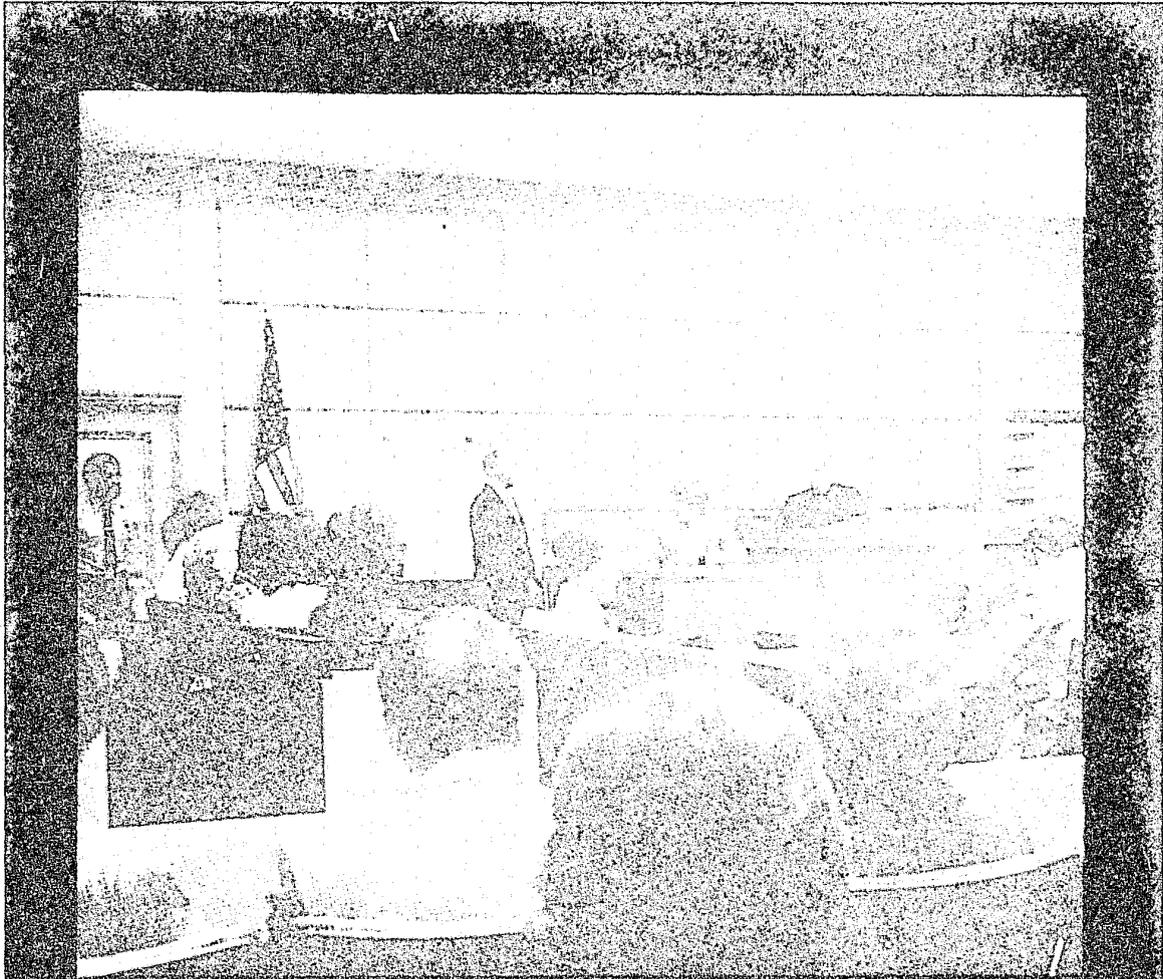


# COURT MONITOR'S HANDBOOK



It . . . is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

—Lord Hewart (1921)

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## MONITOR'S HANDBOOK

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## COURT MONITORING PROJECT

### I – INTRODUCTION

#### THE PROBLEM

The advice given years ago by Charles Evans Hughes, Chief Justice of the United States Supreme Court (1930-41), still seems appropriate: "The Supreme Court of the United States and the courts of appeal will take care of themselves. Look after the courts of the poor, who stand most in need of justice. The security of the republic will be found in the treatment of the poor and ignorant; in indifference to their misery and helplessness lies disaster."

The message that all is not right with the administration of these courts has come through clearly enough. However, people are confused about what is wrong and what might be done about it.

The need for significant change in this area is well-documented. In mid-1970, the New York State legislature created a Temporary Commission on the New York State Court System, chaired by State Senator D. Clinton Dominick. After nearly two years of extensive work, it produced a report in January, 1973 which recommended sweeping reforms. In the words of the report:

"Although the Commission found much that is right with the state court system, it found too much that is wrong. Administrative responsibility is fragmented. Criminal and civil case backlogs are too large. The need to resort to plea bargaining in criminal cases is too prevalent. Judges and other court personnel are allocated unevenly. Coordination with court-related agencies is insufficient. Long-range planning and the collection and analysis of data are deficient." Dominick Commission Report, p. 1.

Some citizen groups criticize antiquated procedures. Judges cite an increasing volume of cases, inadequate courtroom space, lack of personnel, and excessive demands for continuances. Criminologists point accusing fingers at laws attempting to regulate morality for jamming the courts with "victimless" crimes.

To what extent these factors affect the quality of justice administered in the state's criminal courts is uncertain. The Fund for Modern Courts, Inc. believes that this monitoring project provides one way for interested citizens to assess the various charges being leveled at their courts and to work with the judiciary and the public toward improving the system.

## THE PROJECT

The Fund for Modern Courts, Inc. is sponsoring a program of court monitoring that is funded by the N.Y. State Division of Criminal Justice Services. This project is designed as the first half of a three-year program to utilize trained volunteers to monitor and report on the trial process within selected courts in New York State.

Demonstration projects are being initiated in four areas – New York City, Rochester (upstate urban), Glens Falls (upstate rural), and Poughkeepsie (mixed).

Our goals are: 1) Collecting and evaluating data on factors affecting the quality of justice and 2) developing a universal model for citizens to use in other communities in monitoring their courts.

The anticipated results are:

Specific recommendations for upgrading the courts. They may include suggestions for 1) improvement of physical facilities, 2) addition of personnel, 3) changes in the law or procedures.

Better public understanding of problems in administering justice and support for improving the system.

Establishment of a continuing dialogue between citizens and their judiciary.

The criminal courts were chosen for the first phase of the project because they are "the people's courts," the place where most offenders meet the law for the first time. As such, they should be models which exemplify justice under law.

## THE FUND FOR MODERN COURTS, INC.

The Fund for Modern Courts, Inc. is an organization of people who are concerned about the system of administering justice in New York State. The Fund does research on practices and institutions of our courts and related services and seeks to educate the public about the nature and problems of our court system.

Through its individual members, professional staff and Board of Directors, the Fund coordinates the activities of regional chapters in key cities throughout the State, among them Albany, Buffalo, Syracuse, Rochester and Rome-Utica. In addition, it is the focal point of a coalition of organizations which support the Fund and share its vital concern for court reform in New York State.

## II – CRIMES

In New York State there are no longer any common law crimes. All crimes are statutory; i.e. created and defined by laws made by the legislative branch of the State and Federal government.

Acts that are contrary to these laws may be classified as violations, misdemeanors or felonies. A violation is a relatively minor offense which is punishable by up to fifteen (15) days in jail and/or a fine of up to \$250. Misdemeanors and felonies, however, are considered crimes. The punishment for a Class A misdemeanor may be a prison sentence of up to one year or probation of up to three years or a fine of up to \$1,000. For a felony the penalty may be imprisonment for more than one year or a sentence of up to five (5) years of probation supervision.

On the following pages we have listed the offenses and crimes found in the Penal Law. By using this list, you will be able to translate the numbers of the charge you hear in court to the actual crime being charged.

In order to better understand the information on our list, please read the following keys

Abbreviation	Category	Class	Possible Sentence
Fel	Felony	A B C D E	Life Imprisonment up to 25 years up to 15 years up to 7 years up to 4 years
Misd	Misdemeanor	A B	up to 1 year up to 3 months
Viol	Violation		up to 15 days
<b>100</b>		<b>120</b>	
100.00 Criminal Solicitation	(Viol)	120.00 Assault 3rd Deg.	(A Misd)
100.05 Criminal Solicitation	(A Misd)	120.05 Assault 2nd Deg.	(D Fel)
100.10 Criminal Solicitation	(D Fel)	120.10 Assault 1st Deg.	(C Fel)
		120.15 Menacing	(B Misd)
<b>105</b>		120.20 Reckless Endangerment	(A Misd)
105.00 Conspiracy 4th Deg.	(B Misd)	120.25 Reckless Endangerment	(D Fel)
105.05 Conspiracy 3rd Deg.	(A Misd)	120.30 Prom. or Suicide Att.	(E Fel)
105.10 Conspiracy 2nd Deg.	(E Fel)		
105.15 Conspiracy 1st Deg.	(B Fel)	<b>125</b>	
		125.10 Homicide	(E Fel)
<b>115</b>		125.15 Manslaughter 2nd Deg.	(C Fel)
115.00 Criminal Facilitation	(A Misd)	125.20 Manslaughter 1st Deg.	(B Fel)
115.05 Criminal Facilitation	(C Fel)	125.25 Murder 2nd Deg.	(A Fel)
		125.27 Murder 1st Deg.	(A Fel)

125.40 Abortion 2nd Deg.	(E Fel)	155.30 Grand Larceny		185		210.10 Perjury 2nd Degree	(E Fel)
125.45 Abortion 1st Deg.	(D Fel)	155.30 Grand Larceny 3rd Deg.	(E Fel)	185.00 Fraud in Insolvency	(A Misd)	210.15 Perjury 1st Degree	(D Fel)
125.50 Self-Abortion 2nd Deg.	(B Misd)	155.35 Grand Larceny 2nd Deg.	(D Fel)	185.05 Fraud-Security Interest	(A Misd)	210.35 Making Apparent false statement 2nd Degree	(A Misd)
125.55 Self-Abort 24 Wks. preg	(A Misd)	155.40 Grand Larceny 1st Deg.	(C Fel)	185.10 Fraud Disp. Mortgaged Prop.	(A Misd)	210.40 Making apparent false statement 1st Degree	(E Fel)
125.60 Issuing Abort. Articles	(B Misd)			185.15 Fraud Disp. Prop. Subject to Cond. Sales Contract	(A Misd)	210.45 Making a punishable false written statement	(A Misd)
<b>130</b>		<b>160</b>		<b>190</b>		<b>215</b>	
130.20 Sexual Misconduct	(A Misd)	160.05 Robbery 3rd Deg.	(D Fel)	190.05 Issuing a Bad Check	(B Misd)	215.00 Bribing a witness	(D Fel)
130.25 Rape 3rd Deg.	(E Fel)	160.10 Robbery 2nd Deg.	(C Fel)	190.20 False Advertising	(A Misd)	215.05 Bribe receiving by witness	(D Fel)
130.30 Rape 2nd Deg.	(D Fel)	160.15 Robbery 1st Deg.	(B Fel)	190.25 Crim. Impersonation	(A Misd)	215.10 Tampering with a witness	(A Misd)
130.35 Rape 1st Deg.	(B Fel)			190.30 Unlaw Concealing Will	(E Fel)	215.15 Bribing a juror	(D Fel)
130.38 Consensual Sodomy	(B Misd)	<b>165</b>		190.35 Misconduct Corp. Off.	(B Misd)	215.20 Juror receiving a bribe	(D Fel)
130.40 Sodomy 3rd Deg.	(E Fel)	165.00 Misapplication of Property	(A Misd)	190.40 Criminal Usury	(E Fel)	215.25 Tampering with a juror	(A Misd)
130.45 Sodomy 2nd Deg.	(D Fel)	165.05 Unauthorized Use Vehicle	(A Misd)	190.45 Poss. Usurious Loan Rec.	(A Misd)	215.30 Misconduct by a juror	(A Misd)
130.50 Sodomy 1st Deg.	(B Fel)	165.07 Unlaw use Secret Science Mat.	(E Fel)	190.50a Unlawful Collection Practice	(B Misd)	215.40 Tampering with physical evidence	(E Fel)
130.55 Sexual Abuse 3rd Deg.	(B Misd)	165.15 Theft of Services	(A Misd)	190.50b Making false statement of credit terms	(A Misd)	215.45 Compounding crime	(A Misd)
130.60 Sexual Abuse 2nd Deg.	(A Misd)	165.17 Unlawful use credit card	(A Misd)			215.50 Criminal contempt 2nd Deg.	(A Misd)
130.65 Sexual Abuse 1st Deg.	(D Fel)	165.20 Fraud. Obtained Signature	(A Misd)	<b>195</b>		215.51 Criminal contempt 1st Deg.	(E Fel)
<b>135</b>		165.25 Jostling	(A Misd)	195.00 Official Misconduct	(A Misd)	215.56 Bail jumping 2nd Deg.	(A Misd)
135.05 Unlaw Imprisonment 2nd	(A Misd)	165.30 Fraudulent Accosting	(A Misd)	195.05 Obstruct Govt. Admin.	(A Misd)	215.57 Bail jumping 1st Deg.	(E Fel)
135.10 Unlaw Imprisonment 1st	(E Fel)	165.35 Fortune Telling	(B Misd)	195.10 Refusing to aid peace officer	(B Misd)	215.58 Fail. respond on appear. ticket	(Viol)
135.20 Kidnapping 2nd Deg.	(B Fel)	165.40 Crim. Poss Stolen Prop.	(A Misd)	195.15 Obstruct Firefighting Oper.	(A Misd)	215.60 Criminal contempt of Legislature	(A Misd)
135.25 Kidnapping 1st Deg.	(A Fel)	165.45 Crim. Poss Stolen Prop. 2nd Deg.	(E Fel)			215.65 Criminal Contempt Temp. State Com.	(A Misd)
135.45 Custodial Interfere 2nd Deg.	(A Misd)	165.50 Crim. Poss Stolen Prop. 1st Deg.	(D Fel)	<b>200</b>		215.70 Unlawful Grand Jury disclosure	(B Misd)
135.50 Custodial Interfere 1st Deg.	(E Fel)			200.00 Bribery (public servant) 2nd Deg.	(D Fel)	215.75 Unlawful disclosure of indictment	(B Misd)
135.55 Substitution of Children	(E Fel)	<b>170</b>		200.04 Bribery (public servant) 1st	(B Fel)		
135.60 Coercion 2nd Deg.	(A Misd)	170.05 Forgery 3rd Deg.	(A Misd)	200.10 Bribery Receive (pub. serv.) 2nd	(D Fel)	<b>220</b>	
135.65 Coercion 1st Deg.	(D Fel)	170.10 Forgery 2nd Deg.	(D Fel)	200.12 Bribery Receive (pub. serv.) 1st	(B Fel)	220.03 Crim. Poss. controlled sub. (Drugs) 7th Deg.	(A Misd)
<b>140</b>		170.15 Forgery 1st Deg.	(C Fel)	200.20 Rewarding Official Misconduct	(E Fel)	220.06 Crim. poss. controlled sub. (Drugs) 6th Deg.	(D Fel)
140.05 Crim. Trespass	(Viol)	170.20 Poss. Forged Instrument 3rd Deg.	(A Misd)	200.25 Receive Reward of Misconduct	(E Fel)	220.09 Crim. poss. controlled sub. (Drugs) 5th Deg.	(C Fel)
140.10 Crim. Trespass 3rd Deg.	(E Fel)	170.25 Poss. Forged Instrument 2nd Deg.	(D Fel)	200.27 Receive Reward of Misconduct	(C Fel)	220.12 Crim. poss. controlled sub. (Drugs) 4th Deg.	(B Fel)
140.15 Crim. Trespass 2nd Deg.	(A Misd)	170.30 Poss. Forged Instrument 1st Deg.	(C Fel)	200.30 Give Unlaw Gratuities	(A Misd)	220.16 Crim. poss. controlled sub. (Drugs) 3rd Deg.	(A Fel)
140.17 Crim. Trespass 1st Deg.	(D Fel)	170.40 Crim. Poss. Forged Device	(D Fel)	200.35 Receive Unlaw Gratuities	(A Misd)	220.18 Crim. poss. controlled sub. (Drugs) 2nd Deg.	(A Fel)
140.20 Burglary 3rd Deg.	(D Fel)	170.45 Criminal Simulation	(A Misd)	200.45 Bribe given for Pub. Office	(D Fel)	220.21 Crim. poss. controlled sub. (Drugs) 6th Deg.	(D Fel)
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140.30 Burglary 1st Deg.	(B Fel)	170.60 Unlaw. Using Slugs 1st	(E Fel)			220.37 Crim. sale controlled sub. 4th Deg.	(B Fel)
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140.40 Unlawful Poss. Radio Device	(B Misd)	170.70 Illegal Poss. Vehicle ID	(E Fel)	205.05 Escape 3rd Degree	(A Misd)	220.41 Crim. sale controlled sub. 2nd Deg.	(A Fel)
<b>145</b>				205.10 Escape 2nd Degree	(E Fel)	220.43 Crim. sale controlled sub. 1st Deg.	(A Fel)
145.00 Crim. Mischief 4th Deg.	(A Misd)	<b>175</b>		205.15 Escape 1st Degree	(D Fel)	220.45 Poss. hypodermic instrument	(A Misd)
145.05 Crim. Mischief 3rd Deg.	(E Fel)	175.05 Falsifying Bus. Rec. 2nd	(A Misd)	205.16 Inmate Absconding 2nd	(A Misd)	220.45 Crim. injection narcotic drug	(E Fel)
145.10 Crim. Mischief 2nd Deg.	(D Fel)	175.10 Falsifying Bus. Rec. 1st	(E Fel)	205.17 Inmate Absconding Hidden	(E Fel)	220.50 Crim. use drug paraphernalia 2nd Deg.	(A Misd)
145.12 Crim. Mischief 1st Deg.	(B Fel)	175.20 Tampering Pub. Rec. 2nd	(A Misd)	205.18 Inmate Absconding (Furlough)	(A Misd)	220.55 Crim. use drug paraphernalia 1st Deg.	(D Fel)
145.15 Crim. Tampering 2nd Deg.	(B Misd)	175.25 Tampering Pub. Rec. 1st	(D Fel)	205.20 Promote Prison Contraband 2nd Degree	(A Misd)	220.60 Crim. poss. precursors controlled sub.	(E Fel)
145.20 Crim. Tampering 1st Deg.	(D Fel)	175.30 Offer False Instrument	(A Misd)	205.25 Prom. Prison Contraband 1st Degree	(D Fel)		
145.25 Reck. Endanger Property	(B Misd)	175.35 Offer False Instrument	(E Fel)	205.30 Resisting Arrest	(A Misd)		
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150.10 Arson 3rd Deg.	(C Fel)			<b>210</b>			
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		180.40 Sports Bribing	(D Fel)				
		180.45 Sports Bribe Receiving	(E Fel)				
		180.50 Tampering Sports Event	(A Misd)				
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 225.20 Poss. Gambling Rec. 1st Deg. (E Fel)  
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**230**  
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 260.10 Endangering Welfare of Child (A Misd)  
 260.20 Unlawfully Dealing with Child (B Misd)  
 260.25 Endangering Welfare of an Incompetent (A Misd)

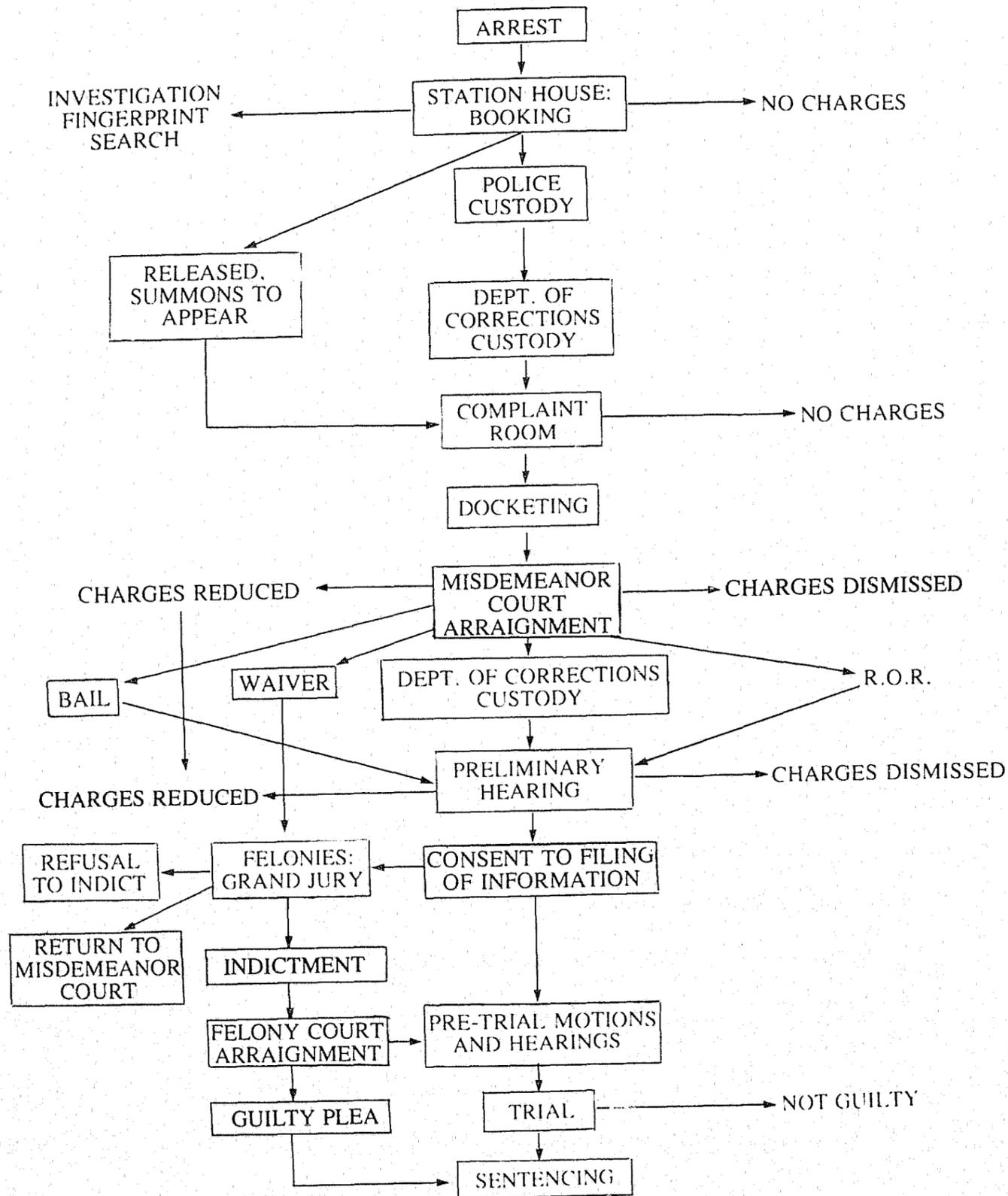
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#### Criminal Case Processing Chart

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- Booking
- Complaint
- Arraignment
- Plea Bargaining
- Preliminary Hearing
- Grand Jury
- Supreme Court
- Trial
- Youthful Offender
- Jury Selection
- Sentencing

## CRIMINAL CASE PROCESSING CHART



### ARREST

Most people are familiar with the commonest form of arrest, the "on view" arrest. As the term implies, this occurs when a police officer sees someone committing a felony, misdemeanor, or offense and immediately apprehends the offender. New York law allows a police officer to make an arrest for a crime not committed in his or her sight and without a warrant for a felony whenever there are "reasonable grounds" to believe that the crime has been committed and that the defendant is the perpetrator. An arrest may be made at any time when there is a valid arrest warrant.

Another type of arrest is a "citizen's arrest." In that case, the arresting person must state the defendant's right to remain silent and report directly to the police for processing.

### BOOKING

Once an arrest has been made, the accused is brought to the police station and is booked. This is a clerical procedure which involves entering the charges into the police register and fingerprinting the accused. A date is then set for appearance at court for arraignment, within 24 hours, if the defendant is held, or the defendant may be given a summons to appear.

### COMPLAINT

Once an arrest has been made, a formal complaint is filed against the accused with a prosecutor in the local criminal court by the arresting officer and/or complaining witness, on behalf of the people of New York State. This verified written accusation must be obtained, along with the defendant's criminal history (called a NYSIIS report, or yellow sheet) before the defendant can be arraigned.

While the formal complaint is being sworn to, the defendant is often interviewed by the Probation Department, a report is made, and a docket number is assigned.

### ARRAIGNMENT

The accused is brought before a judge in the local criminal court for arraignment. There defendants are:

- 1-Informed of and then given a copy of the formal charges against them.
- 2-Informed of their right to counsel.
- 3-Bail conditions may be set for the release of the defendant

Bail is an amount of money set by the court to be paid by the defendant as a guarantee of his or her reappearance in court on a designated date. Once bail has been met, the defendant is released from legal custody. The amount assigned by the judge depends on the circumstances of the case. Cash may be deposited as bail in lieu of a bond. When, however, the defendant is unable to deposit the

full amount of security required, bail may be arranged through a bondsman. The accused pays the bail bondsman a percentage (established by statute) of the amount of bail set by the judge. The bondsman agrees to pay the full amount should the defendant not appear at the next designated court appearance. The bondsman may also demand collateral, which is not controlled by state law. When the accused appears as required, the bondsman is no longer liable if the collateral is returned. The percentage stated above is kept as the fee.

In several places throughout New York State, groups of private citizens have organized to provide bail for indigent persons awaiting trial.

The defendant may also be released on his own recognizance (ROR), pending future action, or ordered detained in custody by the judge.

At this stage the judge may dismiss the case for lack of sufficient evidence to proceed. He or she may reduce a felony charge to a misdemeanor. If the charge is for a misdemeanor or less, the defendant may enter a plea at this time, or may obtain an adjournment until a future date.

If the arraignment is for a felony charge, the defendant never enters a plea in criminal court. He or she may request a hearing (called a preliminary hearing) to determine whether there is sufficient evidence to warrant holding the case for action by the Grand Jury, or the defendant may waive the right to a preliminary hearing.

#### WHEN THE PLEA IS GUILTY - PLEA BARGAINING

If a defendant pleads guilty, before accepting this plea the court must inform him or her of (and determine that he or she understands):

- 1-The nature of the charge
- 2-The maximum and minimum penalties for the offense
- 3-The right to plead guilty or not guilty
- 4-The consequence of a guilty plea - forfeiture of a trial of any kind and waiver of the right to be confronted by witnesses against him or her.

The court must also determine whether there is a factual basis for the plea and whether the plea is voluntary. To accomplish this, the judge must directly question the defendant. The defendant may plead any time throughout the whole court process; in arraignment, preliminary hearing, various court appearances, or during the trial.

Often the plea is entered after a process of plea bargaining, an agreement between defense and prosecution to lessen the charge and/or recommended penalty in return for a plea of guilty. After a plea agreement is stated in court, the judge must confirm the terms by personally questioning the defendant to determine whether force, threats or promises outside of the agreement were used to obtain the plea.

A judge may not initiate plea negotiations, but he or she is not explicitly prohibited from participating in them once they have begun. The parties involved can either request the judge's concurrence in court prior to entering the plea or his or her previous agreement can be stated when the plea is entered. The judge then will either sentence the defendant or adjourn to a later date to wait for a pre-sentence investigation report by the Probation Department.

#### PRELIMINARY HEARING

In New York City, a defendant charged with a misdemeanor is entitled to a preliminary hearing where the judge will determine if there is sufficient evidence to believe that the crime charged was committed and that the defendant was the one who committed it.

Preliminary hearings for felonies serve a different purpose than for misdemeanors. A hearing may be requested by a person charged with a felony at the time of arraignment in a local criminal court. The purpose is to determine if there is sufficient evidence to warrant submitting the case to the Grand Jury for consideration. A felony hearing can be waived by the defendant, or by-passed by the issuance of a Grand Jury indictment.

#### MOTIONS AND APPLICATIONS

These are often procedural moves made by either the defense or prosecuting attorney that help to define and set the ground rules for the proceedings, such as a motion to postpone a hearing or trial date or to delay sentencing. These motions can be made in any stage: arraignment, examination, pleading, trial or sentence. Other motions, such as a motion to suppress evidence because it was seized by illegal methods, or to suppress a confession, are always made before a trial.

#### GRAND JURY

From the preliminary hearing, a felony case may be sent to the Grand Jury. This panel, consisting of from 16-23 persons chosen on a countywide basis, is charged with the determination of whether there is sufficient evidence to prosecute. Enough evidence must indicate that both a felony was committed, and that it was committed by the accused.

If at least 12 jurors decide the case is strong enough to justify a trial, a "true bill" is returned. If it is found that the case should be dismissed, the Grand Jury returns a "no bill." If the Grand Jury determines that the evidence of a felony charge is inadequate, but enough to believe a misdemeanor has been committed, the charges can be reduced and sent back to the local criminal courts on information as a misdemeanor.

A Grand Jury has inquisitorial powers which allow it to make full investigations into cases. They may investigate on their own knowledge or upon information of any kind from any source deemed reliable. Evidence and testimony is presented by the prosecuting attorney against the accused. At the discretion of the Grand Jury, witnesses may also testify. The secrecy of proceedings before a Grand Jury is zealously guarded in order to encourage witnesses to give full disclosure of their knowledge about possible criminal action.

## SUPREME COURT

The first procedural step following indictment by the Grand Jury is arraignment in the court that tries felonies (a process identical to that in the criminal court). In that court, the defendant may now plead guilty to the felony charges in the indictment; or at the discretion of the prosecutor, to a lesser charge.

Should the defendant plead not guilty at the arraignment, he or she might next appear at a pre-trial conference. There the judge, prosecutor and defense counsel will attempt to settle the case by dismissal or plea of guilty. Failing such settlement, the case will be assigned to trial, where motions will be decided and trial will be held.

## TRIAL

Upon pleading not guilty, on arraignment, the defendant is often asked by the presiding judge in open court, whether he or she wants a trial by jury or trial by a judge (a bench trial). If the accused waives his or her right to a jury trial, the court has the burden to insure that the choice was made knowingly and voluntarily.

The purpose of the trial, be it bench or jury, is to examine the evidence, hear the testimony and determine the innocence or guilt of the accused.

All violations and misdemeanors with less than a possible six month maximum sentence are tried by the judge only. Persons eligible for Youthful Offender Treatment and who have no prior record of conviction, are given bench trials. Most trials in misdemeanor cases are such trials. These trials may sometimes be rather perfunctory, with the judge reaching a verdict after brief questioning of the defendant, complainant and witness (if any). However there are, of course, many bench trials in which defense and prosecuting attorney find thorough examination of witnesses necessary.

## YOUTHFUL OFFENDER

A person between 16 and 19 (at the time of the crime) who has committed a crime not punishable by death or life imprisonment, and who has not previously been convicted of a felony, may be treated as a Youthful Offender (Y.O.).

At the time of arraignment (if the circumstances warrant it) the judge must inform the defendant that he appears to be eligible for Y.O. Treatment, and explain the meaning of such treatment. The decision to grant Y.O. treatment is made now after a conviction by jury or judge.

Before sentencing, the court must request an investigation by the probation department, and on the basis of this, will decide whether to grant Y.O. treatment. If it is granted, the main features are:

- a-the books will be closed and no criminal record will be entered against the defendant, and
- b-the defendant may be sent to a special state institution rather than jail or the penitentiary

## JURY SELECTION

Once the panel of prospective jurors (selected randomly from the county's registered voters list) is ready, the judge should introduce the parties and their counsel and outline the nature of the case. The judge may then initiate the **voir dire examination**, during which he or she and the attorneys question the potential jurors to ascertain their qualifications and to assure that they will be free of biases or prejudices in reaching a verdict. Both the defense and prosecution have the right to three peremptory challenges (asking to bar a person from the jury panel) and one additional for each alternate juror, in misdemeanor trials. When all jurors are selected and approved, they are sworn in.

## SENTENCING

Upon conviction of a misdemeanor, after trial, or upon a plea of guilty, the defendant will be sentenced immediately unless a pre-sentence report (or application for a stay of execution) is requested. In this event, the case is adjourned to a later date for the sentencing. All felony convictions require a pre-sentence investigation. The defendant's final appearance in the trial court will be for the purpose of sentencing.

No person convicted for any misdemeanor, except minor driving infractions, can be sentenced until the judge has received and considered information as to the defendant's previous criminal record.

Pre-sentence reports are prepared by the probation department servicing the court. They are mandated in all cases where the possible sentence can exceed a period of 90 days incarceration, and up to the discretion of the judge for lesser charges, except when the defendant is sentenced to Probation or to a Reformatory (youth).

The reports provide the judge with information on the defendant's background, possible mitigating circumstances involved in the crime, chances for successful probation, and suggested programs of rehabilitation. The judge is under no legal obligation to follow the probation department's recommendation, however.

In New York State, as in many other states and in the federal system, a judge usually has a broad range of discretion in determining what type of sentence to impose on a person convicted of a crime.

Some alternatives to a sentence of incarceration are:

- a-Unconditional discharge: open court - the offender may be released subject to no conditions.
- b-Conditional discharge: the defendant is released on the promise to comply with court-imposed rules governing his conduct.
- c-Fine: A monetary sentence may be given alone or with a reformatory or prison term.
- d-Probation: The defendant is placed under the supervision of a probation officer to whom he must report periodically.

Some judges prefer probation and conditional discharge sentences because they feel they offer great hope for rehabilitation and are much less expensive than imprisonment. A defendant assigned probation or conditional discharge is released under conditions set by the judge: such as attending Alcoholics Anonymous or a drug program, or participating in a work program.

## IV - DEFENDANT'S RIGHTS

### THE ARRAIGNMENT

In New York, arraignment must occur without unnecessary delay; but before bringing the arrestee to court the police must fingerprint, photograph and do other preliminary police duties.

Where the arrest is not for a felony, without an arrest warrant, and the police are unable to bring the person before a court with reasonable promptness, they may serve an appearance summons.

In setting bail, great weight must be given to the evidence of reliability and the financial resources of the defendant. The defendant will be asked certain "bail facts" by the attorney or the judge: e.g. how long the defendant has lived in the community, their employment record, educational background, family ties and family responsibilities, reliability in the past, etc. These questions, together with the seriousness of the alleged crime and the defendant's prior criminal record, are the only factors that the court may consider in setting bail.

It is illegal for the court to set bail in such an extremely high amount that the court knows the defendant cannot post it, just to keep the defendant in jail.

### RIGHT TO COUNSEL

The accused has the right to have a lawyer with him or her at any stage of the criminal process from arrest through appeal, except inside a grand jury room. For those who cannot afford a lawyer, the state must furnish a lawyer free of charge.

Juveniles are also entitled to free counsel where there is a possibility that their freedom will be curtailed, even though the proceedings may be labeled as civil rather than criminal.

The right to counsel is not limited to the trial itself, it extends to every "critical stage" of the proceedings. When someone is being held for questioning by the police, they have the right to counsel, free if they cannot afford their own, and they must be informed of that right. The right attaches whether or not they are actually in custody, as long as they have somehow been deprived of their freedom in any way.

### RIGHT TO EXCLUDE EVIDENCE

When evidence is illegally obtained, it is not admissible at a trial. Procedurally, the lawyer must make a motion to exclude the evidence, and usually a pre-trial hearing is held on the motion.

Four common motions to exclude evidence, are:

1-To suppress physical evidence on the grounds that it was seized during an illegal search by the police without a warrant.

2-To controvert a search warrant, on the grounds that the affidavit presented to obtain the warrant did not contain sufficient factual information to show probable cause to believe that a crime was or is being committed on certain premises.

3-To suppress confessions by or statements against, the defendant, on the grounds that they were illegally obtained. The grounds for illegality might be that the defendant acted involuntarily (due to pressure, tricks, threats, etc.) or the defendant was not properly warned, prior to being questioned, that he or she had a right to remain silent, that anything they said might be used in evidence against them and that they had a right to a lawyer (including a free one if they are indigent). The defendant must knowingly waive these rights to make his or her statement admissible.

4-To suppress evidence of an identification, where a lineup or showup was held in an illegal or suggestive manner.

### RIGHT TO A SPEEDY TRIAL

A defendant's right to a speedy trial is guaranteed by the 6th Amendment of the United States Constitution. According to New York statute, a person in custody must be brought to a court within two days after the arrest.

Under New York State's "ready rule", the prosecution must be ready to prosecute:

- 1-a felony within 6 months after arraignment
- 2-a misdemeanor within 90 days
- 3-a violation within 30 days

However, if the defendant is in custody, he or she must be released from jail if the prosecutor is not ready to proceed within:

- 1-90 days for a felony
- 2-30 days for a misdemeanor
- 3-15 days for a violation

A defendant may move to dismiss the charges for unreasonable delay if these standards have been violated.

## V – ROLE OF THE PROSECUTOR AND DEFENSE ATTORNEY

### PROSECUTOR

The chief function of the prosecutor is supposed to be to seek justice, not merely to convict. The District Attorney (D.A.), the prosecutor, or any other public servant who represents the people in a criminal action, is responsible for the prosecution of all crimes committed within that district and brought to his or her attention by police or private citizens.

A prosecuting attorney is elected in each county every four years. D.A.s may be in the most potentially influential positions of the court system, because of their pivotal position in the criminal justice system. They are the only officials who work with all other persons of the court system: the police, defense attorneys, probation officers, and others.

They are also the only attorneys allowed to be present when a case is heard by the Grand Jury.

### DEFENSE ATTORNEY

The defense attorney's major role is to represent the accused in criminal matters.

The Public Defender (as set forth by the 1965 legislature) is a defense attorney who represents, without fees, indigent persons (persons financially unable to obtain private counsel) at every stage of a criminal proceeding. The Legal Aid Society in some areas of New York State fulfills the role of the Public Defender for indigents in that county.

Lawyers have special responsibilities in the administration of justice and their admission to practice and subsequent conduct is carefully supervised.

A defender must represent his or her client zealously and within the bounds of the law — he or she is forbidden to make a defense unwarranted by law, to advise the client to do something illegal or to employ coercion. A defender is supposed to tell the client about trial risks and range of sentences and relay to them any prosecution offers.

Attorneys guilty of serious misconduct may be disbarred or temporarily suspended from practice by the Appellate Division. The defense attorney is guilty of misconduct when he or she participates in any activity with the intent to deceive the court or any party, or wilfully delays the clients suit with a view toward their own gain.

## VI – ADDITIONAL PERSONNEL CONCERNED WITH THE COURTS

### WITHIN THE COURTROOM

Court clerk – Assists the judge in record-keeping and other clerical duties.

Stenographer or Court Reporter – Takes verbatim record of court proceedings

Interpreter – (When necessary)

Court Officer – Only in New York City – They are distinguished by their blue and gold badge and shoulder patches, and are responsible for security in the court room. They are usually armed. They often assist the clerk of the court with clerical duties.

Sheriff – Outside New York City – They are responsible for security in the courtroom.

### STATEWIDE AGENCIES

Probation Department – This agency, found in each county of New York, is the social arm of the court. It is responsible for supervision and rehabilitation of persons placed on probation in lieu of imprisonment. This department conducts pre-sentence investigations used by judges when determining sentences.

Some counties are testing programs which vastly expand the role of the Probation Department. They are experimenting with giving them extensive pre-arraignment functions such as helping to determine if the accused should have to pay bail, the amount of bail, the eligibility for legal aid, etc. Some counties are trying expanded and coordinated use of all public and private social service organizations.

Department of Corrections – This agency is in charge of all persons in detention. They can be identified by the badge that says "Dept. of Corrections" and a pin in their collar saying "DC". This department also transports prisoners to and from court.

## VII - GLOSSARY

**ABATED:** A possible disposition of a case. The case is dismissed, usually because of the death of a party to the case.

**ACCESSORY:** A person who contributes to or aids in the commission of a crime. One who aids without being present at a crime.

**ACQUITTAL:** A verdict or finding of not guilty by a jury, or a judge in the case of a bench trial.

**ADJOURN:** To postpone the case to a later time.

**ADJOURNMENT IN CONTEMPLATION OF DISMISSAL (ACD):** An option not to prosecute in exchange for the fulfillment of certain conditions in cases involving a misdemeanor or less for a set period of time. If at the end of the time, the charges haven't been reinstated, and the conditions were met by the defendant, the case is automatically dismissed and the charge is erased from the record.

**ADJUDICATE:** To hear (or try) and determine a matter before the court.

**ADMISSIBLE EVIDENCE:** Evidence or testimony which is allowed by the judge to be introduced during the trial.

**AFFIDAVIT:** A written declaration or statement sworn to and affirmed.

**APPEAL:** To ask for review by a higher court of the bail, the sentence, a decision, a motion or the verdict handed down by a lower court.

**APPEARANCE TICKET OR SUMMONS:** A summons to appear in court on a particular date. Issued by a police officer after or in lieu of arrest.

**APPLICATIONS OR MOTIONS:** Procedural moves made by either attorney and submitted to the court. They help to define and set the ground rules for the proceedings of a particular case.

**ARRAIGNMENT:** The appearance before the court of a person charged with a crime; at this time he or she is advised of the charge(s) against them.

**ARSON:** The willful or malicious burning of, or setting fire to, a dwelling or other structure or personal property.

**ASSAULT:** An unjustified attack upon a person with an intent to injure or kill him or her.

**BAIL:** Security given a court in exchange for the release of a person in custody to assure their appearance later.

**BAIL BOND:** An obligation to pay the amount of bail if the person fails to appear in court when requested.

**BAR:** Refers to attorneys, counsellors & advocates of the court collectively.

**BENCH-WARRANT:** A direction by the court for the apprehension and arrest of a defendant or one in civil contempt or sought in a civil case.

**BRIDGE:** The table behind which the defendant stands when he or she comes before the judge. The bridgeman is the person who handles the routing of the documents between the judge, the clerk, and the attorneys.

**BURGLARY:** The entering of another's property without permission and with intent to commit a crime.

**CALENDAR:** The list of cases which are to be heard in a particular court.

**CASE LAW:** Non-statutory law, based on past decisions, opinions, interpretations, traditions.

**CHALLENGE:** The right of one party to object to a juror during the selection of the jury before the trial.

**CHANGE OF VENUE:** Transfer of a case for trial to another county or district, often because of claimed prejudicial publicity in the original district.

**CHARGE:** In criminal law, the accusation made against a person. In civil and criminal law, it also refers to the instructions on law that the court gives the jury at the end of the trial.

**COMMITMENT:** The order of a court to keep a person in custody in a penal or mental institution or hospital.

**COMMON LAW:** The vast collection of previous court decisions, customs, and usage.

**COMMUTATION:** A reduction of punishment or sentence after conviction.

**COMPLAINANT:** The victim of a crime who brings the facts to the attention of the authorities.

**COMPLAINT:** The document prepared by the plaintiff to set forth his or her claims.

**CONCURRENT & CONSECUTIVE SENTENCE:** A concurrent sentence is one in which the sentences for different offenses are served at the same time. A consecutive sentence is one in which one sentence is served after another one has been completed.

**CONDITIONAL DISCHARGE:** A sentence wherein the defendant is released on certain conditions set by the court.

**CONTINUANCE:** The postponement of a legal proceeding to another set date.

**COURT REPORTER:** A stenographer who records verbatim the proceedings in open court.

**CROSS EXAMINATION:** The questioning by a party or the attorney of the opponent's witnesses.

**DECREE:** A formal determination of the court.

**DETENTION:** The act of holding a person in custody: by police for questioning, by police while awaiting arraignment, or in jail while awaiting hearing or trial.

**DEFAULT:** Failure to appear and defend a lawsuit.

**DEFENSE ATTORNEY:** Attorney representing the accused.

**DEMURRER:** A defendant's answer to a charge against him or her. It admits the facts while denying legal responsibility.

**DEPOSITION:** A written statement made under oath.

**DISPOSITION:** The outcome of a case.

**DISTRICT ATTORNEY (D.A.) and ASSISTANT DISTRICT ATTORNEY (ADA):** The prosecutor on behalf of the people against the accused.

**DOCKET:** The formal record maintained by the clerk or the court, listing all cases to be heard in a particular part each day. It often contains the defendant's name, docket number, charge, date of arrest, and the outcome of the case.

**DUE PROCESS:** Regular & orderly administration of justice by a court in accordance with established rules.

**EXCEPTION:** An objection made to a court's ruling or its charge to the jury.

**EXHIBITS:** Documents or other tangible evidence.

**EXTORTION:** The taking of money or property by threat or force or under pretense of authority.

**EXTRADITION:** The process for return of a fugitive from one state to another which wants him or her for a criminal offense.

**FELONY:** A crime that may be punishable by imprisonment for more than one year or up to five years of probation supervision.

**GRAND JURY:** A group of citizens that examines evidence against a person suspected of a crime. If it decides they should be held for trial, the foreman writes a "true bill" on the indictment and signs it.

**HABEAS CORPUS:** A writ that requires a person having another in custody to produce that person before the court, to show that they have a right to custody.

**HEARSAY EVIDENCE:** Testimony that is brought out by the witness which is based not on his or her personal knowledge but rather on information he or she received from someone else. Generally it is not acceptable because the informant is not available for cross examination.

**INCARCERATION:** Imprisonment.

**INCOMPETENT:** Refers to a defendant who is unfit to stand trial because he or she is unable to understand the nature of the case, due to a mental or physical condition.

**IN CAMERA:** In private chambers, in secrecy, off the record.

**INDICTMENT:** The document prepared by the District Attorney and approved by the grand jury which charges a certain person with a certain crime.

**INFORMATION:** The written charge against a defendant filed by the District Attorney without grand jury action.

**INJUNCTION:** A court order prohibiting a certain named person from performing certain acts.

**JURISDICTION:** The geographical area and the type of case over which a court has authority.

**JUVENILE:** An accused person between the ages of 7 and 16. These cases are conducted in Family Court.

**LARCENY:** Taking property from another with intent to defraud and deprive that person of it. Petit larceny is the charge for amounts up to \$250.00; grand larceny is the charge for amounts over that.

**MAGISTRATE:** An officer having the power to issue a warrant for arrest of a person charged with a crime. All judges are magistrates but not all magistrates are judges.

**MANSLAUGHTER:** The killing of one person by another although without intent to kill, or under the influence of extreme emotional disturbance.

**MISTRIAL:** A trial which is invalid because of some error in procedure, law, or fact.

**MOTION:** (See applications)

**NEGLIGENCE:** The failure to use the degree of care required to protect the rights and property of others.

**NOLO CONTENDERE:** "I do not wish to contest". A plea made by defendant; while not an admission of guilt, it means the defendant will not challenge the charges but will submit to the court imposed punishment.

**NONSUIT:** Dismissal of a lawsuit when the plaintiff abandons it or fails to prove his or her cause.

**NYSIIS:** New York State (Investigating Division) – Identification & Intelligence System. A state report of a person's previous record, obtained by a person's fingerprints.

**OBJECTION:** A protest made to record one party's disapproval of a question asked by their opponent.

**OFFENSE:** A violation of a local municipal regulation. The violation of any criminal ordinance or statute is commonly designated an offense.

**ORDINANCE:** A regulation established by a local government.

**PARDON:** An order releasing a person convicted of a crime from the punishment imposed by the court. Only the Governor has that power in the state.

**PAROLE:** A conditional release from custody.

**PERJURY:** The legal offense of testifying falsely and deliberately under oath.

**PLEA:** The reply of the defendant to the charges.

**PRELIMINARY HEARING:** To determine if there is sufficient evidence to warrant submitting a felony case to the grand jury; and in N. Y. C. to determine if there is sufficient evidence that a crime was committed and the defendant is the offender.

**PRE-SENTENCE INVESTIGATION:** A report on the defendant done by the Probation Department and submitted to the judge for consideration before sentencing.

**PRETRIAL CONFERENCE:** A meeting, after indictment, in which the judge, defense attorney, prosecutor & defendant try to conclude a case without a trial.

**PRIMA FACIE:** "On the face of it". Where sufficient evidence has been produced to obtain a conviction unless overcome by additional evidence.

**PRISONER'S PEN:** The detention center where the prisoners wait to be brought before the judge.

**PRIVILEGED COMMUNICATION:** A statement made to a person of trust (Minister, doctor, lawyer, wife, husband). It cannot be revealed without the originator's consent.

**PROBATION:** A sentence that allows a person found guilty of a crime to not be incarcerated, but to be under the supervision of a probation officer for a definite period of time.

**PUBLIC DEFENDER:** The attorney representing a defendant who can not afford private counsel.

**QUASH:** To make void, or do away with. Example: an indictment may be quashed if there is not enough evidence to hold a suspect for trial.

**RELEASE ON OWN RECOGNIZANCE:** (ROR) The defendant is released without bail, pending a trial or other court action.

**SEARCH WARRANT:** A written order issued by a judge directing a police officer to search a person or place for particular articles specified in the warrant.

**STATUTE:** Any law passed by a local, state or federal legislative body.

**STAY OF EXECUTION:** A temporary delay of the enforcement of sentence after the defendant has been found guilty.

**STIPULATION:** An agreement between the parties or their attorneys.

**SUBPOENA:** A court order requiring a witness to attend; it may also order him or her to bring books or records with them.

**SUMMONS:** The process by which a defendant is advised that there is a claim against him or her; it may also be a notification to a witness or a juror to appear in court.

**TESTIMONY:** Words heard from the witnesses in court (as distinguished from evidence derived from writings).

**TRANSCRIPTS:** An official record of proceedings in court recorded by the court stenographer.

**TRIAL:** A proceeding in court where the charge and facts in question are reviewed and the guilt or innocence of the defendant is determined.

**TRUE BILL:** The endorsement of an indictment when the Grand Jury finds it to be sustained by the evidence; also, the bill so endorsed.

**UNCONDITIONAL DISCHARGE:** A possible disposition of a case; the defendant is released without any court-imposed conditions.

**VENUE:** The county in which a prosecution or an action is brought to trial.

**WAIVE:** Voluntary surrender of a right, claim, or privilege.

**WITHDRAWAL OF PLEA:** The court at its discretion, may permit a plea believed to be made unknowingly and involuntarily, to be withdrawn and a plea of not guilty submitted.

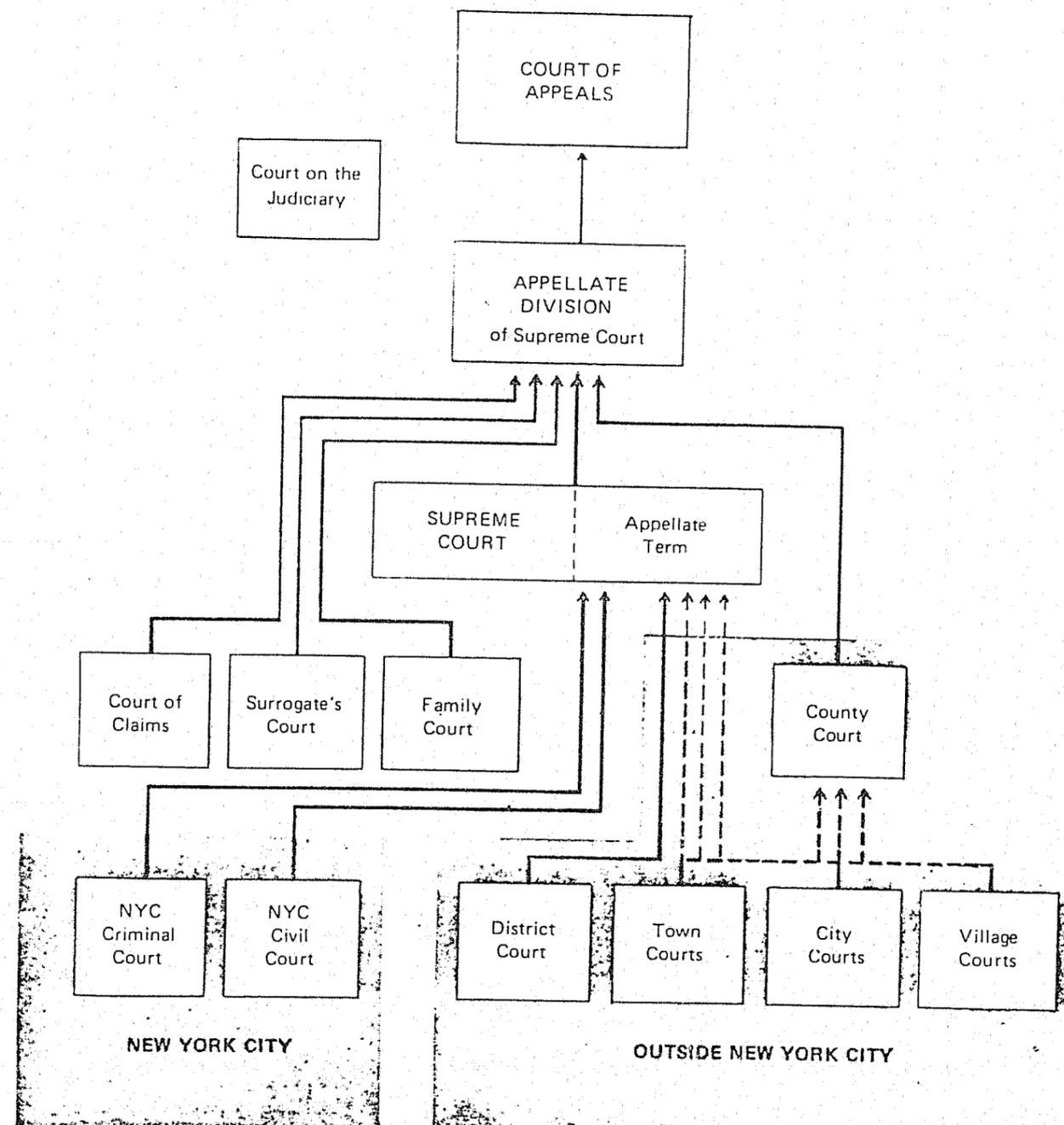
**YOUTHFUL OFFENDER (YO):** A person who is 16-19 years of age who has not had a prior felony conviction and who is not currently being tried for an A felony. At any point in the proceedings the judge has the option of treating that individual as a "YO" rather than an adult in the eyes of the court. The individual's records are sealed, the jury dismissed and the individual is remanded to a special correctional facility if sentence is imposed.

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## APPENDIX A

### PRESENT NEW YORK STATE JUDICIAL SYSTEM



APPENDIX B

**Instructions for Monitors**

**Specific instructions for filling out court watchers' report forms will be given by each local coordinator. The following advice is of a more general nature.**

Do your homework! Read the handbook and attend the training sessions. Ask questions about anything you do not understand. Go to court on your own at least twice during the training period.

Once the daily monitoring starts, make every effort to attend court on the day you are scheduled. If it is impossible for you to go that day, let your local coordinator know as far ahead of time as possible (at least 24 hours) so that she can find an alternate.

Get to court early — at **least** 15 minutes before it is scheduled to begin.

If any effort should be made to bar your attendance, do not argue; merely note the fact on your report form. (The same is true if you are denied any reasonable information or the opportunity to take notes.)

Introduce yourself to the judge, if possible, and to the clerk as an official observer from the Court Monitoring Project.

Sit where your local coordinator has suggested. If the judge asks you to sit somewhere else, don't argue.

Be as unobtrusive as possible in appearance and demeanor. **NEVER INTERRUPT THE PROCEEDINGS.** Always be courteous, no matter what the provocation.

**REMAIN NEUTRAL.** Do not betray your personal feelings by any facial expression or remark. If a judge or anyone else asks your opinion about anything that you have observed, **refrain from commenting.** Emphasize that you are merely collecting data and cannot speak for the Project. Refer the person to the local coordinator.

While you are observing, try to jot down all the data requested on the case observation forms. If you miss some of it, ask the clerk for the additional information during a recess or after adjournment.

Make no movies, photographs or tape recordings in the courtroom.

Note any special problems you encounter and any suggestions you wish to make on the back of your report form or report them to your local coordinator.

**END**