these facilities may be used to hold inmates from jail who are awaiting action by a court after their initial arraignment. Lockups are usually administered by a local police chief who has been appointed by the mayor or other local governmental body. State law mandates that all persons taken into custody be arraigned “forthwith.” Consequently detainees are seldom held in a lockup for more than a day, or if a judge is unavailable, a weekend.

While an individual is detained at a lockup, information regarding pending cases can be developed and decisions regarding disposition can be made. Due to security considerations and the brief length of time that detainees stay at lockups, no programming or recreational opportunities of any kind are offered.

Most lockups do not have kitchen or health facilities. Detainees are usually served meals that are purchased from nearby restaurants and eat meals in their cells. Outside providers are relied on for health care services.

There are about 200 police lockups in New York State. Many have only three or four cells with larger metropolitan facilities having the capacity to hold 20 detainees or more. Smaller police jurisdictions may not maintain lockups at all.

Few departments designate a distinct group of officers for permanent assignment to the lockup. Rather, officers tend to rotate through this assignment or dispatchers have responsibility for supervising the cells.

COUNTY AND MUNICIPAL JAILS

A **jail** is a locally administered detention/correctional institution that is used to confine individuals at least 16 years of age. Younger persons who are taken into custody must be held at separate facilities operated exclusively for juveniles by the New York State Office of Child and Family Services. Inmates are admitted directly from the local courts following arraignment. Legislation enacted in 1990 (Chapter 681 or the Laws of 1990) provides that when bench warrants or arrest warrants have been executed and no appropriate court is available, a police officer may bring the arrestee to a county correctional facility. The arrestee can be detained until the commencement of the court session occurring on the next day.

Jails are used to detain people in a variety of legal situations:

- | Persons who have been arrested, arraigned and are awaiting trial in either criminal or family court. Those who fall into this category either do not have the resources needed to post bail set by the judge, are unable to secure their release on personal recognizance, have not yet had bail set, or have had jail denied by the court.
- | Persons who have been convicted but not yet sentenced.
- | Persons who have been convicted and are serving a sentence of confinement of up to one year.
- | Persons who have been convicted and sentenced to a term of confinement in excess of one year and are awaiting transfer to a state prison ("state ready").
- | Material witnesses who are jailed to guarantee their appearance in court and/or their personal safety prior to testifying.
- | Persons who are detained for parole violations.
- | Persons who are in custody of a Federal law enforcement agency and are being temporarily housed in a county jail.

The task of managing jails is a responsibility of local government. In New York, most of these facilities are administered by county sheriff's, for whom the operation of the jail is but one part of broader court related and law enforcement duties. Some jurisdictions, such as New York City and Westchester County, have established a separate Department of Correction to manage their jails.

It is important to note that each jurisdiction may have more than one type of jail, the types being distinguished by the kind of inmate in custody. Some jails are used solely to detain people awaiting trial. **County penitentiaries** hold only inmates who are serving a court imposed sentence. Separate facilities for detainees and sentenced prisoners are seldom found outside of large metropolitan areas because of cost considerations and the small number of inmates who require confinement. By far the most common type of jail is the combined detained-sentenced facility where all county or city inmates are taken.

All county jails must have a jail physician, and many facilities also employ nurses and part-time medical personnel. By far, the largest category of employees in any jail is that of the correctional officer. Officers supervise inmates, control entry to and exit from the facility, and perform other

duties pertaining to overall institutional security and operations. They are organized by a chain of command (i.e., officer, sergeant, lieutenant, captain) and in the larger jails are sometimes placed under the command of a deputy or assistant warden. The New York State Commission of Correction Minimum Standards and Regulations for Management of County Jails and Penitentiaries mandate that officers complete a basic training program prior to beginning their duties or within one year after their appointment. The Commission of Correction mandates a basic curriculum for new recruits. The curriculum is presented by certified instructors in regional academies.

NYS DEPARTMENT OF CORRECTIONAL SERVICES (NYSDOC)

The NYS Department of Correctional Services operates over 70 minimum, medium, and maximum security prisons as well as the Willard Drug Treatment Campus. The largest facilities accommodate more than 2900 inmates. These facilities are used to confine individuals 16 years and older. Prisons have more comprehensive programming, recreational opportunities and medical/mental health services than county jails. In New York State mental health services for state incarcerated prisoners with mental illness are provided via the NYS Office of Mental Health. OMH operates a 205 bed maximum security, JCAHO-accredited psychiatric hospital, Central New York Psychiatric Center (CNYPC) at Marcy, NY, which admits sentenced persons diagnosed with mental illness from DOCS facilities and local correctional facilities. OMH also operates emergency and outpatient on-site programs in the State prison facilities. These programs include 23 outpatient clinics with twelve full Satellite Units providing a total of 154 crisis beds and 534 Intermediate Care Program (ICP) beds. The ICPs are similar to community residences and provide on-site psychiatric rehabilitation services in prison housing units separated from the general population. These ICP programs serve inmates whose functional disabilities prevent them from living in prison general population housing areas.

County jails should not be confused with state correctional facilities (prisons), which are run by the New York State Department of Correctional Services. Prisons house only convicted felons who have been sentenced to terms ranging from one year to life. Inmates sentenced to prison tend to be more violent and have longer criminal records than those held in county jails.

NEW YORK STATE COMMISSION OF CORRECTION (NYSCOC)

Article 17, Section 5 of the New York State Constitution provides for the establishment of a State Commission of Correction to visit and inspect all institutions used to detain sane adults charged with or convicted of a crime or civil offense. Its jurisdiction encompasses all county jails, county penitentiaries, county lockups, city jails, police lockups, court detention pens, hospital prison wards, secure facilities of the Office of Children and Family Services and all institutions that comprise the state correctional system. Three Commissioners are appointed by the Governor with the consent of the Senate.

The basic functions of the Commission are defined in the State Correction Law. These functions include:

- 1 Promulgating minimum standards (codes) for the care, custody and safety of all persons confined in state and local correctional institutions;
- 1 Investigating reportable incidents (deaths, assaults, escapes, etc.) and the management of all institutions within its purview;
- 1 Approving or rejecting plans for construction or renovation;
- 1 Advising the officials of such institutions in the performance of their lawful duties.

Any correctional facility employee who refuses to admit a member or officer of the Commission for the purpose of visitation and inspection or who does not furnish information required by the Commission is subject to civil or criminal sanctions. The Commission has the authority to subpoena witnesses and documents. It can also close any correctional facility subject to inspection if it is unsafe, unsanitary or unable to provide for the classification of prisoners as required by law or which has not complied with the rules and regulations promulgated by the Commission.

Medical and mental health practitioners are most likely to interact with staff members representing the Commission of Correction's Medical Review Board (MRB). This Board is chaired by one of the Commissioners. New York State Correction Law mandates that the Board have six members including an attorney, a board certified forensic psychiatrist, and a board certified forensic pathologist. Each member is appointed to a five year term of office by the Governor, with the advice and consent of the Senate.

The Medical Review Board is mandated to investigate the cause and circumstances surrounding the death of any

inmate of a correctional facility and, when appropriate, to make recommendations to the facility administrator and health services providers to prevent the recurrence of such deaths.

When there is a questionable inmate death (including but not limited to homicide or suicide), a Correction Facility Specialist from the Commission conducts a field investigation involving the facility in question. The purpose of this inquiry is twofold: first, to answer case specific questions such as the adequacy of supervision or treatment and the timeliness of emergency response efforts; and second, to identify potential problems of a larger systemic nature such as the lack of specific facility or health service procedures for identifying and managing high risk inmates. The police and District Attorney's Office also investigate inmate deaths, but their interest in such cases is generally limited to the single issue of whether a crime was committed. Commission staff are frequently in contact with these agencies in the course of investigations.

Commission staff investigating a case will usually begin the on-site segment of the investigation by consulting the Medical Examiner or pathologist who conducted the autopsy and toxicological examinations. In the case of a suicide, the investigator will then go to the jail or lockup where the incident occurred to review pertinent facility and medical records (supervisory logs, officer statements, clinical records, etc.) and to interview officers, health services providers and inmates who knew or had contact with the deceased. The location where the inmate died will also be inspected. Finally, the investigator will interview any "significant others" (e.g., the inmates' friends and relatives) who might have additional insights into the death. A subpoena will be automatically issued for all medical, mental health and hospital records.

The report that the investigator subsequently writes about the death will be reviewed at two levels. The report and all supporting documents such as photographs and health records are first submitted to the Medical Review Board. The Medical Review Board reviews the case material and will ask the investigator to answer any clarifying questions that the Board members may have. The Board then prepares a summary report. The report presents major findings of fact that describe what happened along with specific recommendations, where appropriate, to help prevent recurrence.

This report is submitted to the Commission. The Commission has the final authority for issuing the official case report. The Chief Administrator of the facility where

the death occurred then has a specific period of time to respond to the Commission's draft report. The report then becomes a public document. All other case materials and evidence remain confidential.

The Board is also responsible for investigating the delivery of medical and mental health care to inmates and for recommending such changes as it deems necessary to improve the quality and availability of such care. The Commission promulgates "Minimum Standards and Regulations for the Management of County Jails and Penitentiaries" which include the requirement that the jail "make maximum use of community medical and mental health facilities, services and personnel" (*Chapter I, Part 7010.2 (i)*).

Minimum Standards also require jails to complete "initial screening and risk assessment" for each inmate (*Chapter I, Part 7013.3 (2) and 7013.7 (b)*), including "history of mental illness or treatment" and "potential for self-injury or suicide."

THE NEW YORK CITY BOARD OF CORRECTIONS

New York Charter, Section 626, empowers the NYC Board of Corrections to monitor and evaluate the performance of

the NYC Department of Corrections. The primary objective of the nine-member Board of Corrections is to insure that all individuals within the City's Correctional Institutions, both officers and prisoners, are provided with an environment which is safe, secure, healthy, humane and responsive to the needs of the individuals. Specifically, the Board of Corrections:

- | establishes and enforces compliance
- | insures that timely responses are provided to complaints, grievances or requests for assistance from prisoners
- | makes recommendations to improve the delivery of medical, mental health, social service, as well as food service throughout DOC.

The Board has a paid staff of compliance workers who regularly monitor housing and inmate service areas for compliance with minimum standards and who investigate reportable incidents.

The New York State Criminal Justice System

