

YOUTH COURT TRAINING MANUAL

By

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and

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I. INTRODUCTION

A. Origins and Purposes

Society enacts laws to protect itself from those who would otherwise bring harm to persons and property. Those laws serve to protect members of society from attacks on their persons and property. Thus, in most societies laws have been enacted to prohibit attacks on individuals, such as murder, assault, battery and rape, as well as unauthorized abuses of property, such as arson, theft, burglary and trespass.

To enforce these laws protecting members of society from one another, systems of justice have been developed to determine whether someone has violated the laws of that society and, if so, what punishment should be imposed for the violation. Thus, different societies have adopted various forms of courts and trials to determine guilt and innocence and have likewise established various forms of punishment for those found guilty of violating the laws of that society.

Throughout history, these systems of justice made little or no distinction between adults and youths who committed crimes. Only in modern times have societies begun to recognize and treat differently crimes committed by adults versus crimes committed by youths. The creation of Family Courts¹ in the New York State judicial system represented one such change. Under that system, a youth charged with a criminal offense may have his or her guilt or innocence and, if necessary, punishment decided in a court system that recognizes their young

¹ Family Courts have jurisdiction over cases involving youths under age 16.

age and so keeps their identities' confidential. That system also recognizes as a goal the hope that a youth who has violated the law may nevertheless be redirected toward lawful conduct and not suffer permanently the stigma that follows from a criminal conviction and sentence of an adult.

The Family Court is a system of justice operated by adults, which functions only in part to determine the guilt or innocence of youths and to punish their misconduct. The Family Court system serves numerous other purposes, primary among which is the resolution of disputes between estranged parents about the custody and support of minor children. The Family Court is well prepared to handle matters related to criminal conduct by youths where guilt must be determined by rules of evidence and where criminal violations by a particular youth are particularly egregious or are repeated. Similarly, the Family Court system is less well prepared to handle cases involving youths who have committed no prior offenses and have admitted their guilt of the crime for which they have been arrested.

Those cases require that some form of punishment be imposed to deter both the individual youth and others who might be similarly inclined from committing such crimes. Those cases do not require, however, that the first-time, non-serious offender be treated by the same system and punishments created to treat repeat offenders and those charged with serious offenses.

Youth Court is a new approach to addressing such early, anti-social, delinquent and criminal behavior. In Youth Court, a youth who has admitted guilt appears for a sentencing hearing before a jury of peers. The jury is drawn from any young people who wish to volunteer to participate, and may include offenders whose cases have been adjudicated in Youth Court

previously. The jury is presented with evidence relevant to sentencing, deliberates, and passes sentence. Sentences typically include community service, counseling, restitution and will stress rehabilitation.

Youth Court thus serves in the hope that it will enhance the chances that a youth who has committed a criminal offense will, through his or her experience in Youth Court, avoid criminal conduct in the future. Youth Court will also afford those who participate in it exposure to a system of justice through direct participation and decision-making.

B. Organization

Youth Court is a not-for-profit private corporation incorporated under the name "Colonie Youth Court, Inc." It is operated by a **board of directors** comprised of individuals drawn from various components of the communities involved. These include law enforcement, social service groups, elected officials, educators and business people, among others. Each community that wishes to establish a Youth Court program in their area applies for membership to "Colonie Youth Court, Inc." and creates their own local advisory board. These local advisory boards are responsible for, among other things, obtaining funding for their programs and the day-to-day operations of their respective Youth Courts. The board of directors of "Colonie Youth Courts, Inc. establishes the rules by which Youth Court operates, assists in obtains funding, and generally oversees the functioning of Youth Court.

The day-to-day operations of each respective Youth Court are directed by the local **Youth Court Director**. The director is an adult selected by the local advisory board. The director screens potential cases for referral to Youth Court pursuant to criteria described below.

The director also schedules cases for hearings before the Youth Court, assigns teams to the cases, arranges for juries, reviews the sentences imposed by Youth Court, and supervises the service of whatever sentence is imposed by the Youth Court. The director reports to the advisory board on all aspects of the operations of Youth Court and is also the principal point of contact with Youth Court for all outside parties and individuals in their communities.

A **jury** of youths, usually five, will determine the sentence in each case. Jurors will be drawn from among any students from schools within the geographic area served by this Youth Court who volunteer to participate. Volunteer jurors may serve without the need to complete a course of instruction. In addition, each jury will include a Jury Foreperson who is a member of Youth Court, and a jury may include offenders whose cases have been adjudicated previously in Youth Court and who are serving on a jury as a condition of their sentence.

The jury will be given instructions by the student judge on their role in determining an appropriate sentence and the factors, which they should take into consideration. Jurors will then apply the knowledge they have obtained in the decision of cases. Jurors will be led in their deliberations and discussions by a Jury Foreperson, who is a member of the program, to insure full and complete discussion and development of appropriate factors in deliberations.

Student participants, known as **Youth Court members**, consist of students 18 years of age or younger enrolled in any school within the jurisdiction of the Youth Court who have completed a multi-week course of law-related instruction. Areas of instruction will include an overview of the criminal justice system from arrest through appeal, the organization of youth court, including jurisdiction, operation, procedure and roles, the penal law, the consequences of crime to victims, the courts, the police, the probation office, and the community at large, the role

of sentencing in rehabilitation of offenders, the range and effectiveness of rehabilitative actions and programs that are available, and sentencing issues, including aggravating and mitigating circumstances, and the nature and type of evidence that is admissible and probative in sentencing. Members will serve in Youth Court on five member teams which for each case will function in turn as Judge, Prosecutor, Defender, Clerk/Bailiff and Jury Foreperson.

Each team of Youth Court members will be assigned a **Student Advisor or mentor**. The advisor will be an adult with experience in the criminal justice system. The advisor will be available to team members, individually and collectively, as they prepare to fulfill their individual functions in assigned cases.

Youth Court members who satisfactorily complete the training program are asked to commit themselves to participate in Youth Court for a period of one year from the completion of their training. A member who wishes to continue for an additional period of time beyond the one year commitment may ask to do so at or near the completion of the one year. During their participation in Youth Court, members are expected to maintain standards of conduct consistent with their participation in a system of justice. In particular, members are expected to obey the law, a code of conduct (found in Appendix E) and applicable school rules of conduct. Failure to do so may result in termination of a member's participation in Youth Court. See Appendix E.

C. Jurisdiction

Cases may come within the jurisdiction of Youth Court depending on two factors -- the **offense** and the **offender**. Generally, offenses fall into one of four categories depending on the seriousness of the offense. Those four categories are felonies, misdemeanors, violations and

violations of school rules and regulations. The seriousness of an offense is determined for these purposes by the maximum penalty which the law permits to be imposed for a violation. Thus, a crime is a **felony** if the maximum penalty is over one year in prison. This includes all serious crimes, such as murder, selling narcotics, bank robbery and kidnapping. A **misdemeanor** is any crime punishable by one year or less in county jail and a \$1,000 fine; it includes shoplifting, the unauthorized use of a vehicle or credit card, possession of small quantities of narcotics, driving while intoxicated and possession of fireworks. A **violation** is any offense punishable by fifteen days or less in jail and includes disorderly conduct, harassment, loitering and various traffic offenses. The maximum penalty for a violation of school policy can range from a warning to the student being expelled.

Youth Court cases will be limited to offenses constituting misdemeanors and other violations of law or school policy committed within the geographic area served by this Youth Court. Thus, the offenses, which may be referred to Youth Court, will be those misdemeanors and violations which occurred within the geographic boundaries served by this Youth Court.

The second factor is the **offender**. The offender may be any youth 18 years old or younger who is charged with a misdemeanor, violation, traffic infraction or violation of school rules and regulations. It is not required that the offender reside within the geographic area of this Youth Court, but the residence of the offender may be a factor in determining whether a youth is referred to Youth Court insofar as the youth must be able to return to this area on a regular basis for Youth Court appearances, the service of any sentence and for any counseling that is required as part of a sentence.

The offender must also have acknowledged responsibility for the offense charged and voluntarily agree to proceed in Youth Court. The decision of an offender to proceed in Youth Court will be made after consultation with the Youth Court director and with a written acknowledgment of guilt of the crime charged and consent to proceed in Youth Court. Each offender will also be required as part of the process in Youth Court to participate as a juror in a future Youth Court case.

D. Operation

Virtually every case begins with an **arrest**. An arrest, among other things, formally advises an individual that he or she has been charged with committing a crime. An individual is arrested when police have developed evidence to establish probable cause to believe that a crime has been committed and that a particular individual committed that crime. An arrest may be formal, as when police actually locate an offender and take that person into their custody, or it may be less formal, as where an individual is notified of charges and asked to surrender at the police station or is given an appearance ticket, in the nature of a traffic ticket, notifying him or her to appear in court at a particular date and time to answer the charges.

Whether formal or informal, an arrest is cause for the police to process an individual - obtain fingerprints, take photographs and record biographical information of the individual arrested.² Unless removed from the information systems, this information concerning an arrested

² Youth Court may also receive referrals for traffic violations or from school authorities for certain alleged violations of school rules and regulations. These cases will, of course, not commence with any type of arrest by law enforcement officials and will not involve any type of processing as describe here.

individual becomes a permanent part of the system of information upon which law enforcement authorities and others rely in conducting future investigations.

If arrested formally, the individual will then be released on bail (money posted with the court to insure that an individual will not flee to avoid the charges) or on other conditions. The individual may then obtain an attorney and pursue all rights guaranteed under the Constitution and laws of this country. These rights include, among others, requiring the prosecution to prove the charges beyond a reasonable doubt at a trial and to cross-examine the witnesses who testify to prove the charges.

1. Referral to Youth Court

For certain individuals eighteen or under, what occurs after they have been charged with a crime may include referral to Youth Court. After arrest or the institution of charges, the youth is interviewed by the Youth Court Director. At this interview, which includes the youth's parents or guardians, the youth is advised of the possible availability of Youth Court, is given a brochure describing Youth Court,³ and is given the opportunity to consider whether to seek a disposition of his or her case through Youth Court.

The Youth Court Director, after consultation with the referring agency, makes the determination whether a referral may be appropriate for disposition through Youth Court. The Director considers the police report concerning the charges and any additional information provided by the police together with the results of the interview of the youth and his or her parents or guardians and determines whether to offer the youth the opportunity to proceed in Youth Court. The criteria by which the Director makes this determination focus on the youth's

³ A sample brochure is attached hereto at the beginning of this manual.

potential for benefiting from Youth Court by avoiding future unlawful conduct. The Director will consider the nature of the offense charged, whether there is any significant history or pattern of misconduct by the youth, the youth's school record, and the nature of the youth's home environment.

These criteria will be weighed in each case by the Director. Factors may be present in one case but absent in another or may vary from case to case, all of which requires the Director to consider each case separately and individually in deciding whether the youth should be referred to Youth Court. However, one criterion is an absolute requirement in every case before a youth can be referred to Youth Court: every youth referred to Youth Court must admit their wrongdoing - in essence, plead guilty - before their case will be referred.

This criterion is founded on the primary purpose of the Youth Court - to discourage criminal conduct by youths and to encourage youths who have committed crimes to respect and abide by the law. The first step in this process for any youth is the acknowledgment that he or she has in fact violated the law and is willing to accept punishment for that violation. This criterion does not prohibit anyone from asserting their right to contest criminal charges by going to trial. As noted above, that option remains available to any individual charged with a criminal offense. However, it does limit the option of Youth Court to those who have the best chance of benefiting from its availability and procedures.

Nor does the fact that the issues in Youth Court will not include deciding whether a youth is guilty or innocent of the crime charged limit its subject matter to unimportant issues of punishment. The issues to be decided by Youth Court procedures and juries go to the heart of the administration of justice - to what extent was the youth responsible for the crime as compared

to others involved or even compared to the victim? What sentence will fairly punish the misconduct both to deter the offending youth from future misconduct and to discourage others who might be inclined to commit the same violation? In cases where the youth's version of events differs from that of others involved or from that of a victim, who should be believed?

When a youth is offered and accepts referral to Youth Court, then, the youth and his parent(s) or guardian(s) must sign a form entitled Advice of Rights and Consent to Participate in Youth Court.⁴ This document serves several purposes. The written consent to proceed in Youth Court provides the basis for Youth Court to receive a case for disposition. The document also functions as the equivalent of a plea of guilty to the crime charged but leaves the youth free to present to Youth Court any evidence or arguments available that, while guilty, there are reasons why the punishment should be reduced.

The form provided advises the youth of the options for proceeding on the pending charges, the procedures to be followed in Youth Court and of his or her rights and responsibilities there, and that the choice to proceed with sentencing in Youth Court is made freely and voluntarily. The form also describes for the youth the rights, such as the right to trial and to an attorney, which would be available if he or she proceeded with the criminal charges through traditional judicial procedures and that the youth waives, or gives up, those rights by choosing to proceed in Youth Court.

If a youth or the parents or guardians declines to agree to any of these requirements, the youth cannot proceed in Youth Court and will automatically proceed with his or her case through the traditional court system. Likewise, if a youth, once referred to Youth Court, declines

⁴ A sample is attached at Appendix C-1.

to perform any duty or function required by Youth Court up to and including the completion of any sentence imposed by Youth Court, the youth may be sent back to the traditional court system. The youth will then begin proceedings in the traditional court or school setting as if there had been no referral to Youth Court.

2. Proceedings in Youth Court

As set forth in detail below, once a case has been referred to Youth Court, a hearing will be held to determine what sentence should be served by the youth. In general terms, those proceedings are as follows.

A date for the sentencing hearing will be scheduled by the Coordinator within days of a youth being referred to Youth Court. The date of the hearing will be within approximately four weeks of the referral. A team of five Youth Court members will then be assigned by the Director to that case. One member will be designated for that case as the judge, another as the prosecutor, a third as the defender, a fourth as the jury foreperson and the fifth as the clerk/bailiff. The roles of each are more fully described below. In the weeks before the hearing each member will then prepare to perform their particular functions at the hearing.

At the hearing the prosecutor will present whatever evidence he or she thinks appropriate to show the jury the nature of the crime committed by the youth, any resulting harm and any other facts which the prosecutor believes should be considered by the jury in determining the sentence. The defender presents whatever facts and evidence the defender and defendant believe the jury should consider. The judge rules on what evidence the jury may consider and instructs the jury as to the issues before it. The clerk/bailiff keeps the records in the courtroom and otherwise assists the judge in moving the hearing along. The jury of up to five

youths then deliberates in private over what sentence to impose. The jury foreperson leads the deliberations and insures that all members have a fair opportunity to express their views and that the jury's decision accurately represents the decision of the jury.

The sentence imposed by a jury may include any or all of the following. A youth may be sentenced to perform community service for a certain number of hours. Thus, for example, a youth may be required to perform 10 or 20 or 50 hours of community service. The Director will then advise the youth where the service must be performed. The service may be cleaning a park or assisting at a community function or any task which assists the community or any community organization in any way. The sentence may also include restitution -- a requirement that the youth repay the victim of the crime whatever financial loss was suffered as a result -- or that the youth repair or clean up any damage caused by his or her conduct. It may also include counseling or mediation in appropriate cases. Other forms of sentences may also be appropriate in certain cases depending on the youth and the criminal conduct.

3. Confidentiality of Youth Court Proceedings

Certain records concerning each case are generated and maintained by the local advisory boards of Youth Court. These records contain personal information about each youth, the crime charged, the sentence imposed, the service of any sentence, and so forth. People outside Youth Court may occasionally express a desire to review these records for their own purposes. These people may include law enforcement authorities, school authorities, educational institutions, potential employers, the media, neighbors or others.

According to the governing rules of Youth Court, all such records should remain confidential. The records generated in the course of Youth Court proceedings are the property of

Youth Court, not of any governmental entity, and will be collected and maintained by the Youth Court Director consistent with this policy of confidentiality.

E. Training Program

Youth Court involves serious issues in real cases with actual consequences. Those participating in it will help to decide the responsibility of one of their peers for a criminal offense and what sentence he or she should serve as a result of that misconduct. The decision of Youth Court can serve to determine whether a youth spends 50 hours of his or her time in community service or only 10, whether a victim is compensated for any loss resulting from a crime or not or how much was lost, and whether one person or another is telling the truth about certain matters.

For this reason a training program has been instituted and required for participation in Youth Court. That program is designed to educate participants on the theory and functioning of a system of criminal justice, such as Youth Court, and to prepare them to fulfill the roles required for the successful operation of that system. The program, the successful completion of which is required for participation, consists of this Instructions Manual and a series of training sessions held once each week. Participants are expected to become familiar with the contents of this Manual. The training sessions will consist of a combination of lectures and presentations by prosecutors and defense attorneys, police, victims, judges, probation officers and others about their various roles in the criminal justice system, a written examination concerning certain fundamental matters in the course, and mock hearings in which all participants will perform the functions to be filled in Youth Court. The successful completion of this training program is required to become a member of Youth Court.

II. SUBSTANCE: OFFENSES AND PUNISHMENT

A. INTRODUCTION

1. Conduct is criminal only if society has determined, through its elected representatives, that it should be prohibited and has enacted a law specifically prohibiting it.
 - a. For example:
 - i. Shoplifting is a criminal offense because the state legislature has enacted a law prohibiting it.
 - ii. Selling alcoholic beverages to anyone was a crime in the 1920's and 1930's during Prohibition when Congress prohibited it, but it is not a crime today since that law was repealed.
 - b. A list and description of the offenses, which may come before the Youth Court, are set forth below in Section B.
1. Criminal conduct must be punished.
 - a. The reasons for punishment and the factors, which should be considered in determining the appropriate punishment, are set forth below in Section C.

B. OFFENSES

1. GENERALLY

Offenses generally protect persons (for example, assault), property (for example, theft) and the general welfare (for example, narcotics).

2. OFFENSES AGAINST PERSONS

a. Assault (PL⁵ 120.00)

- i. A person is guilty of assault in the third degree if he or she intentionally or recklessly causes physical injury to another person, or negligently causes physical injury to another person by means of a deadly weapon or a dangerous instrument.
- ii. "Intentionally" means to act with the conscious objective of taking such action.
- iii. "**Recklessly**" means to act with the knowledge that a certain result is likely to occur and to act with a conscious disregard of that risk.
- iv. "Negligently" means to act while failing to perceive a substantial and unjustifiable risk that harm will result.

⁵ "PL" refers to the New York State Penal Law. The number following indicates the section of the Penal Law defining the offense. Copies of the Penal Law provisions referred to herein may be found in this manual in Appendix A & B.

- v. Third degree assault, a misdemeanor, is distinguished from first and second degree assault and aggravated assault primarily by the difference in the physical injury which the offender intends and which results (for example, a minor bruise versus a broken nose versus permanent disfigurement).
 - vi. **EXAMPLES:** Punching or kicking another person causing bruises or pain but no broken bones; recklessly or carelessly playing with a knife and cutting another person.
- b. **Disorderly Conduct (PL 240.20)**
- i. This statute prohibits a variety of behavior which causes public inconvenience, annoyance or alarm, or creates the risk of same, including, among other things, fighting and violent behavior, unreasonable noise, abusive or obscene language or gestures in a public place, disturbing any lawful assembly or meeting and obstructing vehicles or pedestrians.
 - ii. **EXAMPLES:** A party which gets out of control, a group of individuals harassing pedestrians on the street with obscenities.
- c. **Harassment (PL 240.25, 240.26, 240.30)**
- i. These statutes prohibit anyone from following another person in public places, repeatedly committing acts which place a person in reasonable fear of physical safety, or making telephone calls with no legitimate purpose.
 - ii. **EXAMPLES:** A rejected boyfriend continues to follow his former girlfriend even after repeated requests to stop; repeated telephone calls to a person with no purpose other than to bother.
- d. **Jostling (PL 165.25)**
- i. This statute protects against pickpockets.
 - ii. The statute prohibits intentionally and unnecessarily placing one's hands in the vicinity of another person's pocket or handbag while in a public place.
- e. **Loitering (PL 240.35, 240.36)**
- i. This statute prohibits remaining in a public place for purposes of begging, gambling or engaging in deviate sexual behavior.
- f. **Menacing (PL 120.14, 120.15)**
- i. These statutes generally prohibit anyone from taking actions, which are calculated to place another person in fear of injury or death, whether it be accomplished by means of a weapon or repeated acts intended to create such a fear.
 - ii. **EXAMPLE:** Pointing a gun at another person; repeatedly threatening to harm or kill someone.

- g. **Reckless Endangerment (PL 120.20)**
 - i. This statute prohibits any act, which creates a substantial likelihood of physical injury to another person.
 - ii. **EXAMPLES:** Recklessly driving a car in a parking lot dangerously close to people; throwing water balloons onto sidewalks from upper floors of hotels.
- h. **Sexual Abuse (PL 130.55, 130.60, 130.65)**
 - i. This statute prohibits subjecting another person to sexual contact without the other person's consent.
 - ii. A person less than seventeen years old is deemed unable to consent.
 - iii. **EXAMPLES:** Intentionally touching a woman's breasts or buttocks for sexual gratification without her consent; doing so to a person less than seventeen years old even if she consented.
- i. **Unlawful Imprisonment (PL 135.05)**
 - i. This statute prohibits restraining another person.
 - ii. **"Restrain"** means intentionally to restrict another person's his or her will from one place to another or by confining that person to one place.
 - iii. **EXAMPLES:** Locking a person in a room against his or her will; physically restraining a person in a car when they attempt to leave.
- j. **Unlawful possession of weapons (PL 265.01, 265.05)**
 - i. Unlawful for anyone under age 16 to possess, among other things, a BB-gun or a dangerous knife.
 - ii. Unlawful for anyone to possess, among other things, a stun gun, switchblade knife, blackjack, brass knuckles, chuka stick or "Kung Fu star."

3. OFFENSES AGAINST PROPERTY

- a. **Criminal Mischief (PL 145.00)**
 - i. Intentionally damaging property in an amount less than \$250.
 - ii. Recklessly damaging property in an amount greater than \$250.
 - iii. **EXAMPLES:** Driving a car across a private lawn intending to cause damage; pulling aerials off parked cars; throwing rocks near parked cars and having one break the windshield.
- b. **Computer crime (PL 156.05, 156.20)**
 - i. Using a computer without authorization.
 - ii. Although having authorization to use a computer intentionally alters or destroys computer data or a computer program of another person.
 - iii. **EXAMPLES:** Deleting information from a database; planting a virus in a program to destroy it.

- c. **Forgery (PL 170.05)**
 - i. Falsely completing a written document with intent to deceive.
 - ii. **EXAMPLES:** Creating false work papers to obtain employment; signing a parent's name to a document to claim parental authorization.

- d. **Petit⁶ Larceny (PL 155.25)**
 - i. **Larceny**" is stealing property from another person.
 - A. **EXAMPLE:** Stealing athletic equipment from a school gymnasium.
 - ii. **"Robbery"** is stealing property from another through force or the threatened use of force.
 - A. **EXAMPLE:** Forcing a person to give up his money by threatening to beat him up.
 - iii. **"Burglary"** is the unlawful entering of a building to steal property.
 - A. **EXAMPLE:** Breaking into a business to steal money or property.
 - iii. **"Petit larceny"** is stealing property from another of a value of \$1,000 or less.

- e. **Possession of Burglary Tools (PL 140.35)**
 - i. Possession of tools adapted for or generally used to make forcible entry into premises.

- f. **Possession of Stolen Property (PL 165.40)**
 - i. Possessing stolen property knowing that it has been stolen where the value of the property is \$1,000 or less.

- g. **Reckless Endangerment of Property (PL 145.25)**
 - i. Recklessly engaging in conduct which creates the risk of causing damage to property exceeding \$250.

- h. **Tampering (PL 145.14, 145.15)**
 - i. Tampering with the property of another with the intent to cause substantial inconvenience to that person.
 - ii. Making a connection with a telephone line or any other public utility without the right to do so.

⁶ Pronounced "petty". "Petit" is French for small. Grand larceny also derives from the French word for large.

iii. **EXAMPLES:** Pouring sugar down the gas tank of another's automobile; accessing a telephone line subscribed to by another person and making long distance calls without that person's consent.

i. Theft of Services (PL 165.15)

- i. Avoiding payment for services received from any vendor, including but not limited to hotels, telephones, cable television, service stations and stores.
- ii. **EXAMPLES:** Ordering a meal at a restaurant and then refusing to pay for it; filling a car with gas and then refusing to pay for it.

j. Trespass (PL 140.05, 140.10, 140.15)

- i. Entering or remaining on premises without permission and where a person has no right to be.

k. Unauthorized Use of a Vehicle (PL 165.05)

- i. Using a motor vehicle in any way without the consent of the owner.
- ii. Although having custody of a motor vehicle with the permission of the owner, the vehicle is intentionally not returned to owner when agreed or demanded.

l. Unlawful Use of a Credit Card (PL 165.17)

- i. Using or displaying a credit card, which has, been revoked or cancelled while attempting to obtain property or services.

4. OFFENSES AGAINST THE GENERAL WELFARE

a. Criminal Impersonation (PL 190.25)

- i. Impersonating another person or acting as the representative of another person and acting with intent to obtain a benefit or to injure another person.
- ii. **EXAMPLE:** Using another person's identification to obtain alcoholic beverages.

b. Falsely Reporting an Incident (PL 240.50, 240.55)

- i. Reporting to official authority the occurrence of a crime, fire, emergency or child abuse knowing that the report is false.
- ii. **EXAMPLES:** Falsely telling police that a crime has occurred; setting off a fire alarm when no fire has occurred.

c. Fireworks (PL 270.00)

- i. Selling or possessing fireworks.

- d. **Obstruction of Governmental Administration (PL 195.05)**
 - i. Acting in any way intentionally to impede, impair or obstruct any public employee in the performance of his or her official duties.
 - ii. **EXAMPLE:** Giving false information to police investigating a crime.
- e. **Possession of Controlled Substances (PL 220.03, 221.05-.40)**
 - i. Possessing any type of controlled substance.
 - ii. Felonies involving controlled substances are those involving sale or the possession with intent to sell.
 - iii. Possess more than two ounces of marihuana is a felony.
- f. **Vehicle Violations (V&T⁷ 511, 600)**
 - i. Includes driving without a license, driving with a suspended license and leaving the scene of an accident.
- g. **Driving While Intoxicated (V&T 1192)**
 - i. Operating a motor vehicle while one's abilities are impaired.
- h. **Giving Alcohol to Minors (PL 260.20, 260.21)**
 - i. Giving alcoholic beverages to minors under the age of 21.

C. SENTENCING ISSUES

- 1. **General Considerations**
 - a. The punishment of those who have violated the law serves several purposes which must be considered in imposing any sentence which is just and fair:
 - i. Deterrence of Offender. It punishes the offender so as to discourage him or her from committing further offenses in the future.
 - ii. Deterrence of Others. Punishing those who violate the law discourages by example others who might be so inclined from committing similar offenses.
 - iii. Rehabilitation. Punishment may be fashioned so as to assist the offender to learn to modify his or her behavior in the future to act within the law.
 - iv. Retribution. When an offender violates the law and in the process causes harm to a victim or to the community in some way, that sense of wrong is avenged by punishing the offender.

⁷ "V&T" refers to the New York Vehicle and Traffic law. The number following is the section of that law.

- b. Any sentence which is just and fair must consider the individual factors of the offender as well, for no two crimes are identical and no two offenders are identical.
 - i. The sentencing of an offender requires an examination of a number of factors concerning both the offender and the offense.
- c. Factors
 - i. Personal Characteristics of the Offender
 - A. Age
 - 1. Did the offender's relative immaturity contribute to the offense or was the offender of sufficient age that he or she should have known better? Compare a 13 year old girl shoplifting cosmetics from a store with a 16 year old girl.
 - B. Health
 - 1. Did the offender suffer from any health problems, which contributed to the offense?
 - C. Family Circumstances
 - 1. Does the offender's home life encourage or discourage future lawful conduct?
 - D. Prior Incidents
 - 1. Has the offender had any prior arrests or encounters with law enforcement authorities?
 - 2. Has the offender had any prior relevant conduct problems at his or her school?
 - 3. Compare an offender guilty of assault who has no priorrecord of assaultive behavior anywhere with an offender who has three prior school suspensions for fighting.
 - E. Academic Record
 - 1. Has the offender demonstrated a reasonable dedication to schoolwork?
 - F. Extracurricular Activities
 - 1. Has the offender participated in extracurricular activities to any extent?
 - G. Employment Record
 - 1. Has the offender held any jobs and, if so, what is his or her employment record? Does the employer speak well or ill about the offender?
 - H. Punishments Already Imposed
 - 1. Has the offender already received some punishment for his/her conduct by parents or school officials?
 - EXAMPLE:** Compare an offender who has performed in school at least at an average level and participates in several extracurricular activities while working part-time at a local store with an offender who has academic problems

at school, participates in no activities and holds no job.

ii. Intent

- A. Although the offender is guilty of the offense, did he or she display an intent to commit the offense or did they act recklessly or in the heat of the moment?

EXAMPLE: Compare an offender guilty of assault who went looking to beat up the victim and surprised him with an offender who was provoked by the victim to fight and was carried away in the fight.

- B. Entrapment: Police conduct, which presents an offender with an opportunity to commit an offense, resulting in the offender's arrest.
- C. Duress or Coercion: Acts or threats by others, which may force the offender to commit the offense.

EXAMPLE: Compare an offender who plans and leads the theft of school equipment with an offender who participates in such an offense because one of the participants threatened to beat him up if he did not participate.

iii. Motive

- A. The reason why a person takes a particular action.
- B. Did the offender commit the offense to help another person or himself or herself or did he or she commit the offense to injure another?
- D. Compare an offender who joins a demonstration protesting government policies regarding the homeless and is arrested for disorderly conduct as an act of civil disobedience with an offender joins a group of friends in a large group at a plaza and refuses a policeman's direction to move on just to have some fun.

iv. Victim

- A. Is the victim especially vulnerable to the offense or did the victim in some way provoke the offense?
- B. Compare an offender who taunts and assaults a younger child with an offender who is provoked by the victim to fight.
- C. Was the harm suffered by the victim minimal or did it significantly affect the victim in some way?
- D. Compare an offense which causes a loss to the store owner of certain goods with an offense which causes a store to close for several days while the damage is repaired or which somehow discourages customers from returning.

v. Role in the Offense

- A. If the offender participated with others in the offense was he or she an organizer or leader of the illegal activity or was he or she a minor participant?

B. Compare the offender who instigates the theft of equipment from a school with the offender who "went along for the ride" or the offender who drove the car which damaged a lawn with the passenger in the car.

vi. Acceptance of Responsibility

A. Does the offender acknowledge responsibility for his or her conduct and sincerely demonstrate remorse or regret or, while admitting guilt, does the offender excuse, minimize or otherwise attempt to avoid responsibility for the offense?

B. Compare the offender who acknowledges his responsibility for taking his neighbor's car without permission with the offender who, while acknowledging guilt, attempts to shift blame to the neighbor for leaving the keys in the car.

III. PROCEDURE: ROLES AND RULES

A. ROLES OF THE PARTICIPANTS AT THE SENTENCING HEARING

1. THE ROLE OF THE PROSECUTOR

a. Function

The function of the prosecutor at the sentencing hearing is to represent the interests of the people of the community. All crimes affect not only the victim in each case, but the community as a whole.

b. Duties and Obligations

Generally, the prosecutor has an obligation to recommend to a jury that a specific sentence be imposed on the offender and to offer evidence in support of that recommendation. A prosecutor in youth court must evaluate the facts of each case and determine what sentence is appropriate to recommend in order to:

- i. punish the offender for what he or she did;
- ii. deter the offender from committing future criminal acts;
- iii. deter others from committing similar crimes;
- iv. compensate the victim for any harm suffered;
- v. rehabilitate the offender.

More specifically, the prosecutor has the following duties and obligations in youth court:

1. investigate the circumstances of the offense by interviewing witnesses and reviewing reports;
2. review the statute violated;
3. investigate the background of the offender;
4. decide what sentence to recommend;
5. prepare for a sentencing hearing;
6. disclose certain information to the defender;
7. present evidence, such as reports and the testimony of witnesses, at the sentencing hearing to support the sentence recommendation that he/she will ultimately make;
8. cross-examine witnesses called by the defender;
9. object to improper or irrelevant arguments or evidence offered by the defender;
10. present a final argument or summation to a jury as to why the sentencing recommendation is appropriate; and
11. act fairly and in the interest of justice.

2. THE ROLE OF THE DEFENDER

a. Function

The function of the defender is to represent the offender, the person who committed the offense.

b. Duties and Obligations

Generally, the defender in youth court must evaluate the facts of each case and the offender's background and determine what sentence is appropriate to recommend to the jury on behalf of the offender.

More specifically, the defender has the following duties and obligations in youth court:

1. Investigate the circumstances of the offense by interviewing the offender and other witnesses and reviewing reports;
2. Review the statute violated;
3. investigate the background of the offender;
4. decide what sentence to recommend;
5. prepare for a sentencing hearing;
6. disclose certain information to the prosecutor;
7. present evidence, such as reports and the testimony of witnesses, at the sentencing hearing to support the sentence recommendation that he/she will ultimately make;
8. cross-examine witnesses called by the prosecutor;
9. object to improper or irrelevant arguments or evidence offered by the prosecutor;
10. present a final argument or summation to a jury as to why the sentencing recommendation is appropriate; and
11. act fairly and candidly.

3. THE ROLE OF THE CLERK/BAILIFF

a. Function

The function of the clerk/bailiff is to maintain accurate records of court proceedings and to help ensure the orderly operation of the court. The clerk/bailiff is an employee of the court system. The clerk/bailiff is a neutral participant.

b. Duties and Obligations

The clerk/bailiff has the following duties and obligations in youth court:

1. precede the judge into court and call the court to order; ("All rise, Youth Court is now in session, the Honorable Judge_____ presiding, please be seated")
2. announce each particular case; ("Participants in the case involving

- Jane Doe, please rise.")
3. require prosecutor, defender and offender to state their names for the record. ("Will the prosecutor, defender, and the offender please state their full names.");
 4. insure that all documents and forms, which are required, are prepared and present in court at the hearing;
 5. provide judge with court folder for each case to be heard;
 6. maintain accurate records of what takes place during each case and the names of all participants in the case (i.e., the name of each case, the case number, the names of all participants, including witnesses, the date of sentencing hearing and the sentence imposed);
 7. render general assistance during the court sessions as requested by the judge;
 8. safeguard the records of each case until they are turned over to the youth court director;
 9. administer an oath to each witness; (When the witness is called, stand and face the witness, raise your right hand and tell the witness: "Raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?" Then tell the witness to be seated on the witness stand).
 10. help maintain order in the courtroom, i.e., proper conduct in court by participants and spectators;
 11. escort the jurors into a room to deliberate at the conclusion of the hearing;
 12. serve as a liaison between the jury and the judge;
 13. escort the juror's back into the courtroom once they reach a verdict and hand the verdict sheet to the judge to review;
 14. after the judge has reviewed the verdict sheet, ask the foreperson to stand;
 15. close proceedings ("There being no further matters before this court, the Court stands adjourned. All rise.")

4. THE ROLE OF THE JUDGE

a. Function

The function of the judge is to preside over the sentencing hearing. The judge, in a sense, is like a referee who ensures that the correct procedures are followed in all cases.

b. Duties and Obligations

The judge has the following duties and obligations in youth court:

1. be fair and impartial (If there is any possibility that a judge may not be fair in a particular case, he/she must not preside over the hearing.

For example, if the judge had a disagreement with the offender in the past or is good friends with the offender or victim, the judge should not preside at the hearing);

2. explain to the jury their function, either by reading to the jury from section 5(a) of this section of the manual, or by conveying to the jury the substance of that information;
3. explain to the jury their duties and obligations, either by reading to the jury from section 5(b) of this section of the manual, or by conveying to the jury the substance of that information;
4. explain to the jury what procedure will be followed at the hearing (For example, state "We will proceed today as follows: the offender will first admit guilt, the prosecutor and defender will first make opening statements to you presenting the facts they expect to establish during the hearing in support of their respective positions, they then will present evidence about the crime and the offender's background, the prosecutor and defender will then be given an opportunity to present to you their arguments as to why a certain sentence should be imposed and then you will retire to the jury room and decide what sentence is appropriate");
5. read the specific charge and take a plea to that charge. (For example, "Jane Doe, it has been charged that on September 18, 1995, at Macy's at the Crossgates Mall, at about 6:30 p.m., you took cosmetics valued at \$45.75, and left the store without paying for them. How do you plead, guilty, or not guilty?");
6. rule on objections (decide what evidence, physical evidence or testimony, is proper or relevant after prosecutor or defender objects);
7. instruct the jury on what evidence to consider, how to deliberate and how to return the verdict at the conclusion of the arguments, either by reading to the jury from sections 5(a) and 5(b), nos. 6-9, of this section of the manual, or by conveying to the jury the substance of that information;
8. ask the foreperson whether the jury has reached a verdict and what it is;
9. sentence the offender after verdict. (For example, "The jury has sentenced you to serve 30 hours of community service, with the following special conditions: [list]."). Since sentencing is one of the most important functions of the Judge and may be a critical factor in convincing the offender to desist from such activities in the future, the judge's sentence should include the following, where appropriate:
 - a) a comment on the jury's determination (For example, "I think that this sentence is fair and appropriate for the offense(s) committed here. We all have to understand that society has rules to protect all of us, and that, even though we are young, we have obligations to follow those rules.");

- b) a recognition of the offender's acceptance of responsibility for his or her actions (For example, "I listened carefully to your testimony this evening, and I believe that you are truly sorry for your actions and that you have learned a valuable lesson from this experience."); and
- c) an expression of support for the offender's future. (For example, " Based upon what occurred here, I am confident that you will complete your community service and fulfill the special conditions imposed upon you, and that thereafter, you will be an asset to the community.").

Please remember that the examples given above are only suggestions, and that you are encouraged to develop your own comments, and to add comments appropriate to the facts of the particular case before you.

5. THE ROLE OF THE JURY

a. Function

The function of the jury in youth court is to decide the appropriate sentence for an offender after examining the evidence in the case and hearing from the prosecutor, defense counsel and the offender. This decision should be based on the goals of sentencing in Youth Court: specific deterrence of the offender, general deterrence of other potential offenders, rehabilitation, and retribution or punishment. (See, Chapter II, Part C, '[1][a]'). One of the purposes of youth court is to allow offenders to be judged by a jury of their peers. The right to have a jury of one's peers sit in judgment is one of the basic constitutional rights in our democracy.

b. Duties and Obligations

Jurors have the following duties and obligations in youth court:

1. be fair and impartial by basing their decision on the evidence in the particular case and not extraneous factors;
2. settle disputed issues of fact presented by the advocates;
3. avoid discussing the case with other jurors until deliberations begin;
4. communicate with only the judge and clerk by way of written notes;
5. follow the court's instructions;
6. deliberate with other jurors by candidly expressing your opinion as to what the sentence should be and why;
7. reach a unanimous verdict as to the appropriate sentence;
8. inform the clerk, by way of written note, through the foreperson, that a verdict has been reached; and
9. announce verdict in open court through foreperson.

6. THE ROLE OF THE FOREPERSON

a. **Function**

The function of the foreperson is to lead the deliberations of the jury to the extent of encouraging the participation of all the jurors in the process, mediating any disputes between jurors and keeping the jurors focused on the decision-making process. Despite this responsibility, the foreperson's vote on a particular sentence is entitled to no greater weight than that of the other jurors.

b. **Duties and Obligations**

The foreperson, in addition to those of a juror, has the following additional duties and obligations in youth court:

1. lead the jury's deliberations by stimulating discussion amongst the jurors;
2. maintain order in the jury room, insuring an open discussion of the facts and the appropriate sentence;
3. require each juror to state his/her views as to what the offender's sentence should be and why;
4. call for a vote during the deliberations as to the appropriate sentence;
5. communicate with the judge, in writing, when a juror or the jury has a question or needs guidance during their deliberations;
6. announce the jury's verdict.

B. RULES OF EVIDENCE

1. **Discretion of Judge**

Evidence consists of the testimony of witnesses and physical exhibits such as reports or photographs. At a youth court sentencing hearing, any evidence is admissible that is relevant and material to the issue of sentencing. In other words, any evidence that would have an impact on the appropriate sentence an offender should receive is admissible. Evidence, which does not relate to the issue in question, is not admissible and the party against whom it is offered should object. For example, evidence that an offender failed a driver's test is irrelevant to what an appropriate sentence should be in a shoplifting case and the defender should object to any such evidence. If the judge agrees with an objection, he or she "sustains" the objection. If the judge does not think the objection is appropriate, he or she "overrules" the objection. Objections should be made and sustained only in the most extraordinary circumstances. For example, it would be inappropriate for a police officer or store security guard to testify that someone "looks like a criminal" or imply that they committed

another crime in the past without facts supporting that implication. The judge has the ultimate discretion to exclude evidence if it is irrelevant, immaterial or too prejudicial.

2. **Burden of Proof**

In order to establish the guilt of a person at a trial the government is required to establish the person's guilt, beyond a reasonable doubt. At a sentencing hearing, guilt has already been established. Therefore, neither the prosecutor nor the defender bear any burden of proof. The jury need only find the evidence believable or credible in order to rely on it.

C. **PREPARING FOR THE SENTENCING HEARING**

In order to present an effective case during the sentencing hearing preparation is essential. Preparation consists primarily of interviewing witnesses, taking statements, collecting or creating physical evidence, and preparing outlines or notes for the direct and cross examinations of witnesses, and opening and closing statements. During the interviews, it will be helpful to take notes of important relevant information. These notes will be helpful when preparing the questions to ask the witnesses on the stand and in preparing for your final arguments. Keep in mind that witnesses do not have to speak to you if they choose not to.

Although it is always preferable to call witnesses at the hearing who have first hand information about the offense, particularly in the case of the prosecution, this is frequently not possible. For example, in a shoplifting case, the store clerk or security guard who witnessed the offense may be unable to attend the youth court proceeding. In that case, a written statement is the best alternative.

You should always assume that your witnesses will be unable to appear in youth court and that your evidence will consist of a written statement. The preferred method for obtaining that statement is to interview the witness in the presence of a third party (preferably another youth court member) who is able to appear in Youth Court and testify to the substance of the statement. You should then prepare a written statement based on the interview, either in narrative form or in question and answer format, signed by the witness in the presence of the third party. The third party may then appear in youth court and testify, and you can question that third party, eliciting that the third party was present when you interviewed the witness, that the witness signed the statement, etc. You should then move to admit the statement as an exhibit and either you or the third party should read the statement to the jury.

It is highly recommended that each Youth Court participant contact his or her advisor or mentor as soon as a case is assigned to them. Advisors can be invaluable in terms of providing advice and direction.

1. Preparation required by prosecutor

a. Receive and review arrest report or the report of offense

In preparing for the hearing the initial source of information about the offender's crime, will, in all likelihood, come from the arrest report or some other report that details the offense. This report should be obtained from the youth court coordinator as soon as available and reviewed in detail.

b. Obtain information for sentencing by contacting witnesses.

The most important source of information about the crime and the offender will be witnesses. All witnesses who possess relevant information should be interviewed. All witnesses should be interviewed with a critical eye. Do not be afraid to question inconsistencies or a version that does not sound right.

i. Arresting officer

The arresting officer should usually be the first witness the prosecutor speaks to. Oftentimes, the arresting officer has spoken to any victims and the offender. The prosecutor should ask the officer what the victim said and what the offender said. The arresting officer should also be able to provide you with the phone number and address of the victim and possibly of some witnesses.

ii. Victim, if any.

The victim, if any, should always be interviewed. Preferably the interview should take place in person but an interview over the telephone may suffice. The victim should be questioned about the circumstances of the crime, including what damage was caused, the cost of repairing any damage, how the offender acted and what steps the offender has taken to right the wrong caused since the crime was committed.

iii. Other witnesses, if any.

If there were any witnesses to the offense, they should be interviewed. They should be questioned in detail about what they saw and heard during the commission of the offense.

iv. Others who may have information about offense or offender

- A. Friends/Acquaintances
- B. Co-defendants
- C. School officials
- D. Community leader

E. Family Members

The prosecutor may wish to interview any other individuals, such as acquaintances, co-offenders, school officials or community leaders who may have some insight into the offense or the offender's past or character. These witnesses may possess information relevant to the ultimate sentencing recommendation made by the prosecutor. They may know facts about the offense and whether the offender committed similar acts in the past.

c. **Prepare for sentencing hearing**

- i. Advise any witnesses of date, time and location;
- ii. Prepare any statements, documents or other objects for use at the hearing;
- iii. Disclose evidence and witnesses to defense counsel;
- iv. Prepare witnesses to testify-direct and cross-examination;
- v. Prepare direct and cross-examinations;
- vi. Prepare final argument to the jury.

After interviewing witnesses and investigating the circumstances of the crime, the prosecutor must prepare for the sentencing hearing itself. All witnesses must be advised of the date, time and location of the hearing. As discussed above, if they will not be able to attend the hearing, a written statement should be prepared and signed by the witness to introduce at the hearing. Arrangements should be made to bring any other documents or reports or any other evidence, such as photographs, to court. The prosecutor must also remember to comply with his/her obligation to provide the defender with various documents and information.

The prosecutor must also prepare the witnesses to testify. This means discussing with them what you will ask them on the stand and how you will ask it. It also means preparing them for cross-examination by anticipating what the defender will ask and explaining that to the witness.

Finally, the prosecutor must decide on the appropriate sentencing recommendation and must prepare his/her final argument to the jury. This argument should be organized and well thought out. The objective is to present a persuasive argument for the sentence you propose based upon the evidence submitted at the hearing.

2. **Preparation required by defender**

a. **Receive and review arrest report or other report of offense**

As stated previously, the arrest report or any other report concerning the offense is an important source of information and should be obtained as soon as available and reviewed in detail.

b. Contact offender

For the defender, one of the most important steps in preparing for the hearing is contacting and interviewing the offender. The offender's name, address, and phone number can be obtained from the youth court director. The defender represents the interests of the offender and must communicate that to the offender during the initial contact. One of objectives of meeting is to assure the offender that he/she can trust you and that you are representing his/her best interests.

i. Arrange meeting

A meeting with the offender should be arranged as soon as possible. Facilities will be provided for such a meeting. Do not arrange to meet the offender at any other location, unless the youth court director consents to the location.

ii. Obtain background information

- A. Family background
- B. Academic record
- C. Employment background, if any
- D. Hobbies, extracurricular activities, if any

During the interview with the offender, the defender should attempt to learn as much as possible about the offender's background. The objective is to obtain positive information about the offender that can be used at the sentencing hearing. The defender should ask the offender about his/her family. The offender should be asked where they go to school, how they are doing in school and what, if any, extracurricular activities they are involved in. The offender should be asked about their employment record or about any volunteer organizations they are, or have been, involved with. The offender should also be asked about any hobbies or interests they may have.

iii. Obtain offender's version of offense

The offender's version of how and why the offense was committed should be obtained during this interview. This information will be critical to the defense of the offender. The offender's version should be viewed with a critical eye. Do not be afraid to question inconsistencies or a version that does not sound right. If a jury thinks that an offender is down playing his/her role or that the offender is not completely candid with them, they may impose a harsher sentence.

iv. Discuss possible explanatory or mitigating circumstances

Although the offender must admit guilt in order to participate in the program, the defender should still explore possible mitigating circumstances or defenses with the offender. These circumstances may still be relevant at the sentencing hearing in order to insure an appropriate sentence, to lessen the seriousness of the offense or the culpability of the offender. Mitigating circumstances may result in a more lenient sentence. Simply by asking the offender why he or she committed an offense will often reveal possible mitigating circumstances or a defense. Examples of such circumstances are drug or alcohol use, peer pressure, problems at home and self-defense. There is almost always some reason that can be offered for the offense being committed that will present the offender in a somewhat more favorable light to the jury.

v. Discuss and identify possible witnesses

A. Witnesses to offense, if any

Often times the offender is the only one who can identify important eyewitnesses. The offender should be asked the names and addresses of any witnesses to the offense. This information should be written down so that the defender will be able to contact them.

B. Character witnesses

- (1) Teachers/School officials
- (2) Employers
- (3) Friends or Acquaintances
- (4) Neighbors
- (5) Youth Court Director

The offender should be asked the names and addresses of any possible character witnesses. These witnesses may include teachers or other school officials, past or present employers, friends, acquaintances and neighbors. This information should be written down so that the defender will be able to interview them and possibly call them as witnesses at the hearing.

c. Contact others to discuss offender and offense

An important duty of the defender is to interview all of the witnesses that possess relevant information.

i. **Arresting officer**

The defender should interview the arresting officer concerning the details of the offense. In addition the officer should be asked for the name and phone number of witnesses if this information is not otherwise known. Oftentimes, favorable information about the offender can also be obtained from the arresting officer. For instance, if the offender admitted guilt immediately or was otherwise very cooperative with the officer, this may be information the defender would like to bring to the jury's attention at the hearing.

ii. **Victim, if any**

The defender should also interview the victim, if any, and if the victim agrees. The victim does not have to speak to the defender and may, in all likelihood, refuse. However, if the victim agrees to speak to the defender, the circumstances of the offense should once again be explored. The victim may possess information favorable to the offender that could be used at the sentencing hearing.

iii. **Witnesses to crime, if any**

Any witnesses to the offense should also be interviewed as to the circumstances of the crime.

iv. **Potential character witnesses**

The defender should identify potential character witnesses and interview them. Each of these witnesses should be questioned about their background, how they know the offender, how long they have known the offender, the offender's reputation in the community and what their opinion is of the offender.

d. **Prepare for sentencing hearing**

- i. Advise any witness of date, time and location;
- ii. Prepare any statements, documents or other objects for use at the hearing;
- iii. Disclose evidence and witnesses to prosecutor;
- iv. Prepare direct examination of defendant and review with defendant;
- v. Prepare witnesses to testify-Direct and Cross-Examination;
- vi. Prepare direct and cross-examinations;
- vii. Prepare final argument to the jury.

After interviewing witnesses and investigating the circumstances of the crime, the defender must prepare for the sentencing hearing itself. All witnesses must be advised of the date, time and location of the hearing. As discussed above, if the witnesses are unable to attend the hearing, a written statement should be prepared and signed by the witness to introduce at the hearing. Arrangements should be made to bring any other documents or reports or any other evidence, such as photographs, to court. The defender must also remember to comply with his/her obligation to provide the prosecutor with various documents and information.

The defender must also prepare the offender and any other witnesses to testify. This means discussing with them what you will ask them on the stand and how you will ask it. It also means preparing them for cross-examination by anticipating what the prosecutor will ask and explaining that to the witness.

Finally, the defender must decide on the appropriate sentencing recommendation and must prepare his/her final argument to the jury. This argument should be organized and well thought out. The objective is to present a persuasive argument for the sentence you propose based upon the evidence submitted at the hearing.

c. Preparation required by judge

a. Become familiar with youth court rules and regulations

The judge should be fully familiar with the youth court rules as they pertain to the proper procedure to be followed during the sentencing hearing.

b. Review charges

The judge should also be fully familiar with the charges against the offender. This requires contacting the youth coordinator and obtaining and reviewing a copy of the formal charges against the offender and a copy of the statute or code that was violated.

c. Prepare scripts for various stages of proceedings

The judge may either prepare his or her own "script" to be used during various stages of the proceeding from the suggestions in this manual or may adapt a "script" used by another youth court member who previously served as a judge. A sample "script" is attached in Appendix C, p. C-3.

4. Preparation required by Clerk/Bailiff

a. **Review charges**

The clerk/bailiff should be familiar with the charges against the offender. This requires contacting the youth coordinator and obtaining and reviewing a copy of the formal charges against the offender and a copy of the statute or code that was violated.

b. **Prepare scripts for various stages of proceedings**

The clerk/bailiff must also obtain copies of scripts to be used during various stages of the proceeding by him/her from the youth court manual or coordinator. If no such scripts exist, the clerk must prepare the scripts.

c. **Be prepared to substitute for any of the three other participants in event any are unable to attend**

In the event that another participant is unable to attend the sentencing hearing, the clerk/bailiff must be prepared to substitute for that person. In the event that a participant, such as the prosecutor or defender, is unable to appear for the hearing on short notice, the hearing may have to be adjourned in order to allow the clerk to properly prepare for his/her role.

5. Discovery obligations of prosecutor and defender

a. **Information that must be disclosed to opponent**

1. No later than one hour before the actual sentencing hearing, the prosecutor and defender **must** provide to the other:
 - i. Copies of any statements, documents or other objects, which are intended to be used in any way at the sentencing hearing;
 - ii. A list of any witnesses intended to be called to testify at the hearing. The list should include the witnesses address and phone number.

Early disclosure of this material is highly recommended and encouraged. In the event the material is not disclosed in a timely fashion, the judge may preclude the evidence if it results in unfairness to your opponent.

2. The prosecutor has a continuing obligation to provide to the defender any evidence that is favorable to the offender, i.e., information that would help the offender receive a more lenient sentence. **This information must be turned over to the defender as soon as practicable after it is received by the prosecutor.**

b. Purposes of Discovery

This information is disclosed to the other side to avoid surprising a participant with evidence at the hearing, to facilitate preparation and to avoid unnecessary delays at the hearing. Surprising an opponent is not fair and may result in the hearing being postponed or delayed in order to allow an advocate an opportunity to investigate the evidence. The hearing is a search for the truth and "sandbagging" an opponent with information does not facilitate the truth-seeking process.

c. Sanctions for failure to comply with discovery obligation

i. Possible Court orders for failure to comply

If either party fails to comply with the requirement to disclose this information, the judge may issue an order as fairness and justice requires. The judge may:

1. delay or adjourn the hearing to give the opposing party an opportunity to review and investigate the late disclosure;
2. refuse to admit as evidence any statement or object not disclosed or the testimony of any witness not disclosed;
3. issue any other order that may be appropriate in a given case. (i.e., fine the party who failed to disclose the information); or,
4. recommend disciplinary sanction to the Youth Court coordinator.

ii. Factors to be considered

In deciding what remedy is appropriate, the judge should consider the following factors:

1. Whether nondisclosure was intentional or inadvertent;
2. Prejudice, if any, to opposing party;
3. Date when evidence was first known to participant seeking its admission;
4. Importance of evidence to sentencing decision;
5. The effect of any sanction on the offender's entitlement to a fair hearing; and
6. Any other factors which appear in a given case to be relevant to fairness and justice

D. INTRODUCING EVIDENCE AT THE SENTENCING HEARING: PHYSICAL EVIDENCE AND THE TESTIMONY OF WITNESSES

1. Physical Evidence

Physical evidence consists of any document or object, as distinguished from the testimony of a witness. Examples of physical evidence that may be used at a sentencing hearing are: statements, reports, receipts, estimates, or photographs. Physical evidence introduced at the hearing are known as exhibits.

The prosecutor or defender may wish to bring a piece of physical evidence to the jury's attention during the hearing. In order for the jury to consider a piece of physical evidence, it must be accepted into evidence at the hearing by the judge. Certain requirements must be met before physical evidence can be introduced as an exhibit at the sentencing hearing.

a. Formally introducing the physical evidence at the hearing

There are certain procedural steps that must be taken in order to actually introduce physical evidence at the hearing as an exhibit.

i. Pre-mark all exhibits.

During the preparation for the hearing, the prosecutor and defender must decide what physical evidence they will introduce at the hearing and in what order they will introduce the evidence. Once this decision is made, the evidence should be marked for identification. What this means is that a notation should be placed on an exhibit sticker (to be supplied) which will be affixed on the exhibit that identifies it by number or letter and as a government's (prosecutor's) or offender's (defender's) exhibit. Traditionally, prosecutor's use numbers and defender's use letters to mark their exhibit. For example, a prosecutor would mark his/her first exhibit as "Government's Exhibit #1" and the Defender would mark his/her first exhibit as "Offender's Exhibit A."

ii. Establish a foundation for the physical evidence at the hearing

In order to introduce physical evidence at the hearing a foundation must first be established. An advocate can not simply show an item of physical evidence to the jury before a foundation has been established. It must be demonstrated to the judge that the physical evidence is relevant to the issue in the case. At the hearing any evidence that relates to what the appropriate sentence should be is relevant. In other words, the document or object must have

something to do with the offender or the circumstances of the crime.

Either through a witness or an oral statement to the jury, the person offering the exhibit must establish generally what the evidence is and how it relates to the case under consideration. For example, if an advocate wished to introduce a police officer's arrest report into evidence, a foundation could be established by asking the police officer on the stand to identify the document and asking the officer whether it pertained to the case under consideration. If the officer was not available to testify, the advocate who wanted to introduce the report would simply identify the document for the judge and jury.

iii. Formally asking the judge to accept the physical evidence as an exhibit at the hearing.

Once a foundation for a piece of physical evidence has been established, the advocate asks the judge to admit the exhibit into evidence. For example, the defender would state: "At this time your honor, I offer defender's exhibit A into evidence." The evidence is then shown to the opposing advocate who then has an opportunity to object or not to the introduction of the exhibit into evidence. If the opposing advocate has no objection, the judge accepts the physical evidence into evidence and it is read to the jury by a witness or the advocate or shown to the jury. If a proper foundation is not established, i.e. the relevancy of the physical evidence is not shown, the opposing advocate can object to it being introduced into evidence and shown to the jury. The judge would then have to rule on whether to introduce the exhibit or not.

SAMPLE: (To introduce the statement of a witness)

Q. Now I'd like to show you what's been marked as prosecution exhibit #1 for identification. Do you recognize that document?

A. Yes I do.

Q. Can you tell us what it is generally?

A. It is a statement given by Jane Doe, store security for Macy's Department store relating to the theft of property on June 2, 1995.

Q. When was that statement taken?

A. June 25, 1995.

Q. Were you present when it was taken?

A. Yes I was.

Q. Is it signed?

A. Yes it is.

Q. By whom?

A. Jane Doe.

[Q. (If not signed) Is the statement a fair and accurate representation of what Jane Doe told us concerning this incident?

A. Yes it is.]

Q. Your honor, at this time I would like to offer this statement as prosecution's exhibit #1 and have the witness read it to the jury.

A. [Witness reads statement.]

2. **The testimony of witnesses**

Evidence is also presented to a jury through the testimony of witnesses, such as the victim, the arresting police officer and the offender. While preparing the case for the hearing, the prosecutor and the defender should identify which witnesses they wish to ask to testify at the hearing. If the witness is unable or unwilling to testify, a statement should be obtained from the witness and introduced as an item of physical evidence as described above.

If the witness agrees to testify, he/she must be prepared to testify as described previously and must be informed of the date and time of the hearing.

At the hearing, the witness is called to the witness stand as follows: "At this time, your honor, I call John Doe to the stand." The witness then takes an oath to tell the truth before sitting in the witness stand.

Once the witness is seated in the witness stand, the participant that asked them to testify asks the witness questions. This is called direct examination. Before the examination begins, the questioner asks the court for permission to examine the witness. The questioning then begins. When the questioner finishes, the judge is

informed that there are no further questions. When the direct examination concludes, the opposing participant is given an opportunity to question the witness. This is called cross-examination. After the cross-examination, additional questions are permitted in the judge's discretion. This questioning is known as redirect and recross examination.

a. Direct Examination

i. Objectives

A witness is called to the stand by a participant to inform the jury of relevant information. The objective of direct examination is to have the witness convey that information to the jury in a clear, believable and logical manner. As mentioned previously, physical evidence may be introduced into evidence through a witness if the witness is familiar with the exhibit.

ii. Form of Questions on Direct examination

Witnesses should be asked open-ended questions that ask for specific information on direct examination. Questions that begin with the words " who, what, where, when, how and why " are usually allowed. Leading questions are not permitted on direct examination. A leading question suggests the answer to the witness. For instance, the question, " Isn't it true that John Doe broke your window on March 2, 1994", is a leading question. On direct examination, the question is properly asked as follows: "What happened on March 2, 1994 at approximately 2:00 P.M.?"

If the form of the question is not proper, the other side may object. The judge will then have to rule on whether the form of the question was proper. If not, the judge should simply ask the questioner to rephrase the question.

iii. Sample direct examinations

The following are sample direct examinations. They are only samples. Witnesses will have to be asked additional and different questions depending on their background and the information you wish to elicit. These sample questions therefore should not be followed exactly. Be creative.

1. Sample direct examination questions for the victim of a theft

- a. Please state your name for the record
- b. Where do you live?
- c. How long have you lived there?

- d. Do you live there with anyone else?
- e. Who do you live there with?
- f. Are you married?
- g. Do you have any children
- h. How many
- i. How old are you?
- j. Are you employed?
- k. Where are you employed?
- l. Where is that located?
- m. What is your position there?
- n. How long have you worked there?
- o. Where were you on March 2, 1994 at approximately 2:00 P.M.?
- p. What happened at that time? (witness describes what he/she saw or heard)
- q. Did you see who did it?
- r. Do you see that person in court today?
- s. Please point the person out
- t. How much did the item cost?
- u. Did you provide me with a receipt for the item?
- v. I'd like to show you government's exhibit 1 for identification. Do you recognize this as the receipt?
- w. Does the receipt contain information about the cost of item?
- x. Your honor, I'd like to introduce this receipt into evidence as government's exhibit 1.
- y. May I show it to the jury, your honor?
- z. What other costs, if any, did you incur because this item what taken?

2. Sample direct examination questions for police officer who arrested offender

- a. Please state your name for the record
- b. Are you employed?
- c. Where are you employed?
- d. What is your position?
- e. How long have you been a police officer?
- f. Were you involved in an investigation or arrest on March 2, 1994?
- g. Who was arrested?
- h. Do you see that person in court today?
- i. Please point the person out
- j. Did you speak to the victim of the offense?
- k. What did the victim tell you?

- l. Did you complete a report after investigating this offense?
- m. I'd like to show you government's exhibit 2 for identification. Do you recognize this as your police report pertaining to this offense?
- n. Your honor, I'd like to introduce this report into evidence as government's Ex. 2.
- y. May I show it or have the witness read it to the jury, your honor?

3. Sample direct examination questions for offender

- a. Please state your name for the record
- b. Where do you live?
- c. How long have you lived there?
- d. Do you live there with anyone else?
- e. Who do you live there with?
- f. How old are you?
- g. Do you go to school?
- h. Where do you go?
- i. What grade are you in?
- j. What classes are you taking?
- k. Do you work?
- l. Where?
- m. Doing what?
- n. Are you involved in any extracurricular activities?
- o. What are they?
- p. Where were you on March 2, 1994 at approximately 2:00 P.M.?
- q. What happened at that time?
- r. Why did you do that?
- q. Have you ever been arrested before?
- r. Is there anything else you would like to tell the jury? (offer apology)

4. Sample direct examination questions for character witness

- a. Please state your name for the record
- b. Where do you live?
- c. How long have you lived there?
- d. Do you live there with anyone else?
- e. Who do you live there with?
- f. Are you married?
- g. Do you have any children?
- h. How many?

- i. How old are you?
- j. Are you employed?
- k. Where are you employed?
- l. Where is that located?
- m. What is your position there?
- n. How long have you worked there?
- o. Do you know the offender, John Doe?
- p. How do you know him?
- q. When did you first meet him?
- r. What is your relationship to him?
- s. How many times have you had an opportunity to speak to him?
- t. Do you know where he lives?
- u. Where?
- v. Had you heard anything about the reputation or character of John Doe in the community in which he lives prior to March 2, 1994?
- w. What have you heard?
- x. Do you have an opinion as to the character or reputation of John Doe prior to March 2, 1994?
- y. What is your opinion?

b. Cross-examination

After a prosecutor or defender conducts a direct examination of a witness, their opponent is given an opportunity to cross-examine the witness.

i. Objectives

The objectives of cross-examination are to elicit information favorable to your position and to cast doubt on testimony that was unfavorable to your position. When appropriate, the questioner should attempt to cast doubt on the testimony of the witness by showing that the witness previously gave a different version, the witness' testimony is improbable, or that the witness is biased or prejudiced because of his/her relationship to the offender or victim. Not every witness need be cross-examined. If the witness did not hurt your position on direct examination, you may decide not to cross-examine the witness.

ii. Form of Questions on Cross-examination

Witnesses can be asked leading questions on cross-examination. The questioner may, however, also use open ended questions.

iii. **Sample cross-examinations**

The following are sample cross-examinations. They are only samples. Witnesses will have to be asked additional and different questions depending on their background and the information you wish to elicit. These sample questions therefore **should not be followed exactly**. Be creative.

1. **Sample cross-examination questions for the victim of a theft**

- a. Isn't it true that when you approached John Doe, he immediately told you what he did?
- b. He didn't say he didn't do it, did he?
- c. He didn't say someone else did it, did he?
- d. He didn't struggle with you did he?
- e. He didn't threaten you, did he?
- f. Isn't it true that he apologized to you immediately?
- g. He told you he took the item because his he needed a gift for his grandmother and couldn't afford one correct?
- h. He told you his grandmother was in the hospital and sick, correct?

One of the purposes of the above questioning is to show that the offender is an honest person, who admitted his guilt immediately and didn't try to hide it. It also is intended to show that the offender is not a violent person. In addition, it demonstrates that there was a sympathetic reason for the crime.

2. **Sample cross-examination questions for the arresting police officer**

- a. Officer, you didn't see the crime occur, did you?
- b. You weren't in the store at the time, were you?
- c. You arrived after the victim called the police correct?
- d. When you arrived at the store, John Doe was cooperative, wasn't he?
- e. He didn't struggle, did he?
- f. Isn't it true that when you first spoke to John Doe, he immediately told you what he did?
- g. He didn't say he didn't do it, did he?
- h. Isn't it true that he apologized to the victim in your presence?
- i. He told you he took the item because his he needed a gift for his grandmother and couldn't afford one correct?

- j. He told you his grandmother was in the hospital and sick, correct?
- k. You've never arrested John Doe before, have you?
- l. In fact, to your knowledge, John Doe has never been in trouble before, correct?

One of the purposes of this line of questions is to show that the officer was not a witness to the crime and therefore his testimony is of minimal value. It also is intended to show that the offender was honest with the police officer and therefore is, arguably, a good person. It also elicits the offender's explanation for committing the crime. Finally, the fact that the officer has not arrested the offender before can be used to argue that he has not committed crimes in the past.

3. Sample cross-examination questions for the offender

- a. You stole the item on March 2, 1994, didn't you?
- b. You claim that you did it because you wanted to get something for your sick grandmother and had no money, correct?
- c. You didn't try to get a part time job to earn the money for a gift, did you?
- d. You didn't ask you mother for money for a gift, did you?
- e. You didn't ask your father, did you?
- f. You didn't ask your sister, did you?
- g. You didn't try to make your grandmother a gift, did you?
- h. You didn't tell the victim you needed a gift for your sick grandmother before you stole the item, did you?
- i. When was the last time you bought something for yourself?
- j. Where did you get that money from?
- k. How much did that cost you?
- l. You only admitted the crime and apologized after you were caught red handed, correct?
- m. You've committed similar offenses in the past, haven't you?
- n. In fact, two months ago, you stole a pair of pants, didn't you?
- o. Your grandmother didn't need pants, did she?

One of the purposes of this line of questions is to establish that there were other legal or legitimate ways to get something for the offender's grandmother. Another purpose is to show that the offender only admitted the crime after being caught "red-handed." Another purpose is to show that the person stole in the past and therefore the punishment should be greater this time.

4. **Sample cross-examination questions for a character witness**

- a. You're a friend of the offender, aren't you?
- b. A very good friend, correct?
- c. You are a friend of his family, correct?
- d. How long have you known his family?
- e. You are here to help a friend, correct?
- f. You weren't at the victim's store on March 4, 1994, were you?
- g. Aside from what you have heard, you don't know what happened, correct?
- h. Prior to March 4, 1992, how many times have you spoken to other people about the offender's character or reputation?
- i. Prior to March 4, 1992, how many times have you spoken to the offender?

One of the purposes of this line of questioning is to show that the witness and the offender are friends in order to argue that the witness' opinion is suspect because of the prior relationship. The argument is that friends may protect one another. Another purpose is to show that the witness was not present during the crime and therefore the testimony is not that relevant. This questioning is also intended to show that the opinion given is really that of the witness and not the community because the witness has not spoken to many people about the offender's character.

c. **Redirect examination and recross-examination**

After a witness has been cross-examined, the party that initially asked the witness to testify, will be given a brief opportunity to conduct a redirect examination in order to ask follow-up questions that clarify or explain anything the witness testified to on cross-examination.

After a redirect examination, the party that cross-examined the witness, will be given a brief opportunity to cross-examine the witness as to questions asked on redirect.

E. THE SENTENCING HEARING

1. **Clerk/Bailiff calls case**

One of the duties of the clerk/bailiff is to call the court to order, and to announce what case will be heard next. Once the case is called, all parties will step forward

and be seated at their tables. The clerk will then ask for the names of the parties. For instance, the clerk will ask the prosecutor and the defense counsel for their names. The prosecutor would respond "Jane Doe, for the government." Defense counsel would reply, "John Doe, for the offender, Paul Smith."

2. Admission of guilt

Although the offender will have previously admitted his/her guilt, this will be reaffirmed before the sentencing hearing in order to conclusively establish the offender's guilt before the jury. The judge will read the charge to the participants. For instance the Judge will say, "It is charged that on February 1, 1993, in this town/city and the State of New York, Jane Doe, intending to deprive another of property, wrongfully took a pair of jeans from the Gap store located in the Colonie mall, without paying for the jeans."

The judge will then ask the offender how he or she pleads to the charge. In order to participate in Youth Court, the offender must respond by saying that he or she admits to or is guilty of the charge.

3. Opening Statements

Prior to any witnesses testifying or evidence being introduced, the judge will permit the prosecutor and the defender an opportunity to present opening statements.

An opening statement is an advocates first opportunity to present to the jury the facts of the case in a light most favorable to their cause. It should be short, concise and contain only facts you believe the evidence will show. An opening statement should not be argumentative and therefore you should not explicitly state why you believe a specific sentence is appropriate. However, you may state during your opening what your ultimate sentencing recommendation will be.

a. Prosecutor's opening

The first advocate to address the jury at this stage is the prosecutor.

i. Describe offense

The prosecutor should begin the opening by explaining the evidence of the offense to the jury in the light most favorable to the government. For example in an assault case, the prosecutor may begin by stating that "This case involves the theft of a pair of jeans from Macy's by Jane Doe on June 5, 1995." The prosecutor should then detail the circumstances of the offense. This statement should convey how serious the offense was. It should contain information that the prosecution intends to introduce through witnesses and physical evidence.

ii. **Discuss any factors relevant to sentencing**

Any other factors that would support the sentence to be recommended and which the evidence during the hearing will support should also be mentioned during the opening. For example, the emotional or financial harm suffered by the victim, the offender's past criminal conduct or if the offender showed no remorse for the crime should be mentioned during your opening. Do not make unwarranted attacks on the offender's character. For instance, never compare an offender to an animal or call the offender names. The opening must be based upon the evidence in the case.

iii. **Recommend sentence or otherwise**

At the conclusion of the opening, the prosecutor should inform the jury that at the conclusion of the case, the jury will be asked to impose a specific sentence.

iv. **Sample opening by a prosecutor**

"May it please the court, Mr./Miss Doe (defender), members of the jury. I'd like to begin by thanking you for your time and attention in this matter. I now have the opportunity to present to you an opening statement. An opening statement is a preview of what the evidence will show during this hearing. Now what will the evidence show?"

On May 2, 1994, John Doe (offender), while hosting a party at his parents' home without their knowledge, served liquor to minors and seriously damaged his neighbor's home to the tune of \$1,500.00. The evidence will show that on that day in May, John Doe "spread the word" at his school that he would be throwing a graduation party that night. Approximately 50 underage students showed up that evening and began to party. During that party, John Doe served alcohol to minors, some of whom were his friends. He served them alcohol even though he knew some of them were driving. Things began to get out of control at about 11:00 A.M. At around that time, a neighbor came to John Doe's home and complained about the noise. John Doe became angry and began to yell at the neighbor. After the neighbor left, John Doe began to throw beer bottles at the neighbor's home. Soon a number of his friends began to join in. Eventually, three windows were broken which cost \$1,500.00 to replace. Eventually the police were called. When they arrived, John Doe began to yell and curse at them. He struggled as they placed handcuffs on him. The police then took him away and contacted his parents.

The evidence will also show that John Doe is a poor student who rarely attends class. More importantly, a judge has already declared him a person in need of supervision, which means that even his parents can not control him.

At the conclusion of the evidence in this matter, I will ask you to impose a sentence of 80 hours of community service, restitution, and psychological counseling for this offender. Thank you very much."

b. Defender's opening

After the prosecutor addresses the jury, the defender will have an opportunity to make an opening statement to the jury.

i. Description of offense (if different from prosecution version)

The defender should begin the opening by describing the evidence of the offense to the jury in the light most favorable to the offender. For example, in a provoked assault case, the defender might say that "On June 6, John Doe did hit Jane Doe, but only after she teased and taunted him about being short." The defender would then explain the circumstances of the offense from the offender's perspective.

ii. Discuss any factors favorable to the defender

During his/her opening, the defender should point out any factors that are favorable to the offender, as long as they are based upon evidence the defender expects to introduce during the hearing. For instance, if the offender has led an otherwise law-abiding life, it should be pointed out that this is the offender's first criminal offense. Likewise, if a character witness will testify that the offender is an otherwise honest person or has contributed to the community, these things should be brought to the jury's attention. In addition, any defense or legitimate excuse for committing the offense should be recounted to the jury.

iii. Recommend sentence or otherwise

At the conclusion of the opening, the defender should recommend that the jury impose a specific sentence.

iv. Sample opening by a defender

"May it please the court, John Doe, Ms. Doe (prosecutor) members of the jury. I'd like to begin by thanking you for your time and attention in this matter. John would also like to thank you for your time here. I now have the opportunity to present to you my opening statement which will present to you a more complete picture of John Doe the person and the events of the evening in question.

What is this case really about? It's really about John Doe, my client. Who is John Doe? You will learn that John Doe is not the irresponsible person the prosecution has tried to portray. Rather John Doe has lead a very straight and responsible life, albeit, with a few minor detours. John Doe is 15 years old and attends Saratoga High School. He is a "B" student who

hopes to go to college some day and study accounting. He plays in their band and plays soccer and baseball. He has numerous friends.

John's problems have only recently begun. In 1991, his parents' divorced and his father moved to California. His mother remarried a year later to someone John did not care for. His parents' divorce crushed John. He was lost. He felt abandoned. As if his parents' didn't care about him. His life was falling apart. He rebelled, probably a cry for help. When his father left, John's responsibilities at home grew. At times he had to babysit his brothers. At times he had to console his mother late at night and couldn't get up for school the following day. That is why his attendance was poor. As time went on, John's frustrations grew and his behavior changed. His mother felt he needed help. Then the unfortunate incident of May 2 occurred. John is sorry it did and wished it never had. He has apologized to his parents, his neighbor, the police officers involved and his friends. He has begun to make restitution.

The evidence will show that John is a person who needs not your scorn, but your help, your understanding, and your guidance; At the conclusion of the evidence in this matter, I will ask you to give him that help, guidance and understanding by asking you to impose a sentence of 20 hours community service, restitution and psychological counseling. Thank you very much."

4. The introduction of evidence

Once guilt is established, the sentencing hearing will begin.

a. Judge asks prosecutor if any evidence to be offered

The judge will begin the hearing by asking the prosecutor whether there is any evidence they wish to introduce that is relevant to what the appropriate sentence should be.

b. Prosecution then offers its evidence

i. Arrest report or other report of offense

If a police report or any other report was completed that details the offense, it should be marked as an exhibit and offered into evidence by the prosecution. The circumstances of the offense are always relevant and should be presented to the judge and jury by the prosecutor. The defense counsel may object to the introduction of any portion of the report that is irrelevant or unduly prejudicial. Once introduced into evidence, the relevant portions of the report should be read to the jury by the witness or the prosecutor.

ii. Victim/Witnesses or their statements

If the victim is willing to appear in court, he/she should be called as a witness to testify to the circumstances of the crime and the effect the crime had on him/her. (i.e., physical or mental injury, damage, amount of restitution, affect on business or their lives).

The prosecutor should also call any witnesses to the crime, if they are willing to appear in court, to detail what they saw or heard.

In the event a victim or witness is unwilling or unable to attend the hearing, a written or oral statement should be obtained from the witness. The jury should then be told what the witness said. If the statement is written, it should be marked as an exhibit and introduced into evidence.

If a witness is called to testify at the hearing, the clerk/bailiff must administer an oath to the witness before the witness testifies, for example, "Do you solemnly swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?"

After the witness has testified for the prosecutor, the defender will have the opportunity to cross-examine the witness. Additional questions by the prosecutor and defender will be permitted in the discretion of judge.

iii. Proof of amount of damage

If the crime involved theft or property damage, a relevant issue for the sentencing hearing is the amount of damage. Evidence of the extent of damage and/or the monetary amount of damage should be offered at the hearing. The victim or a witness should testify concerning the extent of the damage and what the item cost or what it will cost to replace the item. A photograph of the damage would also be admissible and helpful to the jury. A receipt to show what an item cost or an estimate of what it will cost to repair or replace an item is also admissible.

iv. Evidence concerning background of offender⁸

Evidence concerning an offender's background may be admissible at the sentencing hearing if relevant. Evidence of similar past conduct, if any, by the offender should be presented to the jury by the prosecutor. Other offenses committed by the offender in the past that are not similar, may be admissible but only after the judge rules, out of the presence of the jury, that such evidence is relevant to an issue in the case. For instance, if the offender testifies, the prosecutor may be able to cross-examine the offender as to previous offenses involving dishonesty in order to show that the offender may not be candid on the witness stand.

⁸ See Section II (b)(5) above.

v. Any other evidence relevant to sentencing

Since it is difficult to address every category of admissible evidence, other relevant evidence may be admissible in the judge's discretion.

c. Defense then offers its evidence

After the prosecution has presented its evidence, the judge will ask the defender if there is any evidence the offender would like to present in his defense. At this stage, the defender will have an opportunity to present testimony and physical evidence that will support the ultimate sentencing recommendation made by the defender.

i. Documents or objects

Any documents or objects that lessen or mitigate the seriousness of the offender's conduct should be introduced into evidence. For example, any report that offers a version that contradicts the prosecutor's version or that helps the offender's case, in any way, should be offered into evidence. The prosecutor may object to the introduction of the exhibit if it is irrelevant to the issue of sentencing. Once introduced into evidence, the relevant portions of a document should be read to the jury by the witness or the defender.

ii. Witnesses or their statements

The defender may also call witnesses to support the ultimate sentencing recommendation. In the event a witness is unwilling or unable to attend the hearing, a written or oral statement should be obtained from the witness. The jury should then be told what the witness said. If a witness agrees to testify, the clerk must administer the oath before the witness testifies.

After the witness has testified for the defender, the prosecutor will have the opportunity to cross-examine the witness. Additional questions by defender and prosecutor will be permitted in the discretion of judge.

A. Offender

The offender should ordinarily testify as to what he or she did and the reasons for doing it. An offender may not wish to testify if they do not have a reasonable explanation for committing their crime, if they are too nervous or if they have a lengthy criminal history. If the offender does not wish to testify, a statement prepared by the offender should be read to the jury. If the offender wishes to testify, it is important to humanize the offender for the jury by eliciting, in addition to the facts of the

offense and other mitigating circumstances, his or her background and interests in as much detail as possible.

B. Witnesses to offense.

The defender should also call any witness to the offense on behalf of the offender if their version somehow mitigates the offender's involvement in the offense or offers a justifiable excuse. For instance, in an assault-type case, the offender may be guilty of striking someone but it may have occurred after the offender was teased or taunted. A witness who was present during the teasing or taunting should testify to what he or she saw or heard.

C. Character witnesses

The defender should also consider calling witnesses who can testify about the character of the offender. For example, witnesses who can testify that the offender is an honest person or a hard working person or that the offender contributes to his/her community should be called as witnesses. If such witnesses are not called at the hearing, the defender should investigate the character of the offender, and if positive information exists, it should be brought to the jury's attention by the defender.

5. Arguments/Summations

After the witnesses have testified, the judge will permit the defender and the prosecutor an opportunity to present their recommendations for a sentence to the jury and their reasons why the recommendation is appropriate. The arguments must be based upon evidence admitted during the hearing. The arguments should be organized and carefully thought out. The objective of the argument is to persuade the jury that the sentence you recommend is the most appropriate under the circumstances.

a. Defender addresses judge and jury

The first advocate to address the jury during summations is the defender.

i. Description of offense (if different from prosecution version)

The defender should begin the argument by describing the evidence of the offense to the jury in the light most favorable to the offender. For example, in a provoked assault case, the defender might say that "On June 6, John Doe did hit Jane Doe, but only after she teased and taunted him about being short." The defender would then explain the circumstances of the offense from the offender's perspective.

ii. Rebut or refute arguments expected to be made by prosecutor

During the defender's argument, the defender should address arguments he or she expects to be made by the prosecutor since the defender will not have another opportunity to address the jury. Reasons why the prosecutor's expected argument is weak or should not be followed should be pointed out to the jury.

iii. Discuss any factors favorable to offender

During his/her argument, the defender should point out any factors that are favorable to the offender, as long as they are based upon evidence admitted during the hearing. For instance, if the offender has led an otherwise law-abiding life, it should be pointed out that this is the offender's first criminal offense. Likewise, if a character witness has testified that the offender is an otherwise honest person or has contributed to the community, these things should again be brought to the jury's attention. In addition, any defense or legitimate excuse for committing the offense should be recounted to the jury.

iv. Recommend sentence or otherwise

At the conclusion of the argument, the defender should recommend that the jury impose a specific sentence.

v. Sample final argument by a defender

"May it please the court, Ms. Doe (prosecutor) members of the jury. I'd like to begin by thanking you for your time and attention in this matter. John would also like to thank you for your time here. I now have the opportunity to present to you my arguments as to what sentence is appropriate for John and why.

What is this case really about? It's really about John Doe, my client. Who is John Doe? You now know that he is a good student. He is a person involved in many school activities. He is active in his community. You heard from people who know him well and who think he is a good person and a contributing member of society. He is a good person. You've heard no one testify to the contrary.

Now even good people make mistakes in our society. It's an unfortunate characteristic of human nature. John has admitted his mistake. He does not deny that he had a confrontation with the victim. He's sorry about that. He wished it never happened, but it did. He is not saying that he is innocent. He is not saying that the victim deserved what happened. He simply has told you why he did it. He did something in the heat of passion. He loved the victim and was having trouble dealing with rejection. It happens. It happens every day. Some

people can't control themselves at all in these situations. The papers periodically have stories of heat of passion crimes. People kill other people in the heat of passion. They brutally attack people in the heat of passion. They totally degrade people in the heat of passion. In the heat of passion, John crossed the line here. He admits that. But he didn't cross that far. He realizes his mistake in judgment. He is not in denial. He looks to you for understanding.

As I said earlier, it's part of human nature to make mistakes. An old and wise proverb that we are all familiar with states this concept well. "To err is human". Isn't it true? Haven't we all at one time or another erred or crossed that line? But we came back. John crossed a line; but has come back. He is a good person.

The balance of the old proverb I just made reference to is quite poignant here. As you may know the entire proverb goes as follows: "To err is human, to forgive is divine." "To forgive is divine." You have to opportunity to be divine today. To forgive. To punish and forgive John for what he did.

I submit to you that because John realizes he was wrong, because he is a contributing member of the community, because he is a good person, because he is human, his sentence should not be severe. He is not someone who needs to be taught a lesson. He has already learned his lesson. I therefore ask you, on behalf of John and all those who are human, to impose a sentence of 10 hours of community service. Thank you very much."

b. Prosecutor addresses jury

After the defender addresses the jury, the prosecutor will have an opportunity to make a sentencing recommendation to the jury.

i. Describe offense

The prosecutor should begin the argument by explaining the evidence of the offense to the jury in the light most favorable to the government. For example in an assault case, the prosecutor may begin by stating that "This case involves a brutal unprovoked assault on the victim, Jane Doe, by this offender." The prosecutor should then detail the circumstances of the offense. This statement should convey how serious the offense was. It should contain information that the prosecution introduced through witnesses and physical evidence.

ii. Discuss any factors relevant to sentencing

Any other factors that would support the sentence to be recommended and which the evidence during the hearing supported should also be mentioned during the argument. For example, the emotional or financial

harm suffered by the victim, the offender's past criminal conduct or if the offender showed no remorse for the crime should be used as part of your argument for a specific sentence. Do not make unwarranted attacks on the offender's character. For instance, never compare an offender to an animal or call the offender names. The argument must be based upon the evidence in the case.

iii. Rebut or refute arguments expected to be made by prosecutor

During the prosecutor's argument, the prosecutor should address arguments made by the defender. Reasons why the defender's argument is weak or should not be followed should be pointed out to the jury.

iv. Recommend sentence or otherwise

At the conclusion of the argument, the prosecutor should recommend that the jury impose a specific sentence.

v. Sample final argument by a prosecutor

"May it please the court, Mr./Miss Doe (defender), members of the jury. I'd like to begin by thanking you for your time and attention in this matter. I now have the opportunity to present to you my arguments as to what sentence is appropriate and why. My argument will be based upon the facts presented at the hearing we just conducted.

Now what have those facts shown? I submit that they have shown the following: On May 2, 1994, John Doe (offender), without provocation, brutally attacked the victim in this case, Jane Doe. The evidence has shown that on that day in May, Jane Doe was walking to school when the offender approached her and blocked her way. He demanded that she speak to him about their recent breakup. When the victim tried to walk by, he tripped her. He then grabbed her and would not let go. When the victim called him a few names because he tripped her, he began to smack her. It wasn't until a neighbor intervened that the offender stopped his attack.

Now the offender would have you believe that the attack was provoked by the victim. He claims that all he wanted to do was talk to her and she caused him to lose his temper by refusing to talk to him.

Does this story make sense to you members of the jury? You heard from the victim and the witnesses. According to them, the victim was simply minding her own business and tried to avoid a confrontation with the offender. It was he who would not take "no" for an answer. It was he who was invading her space. It was he who stooped so low as to trip her and then smack her. I submit that this crime was a brutal and uncalled for attack. The offender's conduct demonstrates his character and lack of self-control. His conduct here compels a severe sentence. A sentence that will send a message to him. A message that he went too far, that people don't act this

way in a civilized culture and that we won't condone this type of behavior. I submit to you that justice in this case cries out for a stern sentence and I submit to you that he be sentenced to the maximum amount of community service that you can impose. That would be the only sentence that will teach him a lesson and deter others from doing the same thing. Thank you very much."

6. Instructions to jury

At the conclusion of all arguments, the Judge has the obligation to instruct the jury on what evidence it may consider, how it should consider evidence, how to deliberate generally and how to deliver their verdict. This is done in open court.

7. Jury deliberations

a. Jurors discuss case in private

The deliberations of the jury will be conducted in private. Only the jurors may participate in this process. If anyone else attempts to participate in the deliberations or attempts to influence the jury's decision once deliberations begin, the judge or court clerk should be notified immediately.

b. Decision must be unanimous

The decision of the jury as to the appropriate sentence must be unanimous. That means that everyone must agree on the same sentence. This decision making process may not be easy. It will require candid discussion among all the jurors. Jurors will need to present their reasons to the other jurors as to why a particular sentence is appropriate.

c. Advise clerk/bailiff when decision reached

- A. Hours of community service
- B. Restitution, if any
- C. Other

Once a verdict is reached, the foreperson should note the decision on a verdict form and hand it to the clerk of the court. The verdict should indicate the specific sentence to be imposed on the offender. For instance, it should note the number of hours of community service imposed, the restitution ordered, if any, and any other sentence imposed.

8. Imposing the Sentence

Once the clerk receives the verdict form, it is his/her responsibility to hand it to the judge. The clerk is not permitted to inform anyone of the sentence at this time. The judge then reviews the sentence to ensure that it is an appropriate youth court sentence.

a. Judge asks foreperson to state jury's decision

Once the judge has reviewed the verdict form, the form is given to the clerk who hands it to the jury foreperson. The judge then inquires of the foreperson as follows: "Has the jury reached a verdict?" The foreperson then responds "We have, your honor."

The judge then asks the foreperson to announce the jury's verdict.

b. Judge imposes sentence

The judge then asks the offender to stand and states that " Based upon your plea of guilty to [offense] it is the judgment of the jury and this court that you be sentenced to x."

c. Sentence is final

As long as the sentence is an appropriate youth court sentence, it will be final. There are no appeals from the sentence. It must be served by the offender.

d. Limited review by Youth Court director

In rare instances, the sentence may be reviewed and modified by the youth court director.

IV. CONSEQUENCES OF OFFENSES

A. INTRODUCTION

1. When an offender violates the law, his or her conduct affects the lives and jobs of a number of people.
 - a. Victims.
 - i. Psychological and emotional damage.
 - ii. Financial loss.
 - b. Justice system and law enforcement employees.
 - i. Taxpayers' money must be spent to retain such employees to perform their functions to protect the community from violations of its laws and to insure fair and just punishment.
 - ii. There is a financial cost to the community from the expenditure of its resources in the ways described below in Section C.
 - c. The offender.
 - i. Must be punished in some way for misconduct.
 - ii. Punishment may indirectly affect family, friends or associates.
2. The effects of misconduct on these individuals should be kept in mind.
 - a. Assists in understanding the roles played by various individuals in the Youth Court system.
 - b. Significant factors to be considered in determining the appropriate punishment for an offender.

B. VICTIMS

1. By one means or another, every criminal law seeks to protect individuals, groups or the community from the conduct of individuals which would tend to cause them harm.
 - a. Thus, the commission of every offense has a victim.
 - b. A **victim** is one who has suffered harm in some form as a result of an offender's misconduct.
 - i. A victim may be an individual, a group of individuals, an institution or the community as a whole.
 - ii. The harm which results may be physical, psychological, emotional, or financial.
 - iii. The harm may be direct or indirect.
2. **Actual victims.**
 - a. Individuals or entities who suffer loss or damage as a direct result of the offender's misconduct.

i. Individual or entity

A. An individual may suffer loss or damage from the offender's misconduct.

1. **EXAMPLES:** An individual who is harassed or assaulted, an individual whose property is stolen or damaged, or an individual upon whose property someone trespasses.

B. An entity, such as a business or organization, may also suffer loss or damage from the offender's misconduct.

1. **EXAMPLES:** A business whose property is shoplifted, a Little League whose fields are vandalized, or a restaurant where the offender skips out without paying the bill.

ii. Loss or damage

A. The amount of loss or damage caused by an offender's misconduct is a significant factor in determining the appropriate penalty. See Section II(C)(1)(c)(iv).

B. A victim's loss may sometimes be readily measured in dollars and cents.

1. **EXAMPLES:** The cost or sale price of an item that is shoplifted, the bill not paid by a restaurant patron, the estimated cost of repairing the damage to property from vandalism, or the medical bill incurred for an injury.
2. There may, however, be legitimate questions about the real amount of loss.
 - a. Has the estimated loss been inflated by the victim?
 - b. Should the loss be measured by retail value (what the victim would have received for selling the property) or wholesale value (the actual cost of the property to the victim)?
 - c. Did the victim contribute somehow to the commission of the offense and, if so, should the amount of loss be reduced?

1. **EXAMPLE:** An assault victim who instigated the fight.

C. An offender's conduct may, however, cause damage to a victim in ways that are less easily measured but are nevertheless relevant to determining the appropriate sentence.

1. Psychological or emotional damage

- a. **EXAMPLES:** The victim of an assault may demonstrate continued fears or other symptoms of stress, or a piece of jewelry stolen or damaged beyond repair was given to the victim by a grandparent and so holds sentimental value beyond its actual market value.
 - 2. Loss of opportunity
 - a. **EXAMPLES:** The vandalism to playing fields may have forced a league to postpone games and thereby deny children the opportunity to play, or an individual who is injured by an offender may miss activities or events that are important to him/her.
 - iii. Direct result
 - A. For purposes of determining the appropriate punishment, the victim's loss or damage must result directly from the offender's misconduct and not from some other cause.
 - 1. **EXAMPLES:** The assault victim suffered strained knee ligaments but made it worse by failing to follow a doctor's advice, a fence destroyed by vandalism was scheduled to be replaced the next week by the victim, or other people involved in the offense and not the offender facing sentencing caused most of the damage.
3. **Potential victims**
 - a. Some misconduct is criminal even though no actual monetary or physical harm is caused to any particular victim.
 - 1. **EXAMPLES:** Menacing, reckless endangerment, or possession of burglary tools.
 - b. Monetary loss is not a factor in such cases, although the potential victim may still suffer damage in some form.
1. **EXAMPLE:** Victim of attempted sexual abuse may have residual fears even though the offender was stopped before the actual abuse occurred.
4. **Community as victim - "victimless crimes"**
 - a. Some offenses have no direct or actual victim.
 - 1. Sometimes described as "victimless crimes."
 - 2. **EXAMPLES:** Possession of marijuana or driving without a license.
 - b. Statutes prohibit conduct which has been deemed harmful to the community in some indirect way.
 - 1. Although marijuana directly affects only the user, the legislature has determined that its use contributes to other offenses (driving under the influence, disorderly conduct) and social ills and, therefore, it should be made illegal.

2. Although driving without a license by itself causes no harm, the threat to other drivers and pedestrians from allowing unlicensed drivers to operate cars on public highways is sufficient to make this a crime even though the driver has not caused any particular harm.

C. JUSTICE SYSTEM AND LAW ENFORCEMENT EMPLOYEES

1. An offender's misconduct involves and affects various individuals who work within the justice system and law enforcement.
2. Police Officers
 - a. Every offense is investigated by a police officer.
 - b. Training
 - i. Police officers are required to complete a course of training which involves classroom study of criminal statutes and rules of procedure, interviewing, report writing, and physical training.
 - c. Duties
 - i. Receives reports or complaints of possible criminal conduct from victims or observers/ witnesses or personally observe what appears to be criminal conduct.
 - A. **EXAMPLES:** The victim of an assault or the owner of property damaged by vandals files a complaint with the police, a neighbor observes individuals around the house of a neighbor away on vacation, or a police officer observes three youths under 16 walking into woods carrying what appears to be beer.
 - ii. Investigates.
 - A. Interviews observers or witnesses.
 1. **EXAMPLES:** Asks victim of assault for identity or description of assailant or attempts to obtain description of car used to drive across victim's lawn.
 2. As part of the investigation, will generally attempt to interview the person or person suspected of committing the offense.
 - B. Examines scene or physical evidence.
 1. **EXAMPLES:** Observes property where vandalism occurred or premises from which property was stolen.
 - iii. Writes report summarizing results of investigation.
 - iv. Arrests alleged offender if sufficient evidence exists to support charges or gives the alleged offender a ticket directing him or her to appear in court to answer the charges.
 - v. Consults with others within the justice system to advise them of his/her judgments and opinions about the case and the alleged offender.
 - A. These include, among others, the prosecutor, the Probation Department or Youth Court Director (if the officer believes that the alleged offender may be appropriate for referral to Youth Court).

- vi. Testifies in court proceedings.
 - A. Preliminary hearing, grand jury, trial, sentencing.

3. Family Court

- a. Has jurisdiction over all juveniles charged with criminal offenses unless the juvenile is charged as an adult because of the nature of the offense or the alleged offender.
- b. If juvenile asserts his or her innocence, a trial is held before a Family Court judge to determine if the evidence is sufficient to establish the guilt of the charged juvenile.
 - i. The juvenile has the right to have an attorney represent him/her at Family Court proceedings.
 - ii. The proceedings are confidential and are not open to the general public.
- c. If the juvenile is found guilty or pleads guilty to the charge, he or she is then sentenced.
 - i. Sentence may include incarceration in a juvenile facility, probation, restitution, community service or a combination thereof.
- d. Relationship to Youth Court
 - i. Youth Court provides an alternative to Family Court proceedings for youths charged with criminal offenses.
 - ii. If an offender is referred to Youth Court, he remains under the jurisdiction of Youth Court until satisfactory completion of his or her sentence.
 - iii. If an offender fails to complete any aspect of Youth Court proceedings, including court appearances and sentence, he or she will be referred back to Family Court where proceedings on his or her case will then resume where they left off.

4. Youth Court Director (YCD)

Duties and Responsibilities

- a. Receive initial referral to Youth Court
 - i. Maintains regular contact with police officers, probation officers, Family Court personnel and other individuals who are aware of the charging of youths with crimes where the youth may benefit from referral to Youth Court.
 - ii. YCD makes determination whether an alleged offender will be referred for disposition in Youth Court.
 - A. Determination made based on factors described above in Section I(C) & (D)(1).

- B. Interviews youth and family to assist in making determination and to explain Youth Court proceedings to the youth and his or her family.
- C. Obtains required admission of guilt and waivers from youth. See Section I (D)(1) above.

b. Schedule Youths for hearings in Youth Court.

- i. Advise youth of time and place for hearing.
- ii. Assign case and roles to Youth Court team. See Sections I (D)(2) & III.
 - A. Provide team members with necessary information and documents concerning the assigned case.
- iii. Arrange for jury members to be present.
- iv. Attend all hearings.
 - A. Monitor proceedings.
 - B. Insure attendance of offenders and Youth Court members.
 - C. Review sentences imposed in Youth Court to protect against miscarriage of justice.
 - i. Insure that sentence imposed was fairly determined and within parameters of just sentence.
 - ii. YCD not authorized to substitute his or her judgment for that of Youth Court jury.
 - D. Arrange service of sentence by offender.
 - i. Payment of restitution to any victim.
 - ii. Arrange for service of any community service required as part of sentence.
 - A. Find suitable form of community service for offender.
 - B. Advise offender of requirements for completion of sentence.
 - E. Insure that offender completes service of sentence.
 - F. Maintain all required documents concerning Youth Court cases.
 - G. Report periodically as directed to Youth Court Board of Directors concerning its operations.

5. The Offender

- a. The offender's involvement in Youth Court affects the offender's life and may also affect the lives of family and friends.
 - i. The offender must meet with the YCD, appear in Youth Court, admit his or guilt before a group of peers and accept their sentence, and complete service of the sentence.
 - A. Requires time of the offender as well as possible embarrassment, humiliation, stigmatization and negative effects on his or her reputation in the community.

- ii. Family and friends may be similarly affect, although less directly.

6. Possible Sentences

i. Community Service

- A. An offender may be required to perform a certain number of hours helping in the community.
 - 1. **EXAMPLES:** Helping the Parks and Recreation Department clean a town park or playground, putting up signs or stuffing envelopes for the Youth Bureau, or assisting at a community cooperative daycare center.
- B. Number of hours of service required determined by Youth Court jury.
 - 1. Determination based on extent of punishment jury finds the offender deserves.
 - 2. **EXAMPLES:** The organizer of a group which vandalized a playground receives a sentence of 35 hours of community service while the younger brother of one of the participants who went along for the ride and did only minor damage receives a sentence of 12 hours of community service.
- C. Actual service of sentence overseen by YCD.

ii. Restitution

- A. Amount determined by Youth Court jury.
 - 1. See Section IV (B)(2)(a)(ii)(B).
- B. Payment overseen by YCD.
 - 1. May be paid on one lump sum or according to a schedule established by the YCD.

iii. **Counseling, Mediation and/or Educational courses**

- A. Where outside factors, or the lack of information, or misinformation, contributed to the youth's commission of the offense, counseling or educational courses may be indicated, to enable the youth to understand and address the matter.
- B. Examples. Where alcohol or narcotics were used, alcohol and substance abuse counseling may be warranted, or where the offense is thoughtless shoplifting, a course describing the costs and effects of shoplifting may be indicated.

iv. Other

- A. In particular cases, other forms of punishment may be found appropriate.
 - 1. **EXAMPLE:** A defendant who vandalized a playground could be sentenced to assist in repairing the damage he or she caused.

APPENDIX A
(DEFINITIONS AND COURT JURISDICTION)

MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED

PENAL LAW
(Current through 2005)

§ 1.05 General purposes

The general purposes of the provisions of this chapter are:

1. To proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;
2. To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
3. To define the act or omission and the accompanying mental state which constitute each offense;
4. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor;
5. To provide for an appropriate public response to particular offenses, including consideration of the consequences of the offense for the victim, including the victim's family, and the community; and
6. To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, and their confinement when required in the interests of public protection.

§ 10.00 Definitions of terms of general use in this chapter

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

1. "Offense" means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same.
2. "Traffic infraction" means any offense defined as "traffic infraction" by section one hundred fifty-five of the vehicle and traffic law.
3. "Violation" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed.
4. "Misdemeanor" means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.
5. "Felony" means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed.
6. "Crime" means a misdemeanor or a felony.

7. "Person" means a human being, and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.
8. "Possess" means to have physical possession or otherwise to exercise dominion or control over tangible property.
9. "Physical injury" means impairment of physical condition or substantial pain.
10. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.
11. "Deadly physical force" means physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury.
12. "Deadly weapon" means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, or metal knuckles.
13. "Dangerous instrument" means any instrument, article or substance, including a "vehicle" as that term is defined in this section, which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.
14. "Vehicle" means a "motor vehicle", "trailer" or "semi-trailer," as defined in the vehicle and traffic law, any snowmobile as defined in the parks and recreation law, any aircraft, or any vessel equipped for propulsion by mechanical means or by sail.
15. "Public servant" means (a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or (b) any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.
16. "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state or by any public servant authorized by law to impanel a jury. The term juror also includes a person who has been drawn or summoned to attend as a prospective juror.
17. "Benefit" means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.
18. "Juvenile offender" means (1) a person thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of this chapter; and (2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (sodomy in the first degree); 130.70 (aggravated sexual abuse); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of this chapter; subdivision four of section 265.02 of this chapter, where such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or section 265.03 of this chapter, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of this chapter; or defined in this

chapter as an attempt to commit murder in the second degree or kidnapping in the first degree.

19. For the purposes of section 260.30 and 120.01 of this chapter the term "child day care provider" shall be defined as provided for in section three hundred ninety of the social services law.

§ 15.00 Culpability; definitions of terms

The following definitions are applicable to this chapter:

1. "Act" means a bodily movement.
2. "Voluntary act" means a bodily movement performed consciously as a result of effort or determination, and includes the possession of property if the actor was aware of his physical possession or control thereof for a sufficient period to have been able to terminate it.
3. "Omission" means a failure to perform an act as to which a duty of performance is imposed by law.
4. "Conduct" means an act or omission and its accompanying mental state.
5. "To act" means either to perform an act or to omit to perform an act.
6. "Culpable mental state" means "intentionally" or "knowingly" or "recklessly" or with "criminal negligence," as these terms are defined in section 15.05.

§ 15.05 Culpability; definitions of culpable mental states

The following definitions are applicable to this chapter:

1. "Intentionally." A person acts intentionally with respect to a result or to conduct described by a statute defining an offense when his conscious objective is to cause such result or to engage in such conduct.
2. "Knowingly." A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.
3. "Recklessly." A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.
4. "Criminal negligence." A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or that such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

§ 15.10 Requirements for criminal liability in general and for offenses of strict liability and mental culpability

The minimal requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform an act which he is physically capable of performing. If such conduct is all that is required for commission of a particular offense, or if an offense or some material element thereof does not require a culpable mental state on the part of the actor, such offense is one of "strict liability." If a culpable mental state on the part of the actor is required with respect to every material element of an offense, such offense is one of

"mental culpability."

§ 15.15 Construction of statutes with respect to culpability requirements

1. When the commission of an offense defined in this chapter, or some element of an offense, requires a particular culpable mental state, such mental state is ordinarily designated in the statute defining the offense by use of the terms "intentionally," "knowingly," "recklessly" or "criminal negligence," or by use of terms, such as "with intent to defraud" and "knowing it to be false," describing a specific kind of intent or knowledge. When one and only one of such terms appears in a statute defining an offense, it is presumed to apply to every element of the offense unless an intent to limit its application clearly appears.

2. Although no culpable mental state is expressly designated in a statute defining an offense, a culpable mental state may nevertheless be required for the commission of such offense, or with respect to some or all of the material elements thereof, if the proscribed conduct necessarily involves such culpable mental state. A statute defining a crime, unless clearly indicating a legislative intent to impose strict liability, should be construed as defining a crime of mental culpability. This subdivision applies to offenses defined both in and outside this chapter.

§ 15.20 Effect of ignorance or mistake upon liability

1. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief of fact, unless:

(a) Such factual mistake negatives the culpable mental state required for the commission of an offense; or

(b) The statute defining the offense or a statute related thereto expressly provides that such factual mistake constitutes a defense or exemption; or

(c) Such factual mistake is of a kind that supports a defense of justification as defined in article thirty-five of this chapter.

2. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless such mistaken belief is founded upon an official statement of the law contained in (a) a statute or other enactment, or (b) an administrative order or grant of permission, or (c) a judicial decision of a state or federal court, or (d) an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law.

3. Notwithstanding the use of the term "knowingly" in any provision of this chapter defining an offense in which the age of a child is an element thereof, knowledge by the defendant of the age of such child is not an element of any such offense and it is not, unless expressly so provided, a defense to a prosecution therefor that the defendant did not know the age of the child or believed such age to be the same as or greater than that specified in the statute.

4. Notwithstanding the use of the term "knowingly" in any provision of this chapter defining an offense in which the aggregate weight of a controlled substance or marihuana is an element, knowledge by the defendant of the aggregate weight of such controlled substance or marihuana is not an element of any such offense and it is not, unless expressly so provided, a defense to a prosecution therefor that the defendant did not know the aggregate weight of the controlled substance or marihuana.

§ 15.25 Effect of intoxication upon liability

Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

**MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
CRIMINAL PROCEDURE LAW**

§ 10.10 The criminal courts; enumeration and definitions

1. The "criminal courts" of this state are comprised of the superior courts and the local criminal courts.
2. "Superior court" means:
 - (a) The supreme court; or
 - (b) A county court.
3. "Local criminal court" means:
 - (a) A district court; or
 - (b) The New York City criminal court; or
 - (c) A city court; or
 - (d) A town court; or
 - (e) A village court; or
 - (f) A supreme court justice sitting as a local criminal court; or
 - (g) A county judge sitting as a local criminal court.
4. "City court" means any court for a city, other than New York City, having trial jurisdiction of offenses of less than felony grade only committed within such city, whether such court is entitled a city court, a municipal court, a police court, a recorder's court or is known by any other name or title.
5. "Town court." A "town court" is comprised of all the town justices of a town.
6. "Village court." A "village court" is comprised of the justice of a village, or all the justices thereof if there be more than one, or, at a time when he or they are absent, an acting justice of a village who is authorized to perform the functions of a village justice during his absence.
7. Notwithstanding any other provision of this section, a court specified herein which possesses civil as well as criminal jurisdiction does not act as a criminal court when acting solely in the exercise of its civil jurisdiction, and an order or determination made by such a court in its civil capacity is not an order or determination of a criminal court even though it may terminate or otherwise control or affect a criminal action or proceeding.

§ 10.20 Superior courts; jurisdiction

1. Superior courts have trial jurisdiction of all offenses. They have:
 - (a) Exclusive trial jurisdiction of felonies; and
 - (b) Trial jurisdiction of misdemeanors concurrent with that of the local criminal courts; and
 - (c) Trial jurisdiction of petty offenses, but only when such an offense is charged in an indictment which also charges a crime.
2. Superior courts have preliminary jurisdiction of all offenses, but they exercise such jurisdiction only by reason of and through the agency of their grand juries.
3. Superior court judges may, in their discretion, sit as local criminal courts for the following purposes:
 - (a) conducting arraignments, as provided in subdivision two of section 170.15 and subdivision two of section 180.20 of this chapter;

(b) issuing warrants of arrests, as provided in subdivision one of section 120.70 of this chapter; and

(c) issuing search warrants, as provided in article six hundred ninety of this chapter.

§ 10.30 Local criminal courts; jurisdiction

1. Local criminal courts have trial jurisdiction of all offenses other than felonies. They have:

(a) Exclusive trial jurisdiction of petty offenses except for the superior court jurisdiction thereof prescribed in paragraph (c) of subdivision one of section 10.20; and

(b) Trial jurisdiction of misdemeanors concurrent with that of the superior courts but subject to divestiture thereof by the latter in any particular case.

2. Local criminal courts have preliminary jurisdiction of all offenses subject to divestiture thereof in any particular case by the superior courts and their grand juries.

3. Notwithstanding the provisions of subdivision one, a superior court judge sitting as a local criminal court does not have trial jurisdiction of any offense, but has preliminary jurisdiction only, as provided in subdivision two.

§ 20.10 Geographical jurisdiction of offenses; definitions of terms

The following definitions are applicable to this article:

1. "This state" means New York State as its boundaries are prescribed in the state law, and the space over it.

2. "County" means any of the sixty-two counties of this state as its boundaries are prescribed by law, and the space over it.

3. "Result of an offense." When a specific consequence, such as the death of the victim in a homicide case, is an element of an offense, the occurrence of such consequence constitutes the "result" of such offense. An offense of which a result is an element is a "result offense."

4. "Particular effect of an offense." When conduct constituting an offense produces consequences which, though not necessarily amounting to a result or element of such offense, have a materially harmful impact upon the governmental processes or community welfare of a particular jurisdiction, or result in the defrauding of persons in such jurisdiction, such conduct and offense have a "particular effect" upon such jurisdiction.

§ 20.20 Geographical jurisdiction of offenses; jurisdiction of state

Except as otherwise provided in this section and section 20.30, a person may be convicted in the criminal courts of this state of an offense defined by the laws of this state, committed either by his own conduct or by the conduct of another for which he is legally accountable pursuant to section 20.00 of the penal law, when:

1. Conduct occurred within this state sufficient to establish:

(a) An element of such offense; or

(b) An attempt to commit such offense; or

(c) A conspiracy or criminal solicitation to commit such offense, or otherwise to establish the complicity of at least one of the persons liable therefor; provided that the jurisdiction accorded by this paragraph extends only to conviction of those persons whose conspiratorial or other conduct of complicity occurred within this state; or

2. Even though none of the conduct constituting such offense may have occurred within this state:

(a) The offense committed was a result offense and the result occurred within this state. If the offense was one of homicide, it is presumed that the result, namely the death of the victim, occurred within this state if the victim's body or a part thereof was found herein; or

(b) The statute defining the offense is designed to prevent the occurrence of a particular effect in this state and the conduct constituting the offense committed was performed with intent that it would have such effect herein; or

(c) The offense committed was an attempt to commit a crime within this state; or

(d) The offense committed was conspiracy to commit a crime within this state and an overt act in furtherance of such conspiracy occurred within this state; or

3. The offense committed was one of omission to perform within this state a duty imposed by the laws of this state. In such case, it is immaterial whether such person was within or outside this state at the time of the omission.

§ 20.40 Geographical jurisdiction of offenses; jurisdiction of counties

A person may be convicted in an appropriate criminal court of a particular county, of an offense of which the criminal courts of this state have jurisdiction pursuant to section 20.20, committed either by his own conduct or by the conduct of another for which he is legally accountable pursuant to section 20.00 of the penal law, when:

1. Conduct occurred within such county sufficient to establish:

(a) An element of such offense; or

(b) An attempt or a conspiracy to commit such offense; or

2. Even though none of the conduct constituting such offense may have occurred within such county:

(a) The offense committed was a result offense and the result occurred in such county; or

(b) The offense committed was one of homicide and the victim's body or a part thereof was found in such county; or

(c) Such conduct had, or was likely to have, a particular effect upon such county or a political subdivision or part thereof, and was performed with intent that it would, or with knowledge that it was likely to, have such particular effect therein; or

(d) The offense committed was attempt, conspiracy or criminal solicitation to commit a crime in such county; or

(e) The offense committed was criminal facilitation of a felony committed in such county; or

3. The offense committed was one of omission to perform a duty imposed by law, which duty either was required to be or could properly have been performed in such county. In such case, it is immaterial whether such person was within or outside such county at the time of the omission; or

4. Jurisdiction of such offense is accorded to the courts of such county pursuant to any of the following rules:

(a) An offense of abandonment of a child or non-support of a child may be prosecuted in (i) any county in which such child resided during the period of abandonment or nonsupport, or (ii) any county in which such person resided during such period, or (iii) any county in which such person was present during such period, provided that he was arrested for such offense in such county or the criminal action therefor was commenced while he was present therein.

(b) An offense of bigamy may be prosecuted either in the county in which such offense was committed or in (i) any county in which bigamous cohabitation subsequently occurred, or (ii) any county in which such person was present after the commission of the offense, provided that he was arrested for such offense in such county or the criminal action therefor was commenced while he was present therein.

(c) An offense committed within five hundred yards of the boundary of a particular county, and in an adjoining county of this state, may be prosecuted in either such county.

(d) An offense committed anywhere on the Hudson river southward of the northern boundary of New York City, or anywhere on New York bay between Staten Island and Long Island, may be prosecuted in any of the five counties of New York City.

(e) An offense committed upon any bridge or in any tunnel having terminals in different counties may be prosecuted in any terminal county.

(f) An offense committed on board a railroad train, aircraft or omnibus operating as a common carrier may be prosecuted in any county through or over which such common carrier passed during the particular trip, or in any county in which such trip terminated or was scheduled to terminate.

(g) An offense committed in a private vehicle during a trip thereof extending through more than one county may be prosecuted in any county through which such vehicle passed in the course of such trip.

(h) An offense committed on board a vessel navigating or lying in any river, canal or lake flowing through or situated within this state, may be prosecuted in any county bordering upon such body of water, or in which it is located, or through which it passes; and if such offense was committed upon a vessel operating as a common carrier, it may be prosecuted in any county bordering upon any body of water upon which such vessel navigated or passed during the particular trip.

(i) An offense committed in the Atlantic Ocean within two nautical miles from the shore at high water mark may be prosecuted in an appropriate court of the county the shore line of which is closest to the point where the offense was committed. A crime committed more than two nautical miles from the shore but within the boundary of this state may be prosecuted in the supreme court of the county the shore line of which is closest to the point where the crime was committed.

(j) An offense of forgery may be prosecuted in any county in which the defendant, or another for whose conduct the defendant is legally accountable pursuant to section 20.00 of the penal law, possessed the instrument.

(k) An offense of offering of a false instrument for filing, or of larceny by means of a false pretense therein, may be prosecuted (i) in any county in which such instrument was executed, in whole or in part, or (ii) in any county in which any of the goods or services for which payment or reimbursement is sought by means of such instrument were purported to have been provided.

§ 20.50 Geographical jurisdiction of offenses; jurisdiction of cities, towns and villages

1. The principles prescribed in section 20.40, governing geographical jurisdiction over offenses as between counties of this state, are, where appropriate, applicable to the determination of geographical jurisdiction over offenses as between cities, towns and villages within a particular county unless a different determination is required by the provisions of some other express provision of statute.

2. Where an offense prosecutable in a local criminal court is committed in a city other than New York City, or in a town or village, but within one hundred yards of any other such political subdivision, it may be prosecuted in either such political subdivision.

APPENDIX B

(Selected Sections of the New York State Penal Law and Vehicle and Traffic Law)

PENAL LAW - (MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK-Current through 2005)

§ 120.00 Assault in the third degree

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person;
- or
2. He recklessly causes physical injury to another person; or
 3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

§ 120.13 Menacing in the first degree

A person is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree within the preceding ten years.

Menacing in the first degree is a class E felony.

§ 120.14 Menacing in the second degree

A person is guilty of menacing in the second degree when:

1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or
3. He or she commits the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to article eight of the family court act, section 530.12 of the criminal procedure law, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

Menacing in the second degree is a class A misdemeanor.

§ 120.15 Menacing in the third degree

A person is guilty of menacing in the third degree when, by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury.

Menacing in the third degree is a class B misdemeanor.

§ 120.16 Hazing in the first degree

A person is guilty of hazing in the first degree when, in the course of another person's initiation into or affiliation with any organization, he intentionally or recklessly engages in conduct which creates a substantial risk of physical injury to such other person or a third person and thereby causes such injury.

Hazing in the first degree is a class A misdemeanor.

§ 120.20 Reckless endangerment in the second degree

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

Reckless endangerment in the second degree is a class A misdemeanor.

§ 130.55 Sexual abuse in the third degree

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

§ 130.60 Sexual abuse in the second degree

A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

§ 130.65 Sexual abuse in the first degree

A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old.

Sexual abuse in the first degree is a class D felony.

§ 135.05 Unlawful imprisonment in the second degree

A person is guilty of unlawful imprisonment in the second degree when he restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

§ 140.05 Trespass

A person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises.
Trespass is a violation.

§ 140.10 Criminal trespass in the third degree

A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property

(a) which is fenced or otherwise enclosed in a manner designed to exclude intruders; or

(b) where the building is utilized as an elementary or secondary school in violation of conspicuously posted rules or regulations governing entry and use thereof; or

(c) located within a city with a population in excess of one million and where the building or real property is utilized as an elementary or secondary school in violation of a personally communicated request to leave the premises from a principal, custodian or other person in charge thereof; or

(d) located outside of a city with a population in excess of one million and where the building or real property is utilized as an elementary or secondary school in violation of a personally communicated request to leave the premises from a principal, custodian, school board member or trustee, or other person in charge thereof; or

(e) where the building is used as a public housing project in violation of conspicuously posted rules or regulations governing entry and use thereof; or

(f) where a building is used as a public housing project in violation of a personally communicated request to leave the premises from a housing police officer or other person in charge thereof; or

(g) where the property consists of a right-of-way or yard of a railroad or rapid transit railroad which has been designated and conspicuously posted as a no-trespass railroad zone, pursuant to section eighty-three-b of the railroad law, by the city or county in which such property is located.

Criminal trespass in the third degree is a class B misdemeanor.

§ 140.15 Criminal trespass in the second degree

A person is guilty of criminal trespass in the second degree when he knowingly enters or remains unlawfully in a dwelling.

Criminal trespass in the second degree is a class A misdemeanor.

§ 140.35 Possession of burglar's tools

A person is guilty of possession of burglar's tools when he possesses any tool, instrument or other article adapted, designed or commonly used for committing or facilitating offenses involving forcible entry into premises, or offenses involving larceny by a physical taking, or offenses involving theft of services as defined in subdivisions four, five and six of section 165.15, under circumstances evincing an intent to use or knowledge that some person intends to use the same in the commission of an offense of such character.

Possession of burglar's tools is a class A misdemeanor.

§ 145.00 Criminal mischief in the fourth degree

A person is guilty of criminal mischief in the fourth degree when, having no right to do so nor any reasonable ground to believe that he has such right, he:

1. Intentionally damages property of another person; or
2. Intentionally participate [FN1] in the destruction of an abandoned building as defined in section one thousand nine hundred seventy-one-a of the real property actions and proceedings law; or
3. Recklessly damages property of another person in an amount exceeding two hundred fifty dollars.

Criminal mischief in the fourth degree is a class A misdemeanor.

§ 145.14 Criminal tampering in the third degree

A person is guilty of criminal tampering in the third degree when, having no right to do so nor any reasonable ground to believe that he has such right, he tampers with property of another person with intent to cause substantial inconvenience to such person or to a third person.

Criminal tampering in the third degree is a class B misdemeanor.

§ 145.15 Criminal tampering in the second degree

A person is guilty of criminal tampering in the second degree when, having no right to do so nor any reasonable ground to believe that he has such right, he tampers or makes connection with property of a gas, electric, sewer, steam or water-works corporation, telephone or telegraph corporation, common carrier, or public utility operated by a municipality or district; except that in any prosecution under this section, it is an affirmative defense that the defendant did not engage in such conduct for a larcenous or otherwise unlawful or wrongful purpose.

Criminal tampering in the second degree is a class A misdemeanor.

§ 145.25 Reckless endangerment of property

A person is guilty of reckless endangerment of property when he recklessly engages in conduct which creates a substantial risk of damage to the property of another person in an amount exceeding two hundred fifty dollars.

Reckless endangerment of property is a class B misdemeanor.

§ 155.25 Petit larceny

A person is guilty of petit larceny when he steals property.

Petit larceny is a class A misdemeanor.

§ 156.05 Unauthorized use of a computer

A person is guilty of unauthorized use of a computer when he knowingly uses or causes to be used a computer or computer service without authorization and the computer utilized is equipped or programmed with any device or

coding system, a function of which is to prevent the unauthorized use of said computer or computer system.
Unauthorized use of a computer is a class A misdemeanor.

§ 156.10 Computer trespass

A person is guilty of computer trespass when he knowingly uses or causes to be used a computer or computer service without authorization and:

1. he does so with an intent to commit or attempt to commit or further the commission of any felony; or
2. he thereby knowingly gains access to computer material.

Computer trespass is a class E felony.

§ 156.20 Computer tampering in the fourth degree

A person is guilty of computer tampering in the fourth degree when he uses or causes to be used a computer or computer service and having no right to do so he intentionally alters in any manner or destroys computer data or a computer program of another person.

Computer tampering in the fourth degree is a class A misdemeanor.

§ 156.25 Computer tampering in the third degree

A person is guilty of computer tampering in the third degree when he commits the crime of computer tampering in the fourth degree and:

1. he does so with an intent to commit or attempt to commit or further the commission of any felony; or
2. he has been previously convicted of any crime under this article or subdivision eleven of section 165.15 of this chapter; or
3. he intentionally alters in any manner or destroys computer material; or
4. he intentionally alters in any manner or destroys computer data or a computer program so as to cause damages in an aggregate amount exceeding one thousand dollars.

Computer tampering in the third degree is a class E felony.

§ 156.26 Computer tampering in the second degree

A person is guilty of computer tampering in the second degree when he commits the crime of computer tampering in the fourth degree and he intentionally alters in any manner or destroys computer data or a computer program so as to cause damages in an aggregate amount exceeding three thousand dollars.

Computer tampering in the second degree is a class D felony.

§ 156.27 Computer tampering in the first degree

A person is guilty of computer tampering in the first degree when he commits the crime of computer tampering in the fourth degree and he intentionally alters in any manner or destroys computer data or a computer program so as to cause damages in an aggregate amount exceeding fifty thousand dollars.

Computer tampering in the first degree is a class C felony.

§ 165.05 Unauthorized use of a vehicle in the third degree

A person is guilty of unauthorized use of a vehicle in the third degree when:

1. Knowing that he does not have the consent of the owner, he takes, operates, exercises control over, rides in or otherwise uses a vehicle. A person who engages in any such conduct without the consent of the owner is presumed to know that he does not have such consent; or

2. Having custody of a vehicle pursuant to an agreement between himself or another and the owner thereof whereby

he or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, he intentionally uses or operates the same, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

3. Having custody of a vehicle pursuant to an agreement with the owner thereof whereby such vehicle is to be returned to the owner at a specified time, he intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

For purposes of this section "a gross deviation from the agreement" shall consist of, but not be limited to, circumstances wherein a person who having had custody of a vehicle for a period of fifteen days or less pursuant to a written agreement retains possession of such vehicle for at least seven days beyond the period specified in the agreement and continues such possession for a period of more than two days after service or refusal of attempted service of a notice in person or by certified mail at an address indicated in the agreement stating (i) the date and time at which the vehicle was to have been returned under the agreement; (ii) that the owner does not consent to the continued withholding or retaining of such vehicle and demands its return; and that continued withholding or retaining of the vehicle may constitute a class A misdemeanor punishable by a fine of up to one thousand dollars or by a sentence to a term of imprisonment for a period of up to one year or by both such fine and imprisonment.

Unauthorized use of a vehicle in the third degree is a class A misdemeanor.

§ 165.10 Auto stripping in the second degree

A person is guilty of auto stripping in the second degree when:

1. He or she commits the offense of auto stripping in the third degree and when he or she has been previously convicted within the last five years of having violated the provisions of section 165.09 or this section; or
2. He or she removes or intentionally destroys, defaces, disguises, or alters any part of two or more vehicles, other than abandoned vehicles, as defined in subdivision one of section one thousand two hundred twenty-four of the vehicle and traffic law, without the permission of the owner, and the value of the parts of vehicles removed, destroyed, defaced, disguised, or altered exceeds an aggregate value of one thousand dollars.

Auto stripping in the second degree is a class E felony.

§ 165.15 Theft of services

A person is guilty of theft of services when:

1. He obtains or attempts to obtain a service, or induces or attempts to induce the supplier of a rendered service to agree to payment therefor on a credit basis, by the use of a credit card or debit card which he knows to be stolen.
2. With intent to avoid payment for restaurant services rendered, or for services rendered to him as a transient guest at a hotel, motel, inn, tourist cabin, rooming house or comparable establishment, he avoids or attempts to avoid such payment by unjustifiable failure or refusal to pay, by stealth, or by any misrepresentation of fact which he knows to be false. A person who fails or refuses to pay for such services is presumed to have intended to avoid payment therefor; or
3. With intent to obtain railroad, subway, bus, air, taxi or any other public transportation service without payment of the lawful charge therefor, or to avoid payment of the lawful charge for such transportation service which has been rendered to him, he obtains or attempts to obtain such service or avoids or attempts to avoid payment therefor by force, intimidation, stealth, deception or mechanical tampering, or by unjustifiable failure or refusal to pay; or
4. With intent to avoid payment by himself or another person of the lawful charge for any telecommunications service, including, without limitation, cable television service, or any gas, steam, sewer, water, electrical, telegraph or telephone service which is provided for a charge or compensation, he obtains or attempts to obtain such service for himself or another person or avoids or attempts to avoid payment therefor by himself or another person by means

of (a) tampering or making connection with the equipment of the supplier, whether by mechanical, electrical, acoustical or other means, or (b) offering for sale or otherwise making available, to anyone other than the provider of a telecommunications service for such service provider's own use in the provision of its service, any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service, or (c) any misrepresentation of fact which he knows to be false, or (d) any other artifice, trick, deception, code or device. For the purposes of this subdivision the telecommunications decoder or descrambler described in paragraph (b) above or the device described in paragraph (d) above shall not include any non-decoding and non-descrambling channel frequency converter or any television receiver-type accepted by the federal communications commission. In any prosecution under this subdivision, proof that telecommunications equipment, including, without limitation, any cable television converter, descrambler, or related equipment, has been tampered with or otherwise intentionally prevented from performing its functions of control of service delivery without the consent of the supplier of the service, or that telecommunications equipment, including, without limitation, any cable television converter, descrambler, receiver, or related equipment, has been connected to the equipment of the supplier of the service without the consent of the supplier of the service, shall be presumptive evidence that the resident to whom the service which is at the time being furnished by or through such equipment has, with intent to avoid payment by himself or another person for a prospective or already rendered service, created or caused to be created with reference to such equipment, the condition so existing. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved. In any prosecution under this subdivision, proof that any telecommunications decoder or descrambler, a principal function of which defeats a mechanism of electronic signal encryption, jamming or individually addressed switching imposed by the provider of any such telecommunications service to restrict the delivery of such service, has been offered for sale or otherwise made available by anyone other than the supplier of such service shall be presumptive evidence that the person offering such equipment for sale or otherwise making it available has, with intent to avoid payment by himself or another person of the lawful charge for such service, obtained or attempted to obtain such service for himself or another person or avoided or attempted to avoid payment therefor by himself or another person; or

5. With intent to avoid payment by himself or another person of the lawful charge for any telephone service which is provided for a charge or compensation he (a) sells, offers for sale or otherwise makes available, without consent, an existing, canceled or revoked access device; or (b) uses, without consent, an existing, canceled or revoked access device; or (c) knowingly obtains any telecommunications service with fraudulent intent by use of an unauthorized, false, or fictitious name, identification, telephone number, or access device. For purposes of this subdivision access device means any telephone calling card number, credit card number, account number, mobile identification number, electronic serial number or personal identification number that can be used to obtain telephone service.

6. With intent to avoid payment by himself or another person for a prospective or already rendered service the charge or compensation for which is measured by a meter or other mechanical device, he tampers with such device or with other equipment related thereto, or in any manner attempts to prevent the meter or device from performing its measuring function, without the consent of the supplier of the service. In any prosecution under this subdivision, proof that a meter or related equipment has been tampered with or otherwise intentionally prevented from performing its measuring function without the consent of the supplier of the service shall be presumptive evidence that the person to whom the service which is at the time being furnished by or through such meter or related equipment has, with intent to avoid payment by himself or another person for a prospective or already rendered service, created or caused to be created with reference to such meter or related equipment, the condition so existing. A person who tampers with such a device or equipment without the consent of the supplier of the service is presumed to do so with intent to avoid, or to enable another to avoid, payment for the service involved; or

7. He knowingly accepts or receives the use and benefit of service, including gas, steam or electricity service, which should pass through a meter but has been diverted therefrom, or which has been prevented from being correctly registered by a meter provided therefor, or which has been diverted from the pipes, wires or conductors of the supplier thereof. In any prosecution under this subdivision proof that service has been intentionally diverted from passing through a meter, or has been intentionally prevented from being correctly registered by a meter provided therefor, or has been intentionally diverted from the pipes, wires or conductors of the supplier thereof, shall be presumptive evidence that the person who accepts or receives the use and benefit of such service has done so

with knowledge of the condition so existing; or

8. With intent to obtain, without the consent of the supplier thereof, gas, electricity, water, steam or telephone service, he tampers with any equipment designed to supply or to prevent the supply of such service either to the community in general or to particular premises; or

9. With intent to avoid payment of the lawful charge for admission to any theater or concert hall, or with intent to avoid payment of the lawful charge for admission to or use of a chair lift, gondola, rope-tow or similar mechanical device utilized in assisting skiers in transportation to a point of ski arrival or departure, he obtains or attempts to obtain such admission without payment of the lawful charge therefor.

10. Obtaining or having control over labor in the employ of another person, or of business, commercial or industrial equipment or facilities of another person, knowing that he is not entitled to the use thereof, and with intent to derive a commercial or other substantial benefit for himself or a third person, he uses or diverts to the use of himself or a third person such labor, equipment or facilities.

11. With intent to avoid payment by himself or another person of the lawful charge for use of any computer or computer service which is provided for a charge or compensation he uses, causes to be used or attempts to use a computer or computer service and avoids or attempts to avoid payment therefor. In any prosecution under this subdivision proof that a person overcame or attempted to overcome any device or coding system a function of which is to prevent the unauthorized use of said computer or computer service shall be presumptive evidence of an intent to avoid payment for the computer or computer service.

Theft of services is a class A misdemeanor, provided, however, that theft of cable television service as defined by the provisions of paragraphs (a), (c) and (d) of subdivision four of this section, and having a value not in excess of one hundred dollars by a person who has not been previously convicted of theft of services under subdivision four of this section is a violation, that theft of services under subdivision nine of this section by a person who has not been previously convicted of theft of services under subdivision nine of this section is a violation and provided further, however, that theft of services of any telephone service under paragraph (a) or (b) of subdivision five of this section having a value in excess of one thousand dollars or by a person who has been previously convicted within five years of theft of services under paragraph (a) of subdivision five of this section is a class E felony.

§ 165.17 Unlawful use of credit card, debit card or public benefit card

A person is guilty of unlawful use of credit card, debit card or public benefit card when in the course of obtaining or attempting to obtain property or a service, he uses or displays a credit card, debit card or public benefit card which he knows to be revoked or canceled.

Unlawful use of a credit card, debit card or public benefit card is a class A misdemeanor.

§ 165.25 Jostling

A person is guilty of jostling when, in a public place, he intentionally and unnecessarily:

1. Places his hand in the proximity of a person's pocket or handbag; or
2. Jostles or crowds another person at a time when a third person's hand is in the proximity of such person's pocket or handbag.

Jostling is a class A misdemeanor.

§ 165.40 Criminal possession of stolen property in the fifth degree

A person is guilty of criminal possession of stolen property in the fifth degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.

Criminal possession of stolen property in the fifth degree is a class A misdemeanor.

§ 170.05 Forgery in the third degree

A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument.

Forgery in the third degree is a class A misdemeanor.

§ 190.25 Criminal impersonation in the second degree

A person is guilty of criminal impersonation in the second degree when he:

1. Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another; or
2. Pretends to be a representative of some person or organization and does an act in such pretended capacity with intent to obtain a benefit or to injure or defraud another; or
3. (a) Pretends to be a public servant, or wears or displays without authority any uniform, badge, insignia or facsimile thereof by which such public servant is lawfully distinguished, or falsely expresses by his words or actions that he is a public servant or is acting with approval or authority of a public agency or department; and (b) so acts with intent to induce another to submit to such pretended official authority, to solicit funds or to otherwise cause another to act in reliance upon that pretense.

Criminal impersonation in the second degree is a class A misdemeanor.

§ 195.05. Obstructing governmental administration in the second degree

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration.

Obstructing governmental administration is a class A misdemeanor.

§ 220.03 Criminal possession of a controlled substance in the seventh degree

A person is guilty of criminal possession of a controlled substance in the seventh degree when he knowingly and unlawfully possesses a controlled substance.

Criminal possession of a controlled substance in the seventh degree is a class A misdemeanor.

§ 220.06 Criminal possession of a controlled substance in the fifth degree

A person is guilty of criminal possession of a controlled substance in the fifth degree when he knowingly and unlawfully possesses:

1. a controlled substance with intent to sell it; or
2. one or more preparations, compounds, mixtures or substances containing a narcotic preparation and said

preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or

3. phencyclidine and said phencyclidine weighs fifty milligrams or more; or
4. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one-fourth ounce or more; or
5. cocaine and said cocaine weighs five hundred milligrams or more.
6. ketamine and said ketamine weighs more than one thousand milligrams; or
7. ketamine and has previously been convicted of possession or the attempt to commit possession of ketamine in any amount.

Criminal possession of a controlled substance in the fifth degree is a class D felony.

§ 220.09 Criminal possession of a controlled substance in the fourth degree

A person is guilty of criminal possession of a controlled substance in the fourth degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or
2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
3. one or more preparations, compounds, mixtures or substances containing a narcotic preparation and said preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or
4. a stimulant and said stimulant weighs one gram or more; or
5. lysergic acid diethylamide and said lysergic acid diethylamide weighs one milligram or more; or
6. a hallucinogen and said hallucinogen weighs twenty-five milligrams or more; or
7. a hallucinogenic substance and said hallucinogenic substance weighs one gram or more; or
8. a dangerous depressant and such dangerous depressant weighs ten ounces or more; or
9. a depressant and such depressant weighs two pounds or more; or
10. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law and said preparations, compounds, mixtures or substances are of an aggregate weight of one ounce or more; or
11. phencyclidine and said phencyclidine weighs two hundred fifty milligrams or more; or
12. methadone and said methadone weighs three hundred sixty milligrams or more; or
13. phencyclidine and said phencyclidine weighs fifty milligrams or more with intent to sell it and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or
14. ketamine and said ketamine weighs four thousand milligrams or more.

Criminal possession of a controlled substance in the fourth degree is a class C felony.

§ 220.16 Criminal possession of a controlled substance in the third degree

A person is guilty of criminal possession of a controlled substance in the third degree when he knowingly and unlawfully possesses:

1. a narcotic drug with intent to sell it; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide, with intent to sell it and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. a stimulant with intent to sell it and said stimulant weighs one gram or more; or
4. lysergic acid diethylamide with intent to sell it and said lysergic acid diethylamide weighs one milligram or more; or
5. a hallucinogen with intent to sell it and said hallucinogen weighs twenty- five milligrams or more; or
6. a hallucinogenic substance with intent to sell it and said hallucinogenic substance weighs one gram or more; or

7. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers with intent to sell it and said preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or
 8. a stimulant and said stimulant weighs five grams or more; or
 9. lysergic acid diethylamide and said lysergic acid diethylamide weighs five milligrams or more; or
 10. a hallucinogen and said hallucinogen weighs one hundred twenty-five milligrams or more; or
 11. a hallucinogenic substance and said hallucinogenic substance weighs five grams or more; or
 12. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of one-half ounce or more; or
 13. phencyclidine and said phencyclidine weighs one thousand two hundred fifty milligrams or more.
- Criminal possession of a controlled substance in the third degree is a class B felony.

§ 220.18 Criminal possession of a controlled substance in the second degree

A person is guilty of criminal possession of a controlled substance in the second degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or
2. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and said preparations, compounds, mixtures or substances are of an aggregate weight of two ounces or more; or
3. a stimulant and said stimulant weighs ten grams or more; or
4. lysergic acid diethylamide and said lysergic acid diethylamide weighs twenty-five milligrams or more; or
5. a hallucinogen and said hallucinogen weighs six hundred twenty-five milligrams or more; or
6. a hallucinogenic substance and said hallucinogenic substance weighs twenty-five grams or more; or
7. methadone and said methadone weighs two thousand eight hundred eighty milligrams or more.

Criminal possession of a controlled substance in the second degree is a class A-II felony.

§ 220.21 Criminal possession of a controlled substance in the first degree

A person is guilty of criminal possession of a controlled substance in the first degree when he knowingly and unlawfully possesses:

1. one or more preparations, compounds, mixtures or substances containing a narcotic drug and said preparations, compounds, mixtures or substances are of an aggregate weight of four ounces or more; or
2. methadone and said methadone weighs five thousand seven hundred sixty milligrams or more.

Criminal possession of a controlled substance in the first degree is a class A-I felony.

§ 220.25 Criminal possession of a controlled substance; presumption

1. The presence of a controlled substance in an automobile, other than a public omnibus, is presumptive evidence of knowing possession thereof by each and every person in the automobile at the time such controlled substance was found; except that such presumption does not apply (a) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of his trade, or (b) to any person in the automobile if one of them, having obtained the controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (c) when the controlled substance is concealed upon the person of one of the occupants.

2. The presence of a narcotic drug, narcotic preparation, marijuana or phencyclidine in open view in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, package or otherwise prepare for sale such controlled substance is presumptive evidence of knowing possession thereof by each and every person in close proximity to such controlled substance at the time such controlled substance was found; except that

such presumption does not apply to any such persons if (a) one of them, having obtained such controlled substance and not being under duress, is authorized to possess it and such controlled substance is in the same container as when he received possession thereof, or (b) one of them has such controlled substance upon his person.

§ 220.31 Criminal sale of a controlled substance in the fifth degree

A person is guilty of criminal sale of a controlled substance in the fifth degree when he knowingly and unlawfully sells a controlled substance.

Criminal sale of a controlled substance in the fifth degree is a class D felony.

§ 220.34 Criminal sale of a controlled substance in the fourth degree

A person is guilty of criminal sale of a controlled substance in the fourth degree when he knowingly and unlawfully sells:

1. a narcotic preparation; or
2. a dangerous depressant or a depressant and the dangerous depressant weighs ten ounces or more, or the depressant weighs two pounds or more; or
3. concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; or
4. phencyclidine and the phencyclidine weighs fifty milligrams or more; or
5. methadone; or
6. any amount of phencyclidine and has previously been convicted of an offense defined in this article or the attempt or conspiracy to commit any such offense; or
- 6-a. ketamine and said ketamine weighs four thousand milligrams or more.
7. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon school grounds; or
8. a controlled substance in violation of section 220.31 of this article, when such sale takes place upon the grounds of a child day care or educational facility under circumstances evincing knowledge by the defendant that such sale is taking place upon such grounds. As used in this subdivision, the phrase "the grounds of a child day care or educational facility" shall have the same meaning as provided for in subdivision five of section 220.44 of this article. For the purposes of this subdivision, a rebuttable presumption shall be established that a person has knowledge that they are within the grounds of a child day care or educational facility when notice is conspicuously posted of the presence or proximity of such facility.

Criminal sale of a controlled substance in the fourth degree is a class C felony.

§ 220.39 Criminal sale of a controlled substance in the third degree

A person is guilty of criminal sale of a controlled substance in the third degree when he knowingly and unlawfully sells:

1. a narcotic drug; or
2. a stimulant, hallucinogen, hallucinogenic substance, or lysergic acid diethylamide and has previously been convicted of an offense defined in article two hundred twenty or the attempt or conspiracy to commit any such offense; or
3. a stimulant and the stimulant weighs one gram or more; or
4. lysergic acid diethylamide and the lysergic acid diethylamide weighs one milligram or more; or

5. a hallucinogen and the hallucinogen weighs twenty-five milligrams or more; or
6. a hallucinogenic substance and the hallucinogenic substance weighs one gram or more; or
7. one or more preparations, compounds, mixtures or substances containing methamphetamine, its salts, isomers or salts of isomers and the preparations, compounds, mixtures or substances are of an aggregate weight of one-eighth ounce or more; or
8. phencyclidine and the phencyclidine weighs two hundred fifty milligrams or more; or
9. a narcotic preparation to a person less than twenty-one years old.
Criminal sale of a controlled substance in the third degree is a class B felony.

§ 221.05 Unlawful possession of marihuana

A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana. Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars. However, where the defendant has previously been convicted of an offense defined in this article or article 220 of this chapter, committed within the three years immediately preceding such violation, it shall be punishable (a) only by a fine of not more than two hundred dollars, if the defendant was previously convicted of one such offense committed during such period, and (b) by a fine of not more than two hundred fifty dollars or a term of imprisonment not in excess of fifteen days or both, if the defendant was previously convicted of two such offenses committed during such period.

§ 221.15 Criminal possession of marihuana in the fourth degree

A person is guilty of criminal possession of marihuana in the fourth degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than two ounces. Criminal possession of marihuana in the fourth degree is a class A misdemeanor.

§ 221.20 Criminal possession of marihuana in the third degree

A person is guilty of criminal possession of marihuana in the third degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than eight ounces. Criminal possession of marihuana in the third degree is a class E felony.

§ 221.25 Criminal possession of marihuana in the second degree

A person is guilty of criminal possession of marihuana in the second degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than sixteen ounces. Criminal possession of marihuana in the second degree is a class D felony.

§ 221.30 Criminal possession of marihuana in the first degree

A person is guilty of criminal possession of marihuana in the first degree when he knowingly and unlawfully possesses one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than ten pounds.

Criminal possession of marihuana in the first degree is a class C felony

§ 221.35 Criminal sale of marihuana in the fifth degree

A person is guilty of criminal sale of marihuana in the fifth degree when he knowingly and unlawfully sells, without consideration, one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of two grams or less; or one cigarette containing marihuana

Criminal sale of marihuana in the fifth degree is a class B misdemeanor.

§ 221.40 Criminal sale of marihuana in the fourth degree

A person is guilty of criminal sale of marihuana in the fourth degree when he knowingly and unlawfully sells marihuana except as provided in section 221.35 of this article.

Criminal sale of marihuana in the fourth degree is a class A misdemeanor.

§ 221.45 Criminal sale of marihuana in the third degree

A person is guilty of criminal sale of marihuana in the third degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams.

Criminal sale of marihuana in the third degree is a class E felony.

§ 221.50 Criminal sale of marihuana in the second degree

A person is guilty of criminal sale of marihuana in the second degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than four ounces, or knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana to a person less than eighteen years of age

Criminal sale of marihuana in the second degree is a class D felony.

§ 221.55 Criminal sale of marihuana in the first degree

A person is guilty of criminal sale of marihuana in the first degree when he knowingly and unlawfully sells one or more preparations, compounds, mixtures or substances containing marihuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than sixteen ounces.

Criminal sale of marihuana in the first degree is a class C felony.

§ 240.20 Disorderly conduct

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Disorderly conduct is a violation.

§ 240.25 Harassment in the first degree

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act, [FN1] as amended, the railway labor act, [FN2] as amended, or the federal employment labor management act, [FN3] as amended.

Harassment in the first degree is a class B misdemeanor.

§ 240.26 Harassment in the second degree

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.

Subdivisions two and three of this section shall not apply to activities regulated by the national labor relations act, [FN1] as amended, the railway labor act, [FN2] as amended, or the federal employment labor management act, [FN3] as amended.

Harassment in the second degree is a violation.

§ 240.30 Aggravated harassment in the second degree

A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or

alarm another person, he or she:

1. Communicates, or causes a communication to be initiated by mechanical or electronic means or otherwise, with a person, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication, in a manner likely to cause annoyance or alarm; or
 2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or
 3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of the race, color, religion or national origin of such person; or
 4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years.
- Aggravated harassment in the second degree is a class A misdemeanor.

§ 240.35 Loitering

A person is guilty of loitering when he:

1. Loiters, remains or wanders about in a public place for the purpose of begging; or
 2. Loiters or remains in a public place for the purpose of gambling with cards, dice or other gambling paraphernalia; or
 3. Loiters or remains in a public place for the purpose of engaging, or soliciting another person to engage, in deviate sexual intercourse or other sexual behavior of a deviate nature; or
 4. Being masked or in any manner disguised by unusual or unnatural attire or facial alteration, loiters, remains or congregates in a public place with other persons so masked or disguised, or knowingly permits or aids persons so masked or disguised to congregate in a public place; except that such conduct is not unlawful when it occurs in connection with a masquerade party or like entertainment if, when such entertainment is held in a city which has promulgated regulations in connection with such affairs, permission is first obtained from the police or other appropriate authorities; or
 5. Loiters or remains in or about school grounds, a college or university building or grounds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same; or
 6. Loiters or remains in any transportation facility, unless specifically authorized to do so, for the purpose of soliciting or engaging in any business, trade or commercial transactions involving the sale of merchandise or services, or for the purpose of entertaining persons by singing, dancing or playing any musical instrument; or
 7. Loiters or remains in any transportation facility, or is found sleeping therein, and is unable to give a satisfactory explanation of his presence; or [FN1]
- Loitering is a violation.

§ 240.36 Loitering in the first degree

A person is guilty of loitering in the first degree when he loiters or remains in any place with one or more persons for the purpose of unlawfully using or possessing a controlled substance, as defined in section 220.00 of this chapter. Loitering in the first degree is a class B misdemeanor.

§ 240.46 Criminal nuisance in the first degree

A person is guilty of criminal nuisance in the first degree when he knowingly conducts or maintains any premises, place or resort where persons come or gather for purposes of engaging in the unlawful sale of controlled substances in violation of section 220.39, 220.41, or 220.43 of this chapter, and thereby derives the benefit from such unlawful conduct.

Criminal nuisance in the first degree is a class E felony.

§ 240.55 Falsely reporting an incident in the second degree

A person is guilty of falsely reporting an incident in the second degree when, knowing the information reported, conveyed or circulated to be false or baseless, he or she:

1. Initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a fire or an explosion under circumstances in which it is not unlikely that public alarm or inconvenience will result;
2. Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire or an explosion which did not in fact occur or does not in fact exist; or
3. Reports, by word or action, to the statewide central register of child abuse and maltreatment, as defined in title six of article six of the social services law, an alleged occurrence or condition of child abuse or maltreatment which did not in fact occur or exist.

Falsely reporting an incident in the second degree is a class A misdemeanor.

§ 260.20 Unlawfully dealing with a child in the first degree

A person is guilty of unlawfully dealing with a child in the first degree when:

1. He knowingly permits a child less than eighteen years old to enter or remain in or upon a place, premises or establishment where sexual activity as defined by article one hundred thirty, two hundred thirty or two hundred sixty- three of this chapter or activity involving controlled substances as defined by article two hundred twenty of this chapter or involving marihuana as defined by article two hundred twenty-one of this chapter is maintained or conducted, and he knows or has reason to know that such activity is being maintained or conducted; or
2. He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a person less than twenty-one years old; except that this subdivision does not apply to the parent or guardian of such a person or to a person who gives or causes to be given any such alcoholic beverage to a person under the age of twenty-one years, who is a student in a curriculum licensed or registered by the state education department, where the tasting or imbibing of alcoholic beverages is required in courses that are part of the required curriculum, provided such alcoholic beverages are given only for instructional purposes during classes conducted pursuant to such curriculum.

It is no defense to a prosecution pursuant to subdivision two of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the first degree is a class A misdemeanor.

§ 260.21 Unlawfully dealing with a child in the second degree

A person is guilty of unlawfully dealing with a child in the second degree when:

1. Being an owner, lessee, manager or employee of a place where alcoholic beverages are sold or given away, he permits a child less than sixteen years old to enter or remain in such place unless:
 - (a) The child is accompanied by his parent, guardian or an adult authorized by a parent or guardian; or
 - (b) The entertainment or activity is being conducted for the benefit or under the auspices of a non-profit school, church or other educational or religious institution; or
 - (c) Otherwise permitted by law to do so; or
 - (d) The establishment is closed to the public for a specified period of time to conduct an activity or entertainment, during which the child is in or remains in such establishment, and no alcoholic beverages are sold, served, given away or consumed at such establishment during such period. The state liquor authority shall be notified in writing

by the licensee of such establishment, of the intended closing of such establishment, to conduct any such activity or entertainment, not less than ten days prior to any such closing; or

2. He marks the body of a child less than eighteen years old with indelible ink or pigments by means of tattooing; or

3. He sells or causes to be sold tobacco in any form to a child less than eighteen years old.

It is no defense to a prosecution pursuant to subdivision three of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such.

Unlawfully dealing with a child in the second degree is a class B misdemeanor.

§ 265.01 Criminal possession of a weapon in the fourth degree

A person is guilty of criminal possession of a weapon in the fourth degree when:

(1) He possesses any firearm, electronic dart gun, electronic stun gun, gravity knife, switchblade knife, pilum ballistic knife, metal knuckle knife, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sandclub, wrist-brace type slingshot or slungshot, shirken or "Kung Fu star"; or

(2) He possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another; or

(3) He knowingly has in his possession a rifle, shotgun or firearm in or upon a building or grounds, used for educational purposes, of any school, college or university, except the forestry lands, wherever located, owned and maintained by the State University of New York college of environmental science and forestry, without the written authorization of such educational institution; or

(4) He possesses a rifle or shotgun and has been convicted of a felony or serious offense; or

(5) He possesses any dangerous or deadly weapon and is not a citizen of the United States; or

(6) He is a person who has been certified not suitable to possess a rifle or shotgun, as defined in subdivision sixteen of section 265.00, and refuses to yield possession of such rifle or shotgun upon the demand of a police officer.

Whenever a person is certified not suitable to possess a rifle or shotgun, a member of the police department to which such certification is made, or of the state police, shall forthwith seize any rifle or shotgun possessed by such person. A rifle or shotgun seized as herein provided shall not be destroyed, but shall be delivered to the headquarters of such police department, or state police, and there retained until the aforesaid certificate has been rescinded by the director or physician in charge, or other disposition of such rifle or shotgun has been ordered or authorized by a court of competent jurisdiction.

(7) He knowingly possesses a bullet containing an explosive substance designed to detonate upon impact.

(8) He possesses any armor piercing ammunition with intent to use the same unlawfully against another.

Criminal possession of a weapon in the fourth degree is a class A misdemeanor.

§ 265.05 Unlawful possession of weapons by persons under sixteen

It shall be unlawful for any person under the age of sixteen to possess any air-gun, spring-gun or other instrument or weapon in which the propelling force is a spring or air, or any gun or any instrument or weapon in or upon which any loaded or blank cartridges may be used, or any loaded or blank cartridges or ammunition therefor, or any dangerous knife; provided that the possession of rifle or shotgun or ammunition therefor by the holder of a hunting license or permit issued pursuant to article eleven of the environmental conservation law and used in accordance with said law shall not be governed by this section.

A person who violates the provisions of this section shall be adjudged a juvenile delinquent.

§ 270.00 Unlawfully dealing with fireworks and dangerous fireworks

1. Definition of "fireworks" and "dangerous fireworks". The term "fireworks," as used in this section, is defined and declared to be and to include any blank cartridge, blank cartridge pistol, or toy cannon in which explosives are

used, firecrackers, sparklers or other combustible or explosive of like construction, or any preparation containing any explosive or inflammable compound or any tablets or other device commonly used and sold as fireworks containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, arsenic, mercury, nitroglycerine, phosphorus or any compound containing any of the same or other explosives, or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, or other device containing any explosive substance and the term "dangerous fireworks" means any fireworks capable of causing serious physical injury and which are: firecrackers containing more than fifty milligrams of any explosive substance, torpedoes, skyrockets and rockets including all devices which employ any combustible or explosive substance and which rise in the air during discharge, Roman candles, bombs, sparklers more than ten inches in length or one-fourth of one inch in diameter, or chasers including all devices which dart or travel about the surface of the ground during discharge. "Fireworks" and "dangerous fireworks" shall not be deemed to include (1) flares of the type used by railroads or any warning lights commonly known as red flares, or marine distress signals of a type approved by the United States coast guard or (2) toy pistols, toy canes, toy guns or other devices in which paper caps containing twenty-five hundredths grains or less of explosive compound are used, providing they are so constructed that the hand cannot come in contact with the cap when in place for use, and toy pistol paper caps which contain less than twenty- hundredths grains of explosive mixture, the sale and use of which shall be permitted at all times, or (3) bank security devices which contain not more than fifty grams of any compound or substance or any combination thereof, together with an igniter not exceeding 0.2 gram, capable of producing a lachrymating and/or visible or audible effect, where such device is stored or used only by banks, national banking associations, trust companies, savings banks, savings and loan associations, industrial banks, or credit unions, or by any manufacturer, wholesaler, dealer, jobber or common carrier for such devices and where the total storage on any one premises does not exceed one hundred devices.

2. Offense. (a) Except as herein otherwise provided, or except where a permit is obtained pursuant to section 405.00; (i) any person who shall offer or expose for sale, sell or furnish, any fireworks or dangerous fireworks is guilty of a class B misdemeanor;

(ii) any person who shall offer or expose for sale, sell or furnish any fireworks or dangerous fireworks valued at five hundred dollars or more shall be guilty of a class A misdemeanor;

(b) (i) Except as herein otherwise stated, or except where a permit is obtained pursuant to section 405.00, any person who shall possess, use, explode or cause to explode any fireworks or dangerous fireworks is guilty of a violation.

(ii) A person who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen is guilty of a class A misdemeanor.

(iii) A person who has previously been convicted of a violation of subparagraph (ii) of this paragraph within the preceding five years and who shall offer or expose for sale, sell or furnish, any dangerous fireworks to any person who is under the age of eighteen, shall be guilty of a class E felony.

(c) Possession of fireworks or dangerous fireworks valued at fifty dollars or more shall be a presumption that such fireworks were intended to be offered or exposed for sale.

3. The provisions of this section shall not apply to articles of the kind and nature herein mentioned, while in possession of railroads and transportation agencies for the purpose of transportation to points without the state, the shipment of which is not prohibited by the interstate commerce commission regulations as formulated and published from time to time, unless the same be held voluntarily by such railroads or transportation companies as warehousemen for delivery to points within the state; provided, that none of the provisions of this section shall apply to signaling devices used by railroad companies or motor vehicles referred to in subdivision seventeen of section three hundred seventy-five of the vehicle and traffic law, or to high explosives for blasting or similar purposes; provided that none of the provisions of this section shall apply to fireworks or dangerous fireworks and the use thereof by the army and navy departments of the state and federal government; nor shall anything in this act contained be construed to prohibit any manufacturer, wholesaler, dealer or jobber from manufacturing, possessing or selling at wholesale such fireworks or dangerous fireworks to municipalities, religious or civic organizations, fair

associations, amusement parks, or other organizations or groups of individuals authorized to possess and use fireworks or dangerous fireworks under this act, or the sale or use of blank cartridges for a show or theatre, or for signal purposes in athletic sports, or for dog trials or dog training, or the use, or the storage, transportation or sale for use of fireworks or dangerous fireworks in the preparation for or in connection with television broadcasts; nor shall anything in this act contained be construed to prohibit the manufacture of fireworks or dangerous fireworks, nor the sale of any kind of fireworks or dangerous fireworks, provided the same are to be shipped directly out of the state.

4. Sales of ammunition not prohibited. Nothing contained in this section shall be construed to prevent, or interfere in any way with, the sale of ammunition for revolvers or pistols of any kind, or for rifles, shot guns, or other arms, belonging or which may belong to any persons whether as sporting or hunting weapons or for the purpose of protection to them in their homes, or, as they may go abroad; and manufacturers are authorized to continue to manufacture, and wholesalers and dealers to continue to deal in and freely to sell ammunition to all such persons for such purposes.

5. Notwithstanding the provisions of subdivision four of this section, it shall be unlawful for any dealer in firearms to sell any ammunition designed exclusively for use in a pistol or revolver to any person, not authorized to possess a pistol or revolver. The violation of this section shall constitute a class B misdemeanor.

NEW YORK STATE VEHICLE AND TRAFFIC LAW

§ 511. Operation while license or privilege is suspended or revoked; aggravated unlicensed operation

1. Aggravated unlicensed operation of a motor vehicle in the third degree.

(a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the third degree when such person operates a motor vehicle upon a public highway while knowing or having reason to know that such person's license or privilege of operating such motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner.

(b) Aggravated unlicensed operation of a motor vehicle in the third degree is a misdemeanor. When a person is convicted of this offense, the sentence of the court must be: (i) a fine of not less than two hundred dollars nor more than five hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.

(c) When a person is convicted of this offense with respect to the operation of a motor vehicle with a gross vehicle weight rating of more than eighteen thousand pounds, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than fifteen hundred dollars; or (ii) a term of imprisonment of not more than thirty days; or (iii) both such fine and imprisonment.

2. Aggravated unlicensed operation of a motor vehicle in the second degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the second degree when such person commits the offense of aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section; and

(i) has previously been convicted of an offense that consists of or includes the elements comprising the offense committed within the immediately preceding eighteen months; or

(ii) the suspension or revocation is based upon a refusal to submit to a chemical test pursuant to section eleven hundred ninety-four of this chapter, a finding of driving after having consumed alcohol in violation of section eleven hundred ninety-two-a of this chapter or upon a conviction for a violation of any of the provisions of section eleven hundred ninety-two of this chapter; or

(iii) the suspension was a mandatory suspension pending prosecution of a charge of a violation of section eleven hundred ninety-two of this chapter ordered pursuant to paragraph (e) of subdivision two of section eleven hundred ninety-three of this chapter or other similar statute; or

(iv) such person has in effect three or more suspensions, imposed on at least three separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

(b) Aggravated unlicensed operation of a motor vehicle in the second degree is a misdemeanor. When a person is convicted of this crime under subparagraph (i) of paragraph (a) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars; and (ii) a term of imprisonment not to exceed one hundred eighty days; or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section. When a person is convicted of this crime under subparagraph (ii), (iii) or (iv) of paragraph (a) of this

subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars nor more than one thousand dollars; and (ii) a term of imprisonment of not less than seven days nor more than one hundred eighty days, or (iii) where appropriate a sentence of probation as provided in subdivision six of this section; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law and consistent with this section.

3. Aggravated unlicensed operation of a motor vehicle in the first degree. (a) A person is guilty of the offense of aggravated unlicensed operation of a motor vehicle in the first degree when such person: (i) commits the offense of aggravated unlicensed operation of a motor vehicle in the second degree as provided in subparagraph (ii), (iii) or (iv) of paragraph (a) of subdivision two of this section and is operating a motor vehicle while under the influence of alcohol or a drug in violation of subdivision one, two, three, four or five of section eleven hundred ninety-two of this chapter; or

(ii) is operating a motor vehicle while such person has in effect ten or more suspensions, imposed on at least ten separate dates for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

(b) Aggravated unlicensed operation of a motor vehicle in the first degree is a class E felony. When a person is convicted of this crime, the sentence of the court must be: (i) a fine in an amount not less than five hundred dollars nor more than five thousand dollars; and (ii) a term of imprisonment as provided in the penal law, or (iii) where appropriate and a term of imprisonment is not required by the penal law, a sentence of probation as provided in subdivision six of this section, or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law.

4. Defense. In any prosecution under this section or section five hundred eleven-a of this chapter, it is a defense that the person operating the motor vehicle has at the time of the offense a license issued by a foreign country, state, territory or federal district, which license is valid for operation in this state in accordance with the provisions of section two hundred fifty of this chapter.

5. Limitation on pleas. Where an accusatory instrument charges a violation of this section, any plea of guilty entered in satisfaction of such charge must include at least a plea of guilty of one of the offenses defined by this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, that if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may set forth upon the record the basis for such determination and consent to a disposition by plea of guilty to another charge in satisfaction of such charge, and the court may accept such plea.

6. Sentence of probation. In any case where a sentence of probation is authorized by this section, the court may in its discretion impose such sentence, provided however, if the court is of the opinion that a program of alcohol or drug treatment may be effective in assisting in prevention of future offenses of a similar nature upon imposing such sentence, the court shall require as a condition of the sentence that the defendant participate in such a program.

7. Exceptions. When a person is convicted of a violation of subdivision one of [FN1] two of this section, and the suspension was issued pursuant to subdivision four-e of section five hundred ten of this article due to a support arrears, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears have been satisfied as shown by certified check, notice issued by the court ordering the suspension, or notice from a support collection unit. The sentencing court shall take the satisfaction of arrears into account when imposing a sentence for any such conviction.

§ 511-a. Facilitating aggravated unlicensed operation of a motor vehicle

1. A person is guilty of the offense of facilitating aggravated unlicensed operation of a motor vehicle in the third degree when such person consents to the operation upon a public highway of a motor vehicle registered in such person's name knowing or having reason to know that the operator of such vehicle is a person whose license or privilege of operating such motor vehicle in this state or privilege of obtaining a license issued to operate such motor vehicle by the commissioner is suspended, revoked or otherwise withdrawn by the commissioner and the vehicle is operated upon a public highway by such person.

2. Facilitating aggravated unlicensed operation of a motor vehicle in the third degree is a traffic infraction. When a person is convicted thereof the sentence of the court must be: (i) a fine of not less than two hundred dollars nor more than five hundred dollars or (ii) a term of imprisonment of not more than fifteen days, or (iii) both.

3. A person is guilty of facilitating aggravated unlicensed operation of a motor vehicle in the second degree when such person:

(a) commits the offense of facilitating aggravated unlicensed operation of a motor vehicle in the third degree as defined in subdivision one of this section after having been convicted of such offense within the preceding eighteen months; or

(b) consents to the operation upon a public highway of a motor vehicle registered in such person's name knowing or having reason to know that the operator of such vehicle is a person who has in effect three or more suspensions, imposed on at least three separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter; or

(c) commits the crime of facilitating aggravated unlicensed operation of a motor vehicle in the third degree after having been convicted of such an offense two or more times within the preceding five years.

For purposes of this subdivision, "motor vehicle" shall mean any vehicle for hire, including a taxicab, livery, as defined in section one hundred twenty- one-e of this chapter, coach, limousine, van or wheelchair accessible van, tow truck, bus or commercial motor vehicle as defined [FN1] section five hundred nine-a of this chapter.

Facilitating aggravated unlicensed operation of a motor vehicle in the second degree is a misdemeanor. When a person is convicted of this crime pursuant to paragraphs (a) or (b) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred dollars, nor more than seven hundred fifty dollars; or (ii) a term of imprisonment not to exceed sixty days; or (iii) both a fine and imprisonment; or (iv) where appropriate, a sentence of probation; or (v) a term of imprisonment as a condition of a sentence of probation as provided in the penal law. When a person is convicted of this crime pursuant to paragraph (c) of this subdivision, the sentence of the court must be: (i) a fine of not less than five hundred, nor more than one thousand dollars; or (ii) a term of imprisonment not to exceed one hundred eighty days; or (iii) both a fine and imprisonment; or (iv) where appropriate, a sentence of probation; or (v) a term of imprisonment as a condition of probation as provided in the penal law.

4. A person is guilty of facilitating aggravated unlicensed operation of a motor vehicle in the first degree when such person consents to the operation upon a public highway of a motor vehicle registered in such person's name knowing or having reason to know that the operator of such vehicle is a person who has in effect ten or more suspensions, imposed on at least ten separate dates, for failure to answer, appear or pay a fine, pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

For purposes of this subdivision, "motor vehicle" shall mean any vehicle for hire, including a taxicab, livery, as defined in section one hundred twenty- one-e of this chapter, coach, limousine, van or wheelchair accessible van, tow truck, bus or commercial motor vehicle as defined in section five hundred nine- a of this chapter.

Facilitating aggravated unlicensed operation of a motor vehicle in the first degree is a class E felony. When a person is convicted of this crime, the sentence of the court must be: (i) a fine in an amount not less than one thousand dollars nor more than five thousand dollars; and (ii) a term of imprisonment as provided in the penal law; or (iii) where appropriate, a sentence of probation; or (iv) a term of imprisonment as a condition of a sentence of probation as provided in the penal law.

5. Upon a conviction of a violation of subdivision three or four of this section the commissioner shall revoke the registration of the motor vehicle for which the defendant's consent is given and shall only be restored pursuant to the provisions of subdivision five of section five hundred ten of this article. If such defendant is a corporation, partnership, association or other group, none of its officers, principals, directors or stockholders owning more than ten percent of the outstanding stock of the corporation shall be eligible to register the motor vehicle.

§ 511-b. Seizure and redemption of unlawfully operated vehicles

1. Upon making an arrest or upon issuing a summons or an appearance ticket for the crime of aggravated unlicensed operation of a motor vehicle in the first or second degree committed in his presence, an officer shall remove or arrange for the removal of the vehicle to a garage, automobile pound, or other place of safety where it shall remain impounded, subject to the provisions of this section if: (a) the operator is the registered owner of the vehicle or the vehicle is not properly registered; or (b) proof of financial security is not produced; or (c) where a person other than the operator is the registered owner and, such person or another properly licensed and authorized to possess and operate the vehicle is not present. The vehicle shall be entered into the New York statewide police information network as an impounded vehicle and the impounding police department shall promptly notify the owner and the local authority that the vehicle has been impounded.

2. A motor vehicle so impounded shall be in the custody of the local authority and shall not be released unless: (a) The person who redeems it has furnished satisfactory evidence of registration and financial security; (b) Payment has been made for the reasonable costs of removal and storage of the motor vehicle. The registered owner of the vehicle shall be responsible for such payment provided, however, that if he was not the operator at the time of the offense he shall have a cause of action against such operator to recover such costs. Payment prior to release of the vehicle shall not be required in cases where the impounded vehicle was stolen or was rented or leased pursuant to a written agreement for a period of thirty days or less, however the operator of such a vehicle shall be liable for the costs of removal and storage of the vehicle to any entity rendering such service.

(c) Where the motor vehicle was operated by a person who at the time of the offense was the owner thereof, (i) satisfactory evidence that the registered owner or other person seeking to redeem the vehicle has a license or privilege to operate a motor vehicle in this state, and (ii) (A) satisfactory evidence that the criminal action founded upon the charge of aggravated unlicensed operation of a motor vehicle has been terminated and that any fine imposed as a result of a conviction thereon has been paid, or (B) a certificate issued by the court in which the criminal action was commenced ordering release of the vehicle prior to the judgment or compliance therewith in the interest of justice, or (C) a certificate issued by the district attorney or other officer authorized to prosecute such charge waiving the requirement that the vehicle be held as security for appearance before and compliance with the judgment of the court.

3. When a vehicle seized and impounded pursuant to this section has been in the custody of the local authority for thirty days, such authority shall make inquiry in the manner prescribed by the commissioner as to the name and address of the owner and any lienholder and upon receipt of such information shall notify the owner and the lienholder, if any, at his last known address by certified mail, return receipt requested, that if the vehicle is not retrieved pursuant to subdivision two of this section within thirty days from the date the notice is given, it will be forfeited. If the vehicle was registered in New York the last known address shall be that address on file with the commissioner. If the vehicle was registered out-of-state or never registered, notification shall be made in the manner prescribed by the commissioner.

4. A motor vehicle that has been seized and not retrieved pursuant to the foregoing provisions of this section shall be forfeited to the local authority upon expiration of the period of the notice set forth in subdivision three of this section provided, however, in computing such period, the period of time during which a criminal prosecution is or was pending against the owner for a violation of this section shall be excluded. A proceeding to decree such

forfeiture and to recover towing and storage costs, if any, to the extent such costs exceed the fair market value of the vehicle may be brought by the local authority in the court in which the criminal action for aggravated unlicensed operation of a motor vehicle was commenced by petition for an order decreeing forfeiture of the motor vehicle accompanied by an affidavit attesting to facts showing that forfeiture is warranted. If the identity and address of the owner and/or lienholder is known to the local authority, ten days notice shall be given to such party, who shall have an opportunity to appear and be heard prior to entry of an order decreeing forfeiture. Where the court is satisfied that forfeiture of a motor vehicle is warranted in accordance with this section, it shall enter an order decreeing forfeiture of such vehicle. Provided, however, that the court at any time prior to entry of such an order may authorize release of the vehicle in accordance with subdivision two of this section upon a showing of good cause for failure to retrieve same prior to commencement of the proceeding to decree forfeiture, but if the court orders release of the motor vehicle as herein provided and the vehicle is not redeemed within ten days from the date of such order, the vehicle shall be deemed to have been abandoned and the court upon application of the local authority must enter an order decreeing its forfeiture.

5. A motor vehicle forfeited in accordance with the provisions of this section shall be and become the property of the local authority, subject however to any lien that was recorded prior to the seizure.

6. For the purposes of this section, the term "local authority" means the municipality in which the motor vehicle was seized; except that if the motor vehicle was seized on property of the New York state thruway authority or property under the jurisdiction of the office of parks, recreation and historic preservation, the department of transportation, or a public authority or commission, the term "local authority" means such authority, office, department, or commission. A county may provide by local law that the county may act as the agent for a local authority under this section.

7. When a vehicle has been seized and impounded pursuant to this section, the local authority or any person having custody of the vehicle shall make the vehicle available or grant access to it to any owner or any person designated or authorized by such owner for the purpose of (i) taking possession of any personal property found within the vehicle and (ii) obtaining proof of registration, financial security, title or documentation in support thereof.

§ 511-c. Seizure and forfeiture of vehicles used in the unlicensed operation of a motor vehicle under certain circumstances

1. For purposes of this section:

(a) The term "owner" shall mean an owner as defined in section one hundred twenty-eight and in subdivision three of section three hundred eighty-eight of this chapter.

(b) The term "security interest" shall mean a security interest as defined in subdivision (k) of section two thousand one hundred one of this chapter.

(c) The term "termination of the criminal proceeding" shall mean the earliest of (i) thirty-one days following the imposition of sentence; or (ii) the date of acquittal of a person arrested for an offense; or (iii) where leave to file new charges or to resubmit the case to a new grand jury is required and has not been granted, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury; or (iv) where leave to file new charges or to resubmit the case to a new grand jury is not required, thirty-one days following the dismissal of the last accusatory instrument filed in the case, or, if applicable, upon expiration of the time granted by the court or permitted by statute for filing new charges or resubmitting the case to a new grand jury; or (v) six months from the issuance of an "adjournment in contemplation of dismissal" order pursuant to section 170.55 of the criminal procedure law, where the case is not restored to the court's calendar within the applicable six-month period; or (vi) the date when, prior to the filing of an accusatory instrument against a person arrested for an offense, the prosecuting authority elects not to prosecute such person.

2. Any motor vehicle which has been or is being used in violation of paragraph (a) of subdivision three of section five hundred eleven of this article may be seized by any peace officer, acting pursuant to his or her special duties, or police officer, and forfeited as hereinafter provided in this section.

3. A vehicle may be seized upon service of a notice of violation upon the owner or operator of a vehicle. The seized motor vehicle shall be delivered by the officer having made the seizure to the custody of the district attorney of the county wherein the seizure was made, except that in the cities of New York, Yonkers, Rochester and Buffalo the seized motor vehicle shall be delivered to the custody of the police department of such cities and such motor vehicle seized by a member or members of the state police shall be delivered to the custody of the superintendent of state police, together with a report of all the facts and circumstances of the seizure. Within one business day after the seizure, notice of such violation and a copy of the notice of violation shall be mailed to the owner of such vehicle at the address for such owner set forth in the records maintained by the department of motor vehicles or, for vehicles not registered in New York state, such equivalent record in such state of registration.

4. (a) The attorney general in seizures by members of the state police, or the district attorney of the county wherein the seizure is made, if elsewhere than in the cities of New York, Yonkers, Rochester or Buffalo, or where the seizure is made in such cities, the corporation counsel of the city shall inquire into the facts of the seizure so reported to him or her. If it appears that there is a basis for the commencement and prosecution of a forfeiture proceeding pursuant to this section, any such forfeiture proceeding shall be commenced in supreme court not later than twenty days after the date of receipt of a written demand by a person claiming ownership of the motor vehicle accompanied by the documentation required to be presented upon release of the vehicle pursuant to subparagraphs (i), (ii), and (iv) of paragraph (a) of subdivision five of this section.

(b) Where forfeiture proceedings are commenced and prosecuted pursuant to this section, the motor vehicle which is the subject of such proceedings shall remain in the custody of such district attorney, police department or superintendent of state police, as applicable, pending the final determination of such proceedings.

(c) To the extent applicable, the procedures of article thirteen-A of the civil practice law and rules shall govern proceedings and actions under this section.

5. A motor vehicle seized pursuant to this section shall be released when:

(a)(i) Such attorney general, district attorney or corporation counsel has made a determination not to institute forfeiture proceedings pursuant to this section or the time period within which a forfeiture proceeding could have been commenced pursuant to this section has elapsed and no such forfeiture proceeding was commenced or the criminal proceeding has been terminated in favor of the accused, as defined in subdivision three of section 160.50 of the criminal procedure law; and

(ii) The person seeking to claim the motor vehicle has furnished satisfactory evidence of registration and financial security and, if the person was the operator of the vehicle at the time of the violation of paragraph (a) of subdivision three of section five hundred eleven of this article, satisfactory evidence of payment of any fines or penalties imposed in connection therewith; and

(iii) Payment has been made for the reasonable costs of removal and storage of the motor vehicle. The owner of the motor vehicle shall be responsible for such payment provided, however, that if he or she was not the operator at the time of the offense, such person shall have a cause of action against such operator to recover such costs. Payment prior to release of the motor vehicle shall not be required in cases where the seized motor vehicle was stolen or rented or leased pursuant to a written agreement for a period of thirty days or less, however the operator of such a motor vehicle shall be liable for the costs of removal and storage of the motor vehicle to any entity rendering such service; and

(iv) If the motor vehicle is held as evidence, the person seeking to claim the motor vehicle has presented a release

from the prosecuting authority providing that the motor vehicle is not needed as evidence.

(b)(i) Pending completion of forfeiture proceedings which have been commenced, the person seeking to claim the motor vehicle has posted a bond in a form satisfactory to such attorney general, district attorney or corporation counsel in an amount that shall not exceed an amount sufficient to cover the maximum fines or civil penalties which may be imposed for the violation underlying the seizure and all reasonable costs for removal and storage of such vehicle; and

(ii) The persons seeking to claim the motor vehicle has [FN1] furnished satisfactory evidence of registration and financial security.

6. Where a demand for the return of a motor vehicle is not made within ninety days after the termination of the criminal proceeding founded upon the charge of aggravated unlicensed operation of a motor vehicle in the first degree, such motor vehicle shall be deemed to be abandoned. Such vehicle shall be disposed of by the county, cities of New York, Yonkers, Rochester or Buffalo or the state, as applicable, in accordance with section twelve hundred twenty-four of this chapter or as otherwise provided by law.

7. Notice of the institution of the forfeiture proceeding shall be served:

(a) By personal service pursuant to the civil practice law and rules upon all owners of the seized motor vehicle listed in the records maintained by the department, or for vehicles not registered in New York state, in the records maintained by the state of registration; and

(b) By first class mail upon all individuals who have notified such attorney general, district attorney or corporation counsel that they are an owner of the vehicle and upon all persons holding a security interest in such motor vehicle which security interest has been filed with the department pursuant to the provisions of title ten of this chapter, at the address set forth in the records of such department, or for motor vehicles not registered in New York state, all persons holding a security interest in such motor vehicle which security interest has been filed with such state of registration, at the address provided by such state of registration.

8. Any owner who receives notice of the institution of a forfeiture action who claims an interest in the motor vehicle subject to forfeiture shall assert a claim for the recovery of the motor vehicle or satisfaction of the owner's interest in such motor vehicle by intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. Any person with a security interest in such vehicle who receives notice of the institution of the forfeiture action shall assert a claim for the satisfaction of such person's security interest in such vehicle by intervening in the forfeiture action in accordance with subdivision (a) of section one thousand twelve of the civil practice law and rules. If the action relates to a vehicle in which a person holding a security interest has intervened pursuant to this subdivision, the burden shall be upon the designated official to prove by clear and convincing evidence that such intervenor knew that such vehicle was or would be used for the commission of a violation of subparagraph (ii) of paragraph (a) of subdivision three of section five hundred eleven of the vehicle and traffic law and either (a) knowingly and unlawfully benefited from such conduct or (b) voluntarily agreed to the use of the vehicle for the commission of such violation by consent freely given. For purposes of this subdivision, such intervenor knowingly and unlawfully benefited from the commission of such violation when he or she derived in exchange for permitting the use of such vehicle by a person or persons committing such specified violation a substantial benefit that would otherwise not have accrued as a result of the lawful use of such vehicle. "Benefit" means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

9. No motor vehicle shall be forfeited under this section to the extent of the interest of a person who claims an interest in the motor vehicle, where such person pleads and proves that:

(a) The use of such motor vehicle for the conduct that was the basis for a seizure occurred without the knowledge of such person, or if such person had knowledge of such use, without the consent of such person, and that such person

did not knowingly obtain such interest in the motor vehicle in order to avoid the forfeiture of such vehicle; or

(b) The conduct that was the basis for such seizure was committed by any person other than such person claiming an interest in the motor vehicle, while such motor vehicle was unlawfully in the possession of a person who acquired possession thereof in violation of the criminal laws of the United States or any state.

10. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the designated official who instituted the action, or a defendant may apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice.

(b) Such application for the relief provided in paragraph (a) of this subdivision must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) of this subdivision must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) of this subdivision if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property or any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.

11. The district attorney, police department or superintendent of state police having custody of the seized motor vehicle, after such judicial determination of forfeiture, shall, by a public notice of at least twenty days, sell such forfeited motor vehicle at public sale. The net proceeds of any such sale, after deduction of the lawful expenses incurred, shall be paid into the general fund of the county wherein the seizure was made, provided, however, that the net proceeds of the sale of a motor vehicle seized in the cities of New York, Yonkers, Rochester and Buffalo shall be paid into the respective general funds of such cities, and provided further that the net proceeds of the sale of a motor vehicle seized by the state police shall be paid into the state police seized assets account.

12. In any action commenced pursuant to this section, where the court awards a sum of money to one or more persons in satisfaction of such person's or persons' interest or interests in the forfeited motor vehicle, the total amount awarded to satisfy such interest or interests shall not exceed the amount of the net proceeds of the sale of the forfeited motor vehicle, after deduction of the lawful expenses incurred by the county, cities of New York, Yonkers, Rochester or Buffalo or the state, as applicable, and storage of the motor vehicle between the time of seizure and the date of sale.

13. At any time within two years after the seizure, any person claiming an interest in a motor vehicle which has been forfeited pursuant to this section who was not sent notice of the commencement of the forfeiture action pursuant to subdivision seven of this section, or who did not otherwise receive actual notice of the forfeiture action, may assert in an action commenced before the justice of the supreme court before whom the forfeiture action was held such claim as could have been asserted in the forfeiture action pursuant to this section. The court may grant the

relief sought upon such terms and conditions as it deems reasonable and just if the person claiming an interest in the motor vehicle establishes that he or she was not sent notice of the commencement of the forfeiture action and was without actual knowledge of the forfeiture action, and establishes either of the affirmative defenses set forth in subdivision nine of this section.

14. No action under this section for wrongful seizure shall be instituted unless such action is commenced within two years after the time when the motor vehicle was seized.

§ 511-d. Aggravated failure to answer appearance tickets or pay fines imposed

1. A person is guilty of the offense of aggravated failure to answer appearance tickets or pay fines imposed when such person has in effect twenty or more suspensions, imposed on at least twenty separate dates, for failure to answer, appear or pay a fine pursuant to subdivision three of section two hundred twenty-six or subdivision four-a of section five hundred ten of this chapter.

2. A person may be prosecuted for a violation of this section in any court of competent jurisdiction in any county: (a) in which more than ten tickets which resulted in suspension for failures to answer, appear or pay fines were issued, or (b) in which the twentieth or any subsequent ticket which resulted in a suspension for failure to answer, appear or pay a fine was issued. The provisions of this subdivision shall not apply to any suspension which has been terminated prior to the defendant's being charged with a violation of this section.

3. Aggravated failure to answer appearance tickets or pay fines imposed is a misdemeanor. When a person is convicted of this crime, the sentence of the court must be: (i) a fine of not less than five hundred dollars; or (ii) a term of imprisonment of not more than one hundred eighty days; or (iii) both such fine and imprisonment.

§ 600. Leaving scene of an incident without reporting

1. a. Any person operating a motor vehicle who, knowing or having cause to know that damage has been caused to the real property or to the personal property, not including animals, of another, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the damage occurred, stop, exhibit his license and insurance identification card for such vehicle, when such card is required pursuant to articles six and eight of this chapter, and give his name, residence, including street and number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy, and license number to the party sustaining the damage, or in case the person sustaining the damage is not present at the place where the damage occurred then he shall report the same as soon as physically able to the nearest police station, or judicial officer.

b. It shall be the duty of any member of a law enforcement agency who is at the scene of the accident to request the said operator or operators of the motor vehicles, when physically capable of doing so, to exchange the information required hereinabove and such member of a law enforcement agency shall assist such operator or operators in making such exchange of information in a reasonable and harmonious manner.

A violation of the provisions of paragraph a of this subdivision shall constitute a traffic infraction punishable by a fine of up to two hundred fifty dollars or a sentence of imprisonment for up to fifteen days or both such fine and imprisonment.

2. a. Any person operating a motor vehicle who, knowing or having cause to know that personal injury has been caused to another person, due to an incident involving the motor vehicle operated by such person shall, before leaving the place where the said personal injury occurred, stop, exhibit his license and insurance identification card for such vehicle, when such card is required pursuant to articles six and eight of this chapter, and give his name, residence, including street and street number, insurance carrier and insurance identification information including but not limited to the number and effective dates of said individual's insurance policy and license number, to the injured party, if practical, and also to a police officer, or in the event that no police officer is in the vicinity of the

place of said injury, then, he shall report said incident as soon as physically able to the nearest police station or judicial officer.

b. It shall be the duty of any member of a law enforcement agency who is at the scene of the accident to request the said operator or operators of the motor vehicles, when physically capable of doing so, to exchange the information required hereinabove and such member of a law enforcement agency shall assist such operator or operators in making such exchange of information in a reasonable and harmonious manner.

The first violation of the provisions of paragraph a of this subdivision shall constitute a class B misdemeanor punishable by a fine of not less than two hundred fifty nor more than five hundred dollars in addition to any other penalties provided by law. Any subsequent violation shall constitute a class A misdemeanor punishable by a fine of not less than five hundred nor more than one thousand dollars in addition to any other penalties provided by law. Any violation of the provisions of this subdivision, other than mere failure of an operator to exhibit his license and insurance identification card for such vehicle, where the personal injury involved results in death or serious physical injury, as defined in section 10.00 of the penal law, shall constitute a class E felony.

§ 1192. Operating a motor vehicle while under the influence of alcohol or drugs

1. Driving while ability impaired. No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol.

2. Driving while intoxicated; per se. No person shall operate a motor vehicle while such person has .10 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article.

3. Driving while intoxicated. No person shall operate a motor vehicle while in an intoxicated condition.

4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.

5. Commercial motor vehicles: per se--level I. Notwithstanding the provisions of section eleven hundred ninety-five of this article, no person shall operate a commercial motor vehicle while such person has .04 of one per centum or more but not more than .07 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article; provided, however, nothing contained in this subdivision shall prohibit the imposition of a charge of a violation of subdivision one of this section, or of section eleven hundred ninety-two-a of this article where a person under the age of twenty-one operates a commercial motor vehicle where a chemical analysis of such person's blood, breath, urine, or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article, indicates that such operator has .02 of one per centum or more but less than .04 of one per centum by weight of alcohol in such operator's blood.

6. Commercial motor vehicles; per se--level II. Notwithstanding the provisions of section eleven hundred ninety-five of this article, no person shall operate a commercial motor vehicle while such person has more than .07 of one per centum but less than .10 of one per centum by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article; provided, however, nothing contained in this subdivision shall prohibit the imposition of a charge of a violation of subdivision one of this section.

7. Where applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic and any other parking lot. For the purposes of this section "parking lot" shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.

8. Effect of prior out-of-state conviction. A prior out-of-state conviction for operating a motor vehicle while under the influence of alcohol or drugs shall be deemed to be a prior conviction of a violation of subdivision one of this section for purposes of determining penalties imposed under this section or for purposes of any administrative action

required to be taken pursuant to subdivision two of section eleven hundred ninety-three of this article; provided, however, that such conduct, had it occurred in this state, would have constituted a violation of any of the provisions of this section. This subdivision shall only apply to convictions occurring on or after November twenty-ninth, nineteen hundred eighty-five.

8-a. Effect of prior finding of having consumed alcohol. A prior finding that a person under the age of twenty-one has operated a motor vehicle after having consumed alcohol pursuant to section eleven hundred ninety-four-a of this article shall have the same effect as a prior conviction of a violation of subdivision one of this section solely for the purpose of determining the length of any license suspension or revocation required to be imposed under any provision of this article, provided that the subsequent offense is committed prior to the expiration of the retention period for such prior offense or offenses set forth in paragraph (k) of subdivision one of section two hundred one of this chapter.

9. Conviction of a different charge. A driver may be convicted of a violation of subdivision one, two or three of this section, notwithstanding that the charge laid before the court alleged a violation of subdivision two or three of this section, and regardless of whether or not such conviction is based on a plea of guilty.

10. Plea bargain limitations. (a) In any case wherein the charge laid before the court alleges a violation of subdivision two, three or four of this section, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section, other than subdivision five or six, and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition. In any case wherein the charge laid before the court alleges a violation of subdivision one of this section and the operator was under the age of twenty-one at the time of such violation, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of such subdivision; provided, however, such charge may instead be satisfied as provided in paragraph (c) of this subdivision, and, provided further that, if the district attorney, upon reviewing the available evidence, determines that the charge of a violation of subdivision one of this section is not warranted, such district attorney may consent, and the court may allow a disposition by plea of guilty to another charge in satisfaction of such charge; provided, however, in all such cases, the court shall set forth upon the record the basis for such disposition.

(b) In any case wherein the charge laid before the court alleges a violation of subdivision one or six of this section while operating a commercial motor vehicle, any plea of guilty thereafter entered in satisfaction of such charge must include at least a plea of guilty to the violation of the provisions of one of the subdivisions of this section and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized; provided, however, if the district attorney upon reviewing the available evidence determines that the charge of a violation of this section is not warranted, he may consent, and the court may allow, a disposition by plea of guilty to another charge is [FN1] satisfaction of such charge.

(c) Except as provided in paragraph (b) of this subdivision, in any case wherein the charge laid before the court alleges a violation of subdivision one of this section by a person who was under the age of twenty-one at the time of commission of the offense, the court, with the consent of both parties, may allow the satisfaction of such charge by the defendant's agreement to be subject to action by the commissioner pursuant to section eleven hundred ninety-four-a of this article. In any such case, the defendant shall waive the right to a hearing under section eleven hundred ninety-four-a of this article and such waiver shall have the same force and effect as a finding of a violation of section eleven hundred ninety-two-a of this article entered after a hearing conducted pursuant to such section eleven hundred ninety-four-a. The defendant shall execute such waiver in open court, and, if represented by counsel, in the presence of his attorney, on a form to be provided by the commissioner, which shall be forwarded by the court to the commissioner within ninety-six hours. To be valid, such form shall, at a minimum, contain clear and conspicuous language advising the defendant that a duly executed waiver: (i) has the same force and effect as a guilty finding following a hearing pursuant to section eleven hundred ninety-four-a of this article; (ii) shall subject the defendant to the imposition of sanctions pursuant to such section eleven hundred ninety-four-a; and (iii) may subject the defendant to increased sanctions upon a subsequent violation of this section or section eleven hundred ninety-two-a of this article. Upon receipt of a duly executed waiver pursuant to this paragraph, the commissioner shall take such

administrative action and impose such sanctions as may be required by section eleven hundred ninety-four- a of this article.

11. No person other than an operator of a commercial motor vehicle may be charged with or convicted of a violation of subdivision five or six of this section.

12. Driving while intoxicated or while ability impaired by drugs--serious physical injury or death. In every case where a person is charged with a violation of subdivision two, three or four of this section, the law enforcement officer alleging such charge shall make a clear notation in the "Description of Violation" section of a simplified traffic information if, arising out of the same incident, someone other than the person charged was killed or suffered serious physical injury as defined in section 10.00 of the penal law; such notation shall be in the form of a "D" if someone other than the person charged was killed and such notation shall be in the form of a "S.P.I." if someone other than the person charged suffered serious physical injury; provided, however, that the failure to make such notation shall in no way affect a charge for a violation of subdivision two, three or four of this section.

1192-a. Operating a motor vehicle after having consumed alcohol; under the age of twenty-one; per se

No person under the age of twenty-one shall operate a motor vehicle after having consumed alcohol as defined in this section. For purposes of this section, a person under the age of twenty-one is deemed to have consumed alcohol only if such person has .02 of one per centum or more but not more than .07 of one per centum by weight of alcohol in the person's blood, as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article. Any person who operates a motor vehicle in violation of this section, and who is not charged with a violation of any subdivision of section eleven hundred ninety-two of this article arising out of the same incident shall be referred to the department for action in accordance with the provisions of section eleven hundred ninety-four-a of this article. Except as otherwise provided in subdivision five of section eleven hundred ninety-two of this article, this section shall not apply to a person who operates a commercial motor vehicle. Notwithstanding any provision of law to the contrary, a finding that a person under the age of twenty-one operated a motor vehicle after having consumed alcohol in violation of this section is not a judgment of conviction for a crime or any other offense.

APPENDIX C

(FORMS)

(Organizational Title) Youth Court
(Youth Court Address)
(Youth Court Phone No.)

Advice of Rights and Consent to Participate in Youth Court

I, _____, have read the Youth Court brochure, and I have had an opportunity to discuss Youth Court with my parents(s)/guardian(s), and to have my questions answered by Youth Court Personnel.

I understand that Youth Court is a voluntary diversion program, that I am not required to proceed in Youth Court, and that I have an absolute right to have my case proceed in the appropriate state court. I understand that in state court I have the right to remain silent and that statements made by me may be used against me in court; that I have the right to have an attorney present during questioning and to represent me throughout the proceeding, and if I cannot afford an attorney, one will be provided without charge; and that I have the right to a trial.

I understand that by choosing to proceed in Youth Court, I am giving up my rights, and that I must admit that I am guilty of the offense with which I am charged. I understand that if I choose Youth Court, the facts of my case, information about me, and related documents, will be made available to Youth Court participants, and that I am giving up certain rights to confidentiality provided for under state law, including the exclusion of the general public from any proceeding and the sealing of accusatory instruments and other documents.

I understand that in order to fulfill my obligations to Youth Court, I must attend all scheduled proceedings, appear on time, serve on at least one (1) Youth Court jury, and complete my community service sentence and all counseling requirements.

I understand that I have a right to consult with an attorney to discuss with me the advisability of choosing Youth Court.

I waive my right to proceed in state court (and all rights associated therewith, including those outlined above) and I hereby request that my case be referred to Youth Court. I acknowledge that I am guilty of the offense with which I am charged.

(Youth Signature)

(Parent Signature)

Judge's Instructions

I. Clerk calls the case

II. **Introductory Comments** – “Ladies and gentlemen of the jury, I would first like to thank you for your time and attention this evening. I would like to remind you that you are here in the interest of serving our community and achieving justice in the society in which we live. It is in our best interest of our society if you are fair and impartial in your deliberations here tonight. The function of the jury in Youth Court is to decide the appropriate sentence for an offender after examining the evidence in the case and hearing from the prosecutor, defense counsel, victim and the offender. This decision should be based on the goals of sentencing in Youth Court: Specific deterrence of other potential offenders, holding the youth accountable for their actions, rehabilitation, and repairing the harm that was done to the victim and the community. One of the purposes of Youth Court is to allow offenders to be judged by a jury of their peers. The right to have a jury of one’s peer’s sit in judgment is one of the basic constitutional rights in our democracy.

As jurors of Youth Court, you each have the following duties and obligations:

1. Be fair and impartial by basing your decision on the evidence in the particular case and not irrelevant factors.
2. Settle disputed issues of fact presented by the advocates.
3. Avoid discussing the case with other jurors until deliberations begin.
4. Communicate with only the judge and clerk by way of written notes.
5. Follow the court’s instructions.
6. Deliberate with other jurors by candidly expressing your opinion as to what the sentence should be and justify the sentence .
7. Identify what harm was done and how it should be repaired
8. Reach a unanimous verdict as to the appropriate sentence.
9. Inform the clerk by way of written note, through the foreperson, that a verdict has been reached and;
10. Announce the verdict in open court through the foreperson.

You have a jury foreperson sitting with you. The function of the foreperson is to lead the deliberations of the jury to the extent of encouraging the participation of all the jurors in the process, mediating any disputes between jurors and keeping the jurors focused on the decision-making process. Despite this responsibility, the foreperson’s vote on a particular sentence is entitled to no greater weight than that of the other jurors.

III. **Plea of Guilty by Offender** – “**Would the defendant please rise. You have been charged with violating New York State Penal Law_____. How do you plead, guilty or not guilty?**” (Offender pleads) “**You may be seated.**”

IV. **Opening Statements** – “**The prosecution may present your opening statement?**” Once the prosecutor finishes opening, say to defender “**The defense may present your opening statement?**”

V. **The Prosecutor’s case** – After openings, ask prosecutor, “**Does the prosecution have any witnesses to call or physical evidence to produce?**” If so state, “**please call your first witness.**” For each witness the prosecutor calls to the stand, the judge instructs the defense that they may cross-examine

the witness prior to the witness stepping down. Then ask the prosecution, **“Please call your next witness.”** If there are no more witnesses or physical evidence to produce, then ask the prosecution **“Does the prosecution rest?”**

VI. **The Defender’s case** – Once the prosecutor rests, the defense case begins. Ask the defender **“Does the defense wish to call any witnesses to the stand or produce any other evidence.”** For each witness the defense calls to the stand, the judge instructs the prosecutor that they may cross-examine the witness prior to the witness stepping down. Then ask the defense, **“Please call your next witness.”** If there are no more witnesses or physical evidence to produce, then ask the defense **“Does the defense rest?”**

VII. **Closing Arguments** – Once the defense rests, state **“The defense may now present its closing arguments and sentence recommendations to the jury.”** At the end, say **“Thank You.”** After the defense’s closing argument, state **“The prosecutor may now present its closing arguments and sentence recommendations to the jury.”** At conclusion, say **“Thank You.”**

VIII. **Jury Instructions** – “Ladies and Gentleman of the jury, you must now deliberate and determine an appropriate sentence. Again, I ask that you each be fair and impartial and also to keep in mind **(1)** you must find evidence believable or credible to rely on it, **(2)** feel free to express and explain your opinions, but please do not force them upon others, and **(3)** you should reach a unanimous verdict as to a sentence, which you will inform the clerk by way of written note. Please keep in mind the goals of Youth Court which are **(1)** to deter the offender and others from future criminal acts, **(2)** to hold the offender accountable for his/her actions **(3)** to repair the harm that was done to the victim and the community, **(4)** restitution to the victim for stolen or damaged property and **(5)** the rehabilitation of the offender.”

IX. **Judge to Clerk** – **“Please escort the jury to the deliberation room.”** When a decision has been reached, the clerk escorts the jury back into the courtroom.

X. **Jury Returns** – Judge says, **“Has the jury reached a verdict? (Wait for answer) The jury foreperson will now announce the verdict.”** Judge remarks on how the verdict is fitted to the crime and any other final statements to the defendant. For example, **“I think this sentence is fair and appropriate for the offense(s) committed here. We all have to understand that society has rules to protect all of us, and that, even though we are young, we have obligations to follow those rules. I want to remind you that besides the victim of this crime, that there are other people who were hurt or affected by your actions such as your parent(s), and family (Judge should think about the case and add any other people who might have been affected and state them at this time, for example, store, community, police, a friend etc.) I listened carefully to your testimony this evening, and I believe that you are truly sorry for your actions and that you have learned a valuable lesson from this experience. I am confident that you will complete your community service obligations and fulfill any special conditions imposed upon you, and thereafter, you will be an asset to the community.”**

XI. **End Proceeding** – Judge says, **“Being there no further business before the Youth Court, I hereby declare Youth Court adjourned.”**

(rev. 8/05)

Appropriate Questions to Ask Victims

- What happened?
- How did that make you feel?
- What damage was caused?
- How would you like to see the damage repaired?
- How did the offender behave towards you?
- Did the offender take any steps to repair the harm that was caused?
- What affects has this had on your life- emotionally, physically, financially?
- What would you like to see happen?

Colonie Youth Court (10/05)

“Do’s” and “Dont’s” of *COMMUNICATING WITH VICTIMS*

Do:

- Always try to communicate trust, support and confidence
- Be calm and comfort victims. Ask: “How are you doing”
- Allow victims time to tell what happened and describe how they are feeling in their own words.
- Give victims back the control the offender took away by letting them decide when to talk with you.
- Reassure them that their feelings are quite normal and natural, even though they may seem a bit unusual at the moment.
- Assure the victim feelings of anger, distress, frustration, fear, etc. are not uncommon and are perfectly justifiable.
- Be willing to **listen** to the victim share his or her experience if they want to talk about the crime and its effects, and provide empathy and support.
- Be encouraging, but not unrealistic.
- Be alert for opportunities to stress the victim’s qualities and strengths.
- Accept the fact that you may never know whether a victim follows through with your suggestions.
- Offer to talk to the youth court staff for further referrals for services the victim might need or request.
- Ask for assistance from the youth court staff if the case is too difficult for you to handle

Don’t:

- Be judgmental or blame the victim for the crime that was committed against him or her
- “Second guess” how the victim reacted to the crime
- Try to equate another similar situation or experience, including your own to the victim’s situation
- Make decisions or choices for the victim
- Be afraid of silence
- Become flustered by the victim’s anxiety or urgency, remain calm
- Get into argument with the victim, don’t be defensive or arrogant
- Expect to know all the “right answers”. Your job is to listen and assist the victim.
- **Don’t be afraid to ask youth court staff for help or advice.**

BAD THINGS TO SAY TO VICTIMS

- I KNOW HOW YOU FEEL.
- I UNDERSTAND WHAT YOU ARE GOING THROUGH.
- I THINK THAT THE OFFENDER WILL RECEIVE (# OF HOURS) OF COMMUNITY SERVICE.
- Why????
- Why were you...didn't you?
- Your case reminds me of another victim I dealt with.
- As a general rule of thumb...
- It's God's will
- You should put this behind you.
- You need to get over it...
- If I were in your shoes....
- You're so strong.....
- You're so lucky...
- At least you weren't hurt.
- You should forgive.
- Time heals all wounds.
- Why didn't you....?
- It could be worse.
- What you need is...
- Get on with your life.
- You're not the only victim I'm trying to help.
- Offenders aren't really bad people...
- The offender had a really tough childhood
- Saying nothing at all.
- Avoid using generalizations.

- Avoid comparisons with other cases or victims.

Seymour, A (July 2002) Communicating with Crime Victims. Washington, DC: Justice Solutions

GOOD THINGS TO SAY TO VICTIMS

- How can I help you?
- What can I do for you?
- I'm sorry this happened to you.
- Your case is important to me.
- I believe you.
- Do you have any concerns about your safety?
- Who else have you spoken to?
- Would you like information on victim services?
- Do you need anything else?
- If you do, you can contact me through the Colonie Youth Court office at 782-2638.
- I'm sorry to bother you.
- I know this is one more interruption in your life.
- If you have a serious problem or crisis you should dial 911
- I can't really understand what you are going through because of this incident, but I will listen and try to help you through the youth court process.
- I don't know, but I'll find out.
- How are you doing?

- What would you like to see happen?
- Thank you for speaking with me.
- Is there anything else you would like to tell me?

Colonie Youth Court (10/05)

Colonie Youth Court Victim Advocate Responsibilities and Duties

- Acts as a liaison between Colonie Youth Court and victim
- Receives and reviews case and victim information from Colonie Youth Court staff
- Contacts victim to explain the Colonie Youth Court program, after Director receives permission from victim to be contacted.
- Reviews with victim their options for participating in the Colonie Youth Court process.
- Accompanies victim to any pre-hearing interviews with the prosecuting attorney.
- Assists victim with writing of victim impact statement (if requested by victim).
- Notifies Defender if victim will: 1. Appear in court and give testimony, or; 2. Appear in court only, or; 3. Provide copy of Victim Impact Statement
- Explains to victim what will happen during the Colonie Youth Court hearing.
- Greets and accompanies victim to hearing.
- Reads statement in youth court hearing at victim's request.
- Advises victim of outcome of hearing.
- Follows up to make sure the offender has completed their obligation to Colonie Youth Court.
- Advises victim of success or unsuccessful completion of offender's requirements (by written letter and/or personal contact)
- Keeps written record of actions taken by Victim Advocate in case.
- Communicates with Youth Court staff about any problems and progress of case.

Victim Advocate Checklist

*** *Please Note:* If necessary, the Victim Advocate may meet with the victim ONLY at the Police Station/Youth Court office. Call the Youth Court office to

assist you with scheduling this. The Victim Advocate should NEVER meet with the victim anywhere else.

Please ***check off*** each responsibility you have completed and the ***date*** you completed each task to the right of the box

(Write "N/A" if the item is not applicable to your specific case)

- | <u>√</u> | <u>Date</u> | |
|--------------------------|-------------|---|
| <input type="checkbox"/> | _____ | Received and reviewed case. |
| <input type="checkbox"/> | _____ | Contacted Youth Court staff for victim contact info.(excludes store shoplifting cases). |
| <input type="checkbox"/> | _____ | Contacted victim to explain the Colonie Youth Court program. |
| <input type="checkbox"/> | _____ | Reviewed options with victim for participating in the Colonie Youth Court process. |
| <input type="checkbox"/> | _____ | Accompanied victim to any pre-hearing interviews with the prosecuting attorney. |
| <input type="checkbox"/> | _____ | Assisted victim with writing of victim impact statement (if requested by victim). |
| <input type="checkbox"/> | _____ | Notified Defender if victim will: _____ Appear to give testimony
_____ Appear for court only
_____ Provide a V.I.S. to be read in court |
| <input type="checkbox"/> | _____ | Explained to victim what will happen during the Colonie Youth Court hearing. |
| <input type="checkbox"/> | _____ | Attended Youth Court hearing. |
| <input type="checkbox"/> | _____ | Greeted and accompanied victim to hearing. |
| <input type="checkbox"/> | _____ | Read Victim Impact Statement in Youth Court at victim's request. |
| <input type="checkbox"/> | _____ | Advised victim of outcome of hearing. |

(Over)

- | | | |
|--------------------------|-------|---|
| <input type="checkbox"/> | _____ | Advised victim of successful or unsuccessful completion of offender's requirements. *** |
| <input type="checkbox"/> | _____ | Communicated with Colonie Youth Court staff about any problems and progress of case. |

If the Victim Advocate and the Victim had a meeting in person other than minutes before the case, state the date, time, and place where the meeting occurred.

***Youth Court staff will notify Victim Advocate of successful completion at a later date. Victim Advocate will then complete this step and notify Youth Court staff.

Signature of Victim Advocate: _____

Comments on your experience: _____

Please mail or drop off this form within 24 hours of the hearing:

**Colonie Youth Court
312 Wolf Road
Latham, NY 12110**

Victim Impact Statement for a Store as a Victim

Defendant's Name: _____

6. If community service is recommended as part of the sentence/disposition, do you have favorite cause or charity that you'd like to recommend as a placement?

7. Is there any other information that you would like to share with the Colonie Youth Court program regarding the offense and how it affected you or your store?

___ Please check here if you would like to be notified about the outcome of this case.

**Victim Impact Statement for a Police Officer/Police Department
as a Victim**

Defendant's Name: _____

Case Number: _____

6. If community service is recommended as part of the sentence/disposition, do you have favorite cause or charity that you'd like to recommend as a placement?

7. Is there any other information that you would like to share with the Colonie Youth Court program regarding the offense and how it affected you or the police department?

___ Please check here if you would like to be notified about the outcome of this case.

Victim Impact Statement for a School Official as a Victim

Defendant's Name: _____

Case Number: _____

6. If community service is recommended as part of the sentence/disposition, do you have favorite cause or charity that you'd like to recommend as a placement?

7. Is there any other information that you would like to share with the Colonie Youth Court program regarding the offense and how it affected you or your school?

___ Please check here if you would like to be notified about the outcome of this case.

Victim Impact Statement for an Adult Victim

Defendant's Name: _____

Case Number: _____

Please answer the following questions as they apply in your case.

1. Please describe how this offense has affected you and your family.

2. What was the emotional impact of this crime on you and your family?

3. What was the financial impact of this crime on you and your family?

4. What was the physical impact of this crime on you and your family? *(Include this question if it was a personal crime.)*

5. What concerns do you have, if any, about your safety and security?

Victim Impact Statement for Parents of Victims

Name of parent or guardian: _____

Name of child: _____

Case Number: _____

1. Has your child been emotionally affected by this crime? If yes, you may wish to discuss how the crime may have affected your child's relationships with you, family members, and those close to you. If your child received any form of victim services such as counseling by either a licensed professional, member of the faith based community or a community-support group, you may wish to mention this. Please use additional paper as necessary.

2. Was your child physically injured or hurt as a result of this crime? If yes, you may wish to write about the type of injuries your child had, what medical treatment your child received, and how long these injuries lasted or are expected to last. Please use additional paper as necessary.

3. Has this crime affected the way your child relates to his or her friends, either at school or in your neighborhood? Has this crime affected your child's school work in any way? Please use additional paper as necessary.

4. How has this crime affected you, your family and those close to your child? You may wish to write about changes that may have occurred in your family, in your ability to perform your work, make a living, run a household or enjoy any other activities you enjoyed before the crime. You may also wish to include any victim services or counseling that you and those close to your child have received. Please use additional paper as necessary.

5. What do you think should happen to _____ as a result of him/her committing this crime against your family member?

6. If community service is recommended as part of the sentence/disposition, do you have favorite cause or charity that you'd like to recommend as a placement?

7. Is there any other information that you would like to share with the Colonie Youth Court regarding the offense and how it affected you or your family?

___ Please check here if you would like to be notified about the outcome of this case.

Victim Impact Statement for the School-Aged Victim

What is your name? _____

How old are you? _____

What grade are you in? _____

1. Please write or draw anything you would like the Colonie Youth Court to know about how you feel because of what has happened to you. You may want to write about anything that has changed in your life or in your family. You can even tell a story or write a poem if you would like. You can add more paper if you run out of room.

-
2. Please write or draw anything you want the Colonie Youth Court to know that may be different at school, in your neighborhood or with your friends because of what has happened to you. You can add more paper if you run out of room.

APPENDIX D
(FACT PATTERNS)

Fact Pattern

The following scenario is loosely drawn from an incident that occurred in another town in recent weeks. **It is not intended to represent the facts of that other case. On the contrary, the facts have been altered for the purpose of this exercise.**

Alice, age 17, a student at Best High School, and a member of the coed soccer team had a great idea. The team had just won the sectional championship, and would be competing for the state championship in two weeks. To celebrate the sectional, **Alice** decided that a party was in order. **Alice** knew she couldn't have the party at her house because her father was a spoiled sport, and if the music were too loud, or anybody brought beer, her father would embarrass her by making a scene in front of all her friends.

Alice mentioned her idea to **Bart**, age 17, and also a player on the team, and **Bart** said they couldn't have the party at his house but they knew of a terrific place to hold a party. **Bart** explained to **Alice** that he was friends with **Zeke**, age 15, and **Bart** knew that **Zeke's** parents owned a small 2 bedroom bungalow, which they rented out. It just so happened that the tenants had moved out recently, and the house was empty. **Bart** and **Alice** went over to the bungalow and looked in the windows, and agreed that it was the perfect place to hold a party.

Bart and **Alice** went to **Zeke** and asked him about using the bungalow for the party. **Zeke** said, "NO WAY! My parents would kill me." Besides, **Zeke** and his parents were going away for the weekend and he couldn't have a party there that weekend.

Bart and **Alice** talked things over agreed that the only place to have a party was a place like the bungalow. **Alice** then said, "it would be so easy to get inside the window next to the backdoor because it looks open. You wouldn't even need a key." **Bart** said, "Are you crazy? We can't just break in." **Alice** said, "It's not breaking if they leave the window open, is it?" So **Alice** decided to invite just soccer players, and to limit it to 12 players. The party was to start at 6:30 p.m.

On Saturday at 6:15 p.m., **Alice** and **Bart** arrived at the bungalow with a CD player and plenty of music. They found 3 soccer players, including **Carry**, age 16, and 4 others "friends" of these players, including **David**, age 16, already there. **Bart** tried to push open the back window, but it was stuck, and **Alice** tried to help. **David** saw them struggling with the window, added his weight to the pushing, and the pane shattered. **David** then knocked away the broken glass and climbed through the window. **Carry** followed him, as did the other players and friends who were there. **Bart** said, "What should we do now?" To which **Alice** replied, "What can we do?" They heard something break in the house and feeling somewhat responsible, both climbed in through the broken window. As others arrived, some of them climbed in through the broken window, but eventually someone unlocked the door.

Around 7:00 p.m., **Bart** noticed people drinking beer, and so as not to feel out of place, he took a bottle and sipped from it. That was all the beer he had all night, and it took him an hour to finish the bottle.

Around 8:00p.m., **Eric** and **Frank**, both age 14, arrived. **Eric** was not on the team, but **Frank** was. **Eric** was a graffiti writer, who liked to spray paint on walls and fences, and he had a can of red spray paint in his coat pocket. **Eric** left his coat on the couch. **Frank** had never had alcohol before and got drunk. **Greg**, age 17, a captain of the team, and its leading scorer, pointed to the can of spray paint hanging out of the coat pocket, and told **Frank** that if he wanted to be a full fledged member of the team, he had to spray his initials on the wall. **Greg** never expected **Frank** to take him seriously, and actually walked away after saying this. **Greg** then left the party because "something didn't feel right."

As **Greg** was walking away, **Frank** picked up the spray paint can and sprayed his initials on the wall. **Frank** then handed the can to **Harold**, the other team co-captain, and repeated what **Greg** had said. **Harold** did not spray the wall; he just put the can down. Someone else picked up the can, and several more people spray painted the wall. **Eric** saw that people was spraying the wall and took back his can of spray paint. But by this time, one whole wall was covered with paint.

By 8:45 p.m., it was obvious that the party was getting out of control. There were more than 50 people there, the music was very loud, two lamps had been broken, and of course one wall was painted red. Around 9:00 p.m. a police car was seen driving by the house. The cry went out, "the police are here," and almost everyone took off through the back door. As it turned out, this car had been called to a different disturbance down the street, but a neighbor was just then calling the police about this party. By the time the police arrived, only **Alice, Bart, Carry, David, Eric, Frank** and **Harold** was still in the house, and they were arrested. **Eric** was found to have a "Kung Fu Star" in his jacket, which he had picked up in Manhattan as a souvenir.

Alice, Bart, Carry, Frank, and **Harold** were suspended from the soccer team for violating the athletic code, and missed the state championship game. **Greg** was not suspended because his involvement did not come to light until after the game had been played.

Alice, Bart, Carry, David, Eric, Frank, Greg and **Harold** are appearing in Youth Court for a sentencing hearing.

APPENDIX E
(CODE OF CONDUCT)

RULES OF CONDUCT AND DISCIPLINARY PROCEDURES
FOR YOUTH COURT MEMBERS

I. PREAMBLE

Youth Court membership is a privilege, not a right. This privilege can be lost if you fail to act in a responsible manner and within the confines of the law. As a Youth Court member, you are expected to serve as a role model for your peers at all times. You therefore must maintain high standards of conduct and encourage other members to do the same. You should be temperate and dignified and refrain from all illegal and morally reprehensible conduct. Because of your position, even minor violations of law may tend to lessen public confidence in the entire Youth Court program. Since Youth Court is designed to promote law-abiding behavior, your behavior must be consistent with that purpose.

Listed below are a number of **RULES OF CONDUCT** which you must follow. If you fail to conduct yourself in conformity with these rules, you shall be deemed guilty of misconduct. Members who are guilty of misconduct will be subject to disciplinary action, according to the procedures set out below, which can include removal from the Youth Court program.

II. RULES OF CONDUCT.

As a member of Youth Court you must abide by the following rules:

- RULE 1.** You must not engage in illegal conduct.
- RULE 2.** You must not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
- RULE 3.** You must not knowingly use perjured or false testimony or statements.
- RULE 4.** You must reveal any false testimony, statements, other evidence used, or any other fraud perpetrated, in any Youth Court proceeding.
- RULE 5.** You must maintain the confidentiality of the Youth Court proceedings.
- RULE 6.** You must not violate the rules and regulations adopted by your school district.
- RULE 7.** You must participate free of bias or prejudice toward any other person's age, race, sex, religion, national origin, or disability.
- RULE 8.** You must appear promptly and prepared for all Youth Court training sessions and court appearances, unless excused.
- RULE 9.** You must perform your role as effectively and competently as possible.
- RULE 10.** You must not engage in undignified or discourteous conduct during a Youth Court session.
- RULE 11.** You must not ask any question that is intended to harass or degrade a witness.
- RULE 12.** You must not let any outside influence, such as other members, parents, fellow students or your own self-interest, affect your actions and decisions in how to proceed.
- RULE 13.** As a defender, unless an offender otherwise directs, you must not reveal a confidence or secret of an offender or use such a confidence or secret to the disadvantage of an offender.

- RULE 14.** You must treat with courtesy and consideration all persons involved in Youth Court proceedings.
- RULE 15.** You must not knowingly fail to disclose or exchange evidence which you are required by the Youth Court training manual to reveal to your opponent.
- RULE 16.** A prosecutor must disclose to the defender evidence that tends to help the offender, i.e., evidence that mitigates the seriousness of the offense or which would tend to reduce the sentence.
- RULE 17.** A prosecutor must not communicate with the offender in the case (except, of course, during cross-examination).
- RULE 18.** A Youth Court member serving as a prosecutor, defender or judge, other than during the performance of your role during a court proceeding, must not communicate with a juror about the case under consideration.
- RULE 19.** You must abide by all your obligations and responsibilities as specified in the Youth Court training manual.
- RULE 20.** A Youth Court member must dress appropriately when participating in a Youth Court proceedings.
- RULE 21.** You must notify the Youth Court **Director** immediately if you are arrested, convicted of a crime or suspended from school.
- RULE 22.** You must report to the Youth Court Director or any Advisory Board member conduct of other members which you believe to be in violation of these Rules of Conduct.
- RULE 23.** You must cooperate with the Advisory Board or any disciplinary committee in any investigation involving a violation of these rules of conduct.

III. DISCIPLINARY PROCEDURE

A. GENERAL POWER AND AUTHORITY OF ADVISORY BOARD

The Advisory Board of a Youth Court is authorized to censure, suspend or remove a member from its Youth Court program who is guilty of violating the **RULES OF CONDUCT** promulgated by Colonie Youth Court.

B. CREATION OF A DISCIPLINARY COMMITTEE

The Advisory Board shall convene when allegations that a Youth Court member failed to comply with the **RULES OF CONDUCT** arise. The Advisory Board shall issue a report and recommendation concerning their investigation to the Director and the Office of Chief of Police or his designee after its investigation.

The member shall have the opportunity to be heard within this process. The Director in conjunction with the Chief of Police or his designee, shall make a final determination of any action to be taken. The Director shall include the final report and recommendation of the Advisory Board as well as the determination of disciplinary action, if any, in the member's file. The Director will also formally advise the member and all parties involved.

C. REPORT AND RECOMMENDATION TO THE ADVISORY BOARD

The Advisory Board may recommend any action it deems appropriate, including, but not limited to, any, or a combination, of the following:

- a. Removal from the Youth Court program;
- b. Suspension and referral to Youth Court as an offender;
- c. Suspension from the program for a time certain;
- d. Supervision by the Youth Court Director for purpose of retraining;
- e. Probation for a specified period of time; or
- f. Dismissal of the complaint with a reason.

D. OBLIGATION OF MEMBER AGAINST WHOM COMPLAINT FILED

The Youth Court member accused of misconduct is required to cooperate with the Advisory Board in their investigations and proceedings. The failure to answer or otherwise cooperate in and of itself constitutes misconduct. The member is, however, entitled to refuse to answer any inquiries by asserting a claim that his responses to the inquiries might tend to incriminate him. In the event such a claim is made, the Advisory Board may consider such claim when deciding the appropriate course of action.

Once the Director communicates its final decision to the member, the member must abide by the Advisory Board's decision. The failure to comply with the decision of the Advisory Board will result in either immediate expulsion from the program or additional Disciplinary Committee action as the Advisory Board and the Director deems appropriate.

E. CONFIDENTIALITY OF THE PROCEEDINGS

Any meeting or hearing of the Advisory Board concerning allegations of misconduct shall be closed to the public. In addition, records relating to the investigation and sanction(s) shall be confidential.

F. SUSPENSION OF MEMBER PENDING CONSIDERATION OF DISCIPLINARY CHARGES

A Youth Court member who is the subject of an investigation into allegations of misconduct may be suspended from participation in Youth Court by the Director pending consideration of the charges. A notice of any suspension will immediately be sent to the member. Said notice will briefly state the reasons for the suspension.

Upon review of the complaint by the Director, the suspension may be lifted in the interest of justice and upon agreement of the Advisory Board.

G. SUSPENSION UPON ARREST

Whenever a Youth Court member is arrested for a criminal offense, other than a traffic infraction, said member will be automatically suspended from the Youth Court program pending the disposition of the criminal charges. A notice of the suspension will immediately be sent to

the member. Said notice will briefly state the reasons for the suspension. Under such circumstances, the Advisory Board need not hold any hearings or investigate the allegations in any way until the criminal charges have been resolved.

In the event the charges are ultimately dismissed, the Advisory Board will meet, investigate and recommend the appropriate sanction, if any, to impose upon the member.

H. REMOVAL UPON CONVICTION

Any Youth Court member convicted of an offense, other than a traffic infraction, shall continue suspension until an investigation and report initiated by the Advisory Board and forwarded to the Director.

If a conviction is subsequently reversed or vacated, the Advisory Board, upon application of the member, shall have the power to vacate or modify any sanction imposed.

I. REINSTATEMENT

For good cause, the Advisory Board may set aside any sanction when it appears consistent with the maintenance of the integrity and honor of Youth Court, the protection of the public and the interests of justice.

J. RESIGNATION

A member who is the subject of a disciplinary proceeding or an investigation may resign from Youth Court by tendering his or her resignation. Upon such resignation, any disciplinary proceeding or an investigation is terminated and all records will remain confidential.

APPENDIX F

(SCRIPTS FOR INTRODUCING PHYSICAL EVIDENCE IN YOUTH COURT)

October 2004

SCRIPT FOR INTRODUCING STATEMENT SIGNED BY THE WITNESS¹

(Prior to the hearing, you should number or letter the exhibit by writing on it. The prosecution uses numbers, i.e., 1, 2, 3, etc. and the defense should use letters, i.e., A, B, C, etc. Once marked, they can be referred to as Prosecution Exhibit 1 or Defense Exhibit A).

TWO WAYS TO INTRODUCE²

A. Without a Witness on the Stand

1. “Your honor, at this time I’d like to introduce into evidence the statement of Jane Doe, which I’ve marked as Defense exhibit A.”
2. “Jane Doe was present on the night of the crime and witnessed the incident. (“Jane Doe has known the offender for many years and can address his character”)“The statement is signed by Jane Doe and dated June 17, 2004.”
3. “May I read it to the jury?”
4. (Read the statement to the Jury.)

B. With a Youth Court Member as a Witness on the Stand

1. “At this time your honor, I call John Doe, a youth court member to the stand.”
2. “Your honor, may I approach the witness?”
3. “John Doe, I am handing you exhibit A (or exhibit 1, if prosecution). Do you recognize this?”
4. “What is it?” (Answer, i.e.,: “It’s a statement given by a witness”)
5. “Whose statement is it?”
6. “Is it signed?”
7. “Is it dated?”
8. “What is the date?”

¹ Remember, you must disclose this type of evidence to your opponent prior to the hearing. This means you tell them about it and show it to them if they want to see it.

² If the witness will appear in court and testify, you do not need to introduce their written statement.

9. “At this time your honor, I’d like to have exhibit A introduced into evidence.”
10. “May the witness read it to the jury?”
11. (Have witness read the statement to the jury)

* Remember: Use the facts from the statement during closing argument.

**SCRIPT FOR INTRODUCING STATEMENT OBTAINED OVER THE
TELEPHONE AND WHICH IS UNSIGNED**³

(Prior to the hearing, you should number or letter the exhibit by writing on it. The prosecution uses numbers, i.e., 1, 2, 3, etc. and the defense should use letters, i.e., A, B, C, etc. Once marked, they can be referred to as Prosecution Exhibit 1 or Defense Exhibit A).

TWO WAYS TO INTRODUCE

- A. With a Youth Court Member as a Witness on the Stand⁴
- a. “At this time your honor, I call John Doe, a youth court member to the stand.”
 - b. “Your honor, may I approach the witness?”
 - c. “John Doe, I am handing you exhibit A (or exhibit 1, if prosecution). Do you recognize this?”
 - d. “What is it?” (Answer, i.e.: “It’s a statement given by witness Jane Doe”)
 - e. “How do you know it is a statement of Jane Doe?” (Answer: “I was on the telephone when Jane Doe was interviewed and heard her state the information in this statement.”)
 - f. “When was this statement taken?”
 - g. “Is this statement a fair and accurate representation of what Jane Doe said on the phone that day?”
 - h. “At this time your honor, I’d like to have exhibit A introduced into evidence.”
 - i. “May the witness read it to the jury?”
 - j. (Have witness read the statement to the jury)

* Remember: Use the facts from the statement during closing argument.

³ Remember, you must disclose this type of evidence to your opponent prior to the hearing. This means you tell them about it and show it to them if they want to see it.

⁴ If the witness will appear in court and testify, you do not need to introduce their written statement.

SCRIPT FOR INTRODUCING A POLICE REPORT⁵

(Prior to the hearing, you should number or letter the exhibit by writing on it. The prosecution uses numbers, i.e., 1, 2, 3, etc. and the defense should use letters, i.e., A, B, C, etc. Once marked, they can be referred to as Prosecution Exhibit 1 or Defense Exhibit A).

TWO WAYS TO INTRODUCE⁶

A. Without a Witness on the Stand

1. “Your honor, at this time I’d like to introduce into evidence the police report pertaining to this case, which I’ve marked as Prosecution exhibit 1.”
2. “Police officer Jane Doe arrested the defendant and prepared this report. However she is unavailable tonight. “The report is dated June 17, 2004.”
3. “May I read portions of it to the jury?”
4. (Read the relevant portions of the report to the Jury.)

B. With a Youth Court Member as a Witness on the Stand

1. “At this time your honor, I call John Doe, a youth court member to the stand.”
2. “Your honor, may I approach the witness?”
3. “John Doe, I am handing you exhibit A (or exhibit 1, if prosecution). Do you recognize this?”
4. “What is it?” (Answer, i.e.,: “It’s a police report”)
5. “Whose report is it?”
6. “Is it signed?”
7. “Is it dated?”
8. “What is the date?”

⁵ Remember, you must disclose this type of evidence to your opponent prior to the hearing. This means you tell them about it and show it to them if they want to see it.

⁶ If the police officer will appear in court and testify, you do not need to introduce their arrest report.

9. “At this time your honor, I’d like to have exhibit A introduced into evidence.”
10. “May the witness read portions of this report to the jury?”
11. (Have witness read relevant portions the jury)

* Remember: Use the facts from the report during closing argument.

SCRIPT FOR INTRODUCING *OBJECTS OR MERCHANDISE*⁷

(Prior to the hearing, you should number or letter the exhibit by writing on it. The prosecution uses numbers, i.e., 1, 2, 3, etc. and the defense should use letters, i.e., A, B, C, etc. Once marked, they can be referred to as Prosecution Exhibit 1 or Defense Exhibit A).

TWO WAYS TO INTRODUCE

A. Through a witness (i.e., police officer, victim or store security guard)

1. “Your honor, may I approach the witness?”
2. “Officer Smith, I am handing you exhibit #1 (or exhibit A, if defense). Do you recognize this?”
3. “What is it?” (i.e., “It’s the lipstick that was taken by Jane Doe on July 1” or “It’s lipstick that is the same type taken by Jane Doe on July 1”)
4. “How do you know that it’s the lipstick that was taken?” (or, “How do you know that it’s the same type of lipstick that was taken?”) (Witness should be able to explain how he or she knows this)
5. “At this time your honor, I’d like to have exhibit 1 introduced into evidence.”
6. “Would you please describe this exhibit to the jurors?”
7. “How much was the store selling this item for?”
8. “May I show it to the jury?” (Show to jurors)

B. Without a witness (where you obtained the original or sample object and a witness is unavailable)

1. “Your honor, at this time I’d like to introduce into evidence the item that was taken (or, “an object that is identical to the one taken”) by the offender on August

⁷ Remember, you must disclose this type of evidence to your opponent prior to the hearing. This means you tell them about it and show it to them if they want to see it.

1, 2004, which I've marked as Prosecution exhibit 1."

2. "I went to the store and obtained the object that was taken by Jane Doe" (or, I obtained an item that is identical to the one taken by Jane Doe").
3. "May I show the object to the jury?" (Show to jurors)

* Remember: Use the exhibit during closing argument.

SCRIPT FOR INTRODUCING PHOTOGRAPHS⁸

(Prior to the hearing, you should number or letter the exhibit by writing on it. The prosecution uses numbers, i.e., 1, 2, 3, etc. and the defense should use letters, i.e., A, B, C, etc. Once marked, they can be referred to as Prosecution Exhibit 1 or Defense Exhibit A).

TWO WAYS TO INTRODUCE

A. Through a witness (i.e., police officer, youth court member, or victim)

1. “Your honor, may I approach the witness?”
2. “Officer Smith, I am handing you exhibit #1 (or exhibit A, if defense). Do you recognize this?”
3. “What is it?”
4. “How do you know that it depicts the car that was damaged?”
5. “Is it a fair and accurate representation of what the damage to the car looked like on June 6, 2004?”
6. “At this time your honor, I’d like to have exhibit 1 introduced into evidence.”
7. “May I show it to the jury?” (Show to jurors)

B. Without a witness (where you have taken the photograph or witness unavailable)

1. “Your honor, at this time I’d like to introduce into evidence photographs of the items taken by the offender on August 1, 2004, which I’ve marked as Prosecution exhibit 1.”
2. “I went to the store and photographed the item taken. (or, “A store security guard took this photograph on the night of August 1, 2004. However she is unavailable tonight.”). The photograph is a fair and accurate representation of the item taken.”
3. “May I show the photograph to the jury?” (Show to jurors)

* Remember: Use the exhibit during closing argument.

⁸ Remember, you must disclose this type of evidence to your opponent prior to the hearing. This means you tell them about it and show it to them if they want to see it.

APPENDIX G

(CHECKLISTS FOR INTERVIEWING WITNESSES)

October 2004

Character Witness Interview Sheet

I. Background:

Name:

Address:

Age:

Occupation:

Contact Information (telephone numbers):

II. Knowledge of the Offender:

1. How do they know the offender?
2. How long have they known him/her?
3. What is their opinion of this person?
4. What facts are they relying on to form this opinion?
5. Any prior problems with the offender?
6. Are they aware of any prior problems the offender has had?
7. Any other aggravating or mitigating circumstances?

III. Knowledge of Incident :

1. Do they know anything about the incident?
2. What do they know?
3. How do they know this information?:

IV. Other:

1. Witness' view of appropriate Youth Court sentence?
2. Would witness be willing to testify in Youth Court hearing? (If so, inform of date, time and place of hearing)
3. If unwilling to appear, would they submit a statement?(If so, assist them in preparing a statement).

Parents of Offender Interview Sheet

I. Background:

Name:

Address:

Age:

Occupation:

Contact Information (telephone numbers):

II. Information about the Offender:

1. How would they describe the offender?
2. How is he at home?
3. Does he help around the house?
4. How would you describe his general attitude?
5. How was offender's behavior prior to this incident ?
6. Has offender ever been in trouble before?
7. If so, for what?
8. If so, was he or she punished for that?
9. If so, what was punishment?
10. Did offender's conduct surprise them in this case?
11. If so, why?
12. How did you react when you learned of this conduct?
13. Has the offender been punished?
14. If not, why not?
15. If so, what is the punishment?
16. What are the offender's feelings about the incident?
17. Does he appear remorseful?
18. If so, how does he/she appear remorseful?
19. Any other aggravating or mitigating circumstances about the offender?

III. Knowledge of Incident :

1. Do they know anything about the incident?
2. What do they know?
3. How do they know this information?

IV. Other:

1. Parent's view of appropriate Youth Court sentence?
2. Would Parent be willing to testify in Youth Court hearing? (If so, inform of date, time and place of hearing)
3. If unwilling to appear, would they submit a statement? (If so, assist them in preparing a statement)

Police Officer Interview Sheet

I. Background:

Name:

Occupation/Position:

Duties and Responsibilities:

Contact Information (telephone numbers; email address):

II. Incident :

1. What happened?(as detailed as possible)
2. When? (Date and time)
3. Where?
4. What was the police officer's involvement?
5. Who was involved?
6. Offender's conduct?
7. Offender's attitude?(During incident and during arrest)
8. Prior problems with the offender/Prior contacts or arrests?
9. Any other aggravating or mitigating circumstances officer is aware of?
10. Any other witnesses?
11. Monetary loss or damage(value of item taken)?

III. Other:

12. Any physical evidence? (such as bills, receipts, property stolen, photographs)
13. Officer's view of appropriate Youth Court sentence?
14. Are there any police reports (i.e., arrest report)? (If so, ask for copies)
15. Would officer be willing to testify in Youth Court hearing? (If so, inform of date, time and place of hearing):
16. If unwilling to appear, would they submit a statement? (If so, prepare statement with them)
17. Victim contact information?

Victim Interview Sheet

I. Background:

Name:

Address:

Age:

Occupation:

Contact Information (telephone numbers):

II. Incident :

1. When? (Date and time)
2. Where?
3. What happened?(as detailed as possible)
4. Who was involved?
5. Offender's conduct?
6. Offender's attitude?
7. Prior problems with the offender?
8. Any other aggravating or mitigating circumstances?
9. Any other witnesses?
10. Monetary loss or damage(value of item taken)?

III. Other:

11. Any physical evidence? (such as bills, receipts, property stolen, photographs)
12. Victim's view of appropriate Youth Court sentence?
13. Would victim be willing to testify in Youth Court hearing? (If so, inform of date, time and place of hearing)
14. If unwilling to appear, would they submit a statement that includes the impact of the crime on them? (If so, assist them in preparing a statement).

II. Incident

1. When? (Date and time):
2. Where?
3. What happened?(as detailed as possible):
4. Who was involved?
5. Your conduct?
6. Conduct of others?
7. Why did you commit the crime?
8. Are you sorry you committed the crime?
9. If crime involved a victim, what would you say to that person now?
10. What have you learned from this experience?
11. Were you punished at home?
12. What was your punishment?
13. Have you paid restitution yet?
14. Have you written a letter of apology yet?
15. Have you started community service yet?

III. Character Witnesses

1. Parents willing to testify?
2. Best Friends? Who? Willing to testify or submit letter?
Phone numbers?
3. Teacher/Other School employee? Who? Willing to testify or submit
letter?
Phone numbers?

4. Other Possible Character Witnesses?(priest, rabbi, minister, employer, coach):

Who? Willing to testify or submit letter?
Phone numbers?

IV. Other

1. Future Plans?

a. College? Where: Field of Study?

b. Employment?

c. Military?

2. Have you ever been arrested before? When? For What?

3. Have you ever committed this type of crime before?

a. When?

b. Describe what happened?

4. What have you learned from this experience?

5. What would you do if the same circumstances of action were to arise?

6. (In peer pressure cases) Are you still associating with the other individuals involved?

a. Why?

b. Has their behavior changed?

7. How can we assure the jury that you will not reoffend?

8. Are you sorry for what happened?

9. Why are you sorry?

10. Are there any other things about you that will help the jury decided this case?

(Positive and Negative information)