



OCA's Office of Justice Court Support  
**TOWN AND VILLAGE COURT CLERK  
OPERATIONS MANUAL**

This document was created in association with:

**New York State Association of Magistrates Court Clerks Inc.**  
and  
**New York State Magistrates Association**

# TABLE OF CONTENTS

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<b>I. INTRODUCTION.....</b>	<b><u>3</u></b>
Operations Manual Committee Members.....	<u>4</u>
Acronyms and Common Abbreviations.....	<u>5</u>
Civil Abbreviations.....	<u>6</u>
Common Legal Terms.....	<u>11</u>
Glossary of Legal Terms.....	<u>12</u>
Contact Numbers/Supervising Judges.....	<u>25</u>
 <b>II. ADMINISTRATION.....</b>	 <b><u>26</u></b>
Court Records – Access To/Sealing of.....	<u>26</u>
Credit Card Machine Distribution Program.....	<u>40</u>
Digital Recorders.....	<u>47</u>
Fees.....	<u>46</u>
Fiscal Responsibility.....	<u>47</u>
Interpreters.....	<u>57</u>
Marriages.....	<u>58</u>
Preparation for a Jury Trial.....	<u>59</u>
Preparation for Court Night.....	<u>64</u>
Records Retention.....	<u>66</u>
Stenographers.....	<u>67</u>
 <b>III. CIVIL.....</b>	 <b><u>68</u></b>
Small Claims – Uniform Justice Court Act (UJCA) Article 18.....	<u>68</u>
Small Claims Checklist.....	<u>75</u>
Civil Actions.....	<u>77</u>
Summary Proceedings.....	<u>78</u>
Civil Appeals.....	<u>87</u>
 <b>IV. CRIMINAL.....</b>	 <b><u>93</u></b>
A Start to a Criminal Case File.....	<u>93</u>
Assigned Counsel.....	<u>97</u>
Criminal Summons.....	<u>100</u>
Bail.....	<u>101</u>

<b>E-JusticeNY - Integrated Justice Portal.....</b>	<b><a href="#"><u>107</u></a></b>
<b>Fingerprinting Requirement. ....</b>	<b><a href="#"><u>109</u></a></b>
<b>Orders of Protection. ....</b>	<b><a href="#"><u>112</u></a></b>
<b>WEB-DVS .....</b>	<b><a href="#"><u>116</u></a></b>
<b>Mental Health Issues .....</b>	<b><a href="#"><u>125</u></a></b>
<b>Fugitive from Justice .....</b>	<b><a href="#"><u>126</u></a></b>
<b>Adjournment in Contemplation of Dismissal (ACD) .....</b>	<b><a href="#"><u>127</u></a></b>
<b>Conditional Discharge .....</b>	<b><a href="#"><u>130</u></a></b>
<b>Dangerous Dog .....</b>	<b><a href="#"><u>131</u></a></b>
<b>DNA Samples. ....</b>	<b><a href="#"><u>136</u></a></b>
<b>Driving While Intoxicated (DWI).....</b>	<b><a href="#"><u>139</u></a></b>
<b>Enforcing Payment of Fines.. ....</b>	<b><a href="#"><u>146</u></a></b>
<b>Civil Judgment .....</b>	<b><a href="#"><u>149</u></a></b>
<b>Pre-Trial Conferences .....</b>	<b><a href="#"><u>150</u></a></b>
<b>Youthful Offender Procedure. ....</b>	<b><a href="#"><u>151</u></a></b>
<b>Safe School Act .....</b>	<b><a href="#"><u>154</u></a></b>
<b>Probation Transfers.....</b>	<b><a href="#"><u>155</u></a></b>
<b>Divestiture to Superior Court .....</b>	<b><a href="#"><u>155</u></a></b>
<b>Sex Offense Registration Act (SORA). ....</b>	<b><a href="#"><u>157</u></a></b>
<b>Surcharges. ....</b>	<b><a href="#"><u>162</u></a></b>
<b>Traffic Safety Law Enforcement &amp; Disposition (T-SLED).....</b>	<b><a href="#"><u>162</u></a></b>
<b>Tickets in Compass for Courts .....</b>	<b><a href="#"><u>166</u></a></b>
<b>Traffic Diversion Programs .....</b>	<b><a href="#"><u>166</u></a></b>
<b>Appeals (Criminal) .....</b>	<b><a href="#"><u>167</u></a></b>
<b>Certificate of Relief from Disabilities .....</b>	<b><a href="#"><u>172</u></a></b>
<b>Sovereign Citizens .....</b>	<b><a href="#"><u>173</u></a></b>
<b>Raise the Age .....</b>	<b><a href="#"><u>176</u></a></b>

# **I. INTRODUCTION**

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**The Town and Village Court Clerk Operations Manual was primarily written by court clerks for court clerks. It is intended to assist court clerks in completing their daily, weekly, monthly and yearly duties and responsibilities.**

**With more attention being paid to our criminal justice system by our county and state officials, additional mandates are regularly being handed down to our local courts in an attempt to monitor the actions of those individuals convicted of crimes. These mandates frequently add to an ever increasing court clerk job description. Town and village court clerks are responsible for managing court operations related to case processing, collecting of fines, reconciling daily receipts, preparing reports for monthly disbursements, preparing forms, orders, and other court documents, assisting members of the public in preparing small claims actions, preparing court calendars, responding to inquiries from attorneys, parties to court proceedings and the public, and a plethora of additional responsibilities. For many citizens, court clerks are literally the face of the court system.**

**The manual is broken down into specific topics that attempt to provide an overview of the subjects being discussed. Many of the chapters also provide step - by - step instructions on the duties and responsibilities required of a court clerk relating to that specific topic. Additionally, many of the forms and memos that pertain to the manual topics have been referred to in the chapters and may be viewed by clicking on the hyperlink provided after each form reference.**

**The manual will continue to be updated to include changes in the law, and additional suggested topics from town and village court clerks will be added as we move forward.**

**The Office of Justice Court Support is grateful to the dedicated personnel who wrote this manual, and it is our hope that the manual serves as a useful reference tool to the town and village court clerks of this state for years to come.**



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The committee would like to thank Deputy Chief Administrative Judge Michael Coccoma, without whose support and guidance this manual would not have been possible. Also, the committee would like to thank New York State Association of Magistrates Court Clerks and the New York State Magistrates Association for their contributions to the manual.

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## Acronyms and Common Abbreviations

ACD	Adjournment in Contemplation of Dismissal
CD / UCDC	Conditional Discharge / Unconditional Discharge
CDL / CMV	Commercial Drivers License / Commercial Motor Vehicle
CDR	Criminal Disposition Report
CJTN	Criminal Justice Tracking Number
CPL	Criminal Procedure Law
DCJS	Division of Criminal Justice Services
DMV	Department of Motor Vehicles
DOT	Division of Technology
FOIL	Freedom of Information Law
IAS	Internal Audit Services
IID	Ignition Interlock Device
JCAP	Justice Court Assistance Program

<b>NYSID</b>	<b>New York State Identification – a unique number identifier assigned to an individual by DCJS—found on Rap Sheet</b>
<b>OASAS</b>	<b>Office of Alcoholism and Substance Abuse Services</b>
<b>OCA</b>	<b>Office of Court Administration</b>
<b>OJCS</b>	<b>Office of Justice Court Support (also known as The Resource Center)</b>
<b>ORI</b>	<b>Originating Reporting Identifier (Agency ID number)</b>
<b>OSC</b>	<b>Office of the State Comptroller</b>
<b>PSI</b>	<b>Pre Sentence Investigations</b>
<b>RDR</b>	<b>Records Disposition Request</b>
<b>SEi</b>	<b>(Program created by) Service Education, Inc.</b>
<b>SFS</b>	<b>State Financial System</b>
<b>SMA</b>	<b>State Magistrates Association</b>
<b>SORA</b>	<b>Sex Offender Registration Act</b>
<b>TAC</b>	<b>Terminal Agency Coordinator (e-justice portal)</b>
<b>TraCS</b>	<b>Traffic and Criminal Software</b>
<b>TSLED</b>	<b>Traffic Safety Law Enforcement &amp; Disposition</b>
<b>UCS</b>	<b>Unified Court System</b>
<b>VTL</b>	<b>Vehicle &amp; Traffic Law</b>
<b>YO</b>	<b>Youthful Offender</b>

## **Civil Abbreviations, Terms, Symbols & Phrases**

**Frequently used in NYS Town & Village Courts**

<b>Acc</b>	<b>Accident</b>
<b>Aff</b>	<b>Affidavit</b>
<b>Affd</b>	<b>Affirmed</b>
<b>Art</b>	<b>Article</b>
<b>Ag&amp;Mkt</b>	<b>Agriculture &amp; Markets Law</b>
<b><i>Ante</i></b>	<b><i>“before”</i></b>
<b>AKA</b>	<b>Also Known As</b>
<b>ALJ</b>	<b>Administrative Law Judge</b>
<b>AOS</b>	<b>Affidavit of Service</b>

<b>App Div</b>	<b>Appellate Division, also refers to the books that contain early App Div cases</b>
<b>AD2d</b>	<b>Appellate Division Reports 2d Series</b>
<b>AD3d</b>	<b>Appellate Division Reports 3d Series</b>
<b>Applt Term</b>	<b>Appellate Term</b>
<b>Article 7</b>	<b>Refers to the sections of the RPAPL dealing with Summary Proceedings</b>
<b>Article 78</b>	<b>Proceeding Against a Body or Officer (frequently vs. a judge)</b>
<b>Atty</b>	<b>Attorney</b>
<b>BCL</b>	<b>Business Corporation Law</b>
<b><i>Bona fide</i></b>	<b>"in good faith"</b>
<b>BP</b>	<b>Burden of Proof</b>
<b>BR</b>	<b>Bankruptcy</b>
<b>C/A or COA</b>	<b>Cause of Action</b>
<b>CAP</b>	<b>Court of Appeals</b>
<b>Caveat Emptor</b>	<b>"Let the buyer beware"</b>
<b>Chattel</b>	<b>any property other than real property</b>
<b>CJC</b>	<b>Commission on Judicial Conduct</b>
<b>Collateral Estoppel</b>	<b>An affirmative defense barring a party from relitigating an issue determined against that party in an earlier action.</b>
<b>Comm</b>	<b>Commercial</b>
<b>Commn.</b>	<b>Commission</b>
<b>COPS</b>	<b>Committee on Professional Standards - charged with disciplining attorneys</b>
<b>Constable</b>	<b>a peace officer responsible for minor judicial duties, such as serving warrants</b>
<b><i>Contra</i></b>	<b>"against"</b>
<b><i>Contra proferentem</i></b>	<b>"against the one bringing forth" - a doctrine suggesting that ambiguities in a document should be construed against the drafter.</b>
<b>Co</b>	<b>Company or County</b>
<b>Co Ct</b>	<b>County Court</b>
<b>Corp</b>	<b>Corporation</b>
<b>CPLR</b>	<b>New York Civil Practice Laws &amp; Rules</b>
<b>CTV</b>	<b>City, Town &amp; Village</b>
<b>D or Def or Δ</b>	<b>Defendant</b>
<b>DBA</b>	<b>Doing Business As</b>
<b>DOC</b>	<b>Document</b>
<b>DOM</b>	<b>Domicile</b>

<b>DOS</b>	<b>New York State Department of State</b>
<b>DRL</b>	<b>New York Domestic Relations Law</b>
<b><i>Duces tecum</i></b>	<b>“bring with you” i.e. <i>Subpoena Duces Tecum</i> - an Order to produce a document</b>
<b>EBT</b>	<b>Examination before trial aka “depositions”</b>
<b>EDNY</b>	<b>Federal District Court for the Eastern District of New York</b>
<b><i>Ergo</i></b>	<b>“therefore”</b>
<b>Equit. Equitable</b>	
<b><i>Ex Parte</i></b>	<b>“from the part” – communication from one party only, without notice to the adverse party</b>
<b>Fam Ct</b>	<b>Family Court</b>
<b>FFC</b>	<b>Full Faith &amp; Credit - recognition of out-of-state judgments</b>
<b>FKA</b>	<b>Formerly Known As</b>
<b>GAL</b>	<b>Guardian Ad Litem</b>
<b>GBL</b>	<b>General Business Law</b>
<b>GML</b>	<b>General Municipal Law</b>
<b>GOL</b>	<b>General Obligations Law</b>
<b>Gravamen</b>	<b>the essential element of a lawsuit</b>
<b>HRG</b>	<b>Hearing</b>
<b><i>Ibid</i></b>	<b>“In the same place”: Used in a document or text to a page previously mentioned</b>
<b><i>In camera</i></b>	<b>“in the chamber”</b>
<b><i>In limine</i></b>	<b>“at the threshold”</b>
<b><i>In Re</i></b>	<b>“In the Matter of”</b>
<b><i>Intra</i></b>	<b>“Within”</b>
<b>Inc.</b>	<b>Incorporated</b>
<b>Info Sub</b>	<b>Information Subpoena</b>
<b>Inf    Infant</b>	
<b>Inquest</b>	<b>“mini one-sided trial” usually relating to damages in a default judgment of a small claims hearing</b>
<b>Ins    Insurance</b>	
<b>Jud.</b>	<b>Judicial</b>
<b>JUD</b>	<b>Judiciary Law</b>
<b>JSC</b>	<b>Justice of the Supreme Court</b>
<b>Juris</b>	<b>Jurisdiction</b>

<b>K</b>	<b>Contract</b>
<b>LAS</b>	<b>Legal Aid Society</b>
<b>L</b>	<b>Landlord</b>
<b>LL</b>	<b>Labor Law</b>
<b>L-T</b>	<b>Landlord Tenant Action aka Summary Proceeding</b>
<b>LLC</b>	<b>Limited Liability Company</b>
<b>LLP</b>	<b>Limited Liability Partnership</b>
<b>MAL</b>	<b>Malpractice</b>
<b>MAT</b>	<b>Matrimonial</b>
<b>MED</b>	<b>Mediation or Medical(s)</b>
<b>MHL</b>	<b>Mental Hygiene Law</b>
<b>Misc</b>	<b>Miscellaneous Reports (trial court decisions)</b>
<b>Misc 2d</b>	<b>Miscellaneous Reports 2d Series</b>
<b>Misc 3d</b>	<b>Miscellaneous Reports 3d Series</b>
<b>Mun.</b>	<b>Municipality</b>
<b>MV</b>	<b>Motor Vehicle</b>
<b>MVA</b>	<b>Motor Vehicle Accident</b>
<b>Nail &amp; Mail</b>	<b>Where service of papers is performed by posting the papers on or near the door and then mailing a set of papers to the D or Resp.</b>
<b>NDNY Federal</b>	<b>District Court for the Northern District of New York</b>
<b>Negl</b>	<b>Negligence</b>
<b>N/P</b>	<b>Notice of Petition</b>
<b>NYCOM</b>	<b>New York State Conference of Mayors and Municipal Officials</b>
<b>NYCRR</b>	<b>New York Code of Rules &amp; Regulations</b>
<b>NYLJ</b>	<b>New York Law Journal</b>
<b>NY</b>	<b>New York Reports – followed by NY2d , NY3d</b>
<b>NYS</b>	<b>New York Supplement, NYS2d</b>
<b><i>Nunc Pro Tunc</i></b>	<b>A latin phrase used in a judgment that is entered in such a way as to have legal effect from an earlier date</b>
<b>OCA</b>	<b>Office of Court Administration</b>
<b>OJCS</b>	<b>Office of Justice Court Support</b>
<b>OSC</b>	<b>Order to Show Cause</b>
<b>P or Π (Pi Symbol)</b>	<b>Plaintiff or Petitioner</b>
<b>P.C.</b>	<b>Professional Corporation</b>
<b>Pers Juris or PJ</b>	<b>Personal Jurisdiction</b>
<b>PET</b>	<b>Petition</b>

<b>PHL</b>	<b>New York Public Health Law</b>
<b>POA</b>	<b>Power of Attorney</b>
<b>PREJ</b>	<b>Prejudice</b>
<b><i>Prima facie</i></b>	<b>“on its face” or “at first look”</b>
<b><i>Pro hac vice</i></b>	<b>“for this occasion” – refers to the ability of an attorney licensed in a different state to appear in a New York State Court. The rules vary across the State on the procedure for this so call The Resource Center if you have such a request.</b>
<b>PTY</b>	<b>Party</b>

***Quantum meruit*** **“as much as he deserved”; reasonable value of services**

<b>Real Property</b>	<b>Land</b>
<b>REF</b>	<b>Referee</b>
<b><i>Replevin</i></b>	<b>aka an action for return of chattel</b>
<b>R or Resp</b>	<b>Respondent</b>
<b><i>Res ipsa loquitur</i></b>	<b>“the thing speaks for itself”</b>
<b><i>Res Judicata</i></b>	<b>“a thing adjudicated” – an issue that has been definitively settled by judicial decision</b>
<b>Res</b>	<b>Residence</b>
<b><i>Respondeat superior</i></b>	<b>“let the master answer”</b>
<b>RPAPL</b>	<b>Real Property Actions &amp; Proceedings Law</b>
<b>RPL</b>	<b>Real Property Law</b>
<b>Rsbl</b>	<b>Reasonable</b>

<b>S&amp;C</b>	<b>Summons &amp; Complaint</b>
<b>Sewer Service</b>	<b>Where a process server swears to service of papers that were not actually served</b>
<b>SDNY Federal District Court</b>	<b>for the Southern District of New York</b>
<b>SJ</b>	<b>Summary Judgment</b>
<b>SMJ</b>	<b>Subject Matter Jurisdiction</b>
<b>Sub</b>	<b>Subpoena</b>
<b>Substantial Justice</b>	<b>the goal of a Small Claims Proceeding. See UJCA § 1804</b>
<b>SOF</b>	<b>Statute of Frauds</b>
<b>SOL</b>	<b>Statute of Limitations</b>
<b>SC</b>	<b>Small Claim</b>
<b>SCPA</b>	<b>Surrogate’s Court Procedure Act</b>
<b>SP</b>	<b>Summary Proceeding</b>
<b>Stay</b>	<b>a suspension of a case or some designated step in it</b>
<b><i>Stare decisis</i></b>	<b>“to stand by things decided” - the doctrine of precedent</b>

<b>T</b>	<b>Tenant</b>
<b>Tort</b>	a “tortuous act” aka a civil wrong for which a remedy may be obtained
<b>T&amp;E</b>	<b>Trust &amp; Estates</b>
<b>TRO</b>	<b>Temporary Restraining Order – an equitable remedy which T&amp;V Justices are unable to grant</b>
<b>UCC</b>	<b>Uniform Commercial Code</b>
<b>UCCA</b>	<b>Uniform City Court Act</b>
<b>UJCA</b>	<b>Uniform Justice Court Act</b>
<b>Uniform Rules</b>	<b>The Rules of the Court contained in the NYCRR and promulgated by the Chief Administrative Judge of New York</b>

***Verbatim*** “in exactly the same words”

**VP** Verified Petition

**WDNY** Federal District Court for the Western District of New York

**Wherefore Clause** Usually found at the end of legal papers where the party indicates - what he or she is seeking

***Yellowstone Injunction*** An injunction granted by a superior court in commercial tenancies that T&V Justices are unable to grant.

## **Common Legal Terms**

A comprehensive list of common legal terms can be found on the UCS website at – <http://www.nycourts.gov/lawlibraries/glossary.shtml>

Also, a more detailed list of commonly encountered abbreviations can be found at - <https://iapps.courts.state.ny.us/webcivilLocal/LCGlossary>



## Glossary of Legal Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

**Arrest** The taking of a person into custody by a law enforcement officer. An officer may arrest an individual for a felony or misdemeanor not

committed in the officer's presence or without a warrant if there is reasonable cause to believe that the individual being arrested committed the crime. If an individual is being arrested in his home, the police must have an arrest warrant, unless the officer has reasonable cause to believe that a family offense has occurred or other exigent or emergency circumstances exist.

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

**Assigned Counsel** An attorney assigned by a judge to represent a defendant who cannot afford to hire legal counsel. Also referred to as l8(b) or panel attorneys, they are chosen from a list of lawyers previously approved by the Appellate Division of the Supreme Court in each judicial department.

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

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

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

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

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

**Booking** The processing of an accused person by a law enforcement agency or other criminal justice agency following an arrest.

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

<b>Charge</b>	<b>The accusation made against a defendant.</b>
<b>Challenge</b>	<b>A party's request that a judge disqualify a potential juror from becoming a juror on a particular case.</b>
<b>Challenge for Cause</b>	<b>A party's challenge to seating a juror that is supported by a specified reason, such as bias or prejudice. See also Peremptory Challenge.</b>
<b>Complainant</b>	<b>An alleged victim of a crime who swears out a complaint or testifies before the grand jury accusing a particular person of committing a criminal act.</b>
<b>Complaint</b>	<b>Written charge accusing a person of a crime.</b>
<b>Concurrent Sentence</b>	<b>Two or more sentences imposed upon a defendant that a judge orders to run at the same time.</b>
<b>Conditional Discharge</b>	<b>A sentence imposed by a judge which mandates certain conditions on the defendant such as participation in a drug treatment program or refraining from criminal conduct.</b>
<b>Consecutive Sentence</b>	<b>Two or more sentences imposed upon a defendant which the judge orders to run one after the other.</b>
<b>Conviction</b>	<b>The judgment or finding that a person is guilty of a crime.</b>
<b>Court Clerk</b>	<b>A court employee responsible for supervising court personnel as well as handling the court's records and files.</b>
<b>Court Interpreter</b>	<b>A court employee who translates proceedings from English to another language when defendant or witnesses do not understand English or are hearing impaired, and also translates from another language into English when a defendant or a witness does not speak English or is hearing impaired.</b>
<b>Court Officer</b>	<b>A court employee who is responsible for providing court security, maintaining order in the courtroom, and transporting defendants from holding cells to the courtroom.</b>

<b>Court Reporter</b>	<b>A court employee who is responsible for keeping a written record of all court proceedings and preparing transcripts of the proceedings upon request.</b>
<b>Crime Victim Assistance Fee</b>	<b>A fee imposed by New York State upon a defendant who is convicted of a felony, misdemeanor, or violation.</b>
<b>Criminal Offense</b>	<b>An act that violates the Penal Law passed by the New York State Legislature. Offenses can fall into three different categories Felony, Misdemeanor, or Violation.</b>
<b>Criminal Procedure Law (CPL)</b>	<b>A set of laws that specifies the procedures to be followed in criminal cases in New York State.</b>
<b>Cross-examination</b>	<b>The questioning of witnesses by the opposing attorney.</b>
<b>Custody</b>	<b>The detention of an accused or convicted person.</b>
<b>Defendant</b>	<b>The person accused of or convicted of committing a criminal offense.</b>
<b>Defense Attorney</b>	<b>The lawyer who represents the defendant in a criminal case. The defense attorney may be assigned by the judge at no charge to the defendant if the defendant is indigent or retained privately by the defendant for a fee.</b>
<b>Designated Felony</b>	<b>An act committed by a person age 13, 14, or 15, which if committed by an adult, would constitute one of the following crimes murder, kidnapping, arson, assault, manslaughter, rape, criminal sexual acts, or robbery.</b>
<b>Detention</b>	<b>To hold or confine an accused person prior to trial or plea.</b>
<b>Direct Examination</b>	<b>The questioning of a witness by the attorney representing the party for whom the witness is testifying.</b>
<b>Discovery</b>	<b>A process by which attorneys gather information concerning the opposing lawyer's case.</b>
<b>Disposition</b>	<b>The final settlement or determination of the case.</b>

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

## **DNA fee**

**Docket** A schedule of pending cases.

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

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

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

**Family Court** A court located in every county in New York State, which hears cases involving children and families including child custody and support, neglect and abuse, juvenile delinquency, family offenses (i.e. domestic violence), and paternity.

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

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

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

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

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

<b>Hung Jury</b>	<b>A jury that is unable to reach a unanimous verdict, which often results in a mistrial.</b>
<b>Huntley Hearing</b>	<b>A hearing held on a motion to suppress a statement made by a defendant on the grounds that it was illegally obtained.</b>
<b>Incarceration/Imprisonment</b>	<b>Confinement of an individual to prison or jail.</b>
<b>Indictment</b>	<b>The written accusation voted by a grand jury charging the defendant with the commission of a crime, usually a felony.</b>
<b>Indigent Defendant</b>	<b>A person who cannot afford to hire a lawyer, who is eligible to receive the assistance of a court-appointed attorney.</b>
<b>Information</b>	<b>A verified written accusation by a person that charges the defendant with the commission of an offense. An information can provide the basis to commence prosecution.</b>
<b>Integrated Domestic Violence Court (IDV)</b>	<b>A specialized court that hears all aspects of domestic violence cases based on a one-family-one judge model.</b>
<b>Judicial Department</b>	<b>The Appellate Division of the Supreme Court is divided into 4 judicial departments, each consisting of 4 or 5 judges. Each department has jurisdiction over a different part of New York State.</b>
<b>Judicial Hearing Officer (JHO)</b>	<b>A former or retired judge assigned to conduct pre-trial hearings and other pre-trial proceedings who submits a report to the judge presiding over the case containing factual findings and legal conclusions from those proceedings. Under certain circumstances, a JHO can conduct bench trials in misdemeanor cases.</b>
<b>Judge</b>	<b>A public official appointed or elected to hear witnesses, examine evidence, decide legal questions that arise during proceedings, determine the outcome of cases, and issue orders for the resolution of cases.</b>
<b>Jurisdiction</b>	<b>A court's power to decide a case.</b>
<b>Jury</b>	<b>A group of citizens selected according to state law who are sworn to deliver a verdict in a case based on the evidence and the law presented to them.</b>

<b>Jury Deliberation</b>	The process of evaluating and discussing evidence by which a jury reaches a verdict.
<b>Jury Instruction</b>	The guidelines given to the jury at the conclusion of the presentation of evidence at trial and prior to deliberation by the judge about the law that governs the case.
<b>Jury Pool</b>	A group of potential jurors randomly selected from lists of registered voters; licensed drivers; state and local taxpayers; recipients of public assistance benefits; recipients of state unemployment benefits; and volunteers.
<b>Jury Trial</b>	A trial in which a jury, not the judge, determines factual issues and reaches a verdict.
<b>Juvenile</b>	An individual who has not yet reached the age established by law at which one should be treated as an adult by the criminal justice system.
<b>Juvenile Delinquent</b>	A person at least age 7, and younger than age 16, who has committed an act which would constitute a crime, if committed by an adult. Juvenile delinquency cases are handled in the Family Court.
<b>Juvenile Offender</b>	A person aged 13, 14, or 15 who commits certain designated felony acts that are adjudicated in a criminal court.
<b>Law Guardian</b>	An attorney assigned by the court to represent a juvenile in the Family Court.
<b>Legal Aid Society</b>	An organization providing government-funded legal services to indigent defendants.
<b>Mandatory Surcharge</b>	A fee imposed upon a defendant when he/she has been convicted of an offense which is separate and distinct from any fine which the court may impose.
<b>Mapp Hearing</b>	A hearing held on a motion to suppress physical evidence on the grounds that the police seized the evidence during an illegal search.

<b>Mediation</b>	<b>A method of alternative dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable disposition.</b>
<b>Midtown Community Court</b>	<b>A neighborhood-based arraignment court dealing primarily with low-level, quality of life offenses.</b>
<b>Misdemeanor</b>	<b>A criminal offense punishable by a sentence of more than 15 days and up to one year in jail.</b>
<b>Mistrial</b>	<b>A trial ended by a judge due to procedural errors or misconduct during the proceeding or a hung jury.</b>
<b>Modification</b>	<b>An appellate court changes or modifies the sentence or charge.</b>
<b>Motion</b>	<b>A written or oral request that a court take a particular action.</b>
<b>Motion Hearing</b>	<b>A hearing to decide whether to grant a particular request made to the court.</b>
<b>New York Division of Criminal Justice Services (DCJS)</b>	<b>A multi-functional criminal justice support agency that is the central repository for juvenile and adult fingerprint records. Fingerprints along with arrest information are stored in the DCJS's Computerized Criminal History (CCH) database.</b>
<b>Notice of Appeal</b>	<b>A document filed with a court stating that the defendant intends to appeal the trial court's decision.</b>
<b>Opening Statement</b>	<b>A statement given by attorneys at the outset of the trial to provide the jury or judge with a preview of the case including the evidence to be presented.</b>
<b>Partial Verdict</b>	<b>A verdict in which a jury finds a defendant guilty or not guilty on some charges and has no unanimous finding on other charges.</b>
<b>Penal Law/Code</b>	<b>The state's criminal laws, which consists of a list of all offenses and their possible punishments.</b>



<b>Peremptory Challenge</b>	<b>A lawyer's request to dismiss a potential juror without any legal reason during jury selection. Such a challenge may not be used to discriminate on the basis of race, ethnicity, or gender.</b>
<b>Plea</b>	<b>A defendant's answer of "guilty," or "not guilty" to criminal charges.</b>
<b>Plea-Bargaining</b>	<b>The process by which the prosecutor and defense attorney negotiate the disposition of a case. Generally, the defendant pleads guilty to a lesser charge or to one of multiple charges in exchange for dismissal of some charges or a lesser sentence.</b>
<b>Pre-arraignment Bail</b>	<b>A sum of money that an arrested person may be required to pay in order to be released from custody prior to arraignment.</b>
<b>Predicate Felon</b>	<b>A person convicted of a felony after having previously been convicted of a felony within the prior ten years.</b>
<b>Preliminary Hearing</b>	<b>A hearing to determine if there is sufficient evidence to prosecute a defendant for a felony.</b>
<b>Preliminary Instructions</b>	<b>The instructions regarding trial procedures given to a jury by the judge at the start of a trial.</b>
<b>Pre-sentence Investigation Report</b>	<b>A probation officer's report on the defendant's background conducted at the request of the court prior to sentencing.</b>
<b>Pre-trial Conference</b>	<b>A meeting between opposing attorneys to discuss the evidence and issues that will be tried. Frequently such conferences result in the case being resolved without a trial.</b>
<b>Pre-trial Motion</b>	<b>A request by either the prosecutor or the defense attorney that the court take a specific action in a defendant's case. Pre-trial motions must generally be made within 45 days of arraignment.</b>
<b>Probation</b>	<b>A court ordered sentence that places a convicted person under the supervision of a probation officer for a definite period of time. Instead of sending him or her to jail or prison.</b>

<b>Probation Department/Department of Probation</b>	The local (county or city) agency that is responsible for the supervision of convicted criminal defendants.
<b>Probation Officer</b>	An officer of the Department of Probation who prepares pre-sentencing reports and supervises defendants placed on probation.
<b>Prosecutor</b>	A lawyer who represents the people of the State of New York in criminal cases. This lawyer is often from a county District Attorney's office and is referred to as an assistant district attorney (ADA).
<b>Rap Sheet</b>	A written record of an arrested person's prior criminal history, if one exists. It is based on a fingerprint comparison. It also contains biographical data, aliases, and prior and current bench warrants.
<b>Reasonable/Probable Cause</b>	The standard of proof that must be met for a police officer or law enforcement officer to arrest a person without a warrant. Reasonable cause to believe that a person has committed an offense exists when a person of ordinary intelligence, judgment and experience based on the facts or evidence presented believes that it is reasonably likely that a criminal offense was committed and that such person committed it.
<b>Reasonable Doubt</b>	A doubt of guilt for which a person can give a reason. In criminal cases, "beyond a reasonable doubt" is the standard used by a jury to decide whether a defendant is guilty.
<b>Rebuttal</b>	The evidence offered by the prosecution in response to the defendant's direct evidence.
<b>Recidivism</b>	To lapse into a previous pattern of criminal activity or behavior.
<b>Rehabilitation</b>	The process of restoring a convicted offender to a constructive place in society by some form of vocational, correctional, or other training.
<b>Release on Own Recognizance (ROR)</b>	The release of a defendant without bail, pending a trial or other action.
<b>Removal</b>	The transfer of a juvenile offender case from Criminal Court to Family Court.

<b>Restitution</b>	Compensation for the loss caused to another, which is sometimes ordered as a condition of probation or a conditional discharge.
<b>Reversal</b>	An appellate court overturns a conviction or decision of a lower court resulting in the case being dismissed, or a new trial or hearing in most cases.
<b>Sentence</b>	The punishment imposed by the court on a criminal defendant after he or she is found guilty.
<b>Sequestration</b>	The separation or isolation of a jury during the deliberations.
<b>Split Sentence</b>	A sentence in which part of the time is served in jail and the balance on probation.
<b>Standard of Proof</b>	The level of proof required in a specific case, such as “beyond a reasonable doubt” in criminal cases.
<b>Summation</b>	The closing argument made to the jury before it deliberates by both the prosecution and the defense in which each side recaps the evidence in their favor. The prosecution must present a summation. The defense may make a summation.
<b>Summons</b>	A notice requiring an individual to appear in court.
<b>Superior Court Information (SCI)</b>	A written document containing the felony and/or misdemeanor charges against the defendant filed by the district attorney with a superior court when the defendant waives his or her right to a grand jury hearing.
<b>Suppression Hearing</b>	A pre-trial hearing in which a defendant seeks to prevent certain types of evidence from being presented at trial on the grounds that it was illegally obtained. See also pretrial motions.
<b>Temporary Order of Protection</b>	A court order requiring the defendant to stay away from the complainant until the criminal case is resolved.
<b>Term</b>	The periods during which a court conducts its business.
<b>Testimony</b>	The evidence that a competent witness gives under oath at trial, or in a deposition.

<b>Transcript</b>	The official written record of all court proceedings that is recorded by a court reporter.
<b>Trial</b>	A legal proceeding in which evidence is presented to a judge or jury who then returns a verdict based on that evidence.
<b>Trial Court</b>	The court where the evidence is first presented and considered.
<b>Unconditional Discharge</b>	The release of a defendant without any conditions. However, the discharged person will have to pay a fine or make restitution, as well as pay a surcharge or a crime victim's assistance fee.
<b>Verdict</b>	The decision of a jury or a judge in a trial determining whether the prosecutor has proven every element of the crime charged beyond a reasonable doubt. In a criminal case, the verdict is the jury or judge's finding of guilt or non guilt.
<b>Victim Impact Statement</b>	A statement from the victim or the victim's family made during sentencing proceedings to inform the judge of the impact of the crime on the victim and the victim's family.
<b>Violation</b>	An infraction that is punishable by up to 15 days in jail and/or a fine. A violation is not a crime.
<b>Voir Dire</b>	The jury selection part of a trial.
<b>Wade Hearing</b>	A hearing held on a motion to suppress an identification of the defendant on the grounds that an out of court police arranged identification procedure was illegal or suggestive.
<b>Waiver of Immunity</b>	A written document signed by a person who is a witness in a grand jury or other proceeding agreeing to waive his privilege against self-incrimination.
<b>Waiver of Indictment</b>	A written document signed by the defendant agreeing to waive his right to a grand jury hearing.
<b>Witness</b>	A person who testifies as to what he has seen, heard, or otherwise observed pertaining to the case.

**Youth Court** A specialized court, staffed by trained young people, who hear cases involving low-level juvenile offenses.

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

## Contact Numbers/Supervising Judges

A list of contact numbers and Supervising Judges within each Judicial District can be found at the following:

<http://www.nycourts.gov/courts/townandvillage/pdfs/SupervisingJudges.pdf>

### Phone Numbers Referenced in Manual

#### Office of Court Administration

Office of Justice Court Support	1-800-232-0630
Criminal Disposition Reporting Unit	1-866-246-2361
Office of Records Management	518- 238-4327
Family Protection Registry Center	1-800-266-9511
Web-DVS	1-800-622-2522
Division of Technology	1-800-622-2522 x7
Credit Card Machine - Problems with machine	1-800-741-5682
Credit Card Machine - Operating Machine	1-866-451-4007

#### Division of Criminal Justice Services

Fingerprint Process	212-428-2661
Setting up eJustice Account	1-800-262-3257
eJustice Help Desk	1-888-462-8003
Office of Sex Offender Management	518-457-5628

#### Department of Motor Vehicles

T-SLED Error Reports	1-800-948-7533
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#### Interpreting

Language Line Services	1-800-752-6096
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## II. ADMINISTRATION

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### Court Records – Access To/Sealing of

#### Access To Court Records

Addressing requests for court records is an important part of the Court Clerk's duties. There are many rules regarding the releasing and withholding of court information. The public has a general right to know what is happening in the Courts, but there are certain circumstances where some or all of the information in a court case file may be protected.

Knowing who is entitled to see what court records can be one of the most challenging and crucial aspects of learning the Court Clerk's job.

The court should have policies and procedures in place that handle records requests efficiently and consistently.

**IMPORTANT:** Most requesters believe they are *entitled* to the information they seek and they may become frustrated if the court does not appear to be responding in a fair and timely manner. Of course, the court is always concerned about releasing something it should not, but the request for information should be answered promptly and without suspicion. *Remember*, a request for records is not an accusation of wrong-doing by the court *and* the court does not want to create the impression that there is anything to hide about the procedures.

#### Availability of Court Records

##### FOIL (Freedom of Information Law)

FOIL is one of the most common terms used when a person, agency or the media is seeking to obtain information on a court case. There are rules regarding how these requests are to be submitted and processed. Freedom of Information requests are covered under Section 87 of the Public Officers Law which addresses agency records, but Court records are excluded. Public Officers Law 84. The court does not need to process FOIL requests in the same manner as other town and village departments.

*However*, certain court records are available under other laws.

Therefore, it is important to learn the specific rules and laws regarding access to court records.

**NOTE:** Many times, the Town or Village Clerk will receive a FOIL request for the records in your court. It is a good idea to work with the Clerk to develop an understanding of how such requests will be handled. Some Town or Village Clerks will tell the requestor to contact the Court directly. Others will deliver a copy of the request to the Court to respond.

**Generally, Who Has Access to Court Records That Are Not Sealed or Confidential?**

**The Public:** Anyone, regardless of who they are or who they represent. This includes the media (newspapers, radio and television).

Records and dockets of the court shall be at reasonable times open to the public for inspection. Uniform Justice Court Act (UJCA)-2019(a). The public's right of access to court records does not necessarily mean a right to *immediate* access.

What is considered *reasonable* is largely determined by the Court. If there is a request to review the original case file, the court may need to provide supervision. Also, certain confidential materials may need to be removed. Additionally, it may be that a Court session is just about to begin and it is an inconvenient time for the court to accommodate a person requesting access to court records. The Court work does not need to come to a complete halt in order to fulfill a request. However, the court should provide access to eligible records as soon as possible, so that the requester is not unreasonably held up from receiving the information he or she is entitled to.

*Note: As mentioned previously, the time-frames for response to records requests under FOIL do not apply to court records.*

**Agencies:** Specific public agencies that we work with regularly.

The same rules (as above) apply to the agencies that we work with. While the Court is required to provide a copy of certain records to some agencies (like the District Attorney's office and the Probation Department) at certain points during the life of a court case, the court is not required to provide unlimited access to all court records at any time. The court should, however, respond as soon as possible, without creating undue hardship on the operations of the court.

**Municipal Boards:** Your local Town and Village Boards, including the Supervisor or Mayor.

2019a UJCA requires justices to present their records and dockets to their municipal boards at least once annually. The purpose of this rule is to insure that the court is



carrying out the fiscal duties and responsibilities that are outlined in the *Fiscal Responsibility* portion of this manual.

**Note:** There is no law, rule or statute, however, that requires a court to present a monthly status report to his or her board at a public board meeting. The Court Clerk should always be mindful not to make any public statements or comments regarding the handling of court cases or in any way suggest the Court's function is to generate revenue for the municipality.

**Fee:** The fee for photocopies of records shall be 25 cents per page for photocopies. 124.8(a1) of the Rules of the Chief Administrator.

## How to Handle Incoming Requests

### Identification

A person who is requesting court records that are available to the public, is not required to provide information as to who they are or why they are requesting a court record(s).

Some records may be sealed or held confidential and may not be available to the general public. In that case, a person may need to provide proof that they are one of the parties who is entitled to receive such information. For example, a defendant may need to provide an official photo ID, or an attorney may have to provide a letter of representation.

**Question:** *What should a clerk say when a request is coming in and they do not yet know if the person is entitled to the information they are seeking?*

**Answer:** It is perfectly acceptable to inform the individual that if they *wish* to provide proof of their identity, along with their association to the case, and the record does not turn out to be a public record, your court will be able to ascertain what records, if any, are available to them.

**IMPORTANT:** Be consistent. You should provide the same instruction to each individual who comes to you with a request. You should never appear to be throwing up barriers to someone who is entitled to information, nor should you reveal that a specific record even exists if they are not entitled to that information.

### Requests in writing:

The court may ask that the request for a record be written, and may even have a form for that purpose.

**However** the court should not insist that a request be in writing. While the Court should be as consistent as possible, the clerk should be mindful of exceptional circumstances. Any member of the public communicating their request is not necessarily able to write due to a physical, mental or language barrier.

If the request is being sent by mail, and the record being sought is sealed or otherwise held confidential, the court may require that the request include some sort of verification that the requestor is entitled to a copy of the record.

#### **Court Record Search Requests**

Occasionally, courts will receive requests from individuals or agencies asking that the court conduct a record search on a particular individual. Such searches are required to be completed by court personnel as stipulated under section Judiciary Law 255-A which states that “A clerk of the court must, upon request, diligently search the files, papers, records, and dockets in the office.”

The party requesting a search of the records must provide enough information for the clerk to be able to conduct a diligent search of the records, assess a fee (if any), and determine whether there is, in fact, no record to be found.

For administrative purposes, the court may have a form for searching records. These forms may streamline the process by providing answers to questions that will assist the Court in locating the record(s) and basic fee information.

#### **Search Fees**

There is a search fee of \$5.00 for every two-year consecutive search. Civil Practice Laws and Rules 8020 (g)

Example: A search for a Petit Larceny conviction 1997-2000 = \$10.00 in search fees (for four years: 1997, 1998, 1999 & 2000)

If the search period is for an odd number of years, the Court may charge the entire \$5.00 fee for the last year.

Example: seven (7) year Criminal record search = \$20.00 search fee.

The fees should be paid before conducting the search for the record and recorded according to the rules of the State Comptroller. Uniform Justice Court Act 1911(a)2

***Exemptions from Court Record search fees:***

**All NYS Agencies                      Civil Practice Laws and Rules (CPLR) 8017**  
**Local County Agencies      CPLR 8017**

**Certain Federal Agencies including:      Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), Dept. Of Defense, Dept. Of State Office of Personnel Management (Title 5 Section 9101 (b)(1)**

**Sealing Court Records**

**What Cases should be sealed?**

**Uniform Rules for Trial Courts 216: Civil Actions are only sealed upon written finding of good cause.**

**Criminal Procedure Law (CPL) 160.50: Criminal Actions Terminated in Favor of the Accused**

**The criminal action is terminated in favor of the accused and the Court's record is sealed to the public**

**What Cases Are Terminated in Favor of the Accused and Sealed Under CPL 160.50?**

- **Acquitted: (Found Not Guilty after Trial).**
- **Dismissed: all offenses, including traffic infractions and minor offenses under local laws.**
- **Judgment was vacated and either:**
  - 1) No appeal was filed or**
  - 2) Defendant wins on appeal and no new trial was ordered.**
- **Order to set aside the verdict and either:**
  - 1) No appeal was filed or**
  - 2) Defendant wins on appeal and no new trial was ordered.**
- **Conviction was invalidated in a Civil Practice Laws and Rules (CPLR) Article 70 (Habeas Corpus) proceeding and:**
  - 1) No appeal was filed or**
  - 2) Defendant wins on appeal.**
- **Adjournments in Contemplation of Dismissals after the adjournment period has expired, on the deemed dismissed date.**
- **Unlawful Possession of Marijuana Convictions after 3 years have passed since the incident date.**

**CPL 160.50 sub 3 (k)**

**Where the original charge is a Marijuana Misdemeanor or Violation and the conviction is for Unlawful Possession of Marijuana:**

- The charge is mandatorily sealed but not until at least 3 years after the date of the incident
- Reductions to “Zero Tolerance” Vehicle & Traffic Law (VTL) 1192-a and NAV 49-a: Operating a Vessel While Under the Influence of Alcohol and Drugs

**CPL 160.55: Criminal Actions Terminated by a Conviction to a Noncriminal Offense**  
Where a misdemeanor is reduced to a traffic infraction or a violation (exceptions on next screen) the Court records are not sealed and are available to the public. However, the records of the Division of Criminal Justice Services (DCJS), the prosecution and law enforcement are sealed.

#### **CPL 160.55 Exceptions**

In the following cases, DCJS, prosecution and law enforcement records (as well as the Court records) are NOT sealed under this section:

- VTL 1192.1 Driving While Ability Impaired (DWAI).
- PL 240.35(3) Loitering for the Purpose of Engaging or Soliciting Sexual Deviation.
- PL 240.37(2) Loitering for the Purpose of Engaging in Prostitution.
- PL 221.05 UPM - If it is reduced from a Misdemeanor, it does not get a CPL 160.55 seal (Remember: this is eventually sealed under 160.50).
- After Consuming Alcohol while under 21 years old are sealed as CPL 160.55, but not until the defendant turns 21 or 3 years from the commission of the act, whichever is longer.
- Where the Court has determined not to seal in the interest of justice.

Please note: That all though cases that involve Family Offenses have special codes when a Misdemeanor is reduced to a Violation, those cases are still sealed under CPL 160.55. See *New Sealing Requirements* at:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/newSealingReq.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/newSealingReq.shtml)

**CPL 160.58: “Conditional Seal”** is applied to certain specified convictions, where a subsequent arrest may trigger an unsealing event

Defendants who successfully complete a Judicial Diversion Program, Alternative to Prison Drug Treatment Program, or other comparable judicially sanctioned drug treatment program may be eligible for the sealing of a case, and up to three prior Misdemeanor convictions. This type of seal can be removed based on a subsequent arrest for a felony or misdemeanor. See *Sealing Case Files*:

***Please contact the Resource Center if you get notification regarding sealing your Court's records under this section.***

**CPL 720.20: “Youthful Offender Adjudication” where a conviction is replaced by a Youthful Offender finding (at sentencing) and the case is held confidential.**

**CPL 720.15(1): Eligible Youthful Offenders**

**Where Defendant is at least 16 yrs old and less than 19 yrs old with a case filed charging at least one misdemeanor as the highest charge the accusatory instrument is sealed upon filing. The Defendant cannot have been convicted of a crime, or have been previously adjudicated a Youthful Offender (YO). These records are sealed under this section as long as the case is still pending. Cases that have received an Adjournment in Contemplation of Dismissal should remain sealed under this section until they are deemed dismissed. At that time, the CPL 160.50 seal will apply.**

**Who should be notified that a Case is sealed?**

**CPL 160.50, CPL 160.58 & CPL 160.55:**

- **Division of Criminal Justice Services (DCJS).\***
- **Arresting agency.**
- **District Attorney or other designated prosecutor (such as the Town or Village Attorney).**
- **Any jail or prison known to have had custody of the Defendant under the charges during the pendency of the case.**
- **Any other Court that the case was transferred to or from .**

**\* Note: Where a case has been Adjourned in Contemplation of Dismissal (ACD), a new Criminal Disposition Report with the CPL 160.50 sealing code will need to be sent to DCJS on the deemed dismissed date.**

**CPL 720.20: “Youthful Offender Adjudication”**

**All the same agencies as are notified under CPL 160.50, CPL 160.58 & 160.55 AND the Designated Education Official if the Defendant is enrolled in a public or private primary (elementary) or secondary school.**

**Important: The Court should only send the fact that it was adjudicated as a YO and details of the sentence. No information regarding the charges should be released.**

**For more information on these notifications, see Safe Schools Act information:**

**What records are sealed?**

The physical case record and the case record in the computer system, are sealed pursuant to CPL 160.50, 160.58 or held confidential under CPL 720.35. It is also important that any identifiable reference to the case be sealed to the public.

**NOTE:** There are special provisions for the sealing of the records for Apparently Eligible Youths under CPL 720.15(1):

- Court files and accusatory instruments should be conspicuously flagged to alert staff as to the confidential status of the case.
- Calendars and rosters should not display the charges associated with an Eligible Youthful Offender on a docket/case.

**Orders of Protection**      An active (unexpired) Order of Protection is not sealed.

However, in Youthful Offender cases, the system will redact the charges and they do not appear. All other information about the order is available for enforcement. It is important that these cases be marked appropriately in the Order of Protection Registry.

**CPL 160.50:**

When a case is terminated in favor of the accused and sealed, any associated order of protection must be sealed in Web-DVS.

**Delayed Sealing:** At the expiration of an ACD, where the case is then dismissed and sealed, any associated Temporary Order of Protection must be sealed in Web-DVS.

Digital recordings of sealed cases are also sealed under CPL 160.50, 160.58 or held confidential under CPL 720.35.

**Note:** Active Warrants are not sealed.

**How is the Case Record Sealed?**

**Electronically:**

Appropriate sealing codes should be entered into your case management system as soon as possible in order to produce Criminal Disposition Reports (CDR) and other notifications. Cases should be clearly marked with the appropriate sealing code so that access to information can be limited.

### **The Physical File:**

Clearly mark cases that have been sealed with the appropriate statute.

Cases that are sealed pursuant to CPL 160.50, 160.58 or held confidential as a YO should be covered in such a way that no identifying information about the defendant is visible to someone searching for another record.

### **Best Practice:**

Cases that are totally sealed should be separated from other cases. The storage area should be secure from unauthorized access.

A Quick Reference Guide to the Criminal Case Seal Process can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/educationtrainingpdfs/administrative/Criminal-Sealing-Process.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/educationtrainingpdfs/administrative/Criminal-Sealing-Process.pdf)

**\*\*\*Access to sealed records is covered in the Access to Court Records section\*\*\***

### **Who Has Access to Sealed Records?**

There are certain circumstances where sealed records are accessible to certain parties.

Listed next are each of the sealing types, with a description of who can have access to the court's records, and under what circumstances.

### **If a case is sealed under Criminal Procedure Law (CPL) 160.50:**

- Pictures and fingerprints are either returned to defendant or destroyed.
- Division of Criminal Justice Services records are sealed by court reporting "seal" on Criminal Disposition Report 540 form.
- Court notifies arresting agency by providing a sealing notice or copy of 540 report.
- Court notifies original arraigning court if case was transferred.
- Court notifies County Court if case was returned.

Generally, court staff should respond with "No Record Found" except when requested by:

- The defendant or designated agent.
- Law Enforcement ONLY upon granting of an ex-parte motion by superior court.
- Any state or local officer or agency responsible for issuance of gun licenses.

- State Division of Parole when the defendant is currently under parole supervision and the arrest occurred while the defendant was under such supervision.
- The Probation Dept. responsible for supervision of the defendant when the arrest in the case occurred during the period of supervision.
- The prosecutor where the defendant has moved for an order pursuant to CPL 170.56 (Marijuana ACD).
- A prospective employer of a police or peace officer in relation to an application for employment (a copy of the record must also be given to the defendant).

**NOTE:** Generally, court staff should respond with “No Record Found” except when requested by one of the parties listed above. A court clerk responding to a request by Office of Child and Family Services, the Federal Bureau of Investigation (FBI) for a NICS firearms check, Office of Mental Health, and Office of Mental Retardation and Developmental Disabilities concerning information on a CPL 160.50 sealed case should respond: “Case Concluded; Record Sealed.” (See OCA Memorandums dated 4/18/2000, 3/26/2009 & 7/1/2009) which can be found at the following on pages 27-40:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/educationtrainingpdfs/2011/Sealing-Case-Files-Core-A.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/educationtrainingpdfs/2011/Sealing-Case-Files-Core-A.pdf)

**If a case is sealed under CPL 160.58:**

A defendant convicted of an offense defined in article 220 or 221 of the Penal Law or a specified offense defined in 410.91(5) of the CPL who successfully completed a judicial diversion program, or a drug treatment alternative to prison or another judicially sanctioned program, is eligible to have such offense or offenses sealed.

The court may order that all official records and papers relating to arrest, prosecution and conviction resulting in defendant’s participation in drug treatment program, be sealed. In such case, the court may conditionally seal the arrest, prosecution and conviction records for no more than *three* of the defendant’s prior eligible misdemeanors (limited to misdemeanors defined in Articles 220,221 of Penal Law).

Generally, court staff should respond with “No Record Found” when someone inquires about a case sealed pursuant to CPL 160.58. However, records sealed pursuant to this subdivision shall be made available to:

- The defendant or the defendant's designated agent.
- Qualified agencies, as defined in Executive Law 835 subdivision 9.
- courts in the Unified Court System.
- the administrative board of the judicial conference.



- probation departments.
- sheriffs' offices.
- district attorneys' offices.
- the state department of corrections and community supervision.
- the department of correction of any municipality.
- the financial frauds and consumer protection unit of the state department of financial services.
- the office of professional medical conduct of the state department of health for the purposes of section two hundred thirty of the public health law.
- the child protective services unit of a local social services district when conducting an investigation pursuant to subdivision six of section four hundred twenty-four of the social services law.
- the office of Medicaid inspector general.
- the temporary state commission of investigation.
- police forces and departments having responsibility for enforcement of the general criminal laws of the state.
- the Onondaga County Center for Forensic Sciences Laboratory when acting within the scope of its law enforcement duties.
- the division of forensic services of the Nassau county medical examiner's office when acting within the scope of its law enforcement duties.
- Federal and state law enforcement agencies, when acting within the scope of their law enforcement duties.
- Any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the person has made application for such a license.
- Any prospective employer of a police officer or peace officer in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained.

**If a case is sealed under CPL 160.55:**

**This is what is regularly referred to as a “partial seal.” It is when a misdemeanor is reduced to a violation or traffic infraction; or a case is reduced from a crime to a non-crime. In such instance:**

- Pictures and fingerprints are either returned to defendant or destroyed.
- Division of Criminal Justice Services records are sealed by court reporting “seal” on Criminal Disposition Report 540 form.
- Court notifies arresting agency by providing a sealing notice or copy of 540 report.
- Court notifies original arraigning court if case was transferred.
- Court notifies County Court if case was returned.

*However, court records remain open and any applying party has access to the court record.*

**\*\* Requests from representatives of the Armed Services**

If a representative from a branch of the Armed Services requests information on a case involving a potential recruit, such request should be handled in the following manner:

- If the case information involving a potential recruit involves a case that was *not sealed* pursuant to statute, information on the charge and eventual disposition may be provided.
- If the case involving a potential recruit was *sealed* pursuant to statute, no information may be provided to the recruiter unless written authorization has been provided by the defendant (recruit).

**Adjudicated Youthful Offenders - If a case is sealed under CPL 720.35:**

All official records and papers on file with the court are confidential and may not be made available to any person or public or private agency, other than:

- The Youthful Offender or his/her designated agent.
- Any institution to which the defendant has been committed.
- Division of Parole in order to carry out their duties as specified by law.
- Dept. of Probation in order to carry out their duties as specified by law.
- The Designated Educational Official of a public or private primary or secondary school in which the youth is enrolled (ONLY after adjudication and ONLY the fact that the case was adjudicated a YO and sentencing information should be released, not the charges).
- Anyone permitted by statute or with specific authorization by order of the sentencing court.
- Active Warrants and Orders of Protection may be maintained on the statewide registry while they are in effect (CPL 720.35.2).

**NOTE:** Generally, court staff should respond with “No Record Found” except when requested by one of the parties listed above. A court clerk responding to a request by Office of Child and Family Services, the Federal Bureau of Investigation (FBI) for a NICS firearms check, Office of Mental Health, and Office of Mental Retardation and Developmental Disabilities concerning information on a YO adjudication should respond: “Case Concluded; Record Sealed”. (See OCA Memorandums dated 4/18/2000, 3/26/2009 & 7/1/2009) which can be found at the following on pages 27-40:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/educationtrainingpdfs/2011/Sealing-Case-Files-Core-A.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/educationtrainingpdfs/2011/Sealing-Case-Files-Core-A.pdf)

### **Final Adjudication of Youthful Offender:**

**All papers and records on file with the court are confidential. Exceptions include:**

- **The youth himself/herself or designated agent (attorney).**
- **Institution to which defendant has been committed.**
- **Division of Parole in order to carry out their duties as specified by law.**
- **Probation Department in order to carry out their duties as specified by law.**
- **Active warrants and Orders of Protection.**

### **Public Inquiry (Phone, In-Person, Mail)**

**Regardless of the information that a member of the public may provide when making an inquiry (name, docket number, etc.), court staff should be instructed only to disclose the date, time and location of a court proceeding. The accusatory instrument and related information are confidential.**

**There may be requests for case papers (such as general omnibus motions) that may not be covered by this section of law. These requests should be handled following your court's protocol for review. Generally, court staff should respond with "No Record Found".**

### **Inquiry from Defendant or Defendant's Counsel**

**If the defendant can provide proper identification, they should have access to the same information as a defendant in any other criminal proceeding.**

### **Posted Court Calendars & Courthouse Rosters**

**Calendars and rosters should not display the charges associated with an Eligible Youthful Offender on a docket/case.**

**Other Agencies that work in and with the court should not be barred from viewing or having access to the information related to a case pending against an eligible youth, unless that information will, in turn, be made available to the public.**

### **Unsealing Records**

**A record that has been sealed can only be unsealed and released to anyone other than those parties authorized by law, if the Court receives a superior Court order to do so. Depending on your location, a superior Court may be a Supreme, County or Appellate Court.**

### **Confidential Records Within a Case File**

**Cases involving sex crimes Civil Rights Law 50(b)- No public officer or employee shall disclose any portion of any police report, court file, picture, photograph, or other document, which tends to identify the victim of a sex crime.**

***Note:* The Victim's identifying information may be redacted from a copy of the court documents before release to the public.**

**Exceptions: The person charged, their attorney and/or guardian, the District Attorney and any investigating agency may obtain a complete copy of Court papers.**

#### **Pre-Sentence Investigation Report - Criminal Procedure Law 390.50**

**A Pre-Sentence Report submitted to the court and any medical, psychiatric or social agency report or other information gathered for the court by a probation department in connection with the question of sentence is confidential and may not be made available to any person or agency except where required.**

#### **Exceptions:**

**Disclosure of Pre-Sentence Report for examination and copying not less than one day prior to sentencing to:**

- Defendant.
- Defendant's Attorney.
- Prosecutor.

**Court may withhold from disclosure a part or parts of a report which are not relevant to proper sentence.**

***Note:* When a part or parts of the report are excluded, the court shall state on the record the reason for its action.**

#### **Other Confidential Records**

**Alcohol & Drug screenings, assessments and treatment records**

**Medical Records**

**Mental Health Reports**

**Notes of a Judge**

**Search Warrant Applications (generally)**

**Criminal History Report "RAP Sheet"**

**Personal Information received from DMV (Driver Protection Registry Act)**

**Credit Card Information**

**Jurors Names - Judiciary Law 509(a) - (that includes juror questionnaire or juror addresses to the parties)**

### **Court Calendars**

**While a court is not required to prepare, maintain or produce a court calendar for the benefit of a party, person, or entity, a court may share with members of the public a court calendar the court compiles for its own use and to facilitate court operations.**

**Note: Court Calendars that contain notations regarding dispositions (including sealed cases) should not be released to the public.**

### **Credit Card Machine Distribution Program**

The Office of Court Administration established a Town and Village Court Credit Card Machine Distribution Program in 2007. This program allowed individuals to satisfy fines, fees and surcharges, as well as permitting defendants to post bail by credit card. Approximately 750 town and village courts as of August of 2014 were participating in the program. Any fees associated with credit card transactions in town and village courts were covered by the State of New York.

**\*\*NEW CREDIT CARD MACHINE PAYMENT PROGRAM\*\***

Beginning in September 2014, the Office of Court Administration will begin the process of implementing a system under which a service fee will be charged to anyone who uses a credit card to pay a fine, surcharge, bail or other charge in a town or village court. The fee is presently estimated to be 2.99% of the amount charged. Courts will *not* be requested to account for such fees with the Office of the State Comptroller. Additionally, such service fee will automatically be calculated by the new service fee machines. Implementation will require that the Key Merchant Services (KMS) credit card terminals currently in the courts be replaced by terminals capable of assessing cardholder fees at the point of payment.

**SUGGESTED LANGUAGE THAT CAN BE UTILIZED ON SIGN POSTED WITHIN THE COURT REGARDING 2.99% SERVICE FEE:**

*A service fee of 2.99% of the payment amount will be assessed on all credit card payments. Payments may continue to be made by cash or by a cashier/certified check without imposition of a service fee.*

*Note that neither the municipality nor the court receives any portion of the service fee.*

*If you use a credit card, there will be two transaction receipts generated, one for the court fine and one for the service fee. The cardholder must sign both receipts in order for the payment to be processed.*

**Tax Exempt Identification Number and W-9 Form**

In order to provide your court with a new machine, KMS will require your municipality's Taxpayer Exempt Identification Number (TIN) via a tax exemption certificate/letter (available from your fiscal officer) and a completed W-9 form. A blank W-9 form can be found at the following:

**[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Administrative/W-9-Form.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Administrative/W-9-Form.pdf)**

**We are asking each court to facilitate with their fiscal officer the W-9's and tax exempt certifications. Please note that providing the W-9's will not subject your municipality to any costs nor require them to fill out any tax forms. Failure to provide such information may prevent your court from further participation in the Credit Card Machine Distribution Program.**

**You may fax your municipality's completed W-9 form and tax exempt certificate/letter to the Office of Justice Court Support at (518) 438-3518 or by e-mailing the information within 30 days to [resourcecenter@nycourts.gov](mailto:resourcecenter@nycourts.gov)**

#### **Preparing Site for Machines**

**The new machines will still require analog phone lines exist in proximity to the terminal(s) to be used. Dedicated phone lines are not required, however, a "splitter" will be required if more than one payment terminal is being installed or the line is also a voice/fax line. A standard AC outlet is also required to be in close proximity to the terminal site.**

#### **Receipts**

**After each credit card machine transaction occurring in a town or village court, the new terminal will automatically generate two receipts, one for the court related charge, and one for the service fee. (Note, the service fee will go directly to Key Merchant Services, not into the judge's account). Additionally, courts will *not* be required to account for such fees with the Office of the state Comptroller. The cardholder will then be required to sign both transaction receipts. The receipts will include the court name, judge's name, merchant ID number, date, time, card type, cardholder account number, transaction number and amount. The Office of Justice Court Support suggests that service fee receipts and service fee batch settlements be retained by courts for audit purposes.**

#### **Cards Accepted**

**Currently, credit card machines supplied through this program only accept VISA and MasterCard. Debit cards are also accepted as long as they have the MasterCard or VISA logo.**

**Monies are deposited in court's bank accounts within 24 hours of the transaction if they are Key Bank accounts. For non - Key Bank accounts, moneys are deposited within 48 hours.**

#### **Cost to Court**

There is no cost to the municipality by taking part in this program, except for the cost of the credit card machine paper rolls. The paper is called Thermal Paper Rolls, size 2 1/4" x 53'. The paper rolls can be obtained at most office supply stores (Staples, Office Max, etc.) Your new machines will come equipped with paper, along with one additional roll of paper.

#### **Credit Card Payment via Mail**

Defendants may satisfy fines via mail. Town and village courts, however, should amend their mail waiver notification offering a defendant the option to pay fines with a credit card via mail. The mail waiver must note the 2.99% service fee that will be assessed in addition to the fine, surcharge, or other amount charged to the cardholder. Additionally, the mail waiver must request the following information:

- Whether card is VISA or MasterCard.
- Card holder's name.
- 16 digit credit card number.
- Expiration Date.
- Signature as it appears on card.
- Ask for 3 digit security code on back of card or CVV2 number.

**\*\* It is strongly suggested that courts not accept credit card payments by phone due to a lack of a signature from the card holder satisfying the fine. Such signature will aid a court in defending the charge in the event a defendant requests a chargeback from the credit card company after such transaction is completed.**

#### **Batch/Settlement**

A batch settlement compiles all transactions processed that day. Each terminal and each judge must be batched out/settled daily if a credit card payment occurred. Batching out sends transactions to your bank account for deposit. To batch out:

- Push "Settlement" button.
- Machine will ask for password which is 16682.
- Machine will list total charges for the day and total.
- If correct, push "Confirm" or green button.

A monthly statement and daily batch/settlement reports are available on line at [www.merchantconnect.com](http://www.merchantconnect.com) once profile is created for each judge. To establish a profile, click on the "Register" button. The following criteria will then be requested:



- Merchant ID number.
- Last four digits of Judge's bank account number.
- E-mail address.
- User ID name.

**FOR THOSE COURTS CURRENTLY NOT PARTICIPATING IN CREDIT CARD MACHINE DISTRIBUTION PROGRAM OR HAVE NOT PREVIOUSLY SUBMITTED AN APPLICATION TO THE OFFICE OF JUSTICE COURT SUPPORT FOR A MACHINE BUT WOULD LIKE TO APPLY FOR A MACHINE**

## **Application for New Credit Card Machine**

### **STEP 1**

Courts must have an available analog phone line in proximity to the terminal or terminals to be used. While a dedicated phone line is not required, a "splitter" will be required if more than one payment terminal is being installed or the line is also a voice/fax line.

### **STEP 2**

Contact the Office of Justice Court Support at 1-800-232-0630 for assistance in completing an application for a credit card machine.

### **STEP 3**

When a justice court receives a credit card machine, a toll-free telephone number is affixed to the side of the machine that a justice court representative calls for machine installation assistance.

## **Removing a Judge's Name and/or Changing Bank Accounts**

Contact the Office of Justice Court Support at 1-800-232-0630 for assistance in completing a change form.

## **Requesting a New Machine When Current Machine No Longer Works**

In the event a court's credit card machine is not working properly, please contact the Office of Justice Court Support at 1-800-232-0630. Key Merchant will then be notified and a replacement machine will then be sent to your court at no cost to the municipality.

## **Contact Numbers**

## **Key Merchant Services Contact Numbers**

For assistance when you are experiencing a problem with a credit card terminal - 1-800-725-1245 option 2.

After submitting change form to Office of Justice Court Support (OJCS) and receiving notification from OJCS that court can call this number for a download to complete a name change update - 1-800-725-1245 option 2.

#### Office of Justice Court Support Contact Number

1-800-232-0630 - Issues involving chargebacks, changing the names on your credit card machine, when your judge(s) change banks, or courts that wish to participate in the Credit Card Machine Distribution Program.

#### Troubleshooting

##### What May Appear on Terminal Display

- **Invalid Card** This may be due to cardholder writing down incorrect number on mail waiver or clerk may have entered wrong card number.

**COURT ACTION TO TAKE** - Press clear so terminal display returns to Judge's name and repeat transaction. If **Invalid Card** should appear again on terminal display, return the mail waiver to defendant to remit another form of payment or ask cardholder for either another credit card or another form of payment.

- **Declined Card** All information provided by cardholder was correct. However, payment cannot be processed.

**COURT ACTION TO TAKE** - If cardholder is present, return card to cardholder and request another credit card or another form of payment. If mail waiver was submitted, return to defendant indicating that credit card has been declined and request defendant to remit another credit card or another form of payment.

- **Expired Card**

**COURT ACTION TO TAKE** - If cardholder is present, return card to cardholder, inform him that card has expired, and request another credit card or another form of payment. If mail waiver submitted, return to defendant indicating that the credit card is expired and request defendant to remit another credit card or another form of payment.

- **Pick up Card**

**COURT ACTION TO TAKE** - This message may appear for several reasons (*stolen card, attempting to use it before card is activated, etc.*). While Key Merchant would prefer

that the merchant retain the card, the Office of Justice Court Support suggests that the court return the card to the cardholder and ask for another credit card or another form of payment. Do *not* confiscate the card.

Elavon cannot debit money from a judge's bank account without being invoiced. If you receive an invoice notice, please contact the Office of Justice Court Support at 1-800-232-0630.

Court has to file monthly report shortly after money debited from account by Elavon. Regardless of any invoicing, courts should still file their regular monthly report with the Office of the State Comptroller. Refunds and charge backs will be handled as quickly as possible by Elavon.

## Digital Recorders

Digital Recordings of Court Proceedings

In 2008, Chief Administrative Judge Ann issued the following Administrative Order:

"Pursuant to the authority vested in me under section 30.1 of the Rules of the Chief Judge, I hereby require each town and village court of the Unified Court System to mechanically record all proceedings that come before the court. This order shall be effective beginning June 16, 2008."

By virtue of that Order, all Town & Village Courts have been provided with laptop digital recording programs. When courts are requested to provide a copy of the digital recording, they should contact The Resource Center to request guidance on how to proceed.

## Fees

There shall be paid to the clerk of the court the fees outlined in the chart found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Administrative/courtfees2.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Administrative/courtfees2.pdf)

## Fiscal Responsibility

You may contact the Office of the State Comptroller's Justice Court Fund at (518)-408-4934 or 1-800-321-8503. Additionally, you may refer to the Office of Justice Court Fund's Handbook for further guidance. The most up to date copy can be found on the Office of the State Comptroller's website which outlines all fiscal requirements for town and village justices and court clerks.

<http://www.osc.state.ny.us/localgov/pubs/jch.pdf>

### General Recordkeeping Requirements

Each court is required to maintain separate individual case files for each traffic, criminal and civil matter the court handles. You are also required to keep an index of all cases with a unique number assigned to each case. This will allow you to easily search for a specific matter. This may be done manually or with a computer software system.

- Each judge is required to maintain a cash book which chronologically identifies all receipts and disbursements. This may be done manually or with a computer software system.
- Each Justice is required to maintain an official bank account in his or her name. The judges may also open a second account to hold bail. They may also open a joint account for bail.
- Each officer of the court who is receiving money is required to issue acceptable receipts for all monies collected.
- All monies must be deposited in a timely fashion. Funds must be deposited into the Justice's official bank account within 72 hours of collection.
- Make all disbursements by check. The only person who should be signing the check is the Justice whose name appears on the account.
- You must submit a monthly report of all activity by the 10<sup>th</sup> of each month to the Justice Court Fund. In addition to filing the report, you must submit a check for all monies collected to the Justice Court Fund or if your court reports electronically submit the check to your Chief Fiscal Officer.

### Fiscal Responsibilities of Court Clerks

The judge is personally responsible and could be liable for lost/stolen funds paid to the court and then lost or stolen from his/her office, even when he/she is free from negligence or malfeasance. Therefore, all money collected by the court should be received by a justice or by personnel under his/her supervision and control, not by another town official (e.g. town clerk).

The court must be able to account for cash receipts and disbursements from month to month. All bank accounts must be reconciled monthly. It is much easier to find an error in one month rather than reviewing several months' transactions. If the clerk is performing

the bank reconciliations, it is the best practice that the Judge or another court official double check the reconciliation to be sure that it is completed and correct.

### Receipts

Acceptable receipts must be used in all financial transactions. Receipts should be pre-numbered and used in sequential order. They should contain the case information (docket number and/or ticket number). They must be prepared in duplicate. A copy is always given to the defendant and a copy is maintained in the court. The receipt should clearly indicate the type of payment (cash, check, money order, credit card or e-payment). If a check or money order is used for payments, the receipt should contain the number of the check or money order. Further, an acceptable receipt must contain the court address and be signed by the person who accepted the money. Receipt forms produced from computerized software programs, cash registers, and other electronic or mechanical devices should also be issued in consecutive numerical sequence and a hard copy retained as evidence of the transaction.

Here is an example of a properly completed receipt:

RECEIPT			
JUSTICE COURT 123 Main Street Hometown, NY 12801		No. 0064 January 5, 20XX Date	
Received From		Jane Doe	
Purpose		Speeding 40/30 TP0112562	
Fine		100.00	
Civil Fee		Currency <input checked="" type="checkbox"/>	
Surcharge		85.00	
Bail		Check <input type="checkbox"/>	
Other		Money Ord. <input type="checkbox"/>	
TOTAL		185.00	
		Credit Card <input type="checkbox"/>	
		Case #: MV 20	
		Lady Justice	
		Justice Court Personnel	

Once you issue a receipt, you must also record that payment in the cashbook. Below is an example of a cashbook:

All court funds must be deposited intact. That means that it is deposited into the bank in

## CASH RECEIPTS BOOK

DATE	RCT. NO.	RECEIVED FROM		TOTAL RECEIVED	FINES, FORFEITED BAIL & CIVIL PENALTIES	CIVIL FEES	MANDATORY SURCHARGES	BAIL	OTHER	ADDITIONAL INFORMATION	DEPOSITS	
1/4	62	John Doe	MV 18	185.00	100.00		85.00					
1/4	63	John Doe	MV 19	130.00	75.00		55.00					
1/5	64	Jane Doe	MV 20	185.00	100.00		85.00					
1/6	65	John Smith	Criminal 1	500.00				500.00		Forfeited 1/31	1000.00	1/6
1/11	66	Jane Jones (Bail for Mike Jones)	MV 21	300.00				300.00		Returned CK #6		
1/12	67	Tom Sawyer	MV 22	235.00	150.00		85.00					
1/12	68	Huck Finn	MV 23	155.00	100.00		55.00					
1/12	69	Miss Muffet	MV 24	235.00	150.00		85.00					
1/12	70	Mary Jane	Criminal 2	275.00	150.00		125.00					
1/12	71	Tom Riddle Riddle vs Potter	Civil 8	20.00		20.00					1,220.00	1/13
1/29	72	Mary Smith	Criminal 3	455.00	250.00		205.00					
1/29	73	Traffic Violations Bureau	Parking 8-13	105.00	105.00						560.00	1/30
1/31	74	Jack Bauer (Partial)	MV 11	25.00	25.00							
1/31	75	Co Sheriff (Bail for B. Guy)	Criminal 4	500.00				500.00				
1/31	N/A	John Smith	Criminal 1	0.00	485.00	15.00		(500.00)		Bail forfeit and Bail Poundage		
1/31	76	R. Royce	MV 25	510.00	250.00		260.00				1035.00	2/1
		TOTALS		3,815.00	1,940.00	35.00	1040.00	800.00	0.00		3,815.00	

the same form and amount in which it is received (Example: Don't make change for a money order with cash). Do not split amounts between days. Make sure that the money receipted and recorded is deposited to the bank. All money must be deposited into the bank account within 72 hours of collection. Checks and money orders should be endorsed on the back "For Deposit Only". When filling out the deposit slip, be sure to list the defendant or money order number so that the deposit can be traced back through an audit.

#### DEPOSIT SLIP

<b>HOMETOWN NATIONAL BANK</b> Hometown, NY 12801		
<b>DATE</b>	1/6/20XX	
Currency	185	00
Coin		
Checks:		
1. PMO-John Doe	315	00
2. Certified CK. - John Smith	500	00
3.		
4.		
5.		
6.		
7.		
Total Checks and Money Orders	815	00

### Record of Partial Payments

Case File/ Docket Ref.	Defendant	Date Received	Description	Amount Due
MV11	Jack Bauer	12/7	Fine \$100.00 + Surcharge 85.00	\$185.00
	Paid	12/7 \$25.00		
	Paid	12/28 \$25.00		(\$50)
Balance Due at December 31, 20XX		\$135.00		
	Paid	1/31 \$25.00		(\$25.00)
Balance Due at January 31, 20XX		\$110.00		

## **Reconciling**

**You are required to reconcile your bank balance and cash book monthly. Bank statement dates should include the first through the last day of one entire month. This will allow you to easily compare it to your cashbook and monthly report. In the event that your bank currently includes portions of two months on the statement, you may contact the bank and request that the statement be changed.**

- **Verify that deposits have been posted to the account on the correct dates and at the correct amounts.**
- **Verify that checks have cleared the account at the correct amounts.**
- **Verify that other charges or credits are legitimate and are supported by adequate documentation.**
- **Identify any deposits and/or credit card transactions not posted to the account that should be considered “in transit.”**
- **Identify any checks that have not cleared the account that should be considered “outstanding.”**

**Reconciled bank accounts show how much money your court has at the end of each month. This amount should match both the checkbook and cashbook balance.**

**Your Town or Village Board is required to audit the court records once a year. This may be done by the board utilizing the checklist in the JCF handbook or it may be done by an outside auditor.**

**As we touched on earlier in this section, the Justice is personally responsible if money is missing or an error is made in the financial duties. Therefore, it is important to separate duties to the extent possible. The best practice is that no one person is responsible for an entire transaction from the start of the case to the end. To the extent possible, you should separate duties such as collection, depositing, recording, disbursing and reconciling between court staff.**

## **Checks**

**As a court clerk, you should never sign a check. You may prepare the check for the Judge to sign, but he/she is the only one who can authorize the disbursement. Signature stamps should not be used by clerks as a substitute for the judge’s signature. Checks should be pre-numbered and used in consecutive order. You should also maintain a check register and record in that register each time a check is written. Here is a sample of a check:**



<b>JUSTICE COURT</b> 123 MAIN STREET HOMETOWN, NY 12801		0006
Date <u>1/31/20XX</u>		
PAY TO THE ORDER OF <u>Jane Jones</u>	\$ <span style="border: 1px solid black; padding: 2px 10px;">300.00</span>	
<u>Three Hundred and 00/100</u>		DOLLARS
<b>HOMETOWN NATIONAL BANK</b>		
FOR <u>Bail Return – Mike Jones MV 21</u>	Signed by the Justice _____	
123456789: 111562 0006		

### Monthly Reports

You must submit a monthly report of all activity by the 10th of each month to the Justice Court Fund. In addition to filing the report, you must submit a check for all monies collected to the Justice Court Fund (JCF). Additionally, if your court reports electronically, the court will submit the check to your Chief Fiscal Officer (CFO). A report should be filed for each month during which a Judge holds office, whether or not any cases were heard for that particular month. If a Judge is in office for only a portion of a particular month, a report is still required to be completed for that month. If there is no activity for a particular month, simply indicate “No Activity to Report” on the AC-1030 report form.

Only closed cases should be reported to JCF, except when fines are paid in installments. If the court receives a partial payment, ‘X’ the “P” box located under the “Fines, Forfeited Bail, & Civil Penalties” heading. You must report all parking violations where money has been collected. It is not necessary to show each violation line by line; you may aggregate the parking fines collected and report the parking fines in total.

Most software programs that the courts use will generate the monthly report for you based on information you entered on each case throughout the month. However, in the event that you must hand write your report, see the example and steps below:

## Instructions, Examples, and Legends for Monthly Justice Report to the New York State Comptroller

Please PRINT in ONLY Black or Blue ink. Print within boxes as shown in example below (one UPPERCASE character or digit per box).

0	1	3	1	2	3	4	0	0	1	D	Town Justice <input checked="" type="checkbox"/>	Village Justice <input checked="" type="checkbox"/>																					
J	O	H	N		D	O	E																										
H	O	M	E	D	A	L	E																										
1	2		T	O	L	L	S	T	H	O	M	E	D	A	L	E	N	Y															
5	1	8	-	2	1	2	-	4	5	6	7	5	1	8	-	2	1	2	-	9	9	9	0	1	2	3	4	6	-	6	7	8	9

Place an X in box to indicate if a felony.  
Left blank = any other type

T = town  
V = village  
C = county  
P = parkway  
Z = VTL402 / 308: Parked  
Left blank = not a local ordinance

AMD = amended  
FIN = fine  
FSC = fine / surcharge  
DIS = dismissed  
OSJ = originally sentenced to jail  
ACJ = adjustment up to \$250  
BWO = bail forfeiture without poundage  
BWP = bail forfeiture with poundage  
FEE = fee  
RES = restitution  
PGI = plead guilty - indigent  
FTC = felony transferred to county  
CLF = committed in lieu of fine  
CCS = copies  
ARR = arraignment for other courts  
COV = covered by other charges  
OTH = other types, including civil compromises, jail, probation, and grand jury

Defendant Name / Title of Action										Fines, Forfeited Bail, & Civil Penalties		Civil Fees		Mandatory Surcharge			
Docket Number		Arrest Date		Statute - Section		Offense Description		Disposition		Payment Type: P <input type="checkbox"/> F <input checked="" type="checkbox"/>		Fee Type:					
TSLED Number		Disposition Date		Statute - Section		Offense Description		Disposition Sentence Code									
SMITH BETTY																	
070300732		081508		VTL-1180F		SP / WORKZ		AMD									
TP0000720		090708		VTL-1180B		SP / OVR55		FSC									

Place an X in box to indicate if payment is:  
P = partial  
F = full or final (if partial made previously)

1 = Bail Fee  
2 = Sex Offender Registration Fee  
3 = DNA Data Bank Registration Fee  
4 = Termination of Suspension Fee  
5 = Supplemental Sex Offender Victim Fee  
Left blank = All Other Fees

All information fields within this range should be entered for the Original Charge fields.  
If the Original Charge is **NOT** amended the Amended Charge fields should be left blank.  
If the Original Charge is amended (as shown) all information should **ALSO** be entered for the Amended Charge fields.

Complete each of the columns in the body of the report. Enter the name of the defendant, youthful offender or sealed if appropriate, docket number of the case, date of arrest, statute, section and subdivision that the defendant is accused of violating. (Be sure to use the abbreviations provided in the JCF Manual). It is very important that you indicate the correct statute and section of law for each case reported. The distribution of funds remitted to JCF is based on current statute. An incorrect citation of those statutes on your reports may result in a loss of revenue to your municipality. List a brief description of the offense, check the felony box if applicable, enter the Traffic Safety, Law Enforcement and Disposition number (TSLED), date of judgment (disposition) or the date when cases were otherwise closed. Fill in the ordinance and disposition sentence codes, enter AMD if the disposition was amended to a lesser charge and provide the amended statute and section and brief description of the offence on the line below the original charge. Enter the fines, penalties, and forfeitures that relate to each disposition (leave blank if no money is reported for the case), enter the civil fees that relate to each disposition. Enter the mandatory surcharges that relate to each disposition.

The entire Totals section at the bottom of the report must be completed for every page. For multiple pages, carry over the totals from the prior page. The last page of the AC-1030 report must be signed by the Justice. Each justice should write a check made payable to the New York State Comptroller for the total amount being reported. This check should be drawn on the justice's individual court bank account for the amount of the fines, penalties, fees, forfeitures and surcharges collected by the court for all of the cases

reported. Mail the certified monthly AC-1030 report, along with the check, to the address that appears at the bottom of the report. Do not staple the check to the report.

If you are submitting your report electronically, refer to your software vendor instructions. Your monthly check would then be made payable and submitted to the Chief Fiscal Officer of your town or village.

#### **Bail**

- Bail can only be deposited in an official bank account of the judge.
- If your judge chooses to have a separate bail account, it can be joint with another Judge in the same court (Reconcile this separate account monthly as you would a fine account). 22 NYCRR 214.9(d).
- You must issue a receipt when bail is received into your court.
- You must keep detailed records of who posted the bail including a name, address and phone number.
- You only return bail to the person who posted it and can prove they posted it by providing a receipt and a photo id.
- At the end of each month, you should generate a list of bail being held as part of your reconciliation.
- You do not report pending bail to the Justice Court Fund.

Here is an example of a bail receipt:

## Bail Poundage

Bail poundage is calculated at 3% of the amount of cash bail only (not bonds). Poundage is calculated once the defendant has been convicted of the charge or found guilty after trial. If your judge decides to return bail prior to the disposition of the case, you must retain the poundage based on the original amount until the case is disposed of (including ACOD's).

Bail poundage is *not* collected when:

- the case is Terminated in favor of the accused;
- The case or cases are Traffic infractions only;
- the case is Transferred to another court; or
- the case is Transferred to a superior court.

*These are commonly referred to the four "T's"*

## Forfeited Bail

Forfeited bail should be reported to the Justice Court Fund. Exonerated or unclaimed bail does not get reported.

You should make every effort to locate the person who posted the bail. If you are unable to locate the person to return the bail, the court may transfer the money to the Chief Fiscal Officer of the town or village. Cash bail still unclaimed after 6 years becomes the

Bail Receipt	
Hometown Village Justice Court 123 South Central Ave. Hometown, NY 12345	
Bail Receipt No. 500	Date Received:
Summons No:	Bail Received: \$
Defendant:	Next Appearance Date:
Address:	
Bail posted by: For:	
Surety Address:	
Phone No:	I.D. Provided:
The defendant must appear as directed at all times as required by the Court. Any violation of this agreement will cause bail to be forfeited and a warrant of arrest will be issued to secure the appearance of the defendant. Under General Municipal Law 99-m (2), 3% of the sum bail may be retained.	
<u>Lauren Orferra, Village Justice</u>	
I understand and agree to the above terms and conditions:	
Surety	Defendant

**property of the municipality.**

#### **Transfers to Superior Court**

**Cash bail which is posted in your court may not be transferred to a county court or any other specialized court without a superior court order directing your court to transfer the money. This does not apply if your court arraigns for another court and you accept bail. In that instance, you should send the bail to the local court you arraigned for when you transfer the case to them.**

#### **Signature Stamps**

**Signature stamps are not to be used by court clerks at any time.**

## Interpreters

Local courts are required to appoint interpreters either because a party or witness is not proficient in the English language or because the court must provide an accommodation to a court user (party, juror, attorney or spectator) who has a hearing disability.

### Language Interpreters - Judiciary Law 387

Sample questions to assess the English proficiency of a party or witness:

- What is your name?
- How comfortable are you in proceeding with this matter in English?
- In what language do you feel most comfortable speaking and communicating?
- Would you like the court to provide an interpreter in that language to help you communicate and to understand what is being said?

The Office of Court Administration (OCA) maintains an Office of Court Interpreting Services (646-386-5670). Such office provides a statewide per-diem language interpreter list. The county is responsible to pay the first twenty-five dollars per day for each day's actual attendance of the interpreter. The remainder of the cost of such interpreter is the responsibility of the municipality.

Additionally, local courts may find it beneficial to use telephonic interpreting services, such as *Language Line Services*, particularly for after-hours court services. This service offers interpreters in over 175 languages who are available 24 hours a day, every day. There is a fee for such service, and in order to utilize this company's services, your municipality would need to enter into a financial agreement with Language Line Services. You may contact the service by calling 1-800-752-6096 or visit the company's website @ [www.language.com](http://www.language.com).

### Oath of Office

OCA's Office of Court Interpreting Services recommends that interpreters take and file with the court clerk the following oath:

*"I do hereby pledge and declare that I will support the constitution of the United States and the constitution of the State of New York, and that I will faithfully discharge the duties of the position of Court Interpreter, according to the best of my ability."*

### Interpreters for the Deaf - Judiciary Law 390

Section 390 of the Judiciary Law requires courts to appoint a qualified interpreter whenever a deaf person is a party to, or witness to, any legal proceedings. Such interpreter shall be certified by a recognized national or New York State credentialing authority as approved by the Chief Administrator of the Courts to interpret the

proceedings to, and the testimony of, such deaf person. The Registry of Interpreters for the Deaf, Inc. (RID) has been designated for this purpose and can be reached at (703) 838-0030. A portion of the fee for such interpreting services is to be paid by the county.

## Marriages

### Domestic Relations Law (DRL)

#### Authority for Town & Village Judges to perform marriages - DRL 11(3)

Sections 11(3) and 11(6) of the Domestic Relations Law authorizes a town or village justice to solemnize a marriage anywhere within the territorial limits of New York State.

#### How Solemnized - DRL 12

“No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least *one* witness besides the clergyman or magistrate must be present at the ceremony. Sample ceremonies and marriage certificates, as well as further information and legal authority can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/marriage.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/marriage.shtml)

#### Checklist before Marriage is Performed

- 24 Hours have elapsed since license was issued.
- 60 days have not elapsed since license has been issued.
- Both parties over 18 years of age, or, if under, have met the requirements for a valid marriage.
- The license has been issued in New York State.
- The justice should get the witnesses' signatures, complete the marriage license and mail it as directed within 5 days.

## Preparation for a Jury Trial

### Criminal and Civil Cases

Criminal Procedure Law 260, 270, 340 and 360,  
Uniform Justice Court Act §§ 2012-2014; 1303, 1305, 1306, 1307  
Judiciary Law § 508

When a jury trial has been calendared, there are various duties and responsibilities a court clerk must complete to prepare for the jury trial. For further general information regarding jury matters, please see the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/jurymattersincludingcharges.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/jurymattersincludingcharges.shtml)

Below is a list of your responsibilities in priority order.

Before you start, please check with your Judge(s) on the Court's policy regarding jury trials. When a jury trial date is calendared, always remember to leave enough time to request and summons the potential jurors.

### 1<sup>st</sup> STEP - Calendar Jury Trial

Once the jury trial date is confirmed between all parties, enter date into the computer and send a confirmation letter to all parties. Make a notation to yourself when to order jurors from the Commissioner of Jurors.

### 2<sup>nd</sup> STEP - Request a Jury Panel

Requests for a jury panel should be made no less than 3 weeks and no more than 4 weeks before a scheduled trial. Panel requests made too far in advance will be returned to you requesting that it be re-submitted within the prescribed time.

To obtain a list of prospective jurors, all town and village courts are required to use the new Juror Request Form. To access the form, go to [www.nycourts.gov/justicecourts](http://www.nycourts.gov/justicecourts). Once you log in with your username and password, go to the For Judges and Clerks section, select Topics A to Z and then Jury Trial Matters. Scroll down and you will see the Online Juror Request Form link.

Instructions for filling out the form can be found at

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/JurorRequestFormInstructions.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/JurorRequestFormInstructions.pdf)

If you have any problems completing the form, please contact the Commissioner of Jurors



for your county. A list of the New York State Commissioners of Jurors can be found at [http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/CommissionersofJurorsList.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/CommissionersofJurorsList.pdf)

A jury in a justice court consists of a minimum of six jurors and one alternate. The recommended number of jurors to appear in a town or village court is 25 in order to fulfill the 7 spots. If a court needs more, they must explain in writing on the request form.

When completed, do not forget to keep a record of the ID number that has been assigned to your request before you hit the submit button at the bottom.

### **3<sup>rd</sup> STEP - Mail summons to prospective jurors.**

Once the Commissioner of Jurors has put together a list, they will either send the summonses out to the prospective jurors (some counties have a perforated ballot attached to the jury summons) or they will forward it to the Justice Court to mail out. Justice Courts will receive a packet which may include;

- Attendance Sheets.
- Complete Panel Report with Juror's address.
- Sign-in Sheets.
- Ballots.
- Juror Handbooks.
- Juror Questionnaires form.
- Summonses (if your court mails them out).
- Missing summons questionnaire.

***\*\*Please check with your Commissioner of Jurors Office, for each has their own policies when sending out summonses.***

You will then start to receive all types of calls from the potential jurors seeking additional information on serving as a juror, and requesting adjournments. Check with your Judge on the Court's policy granting excuses from jury duty.

### **4<sup>th</sup> STEP - Arrange for a Court Reporter, Court Officer and an Interpreter if needed.**

### **5<sup>th</sup> STEP - Swearing Oaths**

Make sure you have all the swearing oaths ready. One for potential jurors, one for selected jurors, and one for the witness. **\*\*These oaths are provided at the end of this chapter.**

### **6<sup>th</sup> STEP - Ballots**

If you did not receive ballots in your packet, you can improvise by using business cards or slips of paper and write each potential juror's name on one. When the prospective juror appears, and after they sign in, their ballot should be placed in a jurors box for possible selection.

If your county has a ballot attached to their summons, separate it from the summons and deposit it into the juror selection box.

Your court's case management system may have the ability to print out ballots, but you must enter each prospective juror's name into the system first.

**7<sup>th</sup> STEP - Set up courtroom. (The day before or on day of the trial)**

- An area for the court reporter (if one is being utilized).
- Six chairs and one extra one for the alternate ( if you do not have jury box).
- The people's table (which will be closest to the jury box) with one or two chairs.
- The defense table with a couple of chairs.
- The digital recorder with extra microphone, if needed.
- Jury orientation video in the waiting area for potential jurors.

### **Day of the Jury Trial**

**1<sup>st</sup> STEP - Place material and forms in appropriate areas.**

- Defendant's case file, legal pad, pen and evidence labels at bench for Judge.
- Water pitcher and cups.
- Sign-in sheet with pens.
- Juror selection box (also known as the "drum").
- Attendance sheet.
- Juror Handbooks.
- Missing summonses questionnaire.
- Certificate of Attendance form.
- Juror Questionnaire form.

**2<sup>nd</sup> STEP - Prospective jurors sign-in, clerk marks attendance sheet and pulls ballot.**

When greeting a juror, have them sign in. After each signature, the clerk should be marking the attendance sheet and then pull that juror's ballot/card/paper, fold it up and place it in the juror selection box.

**3<sup>rd</sup> STEP - Collect filled-out summonses.**

Make sure to collect the filled-out summonses from the jurors when they arrive. If they do not have one, have them fill out the UCS-219 form found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/pdfs/uc](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/pdfs/uc)

**4<sup>th</sup> STEP - Jury Handbook and Video.**

Distribute the Jury Handbooks and escort the prospective jurors to the waiting area. If you have the jury video, you may present it while they are waiting for the trial to start. Court Officers may assist you with this step. All pamphlets and films are available online at [www.nyjuror.gov](http://www.nyjuror.gov)

**5<sup>th</sup> STEP - Potential jurors fill out “Juror Questionnaire” form.**

Have each potential juror fill out the “juror questionnaire” form for the Judge, Assistant District Attorney (ADA) and Defense Attorney. Juror Questionnaire forms are located at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/Criminal%20Jury%20Instructions/2014\\_JurorQuestionnaireForm.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/Criminal%20Jury%20Instructions/2014_JurorQuestionnaireForm.pdf)

Once all are collected, place them in alphabetical order. If the form does not come in triplicate, make two extra copies so that the Judge, ADA and Defense Attorney have a copy. Court keeps the original. (Not all courts utilize this form. Check with your Judge or ADA ahead of time.)

*While you are setting up the courtroom, more often then not, there will be a pre-trial conference in the Judge’s chambers trying to settle the case. If the trial goes forward, the Judge will take the bench, welcome all that are present, and then swear in the potential jurors.*

Now that the court session has started, the prospective jurors are selected one at a time from the juror selection box by the court clerk. The person called will take a seat in the jury box. This continues until a specific number of prospective jurors (and in some cases, alternate jurors) has been selected.

Keep track of the numerical order that jurors names were selected from the box. This is important because jurors are identified by number; i.e. juror #5, etc. Normally the first juror chosen will act as the Foreman.

## **6<sup>th</sup> STEP - Exhibits**

When an exhibit becomes part of the court record it needs to be marked; i.e., exhibit #1, etc. The court clerk or the court reporter can mark the exhibits and run the exhibit log.

*After hearing the evidence and instructions from the judge,  
the group retires for deliberation to consider a verdict.*

## **After the Jury Trial**

### **1<sup>ST</sup> STEP -Certificate of Attendance**

Certificate of Attendance forms must be signed by the court clerk or judge and have the court seal applied before distributing to jurors.

**2<sup>ND</sup> STEP - Forward “Juror Utilization” information to Commissioner of Jurors office.** No more than seven days after a panel is used or cancelled, you need to forward how the jurors were used by filling out the “Juror Utilization” section on the UCS-219 form and forward it to the Commissioner of Jurors by re-entering the Commissioner of Jurors electronic website.

Enter your ID number assigned to your request with the trial date. This will bring you to the “Juror Utilization” section. Fill out all the required information, print a copy and forward it to the Commissioner of Jurors office with the following material:

- Attendance sheet (with juror attendance code noted).
- Undeliverable summonses.
- Completed summonses for each juror who appeared or a UCS-219 for jurors without a summons.
- Documentation regarding change of address or request for excusal.

If by mail, fill out the “Juror Utilization” section on the UCS-219 form and send a copy with the required material above.

*Jurors who physically report to serve in Town/Village courts  
are eligible to serve again in 2 years. Just because a person is eligible to serve  
does not mean they will be called.*

## **Oaths**

**Oath for Potential Jurors - “Do you swear to answer honestly and truthfully, to the best of your knowledge, all questions asked of you as to your qualifications to serve as a trial juror?”**

**Oath for Trial Jurors - “Do you solemnly swear or affirm to try the action in a just and impartial manner, and to the best of your judgment, render a fair verdict according to the law and the evidence presented to you?”**

**Oath of Witness - “Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?”**

## **Preparation for Court Night**

### **Two Weeks Before Court**

- **Schedule interpreters for the next court calendar and have a voucher prepared. A good practice is to always mark the case file near the defendant’s name when an interpreter is needed and the language that needs to be translated.**
- **If any cases are pending for the PSI Report (Pre-Sentence Investigation Report) and the case is scheduled for sentencing on the next court calendar, make sure you will have it on time. Call the Probation Department to confirm. If an extension is needed, adjourn case and notify the defendant or defendant’s attorney if they are represented and the ADA’s (Assistant District Attorney’s) office of the new date.**
- **Check e-Justice for rap sheets if none came with the case.**

***Clerks should be filing cases under their next appearance date. This way all cases for that particular court day will already be together.***

### **One Week Before Court**

- **Print court calendar and pull case files a couple of days before court. This will give you time to find any missing ones. Never wait until the last minute!**
- **Once you have all the case files, set them aside in a bin or rolling cart to keep control of their whereabouts. It is suggested, if a clerk needs one of the case files, they should fill out a file card stating they are in possession of it and place the card where the case was. This way, everybody will know where the case file is at all times.**
- **Go through all the criminal files to check the type of case it is and what appropriate forms you will or might need. If you have time, fill out whatever you can ahead of time.**

**For every Driving While Intoxicated (DWI) case, automatically include all forms that may be needed; Order of Suspension Pending Prosecution Hardship Privilege, 20 Day Stay, Victim Impact Panel, Pre-Conditional Discharge Investigation and a Chemical Test Refusal Hearing form if necessary.**

**Prepare Orders of Protection for Judge’s signature for cases where it might be requested by the Assistant District Attorney (ADA)., i.e. Harassment, Assault.**

- Any cases involving a Youthful Offender, indicate AEYO (Apparently Eligible Youthful Offender) in the top corner of the case file so these cases can be handled appropriately.
- Go through cases that are marked interpreter and confirm their appearance.
- Clerks must have all of the appropriate paperwork from the arresting agency for a defendant to be arraigned.
- Forward a copy of the court calendar by email or fax to the ADA, Legal Aid/Public Defenders and Special Prosecutor if your court uses one.
- Most Judges review the case files a day or two before court.

## **Court Day**

- Call jail the morning of court to confirm court appearances for defendants that are inmates. The jail's list should agree with the court's calendar. Also confirm appearances for defendants that have been held in other correctional facilities for which ADA has issued Orders to Produce. Have new Commitment forms ready to be completed for defendants going back to jail.
- Make sure appropriate signs are up (no cell phones, etc.)
- Set up water pitcher and cups for the bench.
- Have all the forms you need at the bench, including handout slips for defendants that will state their next appearance date, the court address and phone number.
- Have a receipt book if you do not use receipts from your case management system during court.
- Check that the credit card machines are plugged in and in working order.
- Have a defendant /defendant's attorney sign-in sheet in place, along with a few pens.
- Keep a supply of blank criminal file folders, legal aid information, and assigned counsel information on the bench at all times.
- Have a list of future calendar dates near you for at least the next 6 months for adjournments.
- Court may post the calendar near the entrance of the courtroom.
- Set up and test the digital recorder laptop. Make sure microphone is working and a disk is installed.
- If a defendant has been picked up on a warrant that was issued by your court, try to have easy access to the active warrant files during court.
- If your courtroom is a multi-use facility, the following areas should be searched for weapons or other potential threats before court. This task should be completed by security officials.
  - the courtroom
  - bathrooms
  - corridors

- closets and all other pertinent spaces
- common areas

## Records Retention

### How to Purge Court Records

#### STEP 1

Use the Retention Schedules and Flowchart found on The Office of Records Management website to determine the retention period of a record.

[http://www.nycourts.gov/admin/recordsmanagement/sch\\_court\\_records.shtml](http://www.nycourts.gov/admin/recordsmanagement/sch_court_records.shtml)

- The retention period for criminal case files is determined by the disposition and begins on the disposition date.
- The retention period for civil case files begins on the filing date.

#### STEP 2

Submit the Records Disposition Request (RDR) form to obtain approval to destroy a court record. Courts must receive approval before ANY court records are destroyed. You must submit a separate RDR form for each record series title and record series number. RDR forms may be submitted by fax, mail or by scanning to [disporeq@courts.state.ny.us](mailto:disporeq@courts.state.ny.us). RDR forms can be found at the following:

[http://www.nycourts.gov/admin/recordsmanagement/too\\_forms.shtml](http://www.nycourts.gov/admin/recordsmanagement/too_forms.shtml)

**NOTE:** Fiscal records will require additional approval from the State Comptroller's Office.

#### STEP 3

Once you receive the approved RDR form, you may destroy the records. The approved RDR forms must be kept as a permanent record.

- Follow the special procedures for destruction of sealed records and blank forms.
- You may also want to verify that the Criminal Disposition Report (CDR) and TSLED dispositions have been reported to both the Office of Court Administration (OCA) & the Department of Motor Vehicles (DMV). Contact OCA representative Tina Richburg @ 1-866-246-2361 or DMV @ 1-800-948-7533.

For more information, please contact the OCA Record Retention Unit at 518-238-4327 or the Office of Records Management at its main office at (212) 428-2875 or [records@courts.state.ny.us](mailto:records@courts.state.ny.us)

## Stenographers

### Employing of Stenographers - Uniform Justice Court Act 2021

**"Whenever a contested criminal proceeding is prosecuted in a justice court, the justice *may* employ a stenographer to take the testimony on such trial. The municipal board shall fix the rate of compensation to be paid to such stenographer for such services rendered. Such compensation shall be a *municipal* charge."**

**There is no requirement under the law, however, that a court employ the services of a stenographer.**

### District Attorney Employing Stenographer - County Law 703-a

**If district attorney employs the services of a stenographer in a contested criminal proceeding in a town or village court, the cost of such stenographer shall be a *county* charge.**

### Preliminary Hearings - Judiciary Law 319-a

**"In a hearing held in a criminal proceeding upon a charge of a *felony* in a town or village court, such court may employ the services of a stenographer to take testimony on such examination. The compensation of such stenographer shall be fixed by the board of supervisors and shall be a *county* charge."**

### Digital Recording of Court Proceedings - Rule 30.1 Rules of Chief Judge

**"Pursuant to the authority vested in me under section 30.1 of the Rules of the Chief Judge, I hereby require each town and village court of the Unified Court System to mechanically record all proceedings that come before the court. This order shall be effective beginning June 16, 2008." - Chief Administrative Judge of the Courts, Administrative Order.**

### List of Transcription Services

**A list of certified transcribers is available at the following:**

**<http://www.nycourts.gov/howdoi/transcripts.shtml>**



### III. CIVIL

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#### Small Claims – Uniform Justice Court Act (UJCA) Article 18

##### Definition

A small claim shall include a cause of action to sue for money only, not in excess of \$3,000, excluding interest and costs. UJCA §1801

##### Uniform Rules

Town & Village Courts must have at least one evening session every other week for hearing small claims cases, or they may allocate some part of every court session. 22 NYCRR 214.10

##### Parties

The party who brings the suit in Small Claims Court is referred to as the “Claimant” or the “Plaintiff.” The party that is being sued is referred to as the “Defendant.”

##### Jurisdiction UJCA 1801

Defendant must either,

- reside in the municipality,
- have an office for the transaction of business in the municipality or
- be regularly employed within the municipality.

##### Filing a Small Claims UJCA 1803 - 22 NYCRR 214.10

A small claims action shall be commenced by a plaintiff or someone on his or her behalf.

A good general overview of small claims can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Small%20Claims/SmallClaimsHandbook.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Small%20Claims/SmallClaimsHandbook.pdf)

##### STEP 1 Collecting the filing fee

A filing fee of \$10 on claims that are \$1,000 or less. Claims over \$ 1,000 have a \$ 15.00 filing fee. (Clerk will file monies as a civil fee and report it on their Comptroller’s Report at the end of the month.)

##### STEP 2 Plaintiff supplies the clerk the following information

- Plaintiff's name and residence address;
- Defendant's name and place of residence, or place of business or employment; and the nature and amount of the plaintiff's claim, giving dates and other relevant information.

### **STEP 3 Written Statement**

The justice or clerk shall reduce this information to a written statement, on a form provided therefor, and shall record it in his or her office. The statement shall be in nontechnical, concise and simple language, and shall be signed by the person who shall have supplied the information contained therein. The justice or clerk shall give to the person who signed the statement a memorandum of the time and place set for the hearing. This statement will serve as the “notice of claim” when mailed to the defendant. Notice of claim form can be found at the following:

#### **[Notice of Small Claims Action](#)**

### **STEP 4 Service**

“Notice of Small Claims”, Part 214.10(d); 1803 - The Clerk of the court must,

- schedule the small claims hearing not less than 22 days or more than 45 days from date the claim was filed.
- “serve” the notice of claim by mailing it to the defendant. The notice informs the defendant when and where to appear for the hearing and gives the reason for the claim and the amount.

Within five days after the action is recorded, the clerk shall send to the defendant by ordinary first class mail and by certified mail, return receipt requested, addressed to one or more of the addresses supplied as shall be deemed necessary, a signed notice bearing the seal of the court. If the regular mail is not returned to the court within 21 days as undeliverable, the defendant is deemed to be served.

### **STEP 5**

The Clerk shall furnish every claimant and defendant a copy of the Small Claims Guide published by the Office of Court Administration, UJCA §1803(b). Replacement copies of these books are available from the Office of Justice Court Support @ 1-800-232-0630.

#### **Adjournments**

Once the date is set, one of the parties may request an adjournment. Only the court may decide if an adjournment is to be granted. The party requesting the adjournment should mail the request to the court and the other party, ideally, at least a week before the hearing date. The Judge may want to review the request before it is granted.

#### **Who Can Sue in Small Claims UJCA 1809**

- Anyone 18 years of age or over. If younger, their parents or guardian may sue on their behalf.

- Corporations, partnerships, associations, assignees or insurers cannot sue, though, corporations can be a defendant in a small claims.

***Municipal corporation, public benefit corporation, school district or school district public library wholly or partially within the municipal corporate limit are the exception to the above and may sue and be sued in small claims.***

**Non-attorney Representatives UJCA 1815** - The Court, upon request, may permit a non-attorney to represent a party,

- if related by consanguinity or affinity to such party or
- if court finds that due to party's age, mental, physical or other disability, it would serve the interest of justice.

***Non attorney representative may not charge or accept a fee.***

**Name of Defendant UJCA 1814** - If claimant does not know the true name of the defendant:

- they may commence the claim against the party in the name the party uses to conduct business, if the action involves defendant's business.
- claimant can contact the County Clerk's office in the county where the business is located to get the "legal" name.
- once claimant knows the true name of defendant, they can notify the Clerk of the court to have the papers amended.
- at the hearing, the judge shall determine the true name of the parties.

**Counterclaims by Defendant UJCA 1803(c)** - a "counterclaim" is a claim filed against the claimant by the defendant - a countersuit.

- Counterclaim must be filed within 5 days of receiving notice of small claim.
- If counterclaim is not filed within 5 days, it may still be asserted at the time of the hearing. Judge may either proceed with the hearing or, at the request of the claimant, adjourn the hearing to a later date.
- Pay the court a \$3 .00 filing fee plus costs for mailing. The filing fee must be processed under 'misc money transactions' and must be reported under civil fees in the State Comptroller's Report along with the cost of postage.
- Claim must be sent by first class mail.
- Counterclaim cannot be more than \$ 3,000.

**Limitation on Right to Resort to Small Claims Procedures UJCA 1810**

**If the clerk shall find that the procedures of the small claims part are sought to be utilized by a claimant for purposes of oppression or harassment, as where a claimant has previously resorted to such procedures on the same claim and has been unsuccessful after**

the hearing thereon, the clerk may in his or her discretion compel the claimant to make application to the court for leave to prosecute the claim in the small claims part. The court upon such application may inquire into the circumstances and, if it shall find that the claim has already been adjudicated, or that the claim is sought to be brought on solely for purposes of oppression or harassment and not under color of right, it may make an order denying the claimant the use of the small claims part to prosecute the claim.

#### **Settlements**

Parties to a small claims action are encouraged to settle their cases whenever possible. If the case is settled and parties do not wish to appear, both should notify the court in writing. If money has not been paid yet, the claimant can ask the judge for an “adjournment pending settlement” and a new court date will be set.

#### **Jury Trial UJCA 1806**

- Persons bringing a small claims waives their right to a jury trial.
- Defendants, however, may demand a jury trial with an affidavit specifying issues any time prior to the day of the hearing. Defendant must pay a \$10.00 jury fee and a \$50.00 undertaking (a security deposit) to the court clerk. The \$50.00 should not be sent to the State Comptroller. Only the jury fee needs to be reported.
- If the case is transferred to the regular civil part, the claimant may demand a jury trial.

#### **Hearing UJCA 1802: Part 214.10**

- Courts may not prohibit the taking of stenographic minutes.

(As with all proceedings in Town and Village courts, every proceeding must be digitally recorded)

- Courts **MUST** administer an oath or affirmation to all parties/witnesses.
- For the proof of damages, clerks should instruct claimant to present; itemized bills, invoices, receipts marked paid or 2 itemized estimates for services or repairs. These are admissible as prima facie evidence of such services and repairs.

#### **If a Party Does Not Appear**

- If claimant does not appear in court when the case is called, the case may be dismissed.
- If the defendant does not appear, the judge may hear and decide the damages based only on evidence provided by the claimant. If the claimant’s case is proved, a “default judgment” will be awarded against the defendant.

***Court rules require that the judge wait at least one hour before holding a small claims***

*hearing or entering a judgment in favor of the claimant.*

**Decision UJCA 1304**

- When the judge or arbitrator has decided the case, a decision is filed in the court records and is called a “small claims judgment”. The court will notify the claimant and defendant who appeared at the hearing or trial that a decision has been filed.
- In some cases, a decision may be announced immediately after the trial. If not, it will be mailed to the parties within 30 days, unless further time is given by the consent of both parties.
- If monies have not been paid yet, the case is still considered closed.

**Small Claims Judgments - CPLR 5011, 5012**

If a monetary amount is awarded, the party against whom the judgment is awarded is called the “judgment debtor”. The party who is awarded an amount is called the “judgment creditor”.

There are 3 steps to finalize a judgment.

1. Preparing the Judgment
2. Entering the Judgment
3. Serving the “Notice of Judgment”

Preparing the Judgment - The judgment’s contents must,

- determine the rights of parties.
- refer to and state the result of the verdict or decision, or recite the default upon which it is based.
- be issued against only one party, or against a part of a claim.
- contain notice of enforcement procedures.

Interest may be awarded to compensate for loss of use of money. Specific dates where interest is awarded must be stated in the decision. Interest shall be at the rate of 9% post judgment except where otherwise provided by statute. Time periods of interest runs,

- from time of accrual in Contract and Property Damages cases only,
- until judgment is entered and until the judgment is paid (this is computed by the enforcement officer, not the court)

Costs and disbursements may be added to the judgment where a prevailing party had an attorney. By statute, the cost may not exceed \$50.00.

**Entry of Judgment - CPLR 5016**

The term “entry” refers to the signing and filing of the written judgment. Every judgment

must be entered into the court records by the court clerk. Once the clerk docket the judgment, the judgment becomes enforceable. Judgment form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Small%20Claims/small-judgment%20form.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Small%20Claims/small-judgment%20form.pdf)

#### Notice of Judgment

The winning party will receive a “notice of judgment” from the clerk that will include the judge’s decision as well as information regarding enforcement officers and ways to collect the judgment. The judgment debtor will also receive a copy of the notice of judgment and what can take place if they fail to pay, i.e.; liens, garnishment of wages, seizure and sale of real property, etc.

Please note: A judgment in itself does not constitute a lien on real property.

The judgment creditor must apply for a transcript of judgment and file it with the county clerk.

#### Transcript of Judgment - UJCA 1502

When the judgment debtor fails to pay, upon application by the judgment creditor including the \$2.00 filing fee, the court must deliver to the judgment creditor a transcript of the judgment. Judgment creditor should take the transcript to the county clerk's office to be docketed. The county clerk should then notify the issuing court so that the court may make an entry on the docket of the judgment indicating where the transcript has been filed.

*Winning a judgment does not guarantee payment; however, it does give the judgment creditor the right to collect it. A money judgment is legally enforceable for 20 years. A transcript of judgment may be issued immediately.*

#### Collecting a Money Judgment

If necessary, the winning party should contact the judgment debtor and request payment of the judgment amount. If the judgment debtor has refused, they may need the services of an enforcement officer.

Since there is no 30 day rule, enforcement of the judgment can commence immediately after entry.

#### Information Subpoenas - UJCA 1812(d)

The clerk shall, upon request from the judgment creditor, issue an information subpoena at a nominal cost to the judgment creditor. The clerk of the court will assist the judgment creditor with their preparation and use. A copy of such Information Subpoena is found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Small%20Claims/InformationSubpoena-Fillable.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Small%20Claims/InformationSubpoena-Fillable.pdf)

The Clerk should,

- assist with the preparation and use of the information subpoena.
- sign the information subpoena.
- and may provide a pre-printed questionnaire to include as part of the subpoena.

The pre-printed questionnaires are found at the following:

(1) Questions for the Judgment Debtor:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Small%20Claims/QuestionsAndAnswersToJudgmentDebtor-NotFillable.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Small%20Claims/QuestionsAndAnswersToJudgmentDebtor-NotFillable.pdf)

(2) Questions for the Third Party Corporation:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Small%20Claims/QuestionsAndAnswersToThird%20Party-Corporation-NotFillable.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Small%20Claims/QuestionsAndAnswersToThird%20Party-Corporation-NotFillable.pdf)

(3) Questions for the Third Party:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Small%20Claims/QuestionsAndAnswersInformationSubpoena-NotFillable.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Small%20Claims/QuestionsAndAnswersInformationSubpoena-NotFillable.pdf)

The information subpoena is a legal document that directs a person, corporation or other business to answer certain questions about where the judgment debtor's assets can be found.

*The town & village courts have the same power as the Supreme Court to punish a contempt of court committed with respect to an information subpoena.*

**Executions CPLR 5231 -5234**

Executions may be served or executed only within the county and levied by enforcement officers. Demand is made upon a person known as a "garnishee" who either holds a debt, or holds money/property, belonging to the judgment debtor.

- property executions in justice courts may be levied only against personal property of the judgment-debtor.
- income executions are governed by CPLR 5231.
- executions must bear the date of its delivery, UJCA 1504.

## **Satisfaction CPLR 5020**

Whether partial or full, it is the responsibility of the judgment creditor to file the satisfaction in all counties where the judgment was docketed, and mail a copy to the judgment debtor within 10 days of filing. Refusal may result in a penalty of \$100.

## **Return CPLR 5021(B)**

A sheriff shall return an execution to the court if such execution is wholly or partially satisfied, and the clerk shall make an appropriate entry on the docket of the judgment. In a small claims case, the return shall be made within 90 days.

## **Small Claims Check list for Court Clerks:**

(See attached Example of Small Claim form)

The top 5 examples can be filled out by the Court clerk:

1. Here is where you would put the word "Justice":
2. Here is where you would put the County your court is in
3. Here is where you would put Town or Village depending on your Municipality
4. This is where you would put the name of your Municipality
5. Once the case is placed on the Courtroom Program you would enter the Computer generated case number here.
6. The name and address of the Defendant would go here
  - a.) Plaintiff must have defendant's physical address, Court Cannot serve to a PO Box
  - b.) Defendant must live work or have a place of business in your township. While this is ultimately up to the Judge to make this determination, if you know the address is not in your municipality as a courtesy we tell the Plaintiff to check with the accessor for the correct venue.
7. The name of the person suing is the Plaintiff. Make sure they Print so you can read the name.
8. This is the amount in which the person is suing for.
  - a.) Filing fee is \$10.00 for amounts ranging from \$1-\$1000
9. The Plaintiff will write in a brief description about the claim they are seeking.
10. After the description they will sign the form
11. Place their current address which can be a P.O Box.
12. A current phone number where the Plaintiff can be reached if needed. This hardly ever happens.
13. This is where you pick the court date
  - a.) Date given must be no less than 21 days and no more than 45 days from the date filed.
14. This is what time the case will be heard by the Judge.
15. Here is where you will put the address of the Court for the actual hearing.
16. Once form is completed by the Plaintiff you will sign and
17. Date the form and place the Court seal if your court has one over your name.
  - a.) Clerk must then make a copy of claim to give to the Plaintiff and Mail two copies to the Defendant, one via regular Mail and one via Certified Mail Return Receipt.



NOTICE TO DEFENDANT  
SMALL CLAIMS COURT

FORM NO. SC-1

W. JAMES LEE BOOK COMPANY, NEW YORK, NY 10004

State of New York

① COURT ② COUNTY  
③ OF ④ SMALL CLAIMS PART No. ⑤

NOTICE TO DEFENDANT:

To: ⑥

TAKE NOTICE THAT ⑦ PLAINTIFF,

asks judgment in this Court against you for \$ ⑧ together with costs, upon the following claim:

⑨

In agreement with which the Plaintiff hereby signs and demands Judgment.

⑩ Plaintiff Signature ⑪ Address ⑫ Phone No.

There will be a hearing before the Court upon this claim on ⑬ 20  
at ⑭ o'clock, ⑮ M. in the Small Claims Part of this Court held at

YOU MUST APPEAR and present your defense and any counterclaim you may desire to assert at the hearing at the time and place above set forth (a corporation must be represented by an attorney or any authorized officer, director or employee). IF YOU DO NOT APPEAR, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT EVEN THOUGH YOU MAY HAVE A VALID DEFENSE. If your defense or counterclaim, if any, is supported by witnesses, account books, receipts or other documents, you must produce them at the hearing. The Clerk, if requested, will issue subpoenas for witnesses, without fee thereof.

If you wish to present a counterclaim against the claimant, you must do so by filing with the Clerk of the Court a statement containing such counterclaim within five days of receiving this notice of claim. At the time of such filing you must pay the Clerk a filing fee of \$3.00 plus the cost of postage to send your counterclaim by first class mail to the claimant. If you fail to file a counterclaim within this five-day period, you retain the right to file the counterclaim until the time of the hearing, but the claimant may request and obtain an adjournment of the hearing to a later date.

If you admit the claim, but desire time to pay, you must appear personally on the day set for the hearing and state to the Court your reasons for desiring time to pay.

Dated: ⑰, 20 ⑱ Clerk

A Guide to Small Claims Court is available at the court listed above.

NOTE: If you desire a jury trial, you must, before the day upon which you have been notified to appear, file with the Clerk of the Court a written demand for a trial by jury. You must also pay to the clerk a jury fee of \$10.00 and file an undertaking in the sum of \$50.00 or deposit such sum in cash to secure the payment of any costs that may be awarded against you. You will also be required to make an affidavit specifying the issues of fact which you desire to have tried by a jury and stating that such trial is desired and demanded in good faith.

Under the law, the Court may award \$25.00 additional costs to the plaintiff if a jury trial is demanded by you and a decision is rendered against you.

If at the hearing it shall appear that the defendant has a counterclaim in an amount within the jurisdiction of the part for the hearing of small claims, the judge may either proceed forthwith to hear the entire case or may adjourn the hearing for a period of not more than 20 days or as soon thereafter as may be practicable, at which adjourned time the hearing of the entire case shall be had. An adjournment shall be granted at the request of the claimant if the defendant did not file the counterclaim with the court within five days of receiving the notice of claim.

Adjourn to 20 20 20

BRING THIS NOTICE WITH YOU.

## Civil Actions

### Civil Claims

**1<sup>st</sup> Step**                      Person comes to court to start a Civil Claims Action  
(Parties in a civil action are the plaintiff and defendant)

If plaintiff (party suing) is not familiar with procedure to follow to initiate civil action, you cannot assist them or provide legal advice. Suggest they speak with an attorney if they are uncertain of the procedure.

You *can* inform party that civil claims in town and village courts are for:

- Action to recover money - limit \$3000 (plus interest and costs)  
Uniform Justice Court Act (UJCA) §201.
- Action to recover chattel - property value limit \$3000. UJCA §202.

### Geographical Jurisdiction

For civil claims in town and village court, either party must:

- Reside in the municipality,
- Have a place of business in the municipality or,
- Be employed within the same municipality as the court.

Court clerk should supply plaintiff with a future date when civil claims are heard. (This does not mean the court has accepted the case yet)

It is now the plaintiffs responsibility to inform the defendant of the civil claims action against them by.....

**2<sup>nd</sup> Step**                      Serving the defendant with a Summons and Complaint or a Summons and Notice

The purpose of the summons is to advise the defendant when to appear at the court and answer the plaintiff's complaint (allegations).

- Once the plaintiff serves the papers to the defendant, a copy of the summons or summons and complaint, as well as proof of service, must be filed with the court within six days after the defendant was served.  
UJCA 409
- Court does *not* provide Summons and Complaint form to plaintiff.

### **3<sup>rd</sup> Step**

#### **Filing Fee**

- The plaintiff must pay the court a \$20.00 civil filing fee in order to commence the action.
- Clerk must issue a receipt with required information on it .
- When entering the case, enter the fee paid with the receipt number and mark all papers with the assigned docket number.

### **4<sup>th</sup> Step**

#### **Hearing Date and ANSWER of the DEFENDANT**

- Must be scheduled not less than 6 days, but not more than 30 days from date of service.
- Defendant must appear and answer not less than 6 or more than 30 days after service is complete UJCA 402.
- Where the cause of action is for money only and the defendant appears without attorney, he may describe his answer to the clerk, who shall endorse the substance of the answer on, or annex it to, the summons. UJCA 902(a)(2)
- Burden of proof on the defendant
- Defendant may request a jury trial.

### **5<sup>th</sup> Step**

#### **Judgment**

- Plaintiff responsible for judgment filings and transcript.
- Clerk must docket the judgment.

## **Summary Proceedings**

### **Article 7 under Real Property Actions & Proceedings Law (RPAPL)**

#### **Definition**

A summary proceeding is a legal means for a landlord or other person to recover possession of real property and a judgment for unpaid rent in any amount, provided the party was served in a manner that permits the court to award a money judgment.

#### **Parties**

The party commencing a summary proceeding is referred to as the Petitioner (a landlord or other person entitled to possession of real property). The adverse party is called the Respondent (the occupant of the real property). Civil Practice Laws and Rules CPLR 401

#### **Jurisdiction**

- A summary proceeding must be brought in the court of the municipality in which the property is located. RPAPL §701 [2].

- The occupant must be in possession of the property when the summary proceeding is commenced.
- The court does not lose jurisdiction to determine the right of possession and claim for rent due if the occupant vacates the premises after the summary proceeding is commenced.

*Town courts have jurisdiction on summary proceedings involving property in the town and property in the village within their town, even if the village has a village court. Village courts can only hear summary proceedings involving property within their village. Uniform Justice Court Act (UJCA) 2101(n)(1)*

**There are 2 Classes of Summary Proceedings**

**There is or has been a landlord-tenant relationship between the parties. RPAPL §711**

**OR**

**There has never been such a landlord-tenant relationship between parties. RPAPL §713**

**Statutory Grounds Where Landlord-Tenant Relationships Exists RPAPL §711**

**When the parties are or have been landlord and tenant, the grounds for bringing a summary proceeding are set forth in RPAPL §711. Rooming house and residential hotel occupants are tenants under this section if they have resided at the premises for at least 30 days. Listed below are the grounds for a landlord-tenant relationship summary proceeding:**

**Tenant Is a Hold-over RPAPL §711[1]**

**A tenant who remains in the premises after the tenancy ends is a hold-over tenant.**

**If a written lease exists, it will state when the rental term ends. If the property was rented orally for a specified period of time, the rental term is over when the specified period expires.**

**In both instances, the landlord need not make a demand or give notice. Landlord may bring a summary proceeding as soon as tenant stays in the premises after the rental term expires. If landlord accepts rent from the tenant after the rental term expires, the rental becomes a month-to-month tenancy and tenant is liable for rent on a month-to-month basis at the previous rate.**

**Month-to-Month or Monthly Rental Term**

**If the rental term is monthly or month-to-month, landlord must notify tenant at least one**

month in advance of the date that the rental term will end. Oral notice is sufficient. Tenant must give similar notice to terminate the rental term.

#### **Tenant at Will or by Sufferance**

If the rental term is “at will” or “by sufferance”, landlord must give tenant a written 30 day notice to leave. Landlord must serve the notice on tenant personally, or someone of suitable age, or affixing it on a premises.

#### **Tenant Fails to Pay Rent      RPAPL §711[2]**

Landlord may bring a summary proceeding to evict a tenant who fails to pay the rent. The landlord may not bring a nonpayment summary proceeding if tenant fails to pay a security deposit or for damaging the premises.

*Landlord may not keep tenants’s goods nor prevent tenant from removing tenant’s goods from the premises for non-payment of rent.*

Before bringing a summary proceeding based on nonpayment of rent, landlord must either:

- make a demand (either orally or written) for a specified amount of rent due (though it need not be precisely accurate) and state the period for which it is due, or
- serve a written notice that within 3 days tenant must either pay the rent or move from the premises. The 3 day notice must be served the same way that a notice of petition must be served.

*In a nonpayment and hold-over summary proceeding, the landlord will ask the Judge to grant a judgment that will allow the tenant to be evicted.*

*The Judge may also order the tenant to pay past due rent to the landlord.*

#### **Objectionable Tenant RPAPL §711[1]**

This ground only exists if there is a lease containing a provision giving the landlord the right to terminate if landlord deems tenant to be an objectionable tenant. If there is no written lease, or if the lease does not contain such a provision, the landlord cannot evict tenant on this ground. If the lease so provides, landlord must notify tenant before beginning a summary proceeding usually by a notice of violation or notice to cure.

*Tenant is objectionable when the tenant’s use of the property is unreasonable or unlawful to the annoyance, inconvenience, discomfort or damage of others.*

**Tenant Violates Lease Provision Limiting Number of Persons Allowed to Reside at Premises**  
Having more people living in the same premises than permitted by the lease may not be a lease violation. Real Property Law (RPL) §235-f provides that any lease entered into by one or more tenants shall be read to permit certain additional persons to live there also, unless there is a violation of some other law, such as a building code regulation as to overcrowding.

**Illegal Use** RPAPL §711(5) and 715 authorize removal for illegal use of the premises.  
**Grounds for Removal**

- Use or occupation as a bawdy house.
- Use or occupation as a house or place of assignation for lewd persons.
- Use or occupation for prostitution.
- Use or occupation for any illegal trade, business or manufacture.

***Presumptive Proof: Two or more convictions for specified prostitution or gambling offenses within a period of one year, arising out of conduct engaged in at the same premises, are presumptive proof of illegal use.***

Any one of the following can be the petitioner for a summary proceeding based on illegal use:

- Owner of the property.
- Tenant of the property.
- Tenant of an apartment house, tenement house or multiple dwelling within 200 feet from the property.
- Any domestic corporation organized for the suppression of vice, subject to or which submits to visitation by the State Department of Social Service and possesses a certificate from the department of such fact and of conformity with regulations of the department.
- Any duly organized enforcement agency of the state or of a subdivision of the state authorized to enforce laws relating to buildings.

**Notice Requirements for Illegal Use**

A party other than the owner must serve a written notice to the owner or landlord requiring the owner or landlord to commence the proceeding, and if they fail to litigate the proceeding, such party may then bring or litigate the proceeding as though they were the landlord or owner. RPAPL §715(1)

**Statutory Grounds** RPAPL §713 Where No Landlord-Tenant Relationship Exists

**This statute authorizes a summary proceeding to obtain possession under certain circumstances when there is no landlord-tenant relationship. In most, the landlord must first serve the occupant with a 10 day notice, in the same manner as a petition must be served. Below are the statutory grounds for possession where no relationship exists:**

- **The premises have been sold by execution against respondent or respondent's landlord.**
- **A sharecropping agreement has expired.**
- **Respondent is squatting on the premises.**
- **The premises have been sold at a tax sale.**
- **The premises have been sold at foreclosure, and a certified copy of the deed has been shown to respondent.**
- **Respondent is a life tenant, and the life tenant has terminated.**
- **Respondent is a licensee whose license is no longer valid, or who is no longer entitled to possession.**
- **Respondent is a vendor/grantor of the premises, and petitioner is the vendee/grantee.**
- **Respondent is a vender who subsequently defaults on the terms of the contract of sale, but remains in possession.**
- **Respondent occupies the premises incident to employment and the employment is terminated; i.e. building inspector (10 day notice not required here).**

#### **Commencing a Summary Proceeding      RPAPL §731**

**A landlord commences a summary proceeding by serving tenant with two forms.**

**The Notice of Petition and Verified Petition or an Order to Show Cause and Verified Petition. Clerks should advise litigants to consult with an attorney or refer them to the DIY ("Do It Yourself") website for forms and additional information located at the following:**

**<http://nycourts.gov/CourtHelp/DIY/districtCityTVCourts.shtml>**

**The notice of petition or order to show cause is to inform the respondent of the time and place where the court will hear the petition and to advise the respondent that they must raise and establish any defenses at that time. RPAPL §731(2)**

**Only a lawyer, judge or a court clerk may sign and issue a notice of petition before service.**

**The fee to be paid to the court for the execution of a notice of petition is (\$20) twenty dollars.**

The petition must be verified by the landlord or the landlord's attorney or an agent who has personal knowledge of the facts alleged. RPAPL §741 The petition must have:

- A statement of the petitioner's interests in the premises.
- A statement of the respondent's interests in the premises.
- The petitioner and respondent's relationship with respect to the property.
- A description of the premises.
- The facts giving rise to the proceeding and the relief requested \*

\* The relief requested may include possession of the property and rent due. In addition, provided the notice of petition so state, the petition may claim the fair value of the use and occupancy of the premises for a period during which no rent was due.

#### Service of Notice of Petition and Petition

##### Time of Service - RPAPL §733(1)

- The notice of petition and petition must be served at least 5 days and not more than 12 days before the return date scheduled by the court for the summary proceeding.
- If the notice of petition and petition are not served within the 5-12 day period, the court must dismiss the summary proceeding for lack of jurisdiction.

*An order to show cause may be used to shorten the statutory time period for service.*

*If the court grants an order to show cause, the papers may be served at a time fixed in the order by the court. RPAP §733(2)*

##### Method of Service - RPAPL §735

Methods of service may be made in any one of three ways described below:

- Personal delivery/service to the respondent.
- delivering to and leaving personally with a person of suitable age and discretion who resides or is employed at the property sought to be recovered; or
- if after reasonable application personal or substituted service has been unsuccessful, the respondent may be served by "nail-and-mail", by attaching the papers to a conspicuous part of the property sought to recover.

If the substituted service or "nail-and-mail" methods were used, the copies of the papers must be mailed to the respondent within 1 day of when they were left at the property, and sent by both registered or certified mail and first class mail. RPAPL §735(1)



### **Filing Requirements - RPAPL 735(2)**

**The Notice of Petition, Petition and an Affidavit of Service must be filed with the court within 3 days of personal service or mailing.**

***Service is not completed until the Affidavit of Service is filed.***

### **Answer from Respondent - RPAPL §743**

**The pleading submitted by the respondent in response to the petition in a summary eviction proceeding is known as the “answer”.**

**Respondent (or any person in possession or claiming possession of the premises) may answer orally or in writing on the return date unless the notice of petition includes a demand for an answer at least 3 days before the return date and the notice of petition was served at least 8 days before the return date. If respondent’s answer is written and at least 3 days before, the petitioner must serve any reply at least 1 day before the return date.**

**If the respondent answers orally, the clerk or the judge must endorse (write) the substance of the answer on the petition. The answer may contain any legal or equitable defense and any counterclaim. The statute provides the court “may render affirmative judgment for the amount found due on the counterclaim.”**

### **Defenses**

#### **Defenses to Hold-over Proceedings. RPAPL §711[1]:**

- **The rental term, whether in writing or under an oral agreement has not expired.**
- **The required notice has not been given. The notice must be clear and unambiguous.**
- **Retaliatory Eviction - which applies to all residential rental properties except owner-occupied dwellings with less than four units, prohibits landlord from serving any tenant with a notice to quit in retaliation for the following:**
  - **Making a good faith complaint to a governmental authority alleging violation of any health or safety law or any law regulating premises used for dwelling purposes.**
    - **Starting a legal action in good faith to enforce the lease or any regulation concerning the premises.**
    - **Participating in a tenant’s organization.**

### **Defenses in Non-Payment Proceedings. RPAPL §711[2]**

The rent has been paid, or has been tendered and refused by landlord, before the notice of petition was served.

Landlord breached the warranty of habitability; i.e., maintaining the premises in decent conditions. RPL §235-b

Constructive eviction - this defense applies to commercial property when tenant has been forced to vacate the premises due to conduct by landlord such as withholding utilities or failing to make necessary repairs that deprives the tenant of the beneficial use and enjoyment of the property. Tenant must actually be forced to abandon possession to claim constructive eviction.

Actual eviction - if tenant is physically removed from rented premises, even if only from a portion of the premises, there is no obligation to pay rent for any of the premises even though tenant remains in the part from which he/or she was not removed.

### **Trial RPAPL §745**

The Judge is the fact-finder during the trial, unless, on the return date, a party requests a jury trial. RPAPL §745(1) The party requesting a jury trial must pay a (10) ten dollar jury fee to the court at the time the request is made. UJCA §§1303[d], 1911 [a][7]. Triable issues of fact must be raised.

The court may in its discretion grant an adjournment of the trial up to 10 days or longer on agreement of both parties, if the court believes it is necessary to allow a party to gather witnesses.

### **Decision**

#### **Entry of Judgment - CPLR 5016**

At the conclusion of the trial, the court must render a judgment determining the rights of the parties. The judgment may be issued following a trial, on default or on stipulation, and awarding costs to the successful party. The document is prepared by the successful party, not the court.

### **Relief**

Judgment awards possession of the property to the successful party. If notice of petition includes a demand for unpaid rent, the judgment can include an award on money. RPAPL §747

**Warrant of Eviction - A warrant of eviction is used after the court awards possession of the**

real property to the petitioner. Upon the request of the petitioner, the court must issue a warrant of eviction to the petitioner directing the sheriff or town constable directing that all persons be removed and possession returned to the petitioner. RPAPL §749(1) Sample form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Summary%20Proceedings/summary-warrant%20of%20eviction%20form.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Summary%20Proceedings/summary-warrant%20of%20eviction%20form.pdf)

Persons to be removed must get at least 72 hours written notice of the eviction, excluding Saturday, Sunday or a public holiday. Notice must be served in the same manner used to serve a notice of petition. After 72 hours, the officer may execute the warrant by physically evicting the tenant between sunrise and sunset.

**Stays** - In a non-payment proceeding, a respondent may stop the issuance of the warrant any time before it is issued, by paying the rent due, interest and costs with the court. Upon demand, the money will be paid to the petitioner. RPAPL §751(1)

**Stay for Good Cause** - After a warrant of eviction has been issued, the court may, for good cause shown, stay execution.

#### **Costs**

The successful party is entitled to (limited) costs, unless the unsuccessful party was granted poor person status. UJCA §1903(m)

- \$1.50 for each tenant served other than an enforcement officer.
- \$1.50 for obtaining an affidavit of respondent not in the military service.
- \$20.00 if court signed notice of petition or show cause order.
- \$50.00 (cap) if claim states respondent had forcibly entered or held premises.

#### **Attorney's Fees**

A landlord may recover attorney's fees only if there is a lease providing for such an award, and that lease specifically defines attorneys fees as "additional rent." If the lease does provide for recovery of attorney's fees, the court may award them to the successful party. The fee must be reasonable, factoring in the number of hours reasonably expended.

#### **Miscellaneous Topics**

**Manufactured Homes** - Real Property Law (RPL) 233 applies to rentals of lots or mobile homes in mobile home parks. A mobile home park is defined as any adjoining parcels of land which accommodate three or more mobile homes on a year round basis.

**Evictions** - *Own the Mobile Home* - Proceedings for eviction of a tenant and/or removal of

a mobile home are governed by Real Property Actions and Proceedings Law (RPAPL) Article 7 except that where the tenant owns the mobile home:

- The Notice of Warrant of Eviction must provide ninety (90) days notice to move.
- The Notice of Warrant may provide thirty (30) days notice to move if the eviction is for non-payment of rent or where the eviction is based on imminent threat to the safety, health, or welfare of other tenants.

Evictions - *Rent* the Mobile Home

The Notice of Warrant of Eviction must provide seventy - two hours (72) notice to move. The State of New York Office of the Attorney General Manufactured Home Tenants' Right manual can be found at

[http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real\\_estate\\_finance/manufactured\\_home\\_rights.pdf](http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/real_estate_finance/manufactured_home_rights.pdf)

## Civil Appeals

Definition of an Appeal

It is the submission of a trial court's decision to an appeals court for review. When a party to a legal action is unhappy with the result at the trial court level, they seek the review by a court of higher authority. In the case of most town and village courts, that would be your County Court. The exception to that rule are Town and Village courts within the 9<sup>th</sup> and 10<sup>th</sup> Judicial Districts. Those courts have their appealed cases heard in the Appellate Term.

*Throughout this section, you will come across the words "trial court". This guide is for the Town and Village Court Clerks. Therefore, the "trial court" is the Town and Village Court where the trial commenced (Your court).*

The Parties to an Appeal

**Appellant** - This is the party who is affirmatively appealing the trial court's ruling.

Generally speaking, it is the party or parties not satisfied with the result in the trial court.

**Respondent** - The party against whom the appeal is being taken. In most cases it is the "winning party" in the trial court.

**Who can appeal** - The plaintiff or the defendant has a right to appeal a case.

(Or sometimes both.) Small claims, regular civil actions, summary eviction hearings and dangerous dog cases are filed under a civil appeal.

**What is appealable** - Generally any order or judgment of the court, except an ex parte order or

a default judgment order.

**Timetable to appeal - A Notice of Appeal must be filed with the trial court within 30 days after the service of the judgment with notice of entry upon the non-appealing parties. If the judgment was received by mail, the appellant can add on an additional 5 days and 1 business day if by overnight delivery. If a copy of the judgment or order is not served, there are no time limitations on the filing of the appeal. CPLR 5513 (a)**

***An appeal does not stay (stop) the execution of a judgment. To stay the enforcement of a money judgment either an “undertaking” by bond or certified check or an Order from the Appellate Term is required. See CPLR 5519***

**1<sup>st</sup> Step - Notice of Appeal is Filed with the Trial Court Uniform Justice Court Act (UJCA) §1703**

**The first thing the appellant must do to commence an appeal is to serve the formal document “Notice of Appeal” on the respondent and subsequently file with the trial court, the original and copy of the “Notice of Appeal” along with the proof of service on the respondent within the 30 days.**

**There is a \$5.00 filing fee to be paid to the trial court for a civil appeal. A Notice of Appeal form can be found at the following:**

**[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Small%20Claims/small-form%20notice%20of%20appeal.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Small%20Claims/small-form%20notice%20of%20appeal.pdf)**

**What if they file the appeal after 30 days? Still take it. Not up to the trial court to say too late.**

**What if the \$5.00 fee not taken? Still need to accept it.**

**No proof of service? Do NOT accept it. Tell appellant you cannot accept it for filing unless/until proof of service is with it.**

**2<sup>nd</sup> Step - Transcript Started**

**Court Clerk must inform the appellant they are required to supply and pay for a transcript of the trial for the appeal. Recordings of the trial were either taken by a court reporter or it was digitally recorded.**

**For a copy of the Administrative Order requiring Town and Village Courts to digitally record all proceedings, see the following:**

**<http://inside-ucs.org/courts/dcaj/AdminOrders/Scans/2008-0245.pdf>**

Additionally, the Request for Transcript of Electronic Recording form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Appeals/REQUEST-FOR-TRANSCRIPT-OF-ELECTRONIC-RECORDING.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Appeals/REQUEST-FOR-TRANSCRIPT-OF-ELECTRONIC-RECORDING.pdf)

To have a transcript produced from an electronically recorded matter, the court can send a copy of the digital recording directly to the transcriber of the appellant's choosing. The certified transcription services to choose from are listed at the end of this section. Services that provide transcription from the court's digital recordings (compact discs) are denoted "digital".

*If a court reporter recorded the trial -*

- the appellant must request a copy of the transcript from the reporter. The longer the transcript the higher the fee. The parties may agree that only a portion of the transcript is needed for the appeal which could lessen the cost.

- if transcript is paid for in advance, the court reporter's original transcript must be furnished to the clerk of the court in 10 days. Immediately upon receipt, clerk sends a notice of that fact to appellant.

Where an appellant is granted permission to appeal as a poor person by the Appellate Court, the "court reporter" prepares the transcript at county expense.

For more information on certified transcription services go to -

<http://nycourts.gov/howdoi/transcripts.shtml>

If there is no mechanical recording, within 30 days from the entry of the "Notice to Appeal", the Judge is required to reconstruct his/her "minutes" of the proceeding (summary of the case) and serve copies of the minutes on the parties. UJCA 1703 and 1704(a)(1)

**3<sup>rd</sup> Step - Filing of the Draft Transcript** UJCA §1704(a)(1) and UJCA §1704(a)(2)(i)

Both parties have an opportunity to review the *draft* transcript and submit their amendments or objections. These objections have to be given to the trial court Judge to review and to decide whether or not he/she accepts them or objects them.

- When the appellant receives the draft transcript, they must serve a copy upon the respondent and the trial court within 10 days.

- If the appellant receives the transcript and has objections, they must serve their objections to the trial court and the respondent within 15 days.

- If the respondent receives objections from the appellant, they also can request changes and must serve these changes within 15 days to the appellant and the trial court as well.

*After the 15 days has expired, the appellant may settle the transcript whether or not the respondent has served objections.*

#### **4<sup>th</sup> Step - Notice to Settle Record UJCA §1704(a)(3)**

When all the changes are completed, the appellant needs to send a “Notice to Settle Record” to the trial court and the opposing party. The notice means that the transcript with the proposed amendments and objections will be examined or reviewed for accuracy and finalized by the court. The appellant must give the court and the respondent (or their attorney) at least a 4 days notice.

#### **5<sup>th</sup> Step - Settle Record UJCA §1704(a)(3)**

Clerk sets up a conference date with all parties to determine what is put into the record/return. Parties may stipulate that the transcript together with proposed amendments are correct. The Judge shall settle and endorse his settlement on the return within 5 days of the settlement conference.

#### **6<sup>th</sup> Step - Clerk certifies and files record with the Appellate Court UJCA §1704(a)(3)**

Once the Court Clerk receives the Notice of Appeal and the transcript is settled, they need to prepare and submit the “Record on Appeal” and then forward it to the Appellate Term. Below is a list of the essential ingredients. Although it is not required, it would be helpful when you forward the record that all papers be in the same sequence set forth below.

- Clerk’s Return, signed by the clerk of the court from which the appeal is taken.
- Notice of Appeal
- A copy of the judgment or order appealed from, along with the judge’s decision and all intermediate orders brought up for review if the appeal is from a judgment.
- The transcripts, if any, and settlement thereof.
- Exhibits, if any.
- All of the pleadings.
- If the appeal is from an order which decides a motion, all of the papers considered by the court in deciding that motion.
- The original file.

The appellant has 90 days from when the record is received by the Appellate Term within which to “perfect” the appeal (file a brief) unless he or she seeks more time from the Appellate Term. If the appellant does nothing to further the appeal, the respondent may

**move to dismiss the appeal at the Appellate Term.**

**Decision from the Appeals Court can be one of the following:**

- **Affirm/Affirmance** - Appellate Court agrees with the holding of the trial court; thereby “affirming” the lower court’s decision/order/judgment.
- **Reverse/Reversal** - Appellate Court disagrees with one or more aspects of the trial court decision.
- **Modification** - Appellate Court agrees with portion of the trial court’s decision.
- **Remand** -Appellate Court orders that the case be sent back down to the trial court for disposition in accordance with the appellate court’s ruling(s).

**Time-line Summary on a Civil Appeal**

- 1. Local court has a trial which resulted in a judgment on a motion, decision or order. The Court Clerk enters (signs, dates and files the judgment) and then serves the judgment on the losing party.**
- 2. The losing party has *30 days* from the date the judgment was entered by the clerk to appeal the case in the trial court.**
- 3. If appellant wants to appeal, they must serve the “notice of appeal” on the opposing party with copy of the judgment and then files same with the trial court with proof of service on the respondent within the *30 days (add five days if served by mail)*. Appellant to pay a \$ 5.00 filing fee to the trial court.**
- 4. Appellant is responsible to supply and pay for a copy of the trial transcript.**
  - if electronically recorded, clerk will send copy of the recording directly to a certified transcriber. The appellant decides which one to use.
  - if trial was recorded by a court reporter, clerk should supply appellant with the name and contact number in order to request a copy of the trial.
  - if no mechanical minutes were taken (this should not happen anymore), the Judge is required to create his/her “minutes” of the proceeding.
- 5. Appellant receives the draft transcript. If appellant agrees with what is on the transcript, they should forward a copy to the trial court and the opposing party within *10***



*days.*

**6. If appellant has any objections with the transcript, they must put it in writing and forward them to the trial court and the respondent within *15 days* from when they received the transcript.**

- If the respondent has objections, they must forward them back to the appellant and the trial court within *15 days* as well.**

**7. Once parties review transcript and request changes, a conference with the trial judge should be set up to settle the record. Appellant to give at least *4 days* notice to the trial court and respondent for a conference date.**

**8. Trial judge endorses the record within *5 days* of the settlement.**

**9. Once Court Clerk receives the settled transcript, they need to certify, prepare and submit the “Record on Appeal” to the Appellate Court.**

**10. Appellant has *90 days* from when the record is received by the Appellate Term within which to “perfect” the appeal. If appellant does nothing to further the appeal, respondent may move to dismiss. (Ninth & 10<sup>th</sup> Judicial Districts only)**

## IV. CRIMINAL

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### A Start to a Criminal Case File

#### Filing of Accusatory Instrument

Criminal Procedure Law section 1.20 (17) provides that a criminal action is commenced by the filing of an accusatory instrument against a defendant in a criminal court, and, if more than one accusatory instrument is filed in the course of the action, it commences when the first of such instruments is filed. The accusatory instrument could be in the form of an Information, Simplified Information, Prosecutor's Information, Misdemeanor Complaint or Felony Complaint. The law enforcement agency generally files the original with the Court. In addition, the Court may also receive supporting deposition(s), voluntary statements, affidavits, bail receipt (if station bail was posted), the arrest report as well as a copy of the appearance ticket issued.

\* Upon filing, enter case in case management system

It is best practice to make additional copies for the Court file so that the defendant can be given an additional copy at arraignment, as well as a copy for the defense counsel and district attorney (DA). Upon filing of the accusatory instrument, the information needs to be entered into your case management system in order to diary and calendar all the events of the case, starting with the arraignment, and ending with the disposition.

\* Make at least 3 copies of documents filed- for the district attorney (DA), defendant and Public Defender (PD)/defense counsel.

#### Preparing File for Arraignment

For general information on arraignments, please see the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/arraignments.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/arraignments.shtml)

Prior to the scheduled arraignment, it is also good practice to prepare the courts file, as best possible, so that the Judge will have available all necessary documents needed at the time of arraignment. This should include:

- the arraignment sheet or docket sheet which is used to indicate the progression of the case and notes of the judge. An Arraignment Memorandum form can be found at the following:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/Arraignment-Memorandum-2.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/Arraignment-Memorandum-2.pdf)
- the fingerprint based criminal history
- the drivers motor vehicle abstract when traffic matters are a part of the criminal file

It is good practice to also have readily available any additional forms that may be needed during the arraignment process, such as orders of protection, release under supervision forms, requests for mental health screening, commitments, assignment of counsel (TV-1 and 2 forms), and any additional forms your court may utilize during the arraignment process. These forms can be found under the “Criminal” section at the following: [http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/forms.shtml#criminal](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/forms.shtml#criminal)

#### **Securing Attendance of Defendant**

There are several ways in which a defendant will be required to appear in court. Criminal Procedure Law section 1.20 (26) provides: “Appearance ticket” means a written notice issued by a public servant, more fully defined in section 150.10, requiring a person to appear before a local criminal court in connection with an accusatory instrument to be filed against him therein. This is issued by the arresting agency at the time of arrest directing the defendant to appear on the scheduled court date.

Criminal Procedure Law section 1.20 (27) provides: “Summons” means a process of a local criminal court or superior court, more fully defined in section 130.10, requiring a defendant to appear before such court for the purpose of arraignment upon a accusatory instrument filed therewith by which a criminal action against him has been commenced. The summons is issued by the Court and can be generally be found in your software management programs forms and letter.

Criminal Procedure Law section 1. 20 (28) provides: “Warrant of arrest” means a process of a local criminal court, more fully defined in section 120.10, directing a police officer to arrest a defendant and bring him before such court for the purpose of arraignment upon an accusatory instrument filed therewith by which a criminal action against him has been commenced. The warrant is issued by the Court and can also be found in the court software management program’s forms and letters and is issued in the case where a defendant has not yet been arraigned.

Criminal Procedure Law section 1.20 (30) provides: "Bench warrant" means a process of a criminal court in which a criminal action is pending, directing a police officer, or a uniformed court officer, pursuant to paragraph b of subdivision two of section 530.70 of this chapter, to take into custody a defendant in such action who has previously been arraigned upon the accusatory instrument by which the action was commenced, and to bring him before such court. The function of a bench warrant is to achieve the court appearance of a defendant in a pending criminal action for some purpose other than his initial arraignment in the action. The form may also be found in the Courts software

**management program.**

#### **Contents of Court File**

**The following is a list of documents that may be filed in connection with a Criminal case file:**

- **original information(s)**
- **supporting deposition(s)**
- **oral admission(s)**
- **voluntary statement(s)**
- **affidavits**
- **bail receipt (if posted)**
- **domestic incident report (DIR)**
- **arrest report**
- **appearance ticket**

**Clerk's responsibility to prepare the file for arraignment by:**

- **entering the case information into the Court's records management system**
- **issuing a court bail receipt if station bail was posted**
- **making additional copies of the file for the DA, defendant, and defense counsel**
- **preparing the arraignment sheet**
- **retrieving the defendants finger print response criminal history (see E-Justice)**

#### **Prepare the Courtroom**

**Make sure the Judge has all appropriate forms that may be needed for criminal court including:**

- **Public defender applications.**
- **Orders of protection (if not utilizing Web DVS) both family and non-family orders.**
- **Release under supervision of probation (RUS) forms (Check with your county probation department for appropriate form)**
- **Commitments.**
- **TV1 and TV 2 forms.**
- **Mental health screening forms.**
- **Pre-sentencing forms/instructions.**

**Prepare the court calendar by utilizing this option in the courts software program and**

**ensure that all cases that appear on the calendar are pulled and prepared for court.**

#### **Post Arraignment/Appearance**

**At the conclusion of criminal court:**

- **Update the Courts software program with the arraignment date and the adjournment date, along with any additional information such as defense counsel, co-defendants.**
- **Update the Criminal Disposition Report with the criminal justice tracking number CCTN), New York State ID (NYSID), defense counsel type, arresting agency and next report date.**
- **If orders of protection were issued, update the Family Protection Registry Center and verify that copies of the order were given to the complainant, defendant, defense counsel, and any other person affected by the order, the local and or state correctional facility, if the defendant is imprisoned, the supervising probation department if under supervision. In addition, the clerk of the court shall file a copy of the order with the sheriff's office in the county in which the complainant resides, or if the complainant resides within a city, with the police department of such city, and may be filed with any other law enforcement agency having appropriate jurisdiction, as well as to the police agency responsible for pistol permit applications.**

#### **Criminal Sentencing & Dispositions- Upon a plea of guilty/sentence**

**\*If the proposed sentence is to include probation, process the request for a PSI or pre-sentence report. The process may vary by county, but the probation department will need a court order for investigation and report. If sentencing took place, then forward the signed orders and conditions, along with the order of transfer form, if applicable, onto the supervising probation department, along with instructing the defendant to report to probation. Check with your particular probation department for the corresponding forms referenced above. A pre-sentence investigation and report may be waived by the mutual consent of the parties and with consent of the judge, stated on the record or in writing under certain circumstances.**

**\*If the proposed sentence is to be jail, then a commitment to local custody will be issued by the judge and forwarded to the correctional facility. Upon issuance, make a copy for the Court file.**

**\*If the proposed sentence is Conditional Discharge, process any applicable paperwork (i.e. community service order, court order for restitution, stop shoplifting referral form, etc.) Such forms should again be obtained from your county probation department.**

**In addition:**

- Update and report the conviction and sentence in the court software program.
- Update the Criminal Disposition Report, and forward the notification of sentence if applicable.
- Process and report any fines and fees collected by the court and issue appropriate receipts.
- Return and or apply any bail posted as directed by the Judge, less bail poundage if applicable.

## **Assigned Counsel**

**Criminal Procedure Law 170**

**Criminal Procedure Law (CPL) 170.10 - Arraignment upon information, simplified traffic information, prosecutor's information or misdemeanor complaint: Defendant's presence, defendant's rights, court's instructions and bail matters.**

**CPL 170.10 (1) "Following the filing with a local criminal court of an information, a simplified information, a prosecutor's information or a misdemeanor complaint, the defendant must be arraigned thereon."**

**CPL 170.10 (3) "The defendant has the right *to the aid of counsel* at the arraignment and at every subsequent stage of the action. If he appears upon such arraignment without counsel, he/she has the following rights:**

- To an adjournment for the purpose of obtaining counsel; and
- To communicate, free of charge, by letter or by telephone, for the purpose of obtaining counsel and informing a relative or friend that has been charged with an offense; and
- To have counsel assigned by the court if he is financially unable to obtain the same; except that this paragraph does not apply where the accusatory instrument charges a traffic infraction or infractions only.

**Except as provided in CPL 170.10 (5), the court must inform the defendant:**

- Of his/her rights as prescribed in subdivision three; and the court must not only accord him/her an opportunity to exercise such rights but must itself take such affirmative action as is necessary to effectuate them;

**Defendant Charged with Traffic Infraction**

**While defendants are not entitled to assigned counsel if charged with only a traffic**

infraction, such defendant may retain their own counsel, or proceed without the aid of counsel.

#### **Defendant Charged in All Other Cases**

The court must permit the defendant to proceed without the aid of counsel if it is satisfied that he/she made such decision with knowledge of the significance thereof, but if it is not so satisfied it may not proceed until the defendant is provided with counsel, either of his or her own choosing or by assignment. Regardless of the kind or nature of the charges, a defendant who proceeds at the arraignment without counsel does not waive his/her right to counsel, and the court must inform him or her that he/she continues to have such right as well as all the rights specified in subdivision three which are necessary to effectuate it, and that he/she may exercise such rights at any stage of the action.

#### **Plan for Representation - *County Law 722***

“The governing body of each county and the governing body of the city in which a county is wholly contained shall place in operation throughout the county a plan for providing counsel to persons charged with a crime or who are entitled to counsel pursuant to section two hundred sixty-two or section eleven hundred twenty of the Family Court Act, article six - c of the Correction Law, section four hundred seven of the Surrogate’s Court Procedure Act or article ten of the Mental Hygiene Law, who are financially unable to obtain counsel.”

#### **722-a. Definition of crime**

For the purposes of this article, the term "crime" shall mean a felony, misdemeanor, or the breach of any law of this state or of any law, local law or ordinance of a political subdivision of this state, other than one that defines a "traffic infraction," for which a sentence to a term of imprisonment is authorized upon conviction therein.

#### ***OBLIGATION OF TOWN & VILLAGE COURTS TO MAKE A DETERMINATION AS TO DEFENDANT’S ELIGIBILITY FOR ASSIGNED COUNSEL - UNIFORM RULES FOR COURTS EXERCISING CRIMINAL JURISDICTION - 200.26***

Section 200.26 of the Uniform Civil Rules for Courts Exercising Criminal Jurisdiction creates an obligation on Town and Village Courts, with respect to defendants who appear for arraignment and are remanded (*i.e., ordered held without bail*) or unable to immediately post bail with the Court, to make an initial determination as to the defendant’s eligibility for assigned counsel.

Where it appears that the defendant who is remanded or unable to immediately post bail is financially unable to obtain counsel, the court, under subdivision (c) of the rule, must:

- immediately assign counsel (TV-1 Form). The form can be found at the following:  
[http://www.nycourts.gov/COURTS/townandvillage/judges\\_only/topics/documents/Forms/assigncounsel.pdf](http://www.nycourts.gov/COURTS/townandvillage/judges_only/topics/documents/Forms/assigncounsel.pdf)
- promptly notify both assigned counsel and the local pretrial services agency (if any), by telephone and in writing or by fax, of the Court's assignment and issuance of the bail or remand order (send copy of TV-1 Form) .

The TV-1 Form is an Order assigning counsel. It is to be used when the Court determines that a defendant who is remanded or unable to immediately post bail appears to be financially unable to obtain counsel.

Telephone notice and faxed (or other written) transmission is required to be made upon issuance of the Court's bail or remand order, "or, if not practicable, within 24 hours thereafter, but no later than 48 hours thereafter if extraordinary circumstances so require." 22NYCRR 200.26 (c).

The copy of the TV-1 Order sent or faxed to the assigned counsel must be accompanied by a copy of the accusatory instrument(s) filed in the case.

Where it appears that the defendant who is remanded or unable to immediately post bail is financially able to obtain counsel, the Court, under subdivision (d) of this rule, must:

A) In these cases where counsel is *not* assigned, the Court should complete (TV-2 Form Notice).

The form can be found at the following:

[http://www.nycourts.gov/COURTS/townandvillage/judges\\_only/topics/documents/Forms/noassigncounsel.pdf](http://www.nycourts.gov/COURTS/townandvillage/judges_only/topics/documents/Forms/noassigncounsel.pdf)

B) Provide notice by telephone and fax (if possible), a copy of the completed TV-2 form to the county's indigent defense provider and to the local pretrial services agency (if any).

C) Such telephoned and faxed (or other written) notice to the defense provider and pretrial services agency is required to be given upon issuance of the Court's bail or remand order, "or, if not practicable, within 24 hours thereafter, but no later 48 hours thereafter if extraordinary circumstances so require." 22 NYCRR 200.26(d).

D) A copy of the TV-2 Notice sent or faxed to the county's indigent defense provider must be accompanied by a copy of the accusatory instrument(s) filed in the case.



E) Each town and village court shall obtain from the administrator of the assigned counsel program, public defender, legal aid society or other provider of indigent criminal defense legal services in that jurisdiction, and from the director of the local pretrial services agency or head of the pretrial services unit of the county probation department, if any, the names, addresses, telephone numbers and fax numbers required to effectuate the notification provisions of subdivisions (c) and (d) of this section.

**\*\* Pursuant to subdivision (h) of the rule, “each town and village court shall maintain a record in the case file of any communications and correspondence initiated or received by the Court pursuant to section 200.26 and shall make such records available to the defendant’s counsel and the prosecutor upon request.” 22NYCRR 200.26(h).**

### **Criminal Summons – Getting the Defendant into Court - CPL § 130**

A Criminal Summons is a document generated by the Court directing the Defendant to appear on a set future date and time. It may be issued only when a legally sufficient Prosecutor’s information, Misdemeanor complaint, information or felony complaint is filed with the court. *It cannot be issued on simplified Information.*

A summons must be subscribed by the issuing judge and must state or contain (a) the name of the issuing court, (b) the name of the defendant to whom it is addressed, (c) the name or title of an offense charged in the underlying accusatory instrument, (d) the date of issuance of the summons, (e) the date and time when it is returnable, and (f) a direction that the defendant appear before the issuing court at such time.

A summons may be issued only by the local criminal court with which the accusatory instrument underlying it has been filed, and it may be made returnable in such issuing court only.

**Best practice:** Upon filing of one of the above, enter information into courtroom software with code “awaiting criminal summons,” print summons from courtroom software program and give to the judge to review the charging document and criminal summons for legal sufficiency and signature.

### **Service of a Criminal Summons - CPL §130.40**

May be served by a police officer, or complainant at least 18 years old, or by any person at least 18 years old designated by the court.

It may be served anywhere in the county of issuance or anywhere in adjoining county. The statute is silent on whether it must be personally served.

**Best practice:** Personal service, by a police officer, and a filing of the affidavit of service. In the alternative, service by certified mail. Once signed, update computer program to reflect “1<sup>st</sup> appearance of criminal summons” and have it personally served (with the summons, or mail it by certified and regular mail).

## Bail

### Purpose of Bail

The purpose of setting bail is to ensure that a defendant will return to court. It should not be used as punishment, protection for the community, or to coerce pleas of guilty.

**Black's Law Dictionary:** "to procure release of one charged with an offense by insuring his future attendance in court and compelling him to remain within the jurisdiction of the court."

### Rights to Bail

- Bail or Release on Recognizance (ROR) status must be granted in a non-felony criminal proceeding pending before a local criminal court. Remand without bail is not possible. Criminal Procedure Law (CPL) §530.20(1)
- A city court, town court or village court may not order bail if the defendant is charged with a Class A felony or if it appears that the defendant has two previous felony convictions and is now charged with a felony. CPL §530.20(2)(a)
- A local criminal court may order recognizance or bail on all other felony proceedings provided that the district attorney has had an opportunity to be heard and the court is in receipt of defendant's rap sheet or a police report showing defendant's criminal background.
- The court may deny defendant's application for bail when the defendant is charged with a felony.

### Criteria when Setting Bail

When a defendant is being arraigned, there are factors the judge should consider when setting bail. CPL §510.30 The court must take into account the defendant's:

- character, reputation, habits and mental condition.
- employment and financial resources.
- family ties and length of residence, if any in the community.
- prior criminal record.
- record of previous adjudication as a juvenile delinquent.
- weight of evidence against them in the pending criminal action.
- the sentence which may be or has been imposed on the defendant upon conviction.
- prior bench warrants or failures to appear.

### **Defendant's Right to Counsel**

**Before the Judge issues a securing order fixing bail or committing the defendant to the custody of the sheriff, they need to ascertain if the defendant is financially able to afford counsel. 22 NYCRR §200.26. If the defendant cannot, the court must assign counsel and provide the defendant in writing; the name, business address and telephone number of the attorney assigned to them.**

**If the assigned counsel is not present, the Court must notify them and the local pretrial services agency by telephone and in writing or by fax by using the TV-1 form " Order Assigning Counsel" which provides the following information:**

- **defendant's name.**
- **charges.**
- **docket #.**
- **adjournment day and time.**
- **the terms of the securing order.**
- **a copy of the accusatory instrument within 24 hours.\***

**If the defendant is financially able to retain counsel, the court must still notify the pre-trial services agency and the assigned counsel program by telephone and in writing or by fax using the TV-2 form "Notice , No Assignment of Counsel" which states:**

- **the Court's preliminary determination concerning the defendant's ability to retain counsel.**
- **the defendant's name.**
- **charges.**
- **docket #.**
- **adjournment date and time.**
- **terms of the securing order.**
- **a copy of the accusatory instrument within 24 hours. \***

**\* If extraordinary circumstances exist, no later than 48 hours  
after the Court has issued a securing order.**

**All correspondence received or initiated by the court on the above should be noted in the defendant's case file and shall make such records available to the defendant's counsel and the prosecutor upon request. 22 NYCRR §200.26(h)**

### **Forms of Bail**

**The two most common methods to post bail in Town and Village Courts are cash and credit cards. Bonds are also an option. CPL §520.10. A bond is an undertaking that the defendant will return or that a stated sum of money will be forfeited. There are five**

types.

- Insurance Company Bail Bonds.
- Secured Appearance Bonds.
- Partially Secured Appearance Bonds.
- Secured Surety Bonds.
- Partially Secured Surety Bonds.

The Court of Appeals unanimously held that a judge must give a criminal defendant the choice of at least two methods of posting bail. *People ex rel. McManus v Horn, NY3d (March 22, 2012), 2012 Slip Op.02121*

#### Processing Bail in Priority Order

Once the Judge has set bail, it is the responsibility of the clerk to process it internally within the court's software system and/or financial ledgers.

If you are present when bail is set, it is very important to get as much information from the person posting the bail such as; name, address and telephone number, especially if someone other than the defendant is posting the bail. If a judge sets bail on a traffic matter, the same rule would apply.

#### **1<sup>st</sup> STEP      Bail Receipt to Defendant/Surety**

A receipt must be given to anyone posting bail. Court's receipts should be pre-numbered with at least one duplicate copy for the court's records. Courts can use a "bail" receipt book or the receipt that is generated from your software program. Both should contain the following information:

- Pre-printed receipt number.
- Date received.
- Defendant.
- Charge allocated to bail (if more than one).
- Amount.
- Case/Docket #.
- Payer's name, address and phone # if other than the defendant.
- Method of payment.
- State that 3% bail poundage may be withheld.

Frequently, the court receives a copy of a defendant's bail receipt with the cash bail from the arresting agency. In this case, the court must process a bail receipt to the arresting agency, not the defendant. The payer on the receipt will be the arresting agency. The above information must also be stated on the receipt; defendant, charge, etc.

If the bail is posted by bond, no court receipt is issued. The court maintains the original insurance bond paperwork until the bond is released.

## ***2<sup>nd</sup> STEP      Entry of Bail into Court Records***

Defendant's bail should be entered into your court's software program expeditiously and before you deposit it into the Justice's bank account. Entry should also be written on the defendant's file folder.

If the court does not use a computerized system that produces a current and complete list of all bail held at any specific time, the court should maintain a supplemental record to provide that information. A ledger book or an Excel spreadsheet can be used to list all the current bail. Either one should state:

- Defendant's name.
- Case file/Docket #.
- Bail amount.
- Date received.
- Disposition when closed.
- A running balance.

It is important to have a record of the current and total amount of bail held and who it belongs to at the end of each month.

Separate from above, courts must also keep a "Cash Bail Receipts Report".

If using a ledger book or Excel spreadsheet for "Bail Cash Activity", the records should be done in chronological order on all bail received for specific periods of time. The information contained should include:

- Defendant's name.
- Case file/Docket #.
- Transaction date.
- Amount of bail posted.
- Receipt #.
- Reason for transaction (Return, Paid, Forfeit or Poundage).
- Amount refunded with check #.
- Portion to be applied to fine.

A court has the option of running one ledger to record "bail receipts" and another for "bail disbursements". You may also combine both in one general ledger. It depends upon the software program you have and/or ledger books.

**Any transaction on a case should be updated in your reports immediately.  
This will ensure everything will reconcile in the monthly  
reports at the end of the month.**

**See page 28 in the NYS Comptroller's Manual to view a manual and computer generated Current Bail Defendant's Report and a Bail Activity Report at the following:**

**<http://www.osc.state.ny.us/localgov/pubs/jch.pdf>**

### **3<sup>rd</sup> STEP      Deposit Bail in Bank Account**

**Cash bail should be deposited in the Justice's official bank account in accordance with the same rules and regulations involving other court collections; within 72 hours of receipt (exclusive of Sundays and holidays). The deposit slip should be in duplicate form so that the court can maintain a record of all deposits.**

**Your deposit slip should reflect the name and amount being deposited for each individual defendant.**

**When paying bail by credit card, the monies will be deposited in the judge's bank account within 48 hours.**

### **Bail Poundage**

**At the conclusion of a case, the local criminal court shall retain a fee of 3% on the amount of cash bail (not bonds) deposited with the court in connection with a criminal action or proceeding over which the court retains jurisdiction. \*see below for exceptions. These fees should be reported to the State Comptroller's Office's Justice Court Fund upon final disposition of the case. 2% of the bail money will be returned to the court and the remaining 1% goes to the county.**

***If the original bail is reduced or returned prior to the disposition, poundage should be retained based upon the original amount of bail.***

**\*Bail Poundage should NOT be retained if -**

- Case is transferred to another local court**
- Traffic infractions only (meaning cases that *started* as a traffic infraction)**
- Case is transferred to the Superior Court**
- Case is "terminated in favor of the defendant"; dismissed, or adjourned in contemplation of dismissal (ACOD).**

### **Forfeited Bail**

**If the defendant does not appear when he or she was directed to and there is no sufficient excuse, the Judge may issue a warrant and then order that the bail be forfeited. Forfeited bail**

should always be reported to the Justice Court Fund in your month end audit report. Unless otherwise provided by law, the forfeited bail will become the property of the town or village in which the offense charged is alleged to have been committed. CPL §540.20[2][b]. An application for remission of forfeited bail from a town or village court must be made to a superior court. CPL 540.30(1)(b). Bail poundage must be retained by the court on forfeited bail until the conclusion of the case. At the conclusion of the case, if the case results in one of the four situations where poundage is not retained, then the poundage should be returned to the person who posted bail. Otherwise, the court should report the poundage to the State Comptroller's Office's Justice Court Fund. The State Comptroller's Office is working on changing the Justice Court Fund manual to reflect the correct way to report poundage when bail is forfeited.

#### **Exonerated Bail**

Exonerated bail should be returned to the person who posted the bail, less any applicable bail fees. The clerk should make a good faith effort for a reasonable period of time to locate the person who posted the cash bail. All efforts should be noted in the defendant's case file with copies of mailings, if possible.

*In order for bail to be returned, the defendant/surety must have their Court issued bail receipt.*

If the clerk is unable to locate the surety, the court may transfer the money to the chief fiscal officer of the municipality, pending the claim. Cash bail still unclaimed 6 years after exoneration becomes the property of the municipality. If the surety comes to the court once its has been sent to the municipality, the court must direct them to the municipality for the return. A receipt of the bail must accompany them.

#### **Felony Bail**

Cash bail posted in a local Court involving a felony complaint may not be transferred to a Superior Court unless there is a Superior Court Order directing the local criminal Court to transfer the money. CPL §520.40 If the bail is forfeited in the Superior Court, the bail becomes the property of the county. CPL §520.10 If the bail is forfeited while it is still pending in the local Court, it becomes the property of the local criminal Court.

#### **Reporting of Bail to the Justice Court Fund**

The only bail that needs to be reported to the Justice Court Fund at the end of the month is Forfeited Bail and Poundage.

**Do Not Report**      Pending Bail, Exonerated Bail, Unclaimed Exonerated Bail or Felony Bail.

## **Applying Bail to Fines and Fees**

Cash bail posted by anyone other than the defendant may not be used to pay defendant's fine, if any, except on the express written authorization of the owner of the cash bail. However, CPL 420.10(1)(e) allows the court to apply cash bail posted by the defendant towards the payment of the fine without the defendant's consent.

## **E-JusticeNY - Integrated Justice Portal**

### **Division of Criminal Justice Services**

#### **What Is e-Justice Portal**

e-Justice Portal is a browser based application developed by the New York State Division of Criminal Justice Services (DCJS) which is designed to give users from qualified agencies a single point of access to computerized information within and beyond New York State.

e-JusticeNY embodies the concept of coordinated and integrated criminal justice information systems in New York State. A court's ability to use e-JusticeNY to obtain the most current information regarding the individual's status, both within and beyond New York State, including whether or not the individual is wanted in another jurisdiction, helps ensure that the decision is sound and the interests of public safety are well served.

#### **What Can Users Do with e-JusticeNY**

- Obtain New York State criminal history information, including mug shots.
- Search New York State's Wanted or Missing Persons data files.
- Request out - of - state criminal history information.
- Obtain timely crime trend data for counties outside New York City.
- Access the New York State Crime Mapping System.
- Make inquiries into the New York State Sex Offender Registry and the State's Missing Children Clearinghouse.
- Receive New York State criminal history rap sheet responses electronically for finger-print based criminal and civil identification transactions.
- Review and update records for probationers.
- Access State Department of Motor Vehicle records for licensed drivers and registered vehicles.

### **Setting up an e-Justice Account**

#### **Step 1**

To set up an e-Justice account, you will need to contact DCJS at [cccenter@dcjs.ny.gov](mailto:cccenter@dcjs.ny.gov) or



you may call 1-800-262-3257 for an application. If you have a Terminal Agency Coordinator (TAC) person, they will need to contact DCJS to set up your account. The TAC representative is a person designated by the court staff.

## **Step 2**

Once you or your TAC representative has contacted DCJS, you will receive, through confidential mail, your sign-in and temporary password.

## **Step 3**

You will need to go to the web site [www.e-Justicenyny.gov](http://www.e-Justicenyny.gov) and click on Login. Follow the prompts to set up your account and change your password. At the top right, you will see a tab "My Profile." Click on that tab, then click on "update my account." Make sure to fill in all required fields and Password Reset Information.

## **Step 4**

After completing your set up, you will need to go to the tab "Resources." Scroll down to "Training & Certification." Click on "Portal Certification Test." You will need to complete the Portal Certification test before you can continue. This Exam must be taken every 2 years. Once you complete the test, access is immediate. To contact the Portal Help Desk, you may email at [portalhelpdesk@e-Justice.state.ny.us](mailto:portalhelpdesk@e-Justice.state.ny.us).

When certification is completed, you will then e-mail or have your TAC person email DCJS to have the following tabs added to your account. \*\*(Remember to include in your email: your first and last name, email address, and request the following):

Department of Motor Vehicles (DMV)  
Orders Of Protection - INC  
Sex Offender  
Records - Booking

These tabs will allow you to gain access to:

- Out - of - State Drivers Licenses.
- Orders of Protections.
- Sex Offender Registry.

After setting up your account and taking the Certification Exam, you will begin receiving Criminal Histories in your Criminal History Inbox (CCH box). CCH is a tab that you will need to click on to access your inbox for any criminal histories from arresting agencies or inquiries you make. From there, you will be able to print out criminal history reports or "RAP" sheets by clicking on the print icon.

**If you have any questions on the e-JusticeNY Portal, contact the Portal Help Desk/Customer Contact Center at 1-888-462-8003.**

**Obtaining a Defendant's Criminal History Report or "Rap" Sheet**

**Step 1**

**Log into e-Justice**

**Step 2**

**On the top right hand corner of your screen, click where it states "inbox."**

**Step 3**

**A window will open and you will have three options: Personal; Agency; and CCH (your criminal inbox) Click on the CCH tab.**

**Step 4**

**If you have any available "RAP" sheets, they will be in this box. You will need to click on the "print" icon on the right to print the "RAP" sheets out.**

**To Search a Driver's Abstract**

**Step 1**

**On the top of the homepage, you will see a tab that states "People." Click on this tab.**

**Step 2**

**Scroll down to "Driving Record" and over to "License Check" and a window will open up with three tabs (New York State; Other States; or Canada).**

**Step 3**

**You can search by license number, name, or date of birth.**

**Step 4**

**Fill in all appropriate fields with the asterisks, then click on "search."**

**Results Will Then Appear at Bottom of Page. You Can Then Print Abstract Out.**

## **Fingerprinting Requirement**

### **New Requirement**

The New York State Division of Criminal Justice Services (DCJS) is authorized to review criminal history for those individuals accessing or reviewing State Criminal History Record Information (CHRI). Accordingly, DCJS is undertaking an initiative to ensure that *all* users accessing or reviewing State and federal CHRI have undergone both a State and federal fingerprint - based background check. Under no circumstances will the fingerprint process be waived.

### Step 1

To schedule an appointment for fingerprinting, go to the [www.L1enrollment.com](http://www.L1enrollment.com) website or call the L-1 toll free call center at (877) 472-6915. Appointment scheduling via the website is available 24 hours/7 days a week. Appointment scheduling via the call center is available 9am - 9pm Monday through Saturday. Bring the confirmation page with you to the appointment.

### Step 2

When scheduling the appointment, court staff members *must* provide the following information:

- ORI Number of NY030001J to schedule the appointment. This is the ORI number that is assigned exclusively to be used for this purpose; if this ORI number is not provided, the appointment will not be scheduled properly.
- Reason Fingerprinted of "Court Employee- Crim Justice"
- In the Agency ID field, provide the Town of Village Justice Court ORI Number. This is critical to be entered into the Agency ID field in order to ensure that OCA can advise the proper court of the background check determination.

### Step 3

The individual will select the most convenient location to get fingerprinted as part of making their appointment. A list of available locations can be found at [www.L1enrollment.com](http://www.L1enrollment.com). Select "NY" and then click on "Locations" to view the listing.

Payment options include: personal check, government check, business check, certified check, money order, or credit card. Payment is made to "L-1 Enrollment Services." Note: credit cards are not accepted on-site at the fingerprint location; a credit card may only be used at the time of scheduling the fingerprinting appointment. While no statutory exists requiring such, such fees should be paid by the municipality, due to the fact that court clerks cannot adequately perform their duties and responsibilities without accessing State and Federal Criminal History Record Information (CHRI).

### **Fingerprinting Fee**

The fingerprinting fee will be comprised of the total fingerprint search fee(s) plus the L-1 vendor fee. The total fee is made to L-1 Enrollment Services.

State Criminal History Background Fee:	<b>\$75.00</b>
L-1 Enrollment Services Fee	<b><u>\$10.75</u></b>
Total paid to L-1 Enrollment Services	<b>\$85.75</b>

### **Identification**

Two (2) forms of identification are needed, one of which must have a photo. When scheduling your appointment, you will be informed what forms of identification are acceptable (driver's license, US Passport, Social Security Card, etc.)

At fingerprinting location, the identification documents will be reviewed, and fingerprints rolled and photo taken. Once the individual has been fingerprinted, L-1 immediately launches the fingerprint transaction and photo to DCJS for processing.

### **After Fingerprints Are Taken**

The individual will be provided two (2) receipts indicating his/her name, fingerprinting site location, data and time, fee paid and reason for fingerprinting. The individual will retain one copy for his/her records and must email the other copy of the receipt as soon as possible to the following email addresses: [pamccart@nycourts.gov](mailto:pamccart@nycourts.gov).

In the event sending the receipt via email is not an available option, the receipt may be faxed to :

NYS Office of Court Administration, Division of Human Resources  
Attn: Fingerprint Verification  
Fax number: (212) 295-4876

The Office of Justice Court Support  
Attn: Fingerprint Verification  
Fax Number (518) 438-3518

Upon completion of the DCJS fingerprint search process, the DCJS and FBI responses will be delivered electronically to the OCA Personnel Office.

### **Frequently Asked Questions**

**Question - Why do I have to be fingerprinted again since I was fingerprinted when I first took the position of court clerk?**

**Answer - Regardless of the reasons and/or how many times an individual was**

fingerprinted in the past, the town or village court employee will still need to be fingerprinted so that DCJS can run an updated fingerprint check and the Office of Court Administration (OCA) can be informed of any future arrests that may occur. The only exception might be if a person was previously employed by the Office of Court Administration and whether the fingerprints are still on file with OCA.

**Question - Why do I need to be fingerprinted if I do not have access to e-Justice?**

**Answer - Any town or village court staffer that may view or handle criminal history records is required to undergo the fingerprint process.**

If you have any questions, you may contact the DCJS Customer Contact Center at (800) 262-3257 and ask to be directed to the Civil Identification Bureau. Also, if you wish to speak with the OCA contact concerning any problems you may be experiencing with the fingerprint process, please contact Patricia McCarthy, OCA Division of Human Resources at (212) 428-2661 or by e-mail @ [pamccart@nycourts.gov](mailto:pamccart@nycourts.gov)

## Orders of Protection

Criminal Procedure Law (CPL) 530.11, 530.12 & 530.13

Definition of an Order of Protection

Any order or decree issued by a judge whose purpose is to protect a person or pet from further harassment or abuse.

When Should an Order of Protection Be Issued?

**ONLY** after a criminal action has been commenced by the filing of an accusatory instrument in your court; and when a judge believes that it is in everyone's best interest that:

- There should be no offensive behavior or
- That all parties must stay away from each other during the pendency of the criminal prosecution.

In making such decision, the court should consider:

- Will the Order of Protection achieve it's purpose
- Defendant's prior conduct when subject to an Order of Protection
- Prior incidents of abuse
- Past or present injury, threats, or drug or alcohol abuse
- Access to weapons

There are two kinds of Orders of Protection: Family Orders of Protection and Non-Family Orders of Protection.

#### **Protection for Victims of *Family Offenses* - CPL 530.12**

**When a criminal action is pending involving a complainant charging any crime or violation between spouses, former spouses, parent and child, or between members of the same household. The court may issue a *temporary order of protection* in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of any order of recognizance or bail or an adjournment in contemplation of dismissal.**

**For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:**

- **persons related by consanguinity or affinity;**
- **persons legally married to one another;**
- **persons formerly married to one another regardless of whether they still reside in the same household;**
- **persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and**
- **persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship."**

**The court may issue a temporary order of protection in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of any order of recognizance or bail or an adjournment in contemplation of dismissal.**

#### **Protection of Victims of Crimes, Other than Family Offenses - CPL 530.13**

**When any criminal action is pending, and the court has not issued a temporary order of protection pursuant to section 530.12 of this article, the court may for good cause shown issue a temporary order of protection in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of a pre-trial release, or as a condition of release on bail or an adjournment in contemplation of dismissal.**

#### **Conditions of Non-family Offense Temporary Orders of Protection - CPL 530.13(1)(a)-(c):**

- **Stay away from the home, school, business, or place of employment of the victims of, or designated witnesses to, the alleged offense;**

- Refrain from harassing, intimidating, threatening or otherwise interfering with the victims of the alleged offense and such members of the family or household of such victims or designated witnesses as shall be specifically named by the court in such order;
- Refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by such victim or victims or a minor child residing in such victim's or victims' household.

**Length of Temporary Orders of Protection - CPL 530.12(3-a); 530.13(3)**

**Any temporary order of protection shall plainly state the date that such order expires.**

**Family Protection Registry Center**

**All orders of protection issued by a local criminal court relating to a family offense as defined in CPL 530.11(1) must be faxed over and/or transmitted to the Family Protection Registry Center database upon issuance. The registry's fax number is 1-800-266-7924.**

**Issuing Orders of Protection upon Conviction**

**Upon sentencing on a conviction for any crime or violation between spouses, between parent or child, or between members of the same household as defined in subdivision one of section CPL 511, or in cases pertaining to victims of crimes other than family offenses, the court, in addition to any other disposition, may enter an order of protection.**

**Duration of Orders of Protection**

**Family Offense and Non -Family Offenses - CPL 530.12(5) & 530.13(4)**

**Class A Misdemeanor - Shall not exceed the greater of: five years from the date of such sentencing, or five years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed;**

**Conviction for any other offense - Shall not exceed the greater of: two years from the date of sentencing , or two years from the date of the expiration of the maximum term of a definite or intermittent term actually imposed.**

**Conditions such Orders of Protection may require can be found at 530.12 (5) (a) - (e) family offense & 530.13 (4) (a) - (c) non-family offense.**

**\*\*Such orders of protection shall clearly state the date that such order expires.**

**Copies of Orders of Protection - family offense & non-family offense - 530.12 (6) & (8) & 530.13 (5) & (6) shall be provided to:**

- Complainant.
- Defendant.
- Defense Counsel.
- Any other person affected by the order of protection.
- Local correctional facility where individual will be detained.
- Correctional facility where defendant is or will be detained.
- Probation department where defendant is under supervision.
- Sheriff's office in the county in which the complainant resides, or city police department if complainant lives in a city.
- With any other police department from time to time with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order.

**\*\*Temporary orders of protection and orders of protection referred to in this chapter can be found at the following:**

1. Temporary Order of Protection:  
<http://www.nycourts.gov/forms/familycourt/pdfs/GF-5.pdf>
2. Order of Protection: <http://www.nycourts.gov/forms/familycourt/pdfs/gf-5a.pdf>
3. Order of Protection for a Family Offense:  
<http://www.nycourts.gov/forms/familycourt/pdfs/crim1.pdf>
4. Order of Protection for a Non-Family Offense:  
<http://www.nycourts.gov/forms/familycourt/pdfs/crim2.pdf>
5. Clothing and Personal Effects Retrieval Order:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/clothing-order.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/clothing-order.pdf)

#### **Emergency Powers When Family Court Not in Session - CPL 530.12(3-a)**

Upon request of petitioner, a local criminal court may issue an order of protection on ex parte basis pending a hearing in family court, provided that a sworn affidavit, verified in accordance with subdivision one of section 100.30 of CPL, is submitted:

- alleging that family court is not in session;
- alleging that a family offense has been committed;
- alleging that a family offense petition has been filed or will be filed in family court on the next day the court is in session;
- and showing good cause.

Upon appearance in a local criminal court, the petitioner shall be advised that he or she may continue with the proceeding either in family court or upon the filing of a local criminal court accusatory instrument in criminal court or both.



**Issuing temporary family offense order of protection where petitioner requests matter be returnable to Family Court:**

- **Local court shall transfer matter to family court and make matter returnable in family court the next day family court is in session, or as soon as practical, but no more than four calendar days after issuance of order;**
- **Local criminal court shall immediately forward a copy of the order of protection and sworn affidavit to the family court and provide a copy of temporary order of protection to the petitioner**

## **WEB-DVS**

### **Introduction**

**The Domestic Violence System was created by the Office of Court Administration (OCA) in conjunction with the New York State Police as mandated by the Family Protection and Domestic Violence Intervention Act of 1994. WebDVS is a web-based system used to enter information on orders of protection into the OCA database. From there it is electronically transmitted to the New York State Police Information Network (NYSPIN) system.**

**WebDVS collects and stores all order of protection and warrant information issued by the courts of the State of New York. Access to this Registry is currently available to judges, court staff members, and other qualified agencies.**

### **To Obtain User Id and Password to Gain Access to WebDVS**

**To obtain access to the WebDVS website, you must complete the NYS Unified Court System WebDVS User Security Request form which can be found at [www.nycourts.gov/justicecourts](http://www.nycourts.gov/justicecourts). Once completed, the form is sent to Security Administration Unit, 125 Jordan Road, Troy, NY 12180. The unit's phone number is (800) 622-2522; fax number is (212) 457-2627.**

### **How to Enter a Basic Order of Protection into WebDVS**

#### **Select Case Activity**

**Enter Case # (Note: Format of Case # must be consistent within the court)**

**Click Continue**

**If this case was already created, and order is listed in the table:**

**Click Add New**

**Click Create Order**

**If this is a new case - Case Not Found**

**Click Create Case/Order**

**Person Info - enter all the parties associated to this case**

If this case was already created, the parties from the original order will be listed in the Person in docket drop down. Additional parties can be added using the Add New button.

If this is a new case;

Click Add New button. A new page will open.

**Note:** Required fields are: First name; last name, DOB, Sex and Race

Enter First Name, Last Name (use Initial caps)

Enter Date of Birth (click on UNK if DOB is not known), Sex and Race.

Enter Alias, Address and Contact information if needed by selecting the appropriate button.

Additional information can be entered in any of the fields on this page by clicking in the desired field.

**Charges - Enter the charges associated to this case.**

Click Add New button. A new page will open.

Select from Common charges drop down list if charges have been added to the dictionary.

**OR** Select from Browse Charges to access the Charge Dictionary.

Enter the required Article/Section

Click Find Charges

Select from the list of charges displayed

Select Arrest Charge or Conviction Charge

Click Apply

To add additional charges, click Add New and enter the next charge following the same instructions.

**Note:** Charges are required on all Criminal form types

Conviction charge is required on Final orders.

**Relationships - This page needs to be completed before order is submitted.**

Select a person from the Available Party list

Select one of the relationships from the Has Relationship of list

Select a person from the To Party List

Click on Add

**Note:** Inverse relationships are automatically created.

Unknown is available under the Has Relationship of list

**OP Data - This page needs to be completed whether or not there is a pre-existing case.**

Select the Form Type

**Select the Order type**

**Court Location will be defaulted if there is only one location for the court.**

**Select Judge**

**Part**

**Attendance Info**

**Enter Issue date**

**In Effect Until Date (Expiration Date)**

**Order Filed with Police Agencies: Sheriff's Department will be the default agency.**

**Select any other agencies as needed.**

**Note: Hard copies of the order must still be provided to the agencies listed (via mail or fax). Submitting the order only sends it to the Registry/NYSPIN. It does not send copies to the police agencies.**

**Terms & Cond - Enter conditions**

**Select all the Terms & Conditions that apply to the order from the top section of the screen.**

**Enter Terms & Conditions Information by selecting each term individually or by selecting Grouped Conditions.**

**Note: Grouped conditions button contains 1A-1F, 14, and 02.**

**Click on party that condition applies to if needed.**

**Note: Some conditions require additional information.**

**Click Add button to add the terms & conditions to the order**

**Service - Enter Service information**

**Against Party Advised in Court? section Yes or No is preselected based on selection of Attendance Info on OP Data**

**Service - This is a required field**

**Select type of service**

**Additional Service Information - This is not required and any selection will appear in the "Remarks" section of the order**

**Complete the order by selecting one or all of the following options:**

**Save In Process**

**Select this option to save the order in process and complete at a later time.**

**Preview**

**Select this option to Preview the order for accuracy and approval from attorneys and judge prior to submitting.**

**Submit**

**Select this option to save the order to the Registry database and transmit to NYSPIN.**

## **How to use and Extend a Temporary Order of Protection (TOP) Function**

### **Select Inquiry**

**Select Search Area - Statewide is defaulted  
(This is the recommended search criteria)**

**Select Proceeding Type(s) - Select all is defaulted  
(This is the recommended search criteria)**

### **In the Search By section**

**Select either Name or Case Identifier**

**If Name is selected - Enter first name and last name and DOB if available**

**If Case Identifier is selected - Enter the court's docket or case #, or enter the order #, NYSID #, or SSN #**

**Click on Search**

**From Inquiry Results, highlight the original TOP (do not select an extension)**

**Select Extend TOP from the right task panel**

**A new screen will open**

**Select Extend TOP button.**

**(System Assigned is defaulted)**

**The only fields that can be updated on an extension are:**

**Attendance Info (OP data screen)**

**Judge (OP data screen)**

**Issue and Expiration date (OP data screen)**

**Service Information (Service screen)**

**Use this option to:**

**Extend the expiration date of a TOP.**

## **How to use Case Activity (for new and existing orders) Function**

### **Select Case Activity**

#### **If Case Number Unknown**

#### **Select Case # Unknown**

#### **Click Continue**

**All orders currently Saved in Process with the Unknown Case number will be displayed in the Search Results table.**

#### **If No orders are displayed:**

**Select the New Order and Case button**

**Select the Create Order button**

**Note: Case # can be left blank at this time**

**Order # is defaulted to System Assigned Order #**

**Start with Person Info screen**

**Complete the Person Info screen for each party listed on the order.**

**Continue to the Charges screen**

**Enter the charges associated to the order.**

**Continue to the Relationships screen**

**Select Available Party then Has Relationship then To Party**

**Note: Order cannot be submitted without Relationships screen filled in.**

**Continue to the OP Data**

**Enter all known data in the appropriate fields.**

**Continue to the Terms and Conditions screen**

**Enter all Terms and Conditions related to the order.**

**Continue to the Service screen**

**Enter service data if know.**

**Note: Additional Info and Warrant screens are not required.**

**Click to Preview**

**Review order**

**Click on Save In Process**

**Save in In Process if order is not ready to be submitted.**

**Click on Submit**

**Order saved to Registry database and sent to NYSPIN.**

**Print out order.**

**If orders are displayed:**

**Check to see if the desired order has already been started**

**All saved orders In Process with Unknown as a case number will be displayed in the Search Results table with the following data displayed:**

**Status: In Process - Order has not been submitted and is held In Process**

**Case Link (docket #): Number that is assigned to pending associated**

**cases**

**Order #: Order number assigned to the order - either manually or system assigned**

**System Assigned - No order number has yet been assigned. Order is not submitted.**

**Type: Type of Order (TOP; OP)**

**Applying Party: Party selected for this role on the OP Data screen**

**Against Party: Party selected for this role on the OP Data screen**

**NICS/Brady Prohibitor: Determined by conditions and relationships**

**State Prohibitor: Determined by conditions and relationships**

**Issue Date: Date entered on OP Data page as issue date of order**

**Exp. Date:** Date entered on OP Data page In Effect Until (expiration) date

If the desired order is found in the Search Results table, the following options are available:

**Select:** Highlight the order, click on the Select button.

This order can be updated and saved In Process again.

**Add new:** Highlight the order, click the Add New button

This will create a new order that is associated to the same case.

This order can be updated and saved In Process again.

**Delete:** Highlight the order, click the Delete button

This will remove the order from the In Process list.

**Note:** If the Select button is clicked, the Assign Case/Order #'s section will appear.

If the Add New button is clicked, the Create Order section will appear.

**Note:** Finish Orders(s)/Add New Order(s) to Existing Case select is defaulted

Select the Create Order button

**Note:** Case # can be left blank at this time.

Order # is defaulted to System Assigned Order #.

**How to use the Import From Criminal Data Base Function**

**Select Import from Criminal DB**

**Search - Select the search criteria (Case # selection is defaulted)**

**Search by:** Case #; CJTN #; NYSID #; Arrest Number; or Name

**If results are returned:**

Highlight and select the appropriate row and click Select Defendant.

The case information will display on the screen.

**System Assigned - This is defaulted for the Order #.**

**Person Information**

Click on Person Info - all the defendant's pedigree information has been imported and populated into WebDVS

Complete this tab by selecting Add New and add other parties to the order.

**Charges**

Click on Charges - all charges entered into the court's case management system or the OCA database (CRIMS) have been populated into WebDVS.

**Note:** Changes can be made to this screen by adding or deleting charges.

Continue the create order process by completing all remaining tabs as usual. (See How to Enter Basic order of Protection instructions.)

**If Case Number is Known:**

## **Enter Case Number in the Create/Finish Order**

**Note: Case # Known and Case # are defaulted**

### **Click Continue**

**All orders currently Saved in Process with an Unknown Case Number will be displayed in the Search Results table.**

### **If orders are displayed:**

#### **Check to see if the desired order has already been started**

**All saved orders In Process with Unknown as a case number will be displayed in the Search Results table with the following data displayed:**

**Status:** In Process - Order has not been submitted and is held In Process

**Case Link (docket #):** Number that is assigned to pending associated

**cases**

**Order #:** Order number assigned to the order - either manually or system assigned

**System Assigned -** No order number has yet been assigned. Order is not submitted.

**Type:** Type of Order (TOP; OP)

**Applying Party:** Party selected for this role on the OP Data screen

**Against Party:** Party selected for this role on the OP Data screen

**NICS/Brady Prohibitor:** Determined by conditions and relationships

**State Prohibitor:** Determined by conditions and relationships

**Issue Date:** Date entered on OP Data page as issue date of order

**Exp. Date:** Date entered on OP Data page In Effect Until (expiration) date

**If the desired order is found in the Search Results table, the following options are available:**

**Select:** Highlight the order, click on the Select button.

**Submitted orders cannot be updated.**

**Orders In Process can be updated and saved In Process again.**

**Add new:** Highlight the order, click the Add New button

**This will create a new order that is associated to the same case.**

**This order can be updated and saved In Process.**

**Delete:** Highlight the order, click the Delete button

**This will remove the order from the In Process list.**

**Submitted orders cannot be deleted from this screen.**

**Orders In Process cannot be deleted from this screen.  
A \*New\* order can be deleted from this screen.**

**Note: If the Select button is clicked, the Person Info screen will open up.**

**If the Add New button is clicked, the \*New\* order can be created. A row will be added with the \*New\* populated in all data fields.**

**Select the Create Order button**

**Note: Case # can be left blank at this time.**

**Order # is defaulted to System Assigned Order #.**

**How to use the Inquiry Function**

**Select Inquiry**

**Select Search Area - Statewide is defaulted  
(This is the recommended search criteria)**

**Select Proceeding Type(s) - Select all is defaulted  
(This is the recommended search criteria)**

**In the Search By section**

**Select either Name or Case Identifier**

**If Name is selected - Enter first name and last name and DOB if available**

**Click on Search**

**If Case Identifier is selected - Enter the court's docket or case # or enter order #, NYSID # or SSN #.**

**From Inquiry Results, highlight any order to:**

**View Order Details**

**View Order (PDF)**

**Order Recap**

**From Inquiry Results, highlight TOP from your court to:**

**Extend TOP**

**Copy/Modify**

**Edit Existing**

**Violations**

**Vacate Order(s)**



**Dismiss Case**

**Seal Case (seal only if case was disposed in favor of the defendant - 160.50)**

**Use this option to:**

**Search database for any orders filed with the Registry.**

**Search for existing orders from court.**

**If No orders are displayed:**

**Case Not Found will be displayed in the Search Results**

**Choose Create Case/Order to continue to the Person Info screen.**

**Note: System Assigned Order # is defaulted (recommended method of assigning order numbers)**

**Manually Assigned - Contact the Registry to begin using Manually Assigned #'s.**

**Unknown can be selected if Order numbering is unknown**

**Person Info screen will be displayed**

**Continue to the Charges screen**

**Enter the charges associated to the order**

**Continue to the Relationships screen**

**Select Available Party then Has Relationship then To Party**

**Note: Order cannot be submitted without Relationships screen filled in**

**Continue to the OP Data**

**Enter all known data in the appropriate fields**

**Continue to the Terms and Conditions screen**

**Enter all Terms and Conditions related to the order**

**Continue to the Service screen**

**Enter service data if know**

**Additional Info and Warrant screens are not required**

**Click to Preview**

**Review order**

**Click on Save In Process**

**If order is not ready to be submitted.**

**Click on Submit**

**Order saved to Registry database and sent to NYSPIN.**

**Print out order.**

## **[Mental Health Issues and Fitness to Stand Trial](#) [CPL ARTICLE 730](#)**

### **Defining Incapacity**

**Any time after the arraignment and before sentencing – or, in the matter of a felony, before the matter is held for grand jury – if the Court’s opinion is that the defendant may be an incapacitated person, the Court must issue an order for examination (CPL 730.30). An “incapacitated person” is a defendant who, because of mental disease, lacks the capacity to understand the proceedings against him/her and is unable to assist in their defense. Concerns regarding incapacity are relevant as to whether the defendant is able to: stand trial; consent to a search and seizure; confess; plead guilty; waive right to counsel; refuse an insanity defense; testify or be sentenced. Conditions likely to affect incapacity can include: psychosis (hallucinations, delusions, disorganized thinking or bizarre behavior), or acute phases of several disorders (schizophrenia, acute mania or bipolar disorder, severe depression, or substance abuse).**

**An indication of a mental health issue may come from a formal motion by the prosecutor or the defense attorney. But a motion is not required. The court may raise the issue based upon the actions or remarks of the defendant in the presence of the court. If the court does raise the concern then it issues an order of examination to make a determination.**

### **Order of Examination**

**The Court issues an order of examination to a director or a facility operated under the Commissioner of the Office of Mental Health or other State-approved facility. The facility director designates two (2) psychiatric examiners to do an examination and issue a report, which the Court must deliver to the prosecutor and to the defense attorney. The examination may be conducted at the place where the defendant is in custody or at a hospital. The examination can alternatively be conducted on an outpatient basis.**

**A hearing may be held if the Court has any questions or concerns even if the psychiatric examiners are in agreement. The Court must hold a hearing if the psychiatric examiners**

disagree. In addition, a hearing must be conducted if a motion is made by the defense attorney. The Court may order the defendant to receive mental health, alcohol or substance abuse treatment, in-patient treatment or any other medical care deemed necessary.

At a fitness hearing the People must prove that the defendant is not an incapacitated person as defined by CPL 730.10(1). The Court must issue a ruling finding the defendant either competent to stand trial or incompetent to stand trial. If the Court concludes that the defendant is competent, the criminal action proceeds.

If the examination determines the defendant is incapacitated and no motion for further hearing is made, the Court must issue a final order of observation committing a defendant to a facility for a period not to exceed ninety (90) days. If a final order of observation is issued, the local accusatory information is dismissed and bars further prosecution. A sample of the form can be found at the following link:

[https://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/order1.pdf](https://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/order1.pdf)

## **Fugitives from Justice**

A fugitive from Justice is a person who: is accused of a crime, has been convicted of a crime, has escaped confinement, or has violated the terms of bail, probation or parole in another State. Extradition is the surrender by one State's authorities to another State's authorities of such a person. The Uniform Criminal Extradition Act, CPL Article 570, sets forth the procedure for the arrest and delivery of such individuals.

A defendant is brought before a court by a Governor's Warrant, a Judicial Warrant or by a warrantless arrest. The Court's jurisdiction is limited. For example, the Court cannot arraign on a Governor's Warrant and cannot adjourn the matter for more than 30 days. Courts cannot set bail, but rather must remand. Courts cannot accept a *waiver* of extradition, and cannot hold a hearing on the merits of the extradition application. If asked to arraign a fugitive from justice, the Court shall: inform the alleged fugitive of the charges and provide a copy of papers; make a determination regarding appointment of counsel or retaining counsel; make a finding (if supported by facts) that the person held is the same person who stands charged and that the person has fled the requesting jurisdiction and is not present in this state in a situation covered by CPL 570.14 or 570.16. After the arraignment is completed, the Court must: file a TV1 or TV2 as appropriate; and commit the accused to the county jail by a warrant reciting the accusation. When the Court is asked to arraign a fugitive from justice, the following sample documentation would be included in your file:

1. Extradition Request and Warrant
2. Local Accusatory Instrument

### 3. Rap Sheet

### 4. Securing Order (Bail is not an option/MUST remand)

### 5. Assignment of Counsel Order

What if nothing happens in 30 days? If the accused has not been arrested on a Governor's Warrant within the 30 day adjournment, the Court can give adjournment(s) for a period up to *but not exceeding* an additional 60 days (total of 90 = 30 +60) or discharge the accused from custody. The Court may set bail pursuant to CPL 570.40.

What if nothing happens in 90 days? The Court must discharge the accused from custody, and should dismiss the warrant.

Additional information can be found at the following link:

[http://www.courts.state.ny.us/courts/townandvillage/judges\\_only/topics/fugitivesfromjusticeandextradition.shtml](http://www.courts.state.ny.us/courts/townandvillage/judges_only/topics/fugitivesfromjusticeandextradition.shtml)

## Adjournment in Contemplation of Dismissal (ACD)

An adjournment in contemplation of dismissal or "ACD", provides first time offenders involved with the criminal justice system an opportunity to have the arrest and prosecution "deemed a nullity". CPL §170.55

An ACD may be suggested by the prosecution, the defendant or even the court upon its own motion, but one cannot be granted unless there is a mutual agreement by all parties. Criminal Procedure Law (CPL) §170.55[1] An ACD requires no formal motion, procedure or hearing, and has no statutory criteria that must be satisfied prior to it being granted. An ACD must be upon or after arraignment, before entry of a plea of guilty or commencement of trial.

Adjournment period on ACD's are mostly (6) months. But cases involved with marijuana CPL §170.56 or cases which involve family offenses are (12) months.

At the time the ACD is granted,

- the defendant is released on their own recognizance or "ROR" and there is no scheduled future appearance date.
- there is no admission of guilt and the ACD is not deemed a conviction.
- no fines or mandatory surcharges are imposed because it is not a conviction.

However, the court may impose the following conditions in conjunction with the granting of an ACD.

- A defendant may be required to perform community service for a not-for-profit corporation, association, institution or agency, CPL §170.55[6] . The defendant must consent to the amount of time and the conditions.

*When the hours and conditions are reasonable and the defendant refuses to perform them,  
then the consent by either the court or  
the People could be withheld preventing the issuance of the ACD.*

- Defendant may be issued a "temporary order of protection" or "TOP" with specified conditions. CPL §530.11 and 12, CPL §170.55[3]. If the case is a non-family offense, the TOP is (6) months. If it is a family offense, the temporary order of protection can last up to (12) months.

*TOP's cannot be extended. Once a case is dismissed upon the expiration of the adjournment period, it cannot be restored to the court's calendar.*

- If the defendant is under 21 years old, he/she may be required to attend an alcohol awareness program if charged with a misdemeanor or misdemeanors other than a DWI, and it appears that alcohol may have been a contributing factor. CPL §170.55[7]
- If the charge is a crime or violation between spouses or parent and child, or between members of the same family household, the court may require the defendant to participate in an educational program that addresses the issues of spouse abuse or family violence. CPL §170.55[4]
- A defendant may be required to participate in a dispute resolution conference and comply with any award or settlement resulting from such process. CPL §170.55[5]

*There is no authority within the law for the court to order  
restitution as a condition of granting on ACD.*

**Can an ACD be restored back to the court before it is completed?**

Once the ACD is granted by the court and is agreed by all parties, the prosecution may make an application to have the case returned to the court's calendar at any time within the (6) month or (12) month period for further prosecution if the defendant has failed to comply with the conditions. CPL §170.55[2]

The only time the court has the inherent authority to restore the case to its calendar upon its own motion or upon the motion of the DA, is when the ACD involves marijuana. CPL §170.56

The defendant has no right to a hearing to contest the restoration to the calendar. CPL §170.55

*However, since the court, in its discretion, determines whether or not dismissal of the accusatory instrument would be in furtherance of justice it would appear reasonable that the defendant should be given an opportunity to be heard. CPL §170.55[2]*

#### **ACD Court Records**

An adjournment in contemplation of dismissal is not considered favorable to the defendant until the adjournment period has expired and the case has actually been dismissed.

When an ACD is granted, the public still has access to the court records of the case during the six month, or one year if it is a family offense, CPL §170.55. Once the case is dismissed upon the expiration of the adjournment period, it is considered a termination in favor of the accused and courts must seal their records from public access. CPL §160.50

Once sealed, the defendant's records are only available to the defendant, or those others specifically designated by statute for a specific purpose. CPL §160.50[1][d]

*When a case is dismissed upon the expiration of the adjournment period, it cannot be restored to the court's calendar, no matter what the justification or how legitimate the reason.*

Absent restoration to the court's calendar, the accusatory instrument is automatically dismissed by the court in furtherance of justice, and the arrest and prosecution are "deemed a nullity". CPL §170.55[8] The defendant is now restored back to the status he or she occupied prior to the arrest and prosecution.

The Court must notify the following agencies that the matter is dismissed so they can take appropriate action to seal their records, destroy photographs and fingerprints. CPL §160.50

- Division of Criminal Justice Services (through the submission of a CDR)
- Heads of all appropriate police departments

- District Attorney's office
- Any other law enforcement agencies
- Or any other Court that may have conducted an alternate arraignment on the matter

There are three types of ACD's and for each one the clerk must submit a CDR report.

*Please note - CDR Reports for ACD's must be sent at adjudication and again at the dismissed date.*

### **The Filing of Disposed Sealed Cases**

Most courts file all of their sealed cases with the other disposed cases. To differentiate the sealed cases from the rest, the clerk frequently places it in an envelope and seals it. To identify the case, only the docket number is written on the outside and the date it was sealed (the disposition date).

Effective May 30, 2011, Courts may no longer grant an ACD if the offense is a violation of Vehicle and Traffic Law or local law or ordinance relating to the operation of a motor vehicle (except for parking, stopping or standing) when the violation is pending against a motorist who holds a commercial license, or such offense was committed in a commercial motor vehicle. CPL §170.55[9]

## **Conditional Discharge**

(See also New York State Penal Law Section 65.05 - Sentence of Conditional Discharge and CPL Section 410.10)

A conditional discharge (CD) is similar to probation in that it is a “revocable sentence.” The court releases a defendant under certain conditions, like paying restitution, completing community service, attending a drug or alcohol, anger management, job training or GED program, or paying a fine. If any of the conditions are not met, the defendant's sentence may be revoked, and then re-sentenced to probation or jail. A CD, unless terminated sooner in accordance with the Criminal Procedure Law, shall be for a period of one year in the case of a misdemeanor or a violation (Penal Law 65.05 [3][b]).

The Judge may impose a CD for an offense if the court, having regard to the nature and circumstances of the offense and to the history, character and condition of the defendant, believes neither the public interest nor the ends of justice would be served by a sentence of imprisonment and that probation supervision is not appropriate (Penal Law 65.05 [1]).

Under CPL 410.20, the Judge may modify or enlarge the conditions or, if the defendant commits an additional offense or violates a condition, revoke the sentence at any time prior to the expiration or termination of the period of conditional discharge. The judge may also impose an additional period if the defendant has failed to make restitution. The length of the additional period shall be fixed by the court at the time it is imposed and shall not be more than two years (Penal Law 65.05 [3][b]). All of the incidents of the original sentence, including the authority of the court to modify or enlarge the conditions, shall continue to apply during such additional period.

### **CD Violations:**

In cases where a CD is imposed, the court should be careful to keep an eye on the time period. It is suggested that the court set control dates during the defendant's CD to monitor progress and to lessen the risk of the time period expiring prior to the court filing a violation. As a best practice, a written copy of the conditions should be given to the defendant at the time of sentencing when the CD is imposed.

When the court is made aware of an alleged violation of a CD, the Judge may declare the defendant delinquent and sign a written Declaration of Delinquency Form pursuant to CPL 410.30. (INSERT LINK TO FORM HERE). The purpose of this procedure is to “stop the clock” so that the CD does not expire while the offender is violating the terms or while the court is considering possible action to be taken.

The defendant must be served with a copy of the Declaration of Delinquency form and be brought before the court that imposed the sentence. When the defendant appears, or is brought before the court, if the court has reasonable cause to believe the defendant violated a condition of the sentence, the court must issue a securing order and assign an attorney. The judge has the authority to grant bail or ROR, but cannot release under supervision.

A summary hearing will be held and the judge may revoke, modify or continue with the CD based on the decision of the hearing.

## **Dangerous Dogs**

Agriculture and Markets Law (AML) § 108(24)

A DANGEROUS DOG is any dog, which, without justification, attacks a person, companion animal, farm animal or domestic animal and causes physical injury or death, or behaves in a manner which a “reasonable person” would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more persons, companion



**animals, farm animals or domestic animals, or without justification attacks a service dog, guide dog or hearing dog and causes physical injury or death.**

**Under the Agriculture and Markets Law - Farm animals are poultry, cattle, sheep, swine, goats, llamas, horses or fur-bearing animals which are raised for commercial or subsistence purposes.**

**Companion animals or “pets” are any dog or cat, and any other domesticated animal normally maintained in or near the household of the owner who cares for them.**

**Domestic animals are any domesticated sheep, horse, cattle, deer, llama, goat, swine, fowl, duck, goose, swan, turkey, rabbit, pheasant or other bird which is raised in confinement under license from the state Department of Environmental Conservation before release from captivity.**

**Physical Injury means impairment of physical condition or substantial pain.**

**Serious physical injury means that which creates a substantial risk of death, or which causes death or serious or protracted disfigurement, impairment of health, or the protracted loss or impairment of the function of any bodily organ.**

### **Procedure**

**Any person who witnesses an attack or threatened attack, upon a person, companion animal or farm as defined in section three hundred fifty of this chapter, or a domestic animal as defined in subdivision seven of section one hundred eight of the Agricultural and Markets law, or an adult acting on behalf of a minor, may make a complaint to a dog control officer or police officer of the appropriate municipality.**

**The officer will immediately inform the complainant of their right to commence a proceeding and if there is reason to believe the dog is a dangerous dog, the officer shall commence such proceeding.**

### **Time-line of a Dangerous Dog Complaint**

#### **Step 1 - Complaint**

**The witness or officer makes a complaint under oath or affirmation to any municipal judge or justice of such attack or threatened attack. A Dangerous Dog Complaint Form can be found at the following:**

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Civil/DL-41.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Civil/DL-41.pdf)

More common than not, it is the dog control officer for your municipality that would be the complainant.

#### **Step 2 - Probable Cause**

The judge shall immediately determine if there is probable cause to believe the dog is a dangerous dog and if so, shall issue a seize and hold order to any dog control officer, peace officer, or police officer pending judicial determination. A Notice to Seize Dog Form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Civil/DL39.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Civil/DL39.pdf)

#### **Step 3 - Hearing**

Whether or not the judge finds there is probable cause for such seizure, the judge shall,

- Within 5 days and
- Upon written notice of not less than 2 days to the owner of the dog,
- Hold a hearing on the complaint.

The petitioner has the burden of proof by clear and convincing evidence, AM §123-2

A Notice of Hearing Form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Civil/DL-42.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Civil/DL-42.pdf)

#### **Step 4 - Results and Remedies**

If dog is found to be a “dangerous dog”, the judge SHALL order

- Neutering or spaying of the dog, and
- Micro-chipping of the dog.

And if deemed necessary for the protection of the public, the Judge MAY order that the respondent:

- Evaluate dog by a certified applied behaviorist.
- Confine dog - time and manner deemed appropriate.
- Restrain dog with a leash by an adult at least 21 years of age whenever on public premises.
- Muzzle dog whenever on public premises.

- Maintain a liability insurance policy in an amount determined by the court, not in excess of \$100,000.

If one of the following aggravating circumstances is also established

- The dog, without justification, attacked a person, causing serious physical injury or death, or
- The dog has a known vicious propensity, or
- The dog caused serious physical injury or death to a companion animal, farm animal or domestic animal and, in the past two years has been found to be dangerous, the court may order humane euthanasia or permanent confinement of the dog.

A Disposition Order Form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Civil/DL-43.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Civil/DL-43.pdf)

#### Step 5 - Defenses

A dog shall not be declared dangerous by the court if attack occurs while

- Person is committing a crime or offense upon the owner or on the property.
- Person was tormenting, abusing, assaulting or physically threatening the dog or its offspring, or has in the past.
- Dog was responding to pain or injury.
- Dog was protecting itself, its owner, custodian, or a member of its household.

Testimony by a certified expert is relevant as to whether the dog's behavior was justified pursuant to the provisions of this subdivision.

Owner is not liable if the dog was coming to aid or defend a person during the commission or attempted commission of a

- Murder
- Robbery
- Burglary
- Arson
- Rape in the 1st degree
- Criminal sexual act in the 1st degree
- Kidnapping within the dwelling or upon the real property of the owner of the dog and the dog injured or killed the person committing

**such criminal activity.**

#### **Step 6 - Penalties to Owners**

**The owner of a dog who, through any act or omission, negligently permits their dog to bite,**

- a person, service dog, guide dog or hearing dog, shall receive a civil penalty not to exceed \$400.00.**

**The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person causing serious physical injury shall be subject to a civil penalty not to exceed one thousand five hundred dollars in addition to any other applicable penalties. Any such penalty may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.**

**The owner of a dog who, through any act or omission, negligently permits his or her dog previously determined to be dangerous pursuant to this article,**

**Causes serious physical injury, the owner is guilty of a misdemeanor punishable by a fine of not more than \$ 1000.00, or by a period of imprisonment up to 90 days, or both.**

**Any such fine may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.**

**A revised law under AML § 123(10) makes the owner of a dangerous dog strictly liable for medical costs incurred when their dog injures a person, companion animal, farm animal or domestic animal.**

**This does not apply where the dog causing the injury or death was justified in its conduct.**

#### **Step 7- Appeal of the Court's Findings and Order**

**The owner of a dog found to be a "dangerous dog" pursuant to this section may appeal such determination, and/or the court's order concerning disposition of the dog to the court having jurisdiction to hear civil appeals in the county where the "dangerous dog" finding was made. The owner shall commence such appeal by filing a notice of appeal with the appropriate court within thirty days of the final order pursuant to this section. Court rules governing civil appeals in the appropriate jurisdiction shall govern the appeal of a determination under this section. Please refer to the Civil Appeals chapter in this**

manual for further information.

When there is an order for humane euthanasia,

- There is a 30 day grace period to file a notice of appeal unless the owner waives appeal in writing.
- If appealed, there is an automatic stay of the euthanasia order pending the ruling on the appeal.

## **DNA Samples**

Executive Law 995

**DNA - DeoxyriboNucleic Acid**, the genetic blueprint of an individual.

The New York State DNA Databank was created by Chapter 737 of the Laws of 1994 and is the repository for DNA collected and stored by the NYS Division of Criminal Justice Services.

Offenders convicted of certain qualifying offenses must, after sentencing, provide a DNA sample for inclusion in the NYS Databank.

Defendants who have to submit a DNA sample by law are defined as “Designated Offenders” and the list of designated offenses has been expanded several times over the years.

### **Designated Offenders**

In Town and Village Courts, every defendant convicted of any misdemeanor defined in the Penal Law, with one exception\* should be ordered to submit a DNA sample to the State DNA identification index. A sample Order to Report for DNA Sample can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dna/DNA-Order-fillable.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dna/DNA-Order-fillable.pdf)

**\*EXCEPTION:** Defendants who have been convicted of Criminal Possession of Marijuana 5th Degree (in a public place) under PL 221.10 (1) are not subject to this requirement if they have never been convicted of any misdemeanor or felony before.

**Note:** Defendants convicted of a misdemeanor under any law other than the Penal Law (such as the Vehicle and Traffic Law, Environmental Conservation Law, Navigation Law, Agriculture & Markets Law, Town or Village Ordinances, etc.) are excluded from this requirement.

Adjudicated Youthful Offenders are excluded because the conviction has been vacated before sentencing. Criminal Procedure Law 720.20 (3)

**IMPORTANT:** It is the Office of Court Administration Counsel's Office position that the court should order the collection of a new DNA sample upon every new conviction and sentencing, regardless of any prior DNA collection from the designated offender. A copy of this memo can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dna/DNA-memo.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dna/DNA-memo.pdf)

#### **DNA Databank Fee**

The DNA Databank fee is fifty dollars (\$50.00). Penal Law 60.35(1)(a)(v)

The fee is to be assessed each time a defendant is convicted of a designated offense, and shall be collected at sentencing and reported to the State Comptroller in the same manner as all other monies collected. Penal Law 60.35(1)(a)(v), *People v Cooper*, 88 AD3d 1009 (2d Dept 2011) and *People v Guerrero*, 12 NY3d 45 (2009) The fee is to be assessed for the designated offense(s) regardless of whether the DNA sample is actually collected.

**NOTE:** If a defendant is convicted of more than one offense arising out of the same criminal transaction, the court is only required to order the defendant to pay one DNA Databank fee. Penal Law 60.35(2) If there are multiple eligible convictions on a case, the judge should determine whether they fall under the same criminal transaction.

This fee shall not be waived. Criminal Procedure Law 420.35(2)

However, if the Court determines that the defendant is indigent, in that imposing the fee would be an unreasonable hardship on the defendant or his or her immediate family:

- The court may defer collection of the fee. Criminal Procedure Law 420.40(2). If the fee is deferred, the court must direct the filing of a certified copy of the order for the fee with the county clerk, who shall enter the order in the same manner as a civil judgment. Criminal Procedure Law 420.40(5)

#### **DNA Sample Order and Collection**

Collection of the DNA sample should be ordered at sentencing on a designated offense.

**Note:** If a defendant is convicted of more than one offense arising out of the same

criminal transaction, the court is only required to order the defendant to provide one DNA sample and fee. Penal Law 60.35(2) If there are multiple eligible convictions on a case, the judge should determine whether they fall under the same criminal transaction.

**Special Note on Diversion cases:** If a case is subject for removal by the entry of the defendant into a criminal diversion program such as drug court, it would be inappropriate to order the defendant to provide a DNA sample prior to sentencing as the intent of the delay in sentencing contemplates a possible dismissal. When a Court adjourns sentencing to a specific date in order that the defendant be placed on Interim Probation Supervision CPL 390.30(6), the Court should await sentencing before taking any action to secure a DNA sample.

Depending on the location of the Court and the sentence, the Town or Village Court should order the collection of the DNA sample from the designated offender as follows:

- A defendant sentenced to a term of jail shall be directed to have his or her DNA collected by the public servant to whose custody the designated offender has been committed. Executive Law 995-c(3)(b)(i)  
Note: This does not apply to a defendant who has also been sentenced to a term of Probation.
- A defendant sentenced to a term of probation or a jail term with a term of probation shall be directed to have his or her DNA collected by the probation department. Executive Law 995-c(3)(b)(ii).
- A defendant sentenced to time served with no probation should be ordered to provide a sample in the same manner as a defendant who was NOT sentenced to a term of probation or a jail term.
- A defendant NOT sentenced to a term of probation or a jail term should be ordered to report to the local sheriff's office to have his or her DNA collected by the sheriff's office. Alternatively, the court may allow the sample to be taken by a court officer. Executive Law 995-c(3)(b)(iii) It is recommended that courts should consult with their supervising judges\*\* to determine a best practice for each individual court.

**Note:** Defendants receiving any other sentence (such as only a fine and surcharge) should be ordered to provide a sample in the same manner as a defendant who was NOT sentenced to a term of probation or a jail term.

**\*\*The Deputy Chief Administrative Judge for Courts Outside of New York City has appointed A Supervising Judge for each Judicial district. You may contact your district**

office for more information.

#### **Enforcement**

There is currently no penalty in the Executive Law specifically for the defendant who fails to supply a DNA sample.

However, if the court makes reporting for DNA collection a term of the conditional discharge or probation, any failure of the defendant to do so may then be considered a violation of the sentence.

Best practice therefore is to make certain one of the two above possible sentences are considered and implemented.

## **Driving While Intoxicated (DWI)**

Vehicle and Traffic Law (V&T) 1192

#### **Offenses**

**VTL 1192(1) Driving while ability impaired (DWAI) (only a violation)**

**VTL 1192(2) Driving while intoxicated; per se (misdemeanor)**



**VTL 1192(2-a) (a) Aggravated Driving while intoxicated (misdemeanor)**

**VTL 1192(2-a) (b) LEANDRA’S LAW; No person shall operate a motor vehicle in violation of V&T Law 1192(2), (3), and (4) or (4-a) while a child who is fifteen years of age or less is a passenger in such motor vehicle (felony)**

**VTL 1192(3) Driving while intoxicated (DWI) (misdemeanor)**

**VTL 1192(4) Driving while ability impaired by drugs (misdemeanor)**

**VTL 1192(4-a) Driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs (misdemeanor)**

**VTL 1192(5) Prohibits the operation of a commercial motor vehicle with a Blood Alcohol Content (BAC) between .04% and .06% shown by chemical analysis made pursuant to the provisions of VTL 1194 (violation)**

**VTL 1192(6) Prohibits the operation of a commercial motor vehicle with a Blood Alcohol content (BAC) of more than .06% but less than .08% shown by chemical analysis made pursuant to the provisions of 1194 (misdemeanor)**

**Applicable forms and other general information can be found under the “DWI (Suspension, Sentencing & IID Forms)” section, at the following:**

**[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/forms.shtml#dwi](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/forms.shtml#dwi)**

**Paperwork Court can expect to receive from arresting agency relating to a Driving While Intoxicated arrest:**

- **Uniform Traffic Ticket**
- **Chemical Test Results**
- **Chemical Test Refusal Paperwork**
- **Blood Alcohol Content (BAC) Paperwork**
- **Supporting Deposition/Bill of Particulars**
- **Arrest Report**
- **Additional information that may be provided to the court includes accident reports, oral admissions, and additional supporting depositions.**

**Clerk’s responsibilities in preparing the file for a DWI arraignment:**

- Enter case in case management system.
- Copy of documents are prepared for the district attorney, defendant, public defender/defense attorney.
- Retrieve defendant's driver's abstract if not previously provided by arresting agency.
- Retrieve defendant's criminal history or "RAP" sheet from e-Justice. (Refer to the e-Justice chapter of this manual for the procedure to follow to obtain such information)

**Suspension Pending Prosecution – Excessive Blood Alcohol Content - VTL 1193(2)(e)(7)**  
 Court shall suspend a driver's license, *pending prosecution*, when charges are either:

- VTL 1192(2)
- VTL 1192(2a)
- VTL 1192(3)
- VTL 1192(4-a)

AND - .08% or more by weight of alcohol in such driver's blood as shown by chemical analysis...

It's a "prompt" suspension, not an immediate one. Don't suspend without an attorney present. Defendant is entitled to a hearing prior to suspension known as a Pringle Hearing (*Pringle v. Wolf*; NY Court of Appeals).

Clerk duties at conclusion of Pringle Hearing if court is satisfied the accusatory instrument is sufficient on its face and there exists reasonable cause to believe defendant operated a motor vehicle while having a blood alcohol level in excess of .08 of 1% as shown by a chemical test:

- Make sure defendant is provided "white" copy of DMV MV-1193 "Order of Suspension Pending Prosecution" form.
- Form can be found at the following:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/VTL/mv1193.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/VTL/mv1193.pdf)
- Other copies remain in court file; however, court transmits MV-1193 form electronically to the Department of Motor Vehicles via your case management system.
- Defendant at this time would be required to surrender his/her license.

## Hardship Privilege

If court finds that the suspension imposed pursuant to 1193(2)(e)(7) will result in extreme hardship, the court must issue such suspension, but may grant a hardship privilege. Extreme Hardship shall mean the inability to obtain alternative means of travel to and from:

- Licensee's employment
- Necessary medical treatment for licensee or family member
- Accredited school, college or university

Such DMV MV-1193 "Order of Suspension Pending Prosecution - Hardship Privilege" Form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/VTL/mv1193.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/VTL/mv1193.pdf)

### Suspension Pending Prosecution – Prior Conviction or Felony Assault/Homicide - VTL 1193(2)(e)(1)

Court must suspend without notice, pending any prosecution, when defendant is charged with:

- VTL 1192(2); or
- VTL 1192(2-a); or
- VTL 1192(3); or
- VTL 1192(4); or
- VTL 1192(4-a)

### And Either:

- The defendant is charged with a felony under article 120 or 125 of the Penal Law arising out of the same incident; or
- The defendant has been convicted of any violation under the V&T Law 1192 within the preceding 5 years.
- NO HARDSHIP PRIVILEGE FOR VTL 1193(2)(e)(i) SUSPENSIONS

### Junior Operator Suspension – VTL 1193(2)(e)(7)(a-1)

A court *shall* suspend a class DJ or MJ learner's permit or a class DJ or MJ learner's permit or a class DJ or MJ driver's license, pending prosecution, of any person who has been charged with a violation of VTL 1192(1); (2); (2-a) and/or (3).

### Test Refusals – VTL 1194(2)(b)(3) - Defendants Charged with Any Violation under VTL 1192 Who Have Refused to Submit to a Chemical Test

- Their license or permit to drive shall be temporarily suspended by the court without notice, pending the determination of a hearing with DMV. Court completes a "Notice of Temporary Suspension and Notice of Hearing" Form (Copy given to defendant and arresting officer/agency). DMV AA-137 "Notice of Temporary Suspension and

**Notice of Hearing” Form is available at:**

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/VTL/aa137.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/VTL/aa137.pdf)

- **Court must schedule a REFUSAL HEARING with DMV**
- **Refusal Hearing calendar for each County can be found at the following:**  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dwi/M6HearingCalendarScheduleandSitesfortheChemicalTestRefusalProgramandZeroToleranceLawforJuly1throughDecember312015.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dwi/M6HearingCalendarScheduleandSitesfortheChemicalTestRefusalProgramandZeroToleranceLawforJuly1throughDecember312015.pdf)
- **Court must transmit copies of AA-134 “Report of Refusal to Submit to Chemical Test” to DMV within 48 hours of arraignment. Such form is completed by arresting officer and a copy is provided to court.**
- **Driver’s license is taken by Court at this time.**
- **Within 48 hours of arraignment, the Court must mail the following to the Department of Motor Vehicles: (Department of Motor Vehicles, Safety Hearing Bureau, Room 312, 6 Empire Plaza, Albany, NY 12228)**
- **Original driver’s license.**
- **White copy of “Report of Refusal to Submit to Chemical Test” Form.**
- **Original “Notice of Temporary Suspension and Notice of Hearing” Form.**
- **The court must notify the officer of the date, time and place for the hearing.**

### **Out of State Motorists**

- **Authority to suspend “privilege” to operate motor vehicle in New York State only.**
- **NEVER physically take a “foreign” license.**
- **Suspend their privilege to operate motor vehicle in New York State- DO NOT TAKE THE LICENSE.**

### **License Suspensions upon Conviction – VTL 1193(2)(a) or (b)**

- Where a license suspension or revocation is required to be imposed pursuant to VTL 1193 (2) (a) or (b), the court must issue an MV-1192 “Order of Suspension or Revocation” Form order suspending or revoking the defendant’s driver’s license at the time of sentencing. Such form can be found at the following:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/VTL/mv1192.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/VTL/mv1192.pdf)
- Defendant *must* surrender his or her license to the court.
- Suspension takes effect immediately.
- Court may issue a “20 day stay” which makes the license suspension or revocation take effect (20) days after the date of sentencing VTL 1193(2)(d)(2). Such “20 day stay “ is referenced on the MV-1192 “Order of Suspension or Revocation” Form that can be found on page one, under the “Suspension/Revocation” section of the form linked above.

### **Leandra’s Law (Ignition Interlock Device) – VTL 1193(1)(b)(ii)**

**Ignition Interlock Device** – a device slightly larger than cell phone wired to vehicle’s ignition. Requires the defendant to provide a breath sample before engine will start. If device detects alcohol, it will not start.

- Mandatory Ignition Interlock Device (IID) required on any conviction of 1192(2)(2-a) or(3)
- Happens at sentencing
- Should not be waived
- IID must be installed on any vehicle owned/operated by defendants during term of probation/conditional discharge
- Court completes an Order & Conditions of Conditional Discharge Form. Court will include all conditions as well as IID condition. Such form can be found at the following:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dwi/O-C-ProbCDIID-\[UCS-965B\]-fillable.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dwi/O-C-ProbCDIID-[UCS-965B]-fillable.pdf)
- Court will keep the original form.
- Defendant receives a copy at sentencing.
- Court must also notify Monitoring authority within 5 days of sentencing. The Monitor will determine the class of the IID the operator is to install. A Monitor Notification of Ignition Interlock Order Form DCJS/OPCA- 510 - IIN Form can be found at the following:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dwi/OPCA-510-IIN.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dwi/OPCA-510-IIN.pdf)

## **Time Period of IID**

- The minimum period of ignition interlock has been increased from 6 months to 12 months (VTL 1193 (1)(b)(ii)). Effective November 1, 2013.
- However, at the judge's discretion, the time period may be reduced to 6 months upon proof that defendant had, before sentence, installed and maintained an ignition interlock device for at least 6 months.
- The maximum period is up to the term of probation (3 year maximum on a misdemeanor) or conditional discharge (1 year maximum on a misdemeanor).
- Ignition interlock requirement applies to Youthful offenders and Out-of state Drivers.
- Reminder, a judge should contact the Resource Center when considering an application from the parties to reduce the period of interlock from 12 to 6 months.
- Please review the attached "Frequently Asked Questions and Answers concerning Leandra's Law Ignition Interlock Requirement" found at the following:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dwi/Leandras-LAW-FAQ.PDF](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dwi/Leandras-LAW-FAQ.PDF)
- A list of IID Service Centers can be found at the following:  
<http://www.criminaljustice.ny.gov/opca/pdfs/IID-Installation-Service-Provider-Locations.pdf>

## **Defendant's Responsibility**

- Has 10 days from date of sentence to install IID
- Defendant cannot operate vehicle without IID installed
- Cost of IID is borne onto defendant
- 20 day stay does not waive the above requirement

## **Financial Waivers**

- Defendant can claim financial inability to pay for IID and can submit to court a DPCA-500IID-FDR Financial Disclosure Report. Such form can be found at the following in English and Spanish:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dwi/DPCA500-IID-FDR\\_Financial-Disclosure-Report.PDF](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dwi/DPCA500-IID-FDR_Financial-Disclosure-Report.PDF) (English);  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/dwi/DPCA500-IID-FDR\(SP\)\\_Interlock-Financial-Disclosure-Report\\_Spanish.PDF](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/dwi/DPCA500-IID-FDR(SP)_Interlock-Financial-Disclosure-Report_Spanish.PDF) (Spanish)
- If court determines that a payment plan is not feasible, the court shall determine whether the fee/charge for the device shall be waived or reduced.

## **Additional Information on IID**

For additional information on DWI's and IID's, please go to the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/dwi.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/dwi.shtml)

## **Enforcing Payment of Fines**

### **Criminal Procedure Law (CPL) Article 420**

#### **Collection of Fines, Restitution and Reparation Imposed by Court - CPL 420**

When court imposes a fine upon an individual, it may direct:

- That defendant pay fine at sentencing.
- That defendant pay the entire amount at some later date.
- That defendant pay a specified portion at some later date; or defendant pay a specified portion at designated periodic intervals.

#### **Credit Cards**

##### **§ 420.05. Payment of fines, mandatory surcharges and fees by credit card.**

When the court imposes a fine, mandatory surcharge or fee upon an individual who stands convicted of any offense, such individual may pay such fine, mandatory surcharge or fee by credit card or similar device. In such event, notwithstanding any other provision of law, he or she will be required to pay a service fee of 2.99%. The amount of such administrative fee and the time and manner of its payment is in accordance with the system established by the chief administrator of the courts pursuant to paragraph (j) of subdivision two of section two hundred twelve of the judiciary law.

#### **Cash Bail Posted in Local Courts - CPL 420.10(e)**

Upon termination of case, bail is returned to person who posted the bail. However, where cash bail has been posted by defendant, the court at its discretion may order that bail be applied toward payment of any order of restitution, reparation or fine. If the court so orders, the bail proceeds shall be applied to payment first of the restitution or reparation and then of the fine. The defendant's consent to this action is not required.

#### **Failure to Pay Fine - CPL 420.10(3)**

"In any case where the defendant fails to pay a fine, restitution or reparation as directed, the court may issue a warrant directing a peace officer or police officer to take him into custody and bring him before the court..." \*\* It is strongly suggested that the court contact an attorney from the Office of Justice Court Support before taking this action.

**\*\*Warrants should not be issued for traffic infractions or non-jailable offenses.\*\***

#### **Imprisonment for Failure to Pay Fine - CPL 420.10(3)**

**“Where the court imposes a fine, restitution or reparation, the sentence may provide that if the defendant fails to pay the fine, restitution, or reparation in accordance with the direction of the court, the defendant must be imprisoned until the fine, restitution, or reparation is satisfied.”**

**Such provision may be added at the time sentence is pronounced or at any later date while the fine, restitution or reparation or any part thereof remains unpaid. If provision is added at a time subsequent to the pronouncement of sentence, defendant must be personally present when it is added.**

**\*\*If court is contemplating imprisoning a defendant for failure to pay fine, it is suggested the court first contact the City, Town and Village Courts Resource Center .\*\***

**\*\* This sentence may only be imposed if conviction could have initially resulted in a jail term.**

#### **Application for Resentence - CPL 420.10(5)**

**“In any case where the defendant is unable to pay a fine, restitution or reparation imposed by the court, he may at any time apply to the court for re-sentence. In such case, if the court is satisfied that the defendant is unable to pay the fine, restitution or reparation, it must:**

- Adjust the terms of payment.**
  - Lower the amount of the fine, restitution or reparation.**
  - Where sentence consists of probation or imprisonment and a fine, restitution or reparation, revoke the portion of the sentence imposing the fine, restitution or reparation; or**
  - Revoke the entire sentence imposed and re-sentence the defendant.**
- The surcharge, however, cannot be waived.**

#### **Period of Imprisonment - CPL 420.10(4)**

**“When the court directs that the defendant be imprisoned until the fine, restitution or reparation be satisfied, it must specify a maximum period of imprisonment subject to the following limits:**

- Where a fine, restitution or reparation is imposed for a misdemeanor the period of imprisonment may not exceed one-third of the maximum authorized term of imprisonment.**
- Where the fine, restitution or reparation is imposed for a petty offense, the period may not exceed 15 days.**

#### **License Suspension for Failure to Pay Fine - Vehicle & Traffic Law 510(4a)**

**Defendant who fails to pay fine relating to Vehicle and Traffic Law, Tax Law, or**



Transportation Law relating to traffic, may have their driving privileges suspended. This does not include infractions relating to parking, stopping or standing. Suspension shall take effect no less than 30 days from day upon which notice is sent by the Department of Motor Vehicles to defendant. **\*\* (See T-SLED portion of Manual for Scofflaw Procedure)**

#### **Civil Proceeding for Collection - CPL 420.10(6)**

Criminal Procedure Law 420.10 (6) authorizes a civil proceeding for collection of fines.

#### **Step 1**

Court completes a “Converting Fine to Civil Judgment” form. Sample form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/orderToConvertFineToCivilJudgement.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/orderToConvertFineToCivilJudgement.pdf)

#### **Step 2**

Provide certified copy of form to district attorney to file such order with the county clerk of the county in which the court is situate.

#### **Step 3**

Even if defendant was incarcerated for failure to pay fine, court may still attempt to collect in the same manner as described in step 2.

#### **Surcharges, Sex Offender Registration Fee, DNA Databank Fee - CPL 420.35(1)**

Surcharges, Sex Offender Registration Fee, and DNA Databank fees are not to be waived. Additionally, the provisions of CPL 420.10 governing the collection of fines are applicable to the collection of Surcharges, Sex Offender Registration fee, and DNA Databank fee.

#### **Restitution/Reparation & Surcharges**

Notwithstanding any other provision of this section, where a person has made restitution or reparation on or before sentencing, pursuant to section 60.27 of this [fig 1] article , such person shall not be required to pay a mandatory surcharge or a crime victim assistance fee.

#### **Youthful Offender**

There is no Sex Offender Registration Fee, DNA Sample or DNA Databank Fee imposed for a Youthful Offender.

#### **Imprisonment until Surcharge, Sex Offender Registration Fee and DNA Databank Fee are Paid - CPL 420.35**

**“When the court directs that the defendant be imprisoned until**

**the surcharge, sex offender registration fee or DNA databank fee is paid, it must specify the maximum period of imprisonment not to exceed 15 days.”**

**A court may not direct that a defendant be imprisoned until above referenced fees are satisfied if the court determines that the payment of one or all of the fees will work an unreasonable hardship upon the defendant or their immediate family CPL 420.35(1).**

#### **Deferring Payment of Fees - CPL 420.40(5)**

**The above referenced fees may never be waived. A court may defer a defendant’s obligation to pay a mandatory surcharge, sex offender registration fee or DNA databank fee imposed CPL 420.40(5).**

##### **Step 1**

**Fees may be deferred through a written order. Such order does not excuse the person from obligation to pay the surcharge, sex offender registration fee or DNA databank fee.**

##### **Step 2**

**Such order shall be entered by the county clerk in the same manner as a judgment in a civil action.**

##### **Step 3**

**The order shall direct that any unpaid balance of the mandatory surcharge, sex offender registration fee or DNA databank fee be collected in the same manner as a civil judgment.**

#### **Offenses Punishable by Fine Only (Cannot Imprison for Failure to Pay Fine)**

- **Unlawful Possession of Marijuana - Penal Law 221.05.**
- **Possession of Alcohol Under the Age of 21 with Intent to Consume - Alcohol Beverage and Control Law 65c.**
- **All other violations that do not carry a jail penalty.**

## **Civil Judgment**

**Article 420 of the Criminal Procedure Law covers the collection of fines, restitution or reparation.**

**CPL 420.10(6) authorizes a civil proceeding for collection of fines. The fine amount imposed by the court shall be directed by a written order of the court containing the amount required to be paid by the defendant.**

**The court's order also directs the District Attorney to file a certified copy of such order with the County Clerk of the county in which the court is situated.**

A sample of the form can be found at the following link:

[https://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/orderToConvertFineToCivilJudgement.pdf](https://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/orderToConvertFineToCivilJudgement.pdf)

The order is entered by the County Clerk in the same manner as a judgment in a civil action.

There is no statutory authority for the court to convert a scofflaw termination fee into a civil judgment or waive this fee based on indigence.

When a civil judgment is docketed with the County clerk's office, the satisfaction must be filed by the Court with the County Clerk.

## **Pre-Trial Conferences**

### **Vehicle and Traffic Law (VTL) 1806 - Plea of Not Guilty to Traffic Infraction**

In addition to appearing personally to enter a plea of not guilty to a violation of any provision of the tax law or the transportation law regulating traffic, or to a traffic infraction for the violation of any of the provisions of the vehicle and traffic law or any other local law, ordinance, order, rule or regulation relating to the operation of motor vehicles or motorcycles, a defendant may enter a plea of not guilty by mailing to the court of appropriate jurisdiction the ticket making the charge and a signed statement indicating such plea. Such plea must be sent: (a) by registered or certified mail, return receipt requested or by first class mail; and (b) within forty-eight hours after receiving such ticket. Upon receipt of such ticket and statement, the court shall:

- Advise the violator, by first class mail, of an appearance at which no testimony shall be taken. Proposed language can be found at the following:  
[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/VTL/VTL\\_1806\\_Notice\\_of\\_Appearence\\_Sample\\_Text.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/VTL/VTL_1806_Notice_of_Appearence_Sample_Text.pdf)
- Court should also send notification of the appearance date to prosecutor or designated prosecutorial authority.
- Notice shall advise defendant that the purpose of the “appearance date” is to conference the case with a prosecutorial agency for possible resolution, and trial will not be conducted.
- If defendant wants a definite trial, the court shall waive the defendant’s personal appearance on the conference date and schedule the case for trial.

### **Not Guilty Plea by Personal Appearance**

It is appropriate for the court to affirmatively ask a defendant who personally appears to plead not guilty if he or she would prefer to have the case scheduled for a conference. If so, the court should schedule the matter for conference instead of trial.

### **Specific Requests for a Trial Date**

In cases where defendant or defense attorney contacts the court and requests a trial date rather than a conference date, the court may waive the defendant's appearance at conference and schedule the matter for trial on the subsequent date. The court should then notify the prosecutor and the defendant of the new trial date.

### **Failure to Appear**

If a defendant has been notified of the appearance date and fails to appear, the court may in its discretion choose to reschedule the matter for another appearance date or set it down for trial. The court must then formally notify the defense and prosecution of any rescheduled date. In addition, the court may, in its discretion, suspend defendant's license pursuant to VTL 510 for failure to appear on next appearance date.

If both defendant and prosecutor fail to show on appearance date, it is suggested that court refrain from suspending the defendant's license. Instead, the court should reschedule the matter for trial and notify both the defendant and the prosecutor of the trial date.

## **Youthful Offender Procedure**

### **Criminal Procedure Law Article 720**

#### **Criminal Procedure Law (CPL) 720.10 - Definition of Terms**

**CPL 720.10(1) - "Youth"** means a person charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old.

**CPL 720.10(2) - "Eligible youth"** means a youth who is eligible to be found a youthful offender. Every youth is so eligible unless:

- the conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, criminal sexual act in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or
- such youth has previously been convicted and sentenced for a felony or

- such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in the family court act.

**CPL 720.10(4) - “Youthful offender finding”** means a finding, substituted for the conviction of an eligible youth, pursuant to a determination that the eligible youth is a youthful offender.

**CPL 720.10(5) - “Youthful offender sentence”** means the sentence imposed upon a youthful offender finding.

**CPL 720.10(6) - “Youthful offender adjudication”** is comprised of a youthful offender finding and a youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.

**CPL 720.15 - Youthful Offender Procedure; Sealing of Accusatory Instrument; Privacy of Proceedings; Preliminary Instructions to Jury**

**CPL 720.15(1)** - When an accusatory instrument against an apparently eligible youth is filed with a court, it *shall* be filed as a sealed instrument, though only with respect to the public.

**CPL 720.15(2)** - When a youth is initially arraigned upon an accusatory instrument, such arraignment and all proceedings in the action thereafter *may*, in the discretion of the court and with the defendant’s consent, be conducted in private.

**CPL 720.15(3)** - The provisions of subdivision one and two of this section requiring or authorizing the accusatory instrument filed against a youth to be sealed, and the arraignment and all proceedings in the action to be conducted in private shall not apply in connection with a pending charge of committing any *felony* offense as defined in the penal law. The provisions of subdivision one requiring the accusatory instrument filed against a youth to be sealed shall not apply where such youth has previously been adjudicated a youthful offender or convicted of a crime.

**CPL 720.20 - Youthful Offender Determination; When and How Made; Procedure Thereupon**

**CPL 720.20(1)** - Upon conviction of an eligible youth, the court must order a pre-sentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence, the court must determine whether or not the eligible youth is a youthful offender. Such determination shall be in accordance with the

following criteria:

- If in the opinion of the court the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indeterminate term of imprisonment of more than four years, the court may, in its discretion, find the eligible youth is a youthful offender; and
- Where the conviction is had in a local criminal court and the eligible youth had not prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, the court must find he is a youthful offender.

**CPL 720.20(2) - Where an eligible youth is convicted of two or more crimes set forth in separate counts of an accusatory instrument or set forth in two or more accusatory instruments consolidated for trial purposes, the court must not find him a youthful offender with respect to any such conviction pursuant to subdivision one of this section unless it finds him a youthful offender with respect to all such convictions.**

**CPL 720.20(3) - Upon determining that an eligible youth is a youthful offender, the court must direct that the conviction be deemed vacated and replaced by a youthful offender finding; and the court must sentence the defendant pursuant to section 60.02 of the penal law.**

**CPL 720.20(4) - Upon determining that an eligible youth is not a youthful offender, the court must order the accusatory instrument unsealed and continue the action to judgment pursuant to the ordinary rules governing criminal prosecutions.**

**CPL 720.35 - Youthful offender adjudication; effect thereof; records**

**A youthful offender adjudication is not a judgment of conviction for a crime or any other offense, and does not operate as a disqualification of any person so adjudicated to hold public office or public employment or to receive any license granted by public authority but shall be deemed a conviction only for the purposes of transfer of supervision and custody pursuant to section two hundred fifty-nine-m of executive law.**

**\*\*With regards to the handling of youthful offender court records, please refer to the “Access to/Sealing of Court Records” chapter of the manual.**

## **Safe Schools Against Violence in Education Act (Safe Schools Act)**

**CPL §§380.90; 720.35(2); 720.35(3)**

**Under the Safe Schools Act (Chapter 181 of the Laws of 2000), Courts are required to notify schools in certain criminal and youthful offender proceedings.**

**Criminal Procedure Law §380.90(2) provides that “whenever a person under the age of nineteen who is enrolled as a student in a public or private elementary or secondary school is sentenced for a crime, the court that has sentenced such person shall provide notification of the conviction and sentence to the designated education official of the school in which such person is enrolled as a student.” Pursuant to CPL §1.20 and Penal Law §10.00(6), the term “crime” as used here means a misdemeanor or a felony.**

**Pursuant to CPL §380.90(1), the “Designated Educational Official” (DEO) is defined as “an employee or representative of a school district [or a private or charter school] . . . who is designated . . . to receive records pursuant to [CPL 380.90(1)] and to coordinate the student’s participation in programs which may exist in the school district or community....”**

**CPL §720.35, which addresses youthful offender adjudications, also was amended by the Safe Schools Act. CPL §720.35(3) now provides that “If a youth who has been adjudicated a youthful offender is enrolled as a student in a public or private elementary or secondary school the court that has adjudicated the youth as a youthful offender shall provide notification of such adjudication to the [DEO] of the school in which such youth is enrolled as a student.”**

**Any Court that sentences a defendant covered by the notification specifications of the Safe Schools Act needs to ascertain the name and address of the DEO for defendant’s school. To obtain the DEO’s information from the school, the Court needs to contact in writing the Superintendent of the School District in which the defendant is enrolled, requesting the name and address of the DEO. For private schools, letters should be addressed to the Chief School Officer – usually the principal or headmaster – requesting the name and address of the school’s DEO.**

**NOTE: When requesting the name of the DEO, the court must *not* include any information regarding the defendant or provide any other identifying information about the case in question (other than the docket/information number). Such information can only be provided to the DEO.**

Once the Court receives the DEO information from the Superintendent or Chief Officer of the school, then the Court can forward the required notice to the designated DEO.

Copies of all correspondence between the Court and School District regarding the identity of the DEO and notification of conviction or adjudication should be kept in the court file.

**Additional information and forms regarding the Safe Schools Act may be found at the link provided below:**

[http://www.courts.state.ny.us/courts/townandvillage/judges\\_only/topics/safeschoolsact.shtml](http://www.courts.state.ny.us/courts/townandvillage/judges_only/topics/safeschoolsact.shtml)

## **Probation Transfers**

Over the past several years, it has become increasingly evident that the current operational practices surrounding the transfer of probation supervision pursuant to CPL 410.80 are fraught with inconsistencies in both interpretation and implementation. In response to the many inquiries that have been submitted to various OCA offices, and to assist the courts in facilitating a standardized approach to managing these cases, OCA's Counsels Office, Division of Financial Management, Office of Court Operations, Office of Policy & Planning, City, Town & Village Resource Center, Office of Records Management, and Office of Criminal Disposition Reporting as well as the New York State Association of County Clerks and the Division of Criminal Justice Services have partnered in establishing a standard, statewide best practices policy for the management of probation transfers across all New York State Courts of criminal jurisdiction.

The best practices policy regarding Probation Transfers can be found at

[http://www.nycourts.gov/courts/townandvillage/judges\\_only\\_internal01/topics/probation-transfers.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only_internal01/topics/probation-transfers.shtml)

## **Divestitures to Superior Court – CPL §§170 & 180**

A divestiture form is used when a lower Court's felony case is being transferred to a superior court. The information filled out on this form lets the higher Court know what papers are being forwarded to them from the lower Court.

[https://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Clerk%20A-Z/Divestitures/Divestitures-Information-2014.pdf](https://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Clerk%20A-Z/Divestitures/Divestitures-Information-2014.pdf)

The lower Court will complete and send a divestiture form when:

- The defendant is held for Grand Jury action after a preliminary hearing
- The defendant waives the preliminary hearing
- The Court receives notification that an indictment or a Superior Court Information (SCI)



has been filed in the superior Court on the felony case pending in the local Court.

The following documents in the lower Court's file should be attached to the divestiture form:

- The completed divestiture form
- ALL ORIGINAL accusatory instruments
- ALL ORIGINAL traffic tickets (**There is no form - this gets electronically sent to DMV**)
- Driving While Intoxicated forms (MV-1193, refusal, etc.)
- Bail documents and securing orders (NOT ACTUAL BAIL MONEY\*\*)
- Notice of Appearance
- Criminal History (Rap sheets)
- Criminal Disposition Reports (CDR-540 reports-arraignment/transfer to the superior court)
- Since you must send the originals of your file, make a copy of everything you send and keep copies for your court file with a copy of the divestiture form.
  - The court may request in the divestiture order notification of the disposition when the case is completed by the superior court.
  - Transmit a copy of the divestiture form to ADA.

**DO NOT SEND** to the superior court: driver's licenses, permits, registrations, NYS identification cards or out-of-state licenses.

- NYS licenses/permits if taken by local Court are sent to DMV with appropriate order.
- Out-of-state licenses should not be taken by the local Courts.
- Registrations/NYS ID cards which are not an actual exhibit should be returned to owner.

**Bail and Bond Issues:**

5. Transferred bail is not subject to poundage.
7. Bail documents and securing orders are sent with original divestiture form
  - **DO NOT TRANSFER** any cash bail automatically that has been posted with the local court until you receive an **ORDER** from the Superior Court Judge directing you to do so.
  - The amount of bail to be transferred listed on the **ORDER** must match the bail you have posted.
  - If after a period of time, you have not received an **ORDER** to transfer the bail, you may want to contact the superior court's Criminal Court Clerk. In some cases, if the bail has not been transferred, the poster of the bail may appear in your court requesting return of the bail.
5. Bail bonds originally posted when the case is in the local criminal court remain in effect in the superior court, unless expressly limited.

## Sex Offense Registration Act (SORA)

### Correction Law Article 6-C

#### Conviction for Registerable Sex Offense

The following list contains the New York State Penal Law statutes, applicable to Town and Village Courts, for which registration as a sex offender is required. Registration as a sex offender is required upon a conviction of a listed offense or a conviction for an attempt to commit a listed offense or a conviction of or a conviction for an attempt to commit a listed offense as a hate crime or a crime of terrorism.

Penal Law Statute	Offense Class	Offense
130.20	A Misdemeanor	Sexual misconduct
130.52 <sup>1</sup>	A Misdemeanor	Forcible touching
130.55 <sup>1</sup>	B Misdemeanor	Sexual abuse in the third degree
130.60	A Misdemeanor	Sexual abuse in the second degree
135.05 <sup>2</sup>	A Misdemeanor	Unlawful imprisonment in the second degree
230.04 <sup>3</sup>	A Misdemeanor	Patronizing a prostitute in the third degree

<sup>1</sup> A registerable offense only if the victim is less than eighteen years of age or where the defendant has a prior conviction for a sex offense, a sexually violent offense, forcible touching or sexual abuse in the third degree or an attempt thereof even if registration was not required for the prior conviction; regardless of when the prior conviction occurred.

<sup>2</sup> A registerable offense only if the victim is less than seventeen years old and the offender is not the parent of the victim.

<sup>3</sup> A registerable offense only if the person patronized is in fact less than seventeen years old.

Determination of a registerable offense may involve hearings to determine age of victim, and/or prior convictions for sex offenses, sexually violent offenses or forcible touching/sexual abuse 3<sup>rd</sup>/patronizing a prostitute 3<sup>rd</sup>.

A conviction for an attempt of one of the following would also require registration as a sex offender, if the conviction occurred in a Town or Village Court:

Penal Law Statute	Offense Class	Offense
130.25	E Felony	Rape in the third degree
130.40	E Felony	Criminal sexual act in the third degree
130.40	E Felony	Sodomy in the third degree
130.53	E Felony	Persistent sexual abuse
130.65-a	E Felony	Aggravated sexual abuse in the fourth
135.10 <sup>2</sup>	E Felony	Unlawful imprisonment in the first degree
230.05	E Felony	Patronizing a prostitute in the second degree
255.25	E Felony	Incest
263.11	E Felony	Possessing an obscene sexual performance by a child
263.16	E Felony	Possessing a sexual performance by a child

<sup>2</sup> A registerable offense only if the victim is less than seventeen years old and the offender is not the parent of the victim.

### **Registration and Determination of Offender Risk Level**

**If Sentence Is to Be Probation, Split Sentence, Conditional Discharge, Unconditional Discharge or Fine**

The Court shall certify the defendant as a sex offender and include said certification on any Judgment of Conviction and/or Order of Commitment form.

At the time of sentence, the Court shall also advise the defendant of his or her duty to register with Division of Criminal Justice Services (DCJS). The Court should read or provide the defendant with a copy of the instructions to register and verify as outlined on the DCJS Form 3230 Sex Registration Form. Such form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/SexOffenderProcedures/Section%203%20Appendix%20B%20Forms.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/SexOffenderProcedures/Section%203%20Appendix%20B%20Forms.pdf)

The court shall require the defendant to read and sign the registration form and to complete the registration portion.

The Court shall give one copy of the form to the defendant and shall send two copies to

**DCJS, who shall forward the information to the law enforcement agencies having jurisdiction where defendant expects to reside upon his or her release or over the institution of higher education set forth.**

#### **If the Sentence Is Probation**

**Where the court orders a sex offender released on probation, such order must include a provision requiring he or she to comply with the requirements of SORA. Where such sex offender violates such provision, probation may be revoked immediately pursuant to Criminal Procedure Law Article 410.**

**The Court shall also notify the district attorney and the defendant (sex offender) of the date of the determination proceeding (Level of Notice and Designation), which shall be held at least forty-five (45) days after such notice is given. Level of Notice form can be found at the link above.**

**The court shall advise the sex offender that he or she has a right to a hearing prior to the court's determination, that he or she has the right to be represented by counsel at the hearing and that counsel will be appointed if he or she is financially unable to retain counsel. If the sex offender applies for assignment of counsel to represent him or her at the hearing, and counsel was not previously assigned to represent the sex offender in the underlying criminal action, the Court shall determine whether the offender is financially unable to regain counsel. If such a finding is made, the court shall assign counsel to represent the sex offender pursuant to Article 18-B of the County Law.**

**At least fifteen (15) days prior to the determination proceeding, the district attorney shall provide the court and the defendant (sex offender) a written statement setting forth the determinations sought by the district attorney together with the reasons for seeking such determinations.**

**The Court shall allow the defendant (sex offender) to appear and be heard. The state shall appear by the district attorney, or his or her designee.**

**After the hearing, the Court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to DCJS. It shall be the duty of the court, applying the guidelines, to determine the level of notification (Level 1, 2 or 3) and whether such defendant (sex offender) shall be designated a sexual predator, sexually violent offender, or predicate sex offender.**

**Upon application of either party, the court shall seal any portion of the court file or record which contains material that is confidential under any state or federal statute.**

**Either party may appeal the order pursuant to the provisions of Civil Practice Laws & Rules (CPLR) Articles 55, 56 and 57.**

**Failure of defendant to appear for the hearing: If the Defendant was properly given notice of the hearing, including the time and place, but fails to appear, without sufficient excuse, the court shall conduct the hearing and make the determination in abstentia.**

#### **If the Sentence Is Jail**

**At the time a defendant is sentenced to imprisonment, the Court shall certify the defendant as a sex offender and include said certification on any Judgment of Conviction and/or Order of Commitment.**

**At the time of sentence, the Court shall also advise the defendant of his or her duty to register with DCJS. (As described above).**

**Within sixty (60) calendar days prior to the sex offender's release or discharge, the Board of Examiners of sex offenders shall make a recommendation, which is confidential, to the sentencing court as to whether such sex offender warrants the designation of sexual predator, sexual violent offender, or predicate sex offender. In addition, the Board shall make recommendation to the sentencing court, which is confidential, providing for one of the three levels of notification depending upon the degree of the risk of re-offense by the sex offender.**

**After receiving the recommendation from the Board and thirty (30) days prior to the sex offender's release/discharge, the sentencing court shall make a determination as to whether the sex offender is a sexual predator, sexually violent offender, or predicate sex offender. In addition, the Court shall also make a determination with respect to the level of notification (Level 1, 2 or 3). If appropriate, the court will assign counsel to represent the defendant at the hearing.**

**At least twenty (20) days prior to the determination proceeding, the sentencing Court shall notify the district attorney, the sex offender and the sex offender's counsel, in writing, of the date of the determination proceeding and shall also provide each with a copy of the recommendation received from the Board and any statement of reasons for the recommendation received by the Board.**

**If the district attorney seeks a determination that differs from the recommendation submitted by the Board, at least ten (10) days prior to the determination proceeding, the district attorney shall provide to the court and the sex offender a statement setting forth the determinations sought by the district attorney together with the reasons for seeking**

such determinations.

After the hearing, the Court shall render an order setting forth its determinations and the findings of fact and conclusions of law on which the determinations are based. A copy of the order shall be submitted by the court to DCJS. Determination form can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/SexOffenderProcedures/Section%203%20Appendix%20B%20Forms.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/SexOffenderProcedures/Section%203%20Appendix%20B%20Forms.pdf)

### **Classifications**

Risk Level is assigned based upon the likelihood of re-offense as follows:

Level 1 - Sex Offender poses a Low Risk of repeat offense.

Level 2 - Sex Offender poses a Moderate Risk of repeat offense.

Level 3 - Sex Offender poses a High Risk of repeat offense and there exists a threat to the public safety.

### **Sex Offender Designations**

**Sexual Predator** - Sex Offender who has been found guilty of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offenses. A sexual predator must register for life.

**Sexually Violent Offender** - Sex Offender who has been found guilty of a sexually violent offense. A sexually violent offender must register for life.

**Predicate Sex Offender** - Sex Offender who has been found guilty of two or more sex crimes. A predicate sex offender must register for life.

### **Fees**

In addition to any court imposed fines and surcharges the following fees are to be imposed. They are reported in the civil column of your monthly Audit & Control Report.

- Sex Offender Registration Fee \$50
- Supplemental Sex Offender Victim Fee \$1,000
- DNA Data Bank Fee \$50

File all registration forms regardless of whether fees are paid or not. Unpaid fees and surcharges may be subsequently converted to civil judgment or other remedy under Criminal Procedure Law (CPL) §420.10 and CPL §420.40.

**Note:** Youthful Offenders are not required to pay Sex Offender and DNA fees.

## Contact Information

DCJS Website available at: <http://www.criminaljustice.ny.gov/index.htm>

Office of Sex Offender Management  
Division of Criminal Justice Services  
Alfred E. Smith Building  
80 South Swan Street  
Albany, New York 12210

Telephone: (518) 457-5628  
Fax: (518) 485-7593  
E-Mail: [dcjsosom@dcjs.state.ny.us](mailto:dcjsosom@dcjs.state.ny.us)

## Surcharges

### Penal Law 60.35(1)(a)

Except as provided in section eighteen hundred nine of the vehicle and traffic law and section 27.12 of the parks, recreation and historic preservation law, whenever proceedings in an administrative tribunal or a court of this state result in a conviction for a felony, a misdemeanor, or a violation, as these terms are defined in section 10.00 of this chapter, there shall be levied at sentencing a mandatory surcharge, sex offender registration fee, DNA databank fee and a crime victim assistance fee in addition to any sentence required or permitted by law. The current surcharge chart, along with a combination and variation example of multiple surcharges can be found at the following:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Criminal/2013-Surcharge-Chart.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Criminal/2013-Surcharge-Chart.pdf)

## Traffic Safety Law Enforcement & Disposition (T-SLED)

The Traffic Safety Law Enforcement & Disposition (T-SLED) is a division of the New York State Department of Motor Vehicles (DMV) that is responsible for tracking all tickets issued outside the cities of New York, Buffalo and Rochester. This program is a traffic ticket accountability and management information program which allows each ticket to be “tracked” from its original assignment to a particular police agency, up to and including ultimate disposition by the court. By knowing the current status of each ticket, the DMV is able to generate numerous useful reports for police, courts and other users.

Manual Courts are ones that are not getting e-tickets uploaded to their courts and are manually submitting the ticket dispositions to their T-SLED entry site.

Electronic Courts are ones that transmit ticket dispositions to T-SLED electronically. In order to become an electronic court, you must be able to successfully report Criminal

**Disposition Reports (CDRs) to the Office of Court Administration (OCA). To initiate this process, contact Tina Richburg at the Office of Court Administration @ (1-866-246-2361). Once this is completed, you would then contact [TSLEDsupport@dmv.ny.gov](mailto:TSLEDsupport@dmv.ny.gov) and request information on how to receive approval to report scofflaws and dispositions electronically.**

**Once you have received T-SLED approval, you will be able to, from the OCA website:**

#### **Upload Ticket Dispositions to T-SLED**

**Create a report of the cases to be transmitted to T-SLED from a file created in your software program. You may wish to refer to the following for general T-SLED information:**

**[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/tsled.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/tsled.shtml)**

**Step 1 From the OCA website main menu, choose the “T-SLED” button shown on the left of the screen**

**Step 2 Then choose the “Upload T-SLED” tab**

**Step 3 Click on the “Browse” button to find the file that you have saved from your software program.**

**Step 4 Click on “Upload.”**

**Step 5 After Uploading the file, you will receive a message as to how many tickets were transmitted.**

**To verify how many cases were transmitted to T-SLED on a particular day**

**Step 1 Select the T-SLED Cases Transmitted tab. This will allow you to display a calendar with the total number of cases transmitted on each date. The current month and year will be pre-filled. You may leave the end month and end year blank or indicate which months you wish to see.**

**Step 2 Select “Run Calendar.” Clicking on the number listed on a certain date will show a list of all tickets transmitted that day.**

**To obtain a report that lists how many times a particular ticket has been transmitted:**

**Step 1 Click or highlight a ticket number on the list.**

**Step 2 Choose “copy” and then go back and select the “Review T-SLED” tab and paste the ticket number into the field.**

**Step 3 Select “Run Report.” The most recent transaction will be listed first. The ticket number will be underlined. If you click on the ticket number, it will display the information regarding that transmission.**

#### **Review the T-SLED Error Report**

**If there are any errors or problems with the information that you are transmitting to T-**



SLED, they will appear on this report. This report must be maintained to ensure that your transactions are accurately and timely posted to the T-SLED file. Some transactions will require you to make corrections and re-transmit the information. Some transactions will require action by T-SLED and you should contact them directly for assistance.

**Step 1 Click on “T-SLED” tab**

**Step 2 Select “T-SLED Error Report” tab**

**Step 3 In Box #1, select the drop down box and choose how you want the information to appear on the report (ex. By Defendant name first)**

**Step 4 Click on “Run” and the report will display.**

The report will indicate which Judge the case is for, the date transmitted, the ticket number, the defendant’s name and the error message. Refer to the attached chart from T-SLED to determine what the error message means and how to resolve the error.

After making the corrections within the case in your software program and resubmitting the record, the error will be removed from the error report, generally within 24-48 hours. For errors that you are not able to remove or any T-SLED support questions, call: 1/800-948-7533.

## **TraCS**

Traffic and Criminal Software (TraCS) is application software used by the New York State Police and over 400 other police agencies in New York State. Police officers can write tickets (e-tickets) and accident reports on a computer in the patrol car, print copies for the involved citizen, and electronically transmit the data to the Courts and to T-SLED. The Court can then download these tickets into their court software programs and transmit the dispositions to T-SLED electronically.

## **Download Electronic Tickets**

**Step 1 Sign onto the OCA website.**

**Step 2 Choose “E-Tickets” from the main menu on the left side of the screen**

**Step 3 Choose “# of New Tickets” tab**

**Step 4 Choose “Click Here” to Create Download File (XML)**

**Step 5 Choose “Save”**

**Step 6 File already exists. Do you want to replace it? Choose “Yes’.**

**Step 7 Download Complete choose ‘Close.”**

**Step 8 Open software program and import per vendor instructions.**

**Step 9 Return to OCA Web site.**

**Step 10 Choose “Update as Received.”**

**Step 11 Choose “Remove Old Ticket Records” from Download**

**Step 12 Are you sure? “Yes”**

Although the screen will indicate “Tickets Updated” it will take approximately 24 hours for the old tickets to be removed and the numbers to be updated.

## **VPASS**

VPASS is the Web application that allows courts electronic access to DMV records and information. Through a Web VPASS account, courts are able to:

- View Magistrates Memos (Online Series Memos)
- Retrieve T-SLED reports such as:
  - CM01 Report of Pending Case Activity for the Period Ending (Month)
  - CM02 Report of Cases Pending 60 Days for the Period Ending (NYS drivers only)
  - CM02.1 Report of Cases Pending 6 Days for the Period Ending (Out-of-State Drivers)
  - CM03 Report of Transferred Cases for the Period Ending
  - CM04 Report of Disposed Cases for the Period Ending

Search DMV license files utilizing COMPASS which enables the courts to obtain information regarding an individual’s license, registration, insurance, inspection and vehicle title records.

Conduct TSLED Web Transactions (for your court only) such as: Add Scofflaw

Step 1 From the OCA website main menu, choose the “DMV” tab on left side of screen

Step 2 Click on “Log on” to DMV Site tab.

Step 3 Click on Log on To NYS Dept of Motor Vehicles VPASS

Step 4 Enter User ID & Password at login screen

Step 5 From The DMV Web Application, Menu choose “T-SLED Web Transactions.”

Step 6 Review Certification & Security Agreement and agree to the conditions by checking the circle sat the bottom of the page. Click “Submit.”

Step 7 From the T-SLED Web Transaction screen, choose “Scofflaw Transactions” from the menu highlighted in white at the top of the screen.

Step 8 Choose “Add Scofflaw” and fill in the appropriate information from the ticket and click on “Retrieve.” Verify you have the correct defendant and ticket number. Complete screen and click on “Add Scofflaw.” Message will appear that Scofflaw was successfully added.

## **Clear Scofflaw**

Step 1 Follow first seven steps listed above.

Step 2 Choose “Clear Scofflaw.” Enter ticket information and click on “Retrieve.” Verify retrieved information is correct and complete required fields. Select suspension or suspensions to be cleared and submit. A Scofflaw Lift Confirmation Notice will appear to

be printed for your court file and/or the defendant.

From this website you can also obtain DMV Forms and View DMV's Magistrate's Manual.

### [Tickets in Compass for Courts](#)

*Tickets in Compass* gives Judges the official DMV record of an individual's ticket history, which includes the ORIGINAL charge as well as the conviction charge for the previous 10-year period.

Access to DMV's "*Tickets in Compass*" is restricted for to the use of Judges and, with the Judge's approval, for may be used by court clerks who have an existing VPASS account with TSLED.

Form MV-15TKTC must be completed in order to access "*Tickets in Compass*". Download this form at <https://dmv.ny.gov/dmv/tickets-compass> or go to TSLED Web Transactions, and under DMV FORMS go to the MV-15TKTC form.

### [Traffic Diversion Programs](#)

A traffic diversion program may be administered by a county District Attorney's office. Under such programs, motorists charged with certain violations may attend a traffic safety course in lieu of a conviction for the traffic offense. Traffic diversion programs are not available in all counties and vary in terms of eligibility and requirements to complete. The defendant will usually pay a non-refundable fee to the program – not the court – as part of the application process. *The court takes no role in these programs whatsoever.*

Typically, upon the successful completion of a traffic safety course, the District Attorney's office will make a motion to have the pending vehicle and traffic ticket dismissed, there will be no fine or surcharge, and there will be no record of conviction on the motorist's driving record. Participants of traffic diversion programs are free to use their class certificate for insurance reduction purposes.

Upon a plea of not guilty:

- The court will schedule a conference just as with all not guilty pleas for traffic tickets.
- The court can entertain any adjournment requests and assign a new court date upon that request.
- The ticket remains pending and the court can still suspend the defendant's license for failure to answer any traffic ticket in a timely manner.

- The Judge will entertain any motion to dismiss that has been made by the District Attorney's office. If granted, the court clerk will process the motion, enter the dismissal and seal the case pursuant to CPL 160.50. If denied, the court clerk will schedule the matter for trial.
- The court clerk must record the disposition in the court records and transmit the disposition to TSLED as usual.
- Reminder: The court does not participate in the traffic diversion program in any way. All questions pertaining to the process can only be answered by the District Attorney's office.

**NOTE:** A DMV memo prohibits CDL operators from participating in traffic diversion programs as a means of resolving a traffic ticket.

## **Appeals (Criminal)**

For general information on criminal appeals, see the following at:

[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/appeals.shtml](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/appeals.shtml)

### **Definition of an Appeal**

An appeal is: submission of a trial court's decision to an appeals court for review. When a party to a legal action is unhappy with the result at the trial court level, they seek the review by a court of higher authority. In most Town and Village Courts, that would be the County Court. However, in Town and Village Courts within the 9<sup>th</sup> and 10<sup>th</sup> Judicial Districts, that court is the Appellate Term.

### **Parties in an Appeal**

**Appellant** - This is the party who is affirmatively appealing the trial court's ruling. Generally speaking, it is the party or parties that are unhappy with the trial court's judgment.

**Respondent** - The party against whom the appeal is being taken. In most cases, this is the "winning party" in the trial court.

*Throughout this section you will come across the words "trial court". This guide is for the Town and Village Court Clerks. Therefore, the "trial court" is the Town and Village Court where the trial commenced. (Your court.)*

### **Who Can Appeal**

The defendant has a right to appeal a judgment of conviction and/or sentence. The people have a statutorily limited right to appeal when "jeopardy" is not attached. (Criminal Procedure Law (CPL) § 450.20)

## **Timetable to Appeal**

**An appeal of a criminal case must be made within 30 days of the imposition of sentence or service upon the defendant of the court order.**

## **Criminal Cases That Can Be Appealed**

**Infractions, local ordinances, Vehicle & Traffic Law (VTL), violations and misdemeanors.**

***An appeal does not automatically stay (stop) the execution of a sentence.***

### **1<sup>st</sup> Step - Sentence CPL 460.10 (1)**

**The defendant has a right to appeal once the court imposes a sentence; Not just a finding of guilt.**

### **2<sup>nd</sup> Step - Notice of Appeal to Trial Court CPL §460.10 1(a)**

**Appellant must file a “Notice of Appeal” form within 30 days of sentence with the trial court after first serving a copy of the “Notice of Appeal” upon the District Attorney or prosecuting party. The original and copy of the Notice of Appeal with proof of service on the District Attorney or prosecuting party must be filed with the trial court. There is no filing fee on a criminal appeal. A Notice of Appeal form can be found at the following:**

**[http://www.nycourts.gov/courts/townandvillage/judges\\_only/topics/documents/Appeals/Notice-of-Appeal-Criminal.pdf](http://www.nycourts.gov/courts/townandvillage/judges_only/topics/documents/Appeals/Notice-of-Appeal-Criminal.pdf)**

***Please note - By order of the Chief Administrative Judge,  
all trials have to be recorded.***

### **3<sup>rd</sup> Step - Notice of Appeal to Appellate Court CPL 460.10 1.(e)**

**As soon as the Court Clerk receives the original Notice of Appeal with a copy and proof of service on the District Attorney or prosecuting party, they must endorse the filing date on all documents. Immediately after, the Clerk must file a copy with the Appellate Court.**

**If there is no Court Clerk the appellant files a duplicate notice with the Appellate Court.**

### **4<sup>th</sup> Step - Transcript Started CPL 460.70(1)**

**The Court Clerk must inform the defendant (who is now the appellant) and the District Attorney or prosecuting party, that a recording is available. Court must provide a copy of the Certified Transcribers list and inform the appellant they are responsible to supply and pay for the costs of the transcript. Transcripts can include the trial or plea and sentence, plus minutes of any hearings. Once the defendant chooses which Certified Transcriber to use, the Court will send the digital recording directly to them. A Request for Transcript of Electronic Recording form can be found at the following:**

If appellant is granted poor person relief, see page 116 for direction on ordering the transcript.

If no official minutes were taken, the appellant must serve and file an “affidavit of errors” with the trial court within 30 days of sentence. Within 10 days the Judge must prepare a return sending a copy to both parties. CPL §§ 460.10 and 460.70.

**5<sup>th</sup> Step - File Draft Transcript Uniform Rules for Courts Exercising Criminal Jurisdiction (UR-CJ) 200.33 and CPL 460.70(1)**

When the appellant receives their copy of the draft transcript, he/she must serve a copy upon the trial court and the District Attorney or prosecuting party.

**6<sup>th</sup> Step - Settle the Record - Uniform Rules for Courts Exercising Criminal Jurisdiction (UR-CJ) 200.33 and CPL 460.70(1)**

The trial court “settles” the record (transcript and other documents) which is usually done during a conference with all the parties.

**7<sup>th</sup> Step - Record Filed with Appellate Court (UR-CJ) 200.33(a)**

Once the trial court receives the final version of the Notice of Appeal and the transcript is settled, the Court Clerk must prepare and submit the “Record on Appeal” to the Appellate Court. When forwarded, the Court Clerk must notify all parties that the Record has been sent to the Appellant Court.

Below is a list of the essential ingredients that need to be sent to the Appellant Court. Although it is not required, it would be helpful when you forward the record, that all papers be in the same sequence set forth below.

1. Clerk’s Return, signed by the Clerk of the Court from which the appeal is taken.
2. Notice of Appeal.
3. Transcripts and settlement thereof or the affidavit of errors.
4. All the original papers, including the information(s), motions, answering papers and orders.
5. An extract setting forth: (a) the date of the plea or verdict and what the defendant was convicted of and (b) the sentence date and what the sentence was on each count.
6. If the People are the appellant, they are ordinarily appealing from an order - this order must be in writing and made as part of the Record.

Decision from the Appellate Court can be one of the following:

**Affirm/Affirmance** - Appellate Court agrees with the holding of the trial court; thereby “affirming” the lower court’s decision/order/judgment.

**Reverse/Reversal** - Appellate Court disagrees with one or more aspects of the trial court decision.

**Modification** - Appellate Court Agrees with portion of the trial court’s decision.

**Remand** -Appellate Court orders that the case be sent back down to the trial court for disposition in accordance with the appellate court’s ruling(s).

*The sentence is still enforced during a Criminal Appeal. Town and Village Courts have no jurisdiction to issue a stay of sentence. Only the Appellate Court can stay a sentence.*

*CPL §460.50(1),(2)(d); 22 NYCRR § 200.31*

#### **Criminal Appeal Time Line - with Recorded Minutes**

1. Trial Court imposes sentence or serves the sentencing order upon the Defendant.
2. If Defendant appeals, he/she must serve the “Notice of Appeal” with an additional copy on the trial court with proof of service on the prosecutor within *30 days* of sentence.
3. Once Court Clerk receives Notice of Appeal with copy, the clerk must endorse all and send the duplicate copy with the date of the filing to the Appellate Court immediately.

*(If no Court Clerk, defendant must send duplicate copy to the Appellate Court)*

4. Court Clerk must send names of certified transcribers to appellant and the District Attorney and remind the appellant it is their responsibility to arrange and pay for the costs of the transcript, unless the Appellate Court grants poor persons status (check with your respective Judicial District for the policy implemented).  
-If defendant granted poor person relief, the Appellate Court orders the minutes from the court reporter. Court reporter must supply 2 copies to the trial court.
5. When appellant receives their copy of the draft transcript from the Court Reporter, he/she must serve a copy upon the trial court and District Attorney or prosecuting party.
6. The trial court must settle the Record. It is the Judge’s decision on how the settlement is done. A date can be set up for a conference with all parties to settle, or each party can forward their suggestions or objections to the Judge. Once the settlement is agreed upon or the Judge determines the record where there is no agreement, the Judge must settle them in writing.

7. Once the transcript is settled, the Clerk needs to prepare and submit the “Record on Appeal” to the Appellate Term. Clerk must notify parties that the Record has been sent to the Appellate Term.

#### **Criminal Appeal Time Line - with No Recordings**

1. Trial Court imposes sentence or serves the sentencing order upon the Defendant.
2. If Defendant appeals, he/she must serve the “Notice of Appeal” with an additional copy on the trial court, with proof of service on the prosecutor within *30 days* of sentence.
3. Once the Court Clerk receives the Notice of Appeal with copy, they must endorse all and send the duplicate copy with the date of the filing to the Appellate Court immediately.

**OR**

4. If no recordings, the Appellant must file an “affidavit of errors” on the court within *30 days* of sentence. Within *10 days* the Judge must write an answer to the affidavit of errors and send copies to both parties.

*Judge has a choice to use a transcript covering his or her personal notes or minutes as the answer to the affidavit of errors. This must be in writing.*

5. Clerk prepares and submits the “Record on Appeal” to the Appellate Court.
6. Appellant has *90 days* after filing the Notice of Appeal within which to “perfect” the appeal (Ninth and 10<sup>th</sup> Judicial Districts only).

#### **If Appellant/Defendant is Granted Poor Person Relief**

1. The Court, appellant/defendant and/or defense counsel, and prosecutor all receive notification of the poor person application.
2. Upon receipt of the Appellate Court’s order granting the defendant’s poor person status, the Court’s obligation is to facilitate transmission of the digital recording to the court certified transcriber.
  - (a) Check with your Judge, special counsel, or the Office of Justice Court Support as to the preferred procedure
  - (b) Options include directly providing copy of the disc to the transcriber or giving the copy to the defendant/defense counsel.
3. Regardless of who provides the disc to the transcriber, the appellant must make arrangements with the transcriber to produce the



- transcript.
4. The disc is provided to the transcriber.
  5. The transcriber provides the transcript to the Court. The Court shall copy the transcript and provide it to the defendant/appellant and/or his/her counsel. The defendant/appellant or his/her counsel shall provide a copy of the minutes to the prosecutor.
  6. Thereafter, the record shall be settled.
  7. If the Court receives the transcriber's bill, the Court should sign off on it and then forward the bill on so the transcriber can get paid.  
**FOR QUESTIONS ABOUT WHO BEARS THE COST OF TRANSCRIPTION, CONSULT WITH YOUR JUDGE, SPECIAL COUNSEL, OR THE OFFICE OF JUSTICE COURT SUPPORT.**
  8. Once the minutes are settled, the Court shall send a complete record, including the transcript, to the Appellate Court.

## **CERTIFICATES OF RELIEF FROM DISABILITIES**

- Laws governing Certificates of Relief from Disabilities were enacted “to reduce the automatic rejection and community isolation that often accompany conviction of crimes” and to contribute “to the complete rehabilitation of first offenders and their successful return to responsible lives in the community.” Any court of this state may, in its discretion, issue a certificate of relief from disabilities to an eligible offender for a conviction that occurred in such court. The eligible offender shall file an application and proposed order with the court for review.
- A person is eligible for a certificate if they have been convicted of any number of misdemeanors and no more than one felony (two or more felony convictions in the same court on the same day are counted as one felony for deciding which certificate they are eligible for). The term “disability” refers to laws that disqualify people from holding certain jobs or other rights because of their conviction. A youthful offender adjudication is not eligible.
- A certificate may relieve an eligible offender of any forfeiture or disability, or remove any bar to employment, automatically imposed by law due to conviction of the crime or the offense. It does not prevent the suspension or revocation of a person's driver's license under VTL 1192.
- A certificate of relief from disabilities shall not prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege.
- A Court may grant this certificate at the time of sentencing or any time thereafter.
- Unless the sentencing court indicates otherwise at the time of transfer, a probationer seeking

Certificate of Relief from Disabilities should be directed to apply to the court to which his/her case was transferred. For a complete transfer, the appropriate court in the receiving jurisdiction must make this determination.

- A Court may, when determining whether such certificate shall be issued, request its probation service to investigate the applicant. Any written report submitted to the court pursuant to this section is confidential and may not be made available to any person or public or private agency except where specifically required or permitted by statute or upon specific authorization of the court.
- Applications, questions or for information contact:
  - DOCCS Certificate Review Unit at (518) 485-8953
  - Legal Action Center – (212) 243-1313
  - Upstate NY – Legal Assistance of Western New York
    - Bath – (607) 776-4126
    - Elmira – (607) 734-1647
    - Geneva - (315) 781-1465
    - Ithaca – (607) 273-3667
    - Jamestown – (716) 664-4535
    - Rochester – (585) 325-2520
    - Legal Aid Bureau of Buffalo (716) 855-1553

### Sovereign Citizens: Common Indicators

Will likely show little or no respect for the judge, the prosecutor or the general decorum of the court.

May not accept the jurisdiction of the court.

Believe that they are not subject to federal, state, or local government and that laws, statutes, ordinances, and other government regulations do not apply to them.

May identify themselves in court by such terms as “freeman,” “constitutionalist,” “freeholder” or “not a Fourteenth Amendment citizen.”

Will sometimes refuse to identify themselves. May use variations of their names, such as “Joe of the family Smith,” or will identify themselves by describing their physical presence as “flesh and blood human.”

Will sometimes claim that court personnel cannot speak or write the individual’s name because he or she has copyrighted it.

May challenge the authority of the judge/other officials and demand to see their “Oath of Office” or other proof-of-position document.

May refuse to leave the spectator section when their case is called, claiming that they are not within the court’s jurisdiction.

Believe there must be a victim in order for there to be a crime; consequently, they will want to know the identity of the injured party.

May state that the complainant in any case against them cannot be a law enforcement officer.

May express a belief in the “redemption theory,” through which they can write legal instruments against the U.S. Treasury to obtain money maintained in secret “straw man” accounts held in their names.

May bring into court their own legal “counsel” or advisor, who will not be an attorney. Will often refuse to use an attorney and will refuse to accept the public defender, if one is appointed.

May claim that because the court is incorporated or military in nature, it has no jurisdiction over them.

May claim to be a diplomat.

May say that the fringe around the flag suspends constitutional rights.

Attempts to record and/or videotape court proceedings.

If the case involves their property, sovereign citizens will claim they can do whatever They please with it.

### **Sovereign Citizens – Best Practices**

- Maintain the decorum of the court
- Formulate a policy to deal with an individual who violates court procedures, including refusing to stand when the judge enters, remove a hat, or take an oath
- Do not allow the sovereign or others (supporters) to disrupt court proceedings
- Be prepared to respond to a sovereign’s request to see an “Oath of Office”
- Do not allow the sovereign to leave the courtroom once his/her case has been called
- Closely read all documents that sovereigns present in court (or at the window or by mail) to prevent them from slipping valid requests into what may appear to meaningless filings or previously stated motions
- Determine whether or not individuals who a sovereign citizen claims represent him/her as a legal advisor or counsel are in fact qualified to appear before the court
- Do not allow the sovereign to use the courtroom as a political forum
- Have a written policy in place to deal with defendants and spectators filming and recording proceedings and be willing to enforce those rules
- Have a written policy in place to deal with an individual who refuses to leave the spectator section of the court and approach the bench once his/her case has been called by the Court
- Court and prosecutorial officials should regularly check their credit reports to determine whether there have been any liens or other financial actions files filed against them
- Consider developing policies to work with local, county, state and federal officials to receive early warnings when judicial filings are made against public officials, including law enforcement and prosecutorial and judicial officials (including clerks)

### **REMINDERS:**

- Chapter 490 of the Laws of 2013 addresses acts of "paper terrorism" against judges and other public officers by Sovereign Nation, Moorish Nation, and like-minded anti-government advocates. Chapter 490 establishes that the filing of false liens against judges in retaliation for acts performed in the course of their official duties is a class E felony.
- Should any filings or motions be filed by the defendant or anyone on their behalf, the Court should contact the Office of Justice Court support to discuss and possibly forward. 1-800-232-0630.



## Raise the Age

Effective October 1, 2018 and October 1, 2019

- Raises the Age of Criminal Responsibility in NY to Age 18 by October 1, 2019
- Creates Youth Part of Superior Court in each County
  - To be staffed by specially trained Family Court Judges
- Presiding Justice of Appellate Division to designate City, Town & Village judges to serve as **Accessible Magistrates** [CPL §722.10(2)]
  - Accessible Magistrates to arraign on felonies when Youth Part not in session and to hold Juvenile Delinquent Pre-Petition Detention Hearing when Family Court not in session
  - To receive specialized training
  - Make determination as to whether to detain the offender on the complaint

## As of October 1, 2018:

Age at Commission of Crime	Charged with or As	Court
13, 14, 15 YOA	Juvenile Offender (serious felonies)	Youth Part *
16 YOA	Adolescent Offender (any felony)	Youth Part *
16 YOA	PL misdemeanor	Family Court as Juvenile Delinquent
16 YOA	VTL misdemeanor, VTL infractions, or PL violations	Justice Court
17 & 18 YOA	All charges	Justice Court

\* Some City, Town & Village Judges will be designated as Accessible Magistrates, and will perform arraignments of these cases, when Youth Part or Family Court is not in session

6

## As of October 1, 2019:

Age at Commission of Crime	Charged with or As	Court
13, 14, 15 YOA	Juvenile Offender (serious felonies)	Youth Part *
16 & 17 YOA	Adolescent Offender (any felony)	Youth Part *
16 & 17 YOA	PL misdemeanor	Family Court as Juvenile Delinquent
16 & 17 YOA	VTL misdemeanor, VTL infractions, or PL violations	Justice Court
18 YOA	All charges	Justice Court

\* Some City, Town & Village Judges will be designated as Accessible Magistrates, and will perform arraignments of these cases, when Youth Part or Family Court is not in session



## Raise the Age (cont'd)

- If 16 YOA on October 1, 2018 or 17 YOA on October 1, 2019, defendant will still be criminally responsible for:
  - Felonies (charged in Youth Part and prosecuted in Youth Part or Family Court)
  - Misdemeanors, if accompanied by felony charge from same criminal transaction or reduced from felony charge
    - charged in Youth Part and prosecuted in Youth Part or Family Court
  - Traffic infractions (charged and prosecuted in Justice Courts)
  - Violations (charged and prosecuted in Justice Courts)
  - VTL misdemeanors (charged and prosecuted in Justice Courts)

\*\*\*\*BIG CHANGE: non-VTL misdemeanors to be charged and prosecuted as Juvenile Delinquent cases in Family Court\*\*\*\*





## Raise the Age (cont'd)

- Beginning October 1, 2018, a 16 YOA remanded to custody of the sheriff – must go to specialized detention facility for older youths (same rule in effect for 17 YOA beginning on October 1, 2019)
- Applies even to Justice Courts, if setting bail on PL violations, VTL infractions or VTL misdemeanors