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RJM

S U M M A R Y
OF
EXISTING NEW YORK CODE
OF
CRIMINAL PROCEDURE

INTRODUCTORY NOTE

The following is a summary of the more significant provisions of the existing New York Code of Criminal Procedure.

In what may serve as a table of contents, set forth at the outset, the figures in parentheses denote the page numbers of the summary statement where the pertinent headings are discussed. An effort has been made to cast the table of contents in terms of a chronological precedural scheme (code) of sorts. It should be made clear that this format is not representative of the one used in the existing code; nor, for that matter, is it intended to represent the kind of framework that the contemplated revised Code ought to assume.

TITLE I - GENERAL PROVISIONS

- Art. 1 - Preliminary Provisions (1)
- Art. 2 - Territorial Jurisdiction (2)
- Art. 3 - Statutes of Limitation (5)
- Art. 4 - Right to Counsel (7)
- Art. 5 - Courts
 - Sect.1 Courts of Original Criminal Jurisdiction (8)
 - Sect.2 Supreme Court (9)
 - Sect.3 County Court (10)
 - Sect.4 Lower Criminal Courts Outside N.Y.City (11)
 - Sect.5 Lower Criminal Court in N.Y.City (13)
 - Sect.6 Magistrates (16)

TITLE II - APPREHENSION AND INVESTIGATION

- Art. 6 - Arrest (17)
- Art. 7 - Search Warrants (24)
- Art. 8 - Unlawful Search and Seizure (26)
- Art. 9 - Eavesdropping (28)

TITLE III - PROCEEDINGS AFTER ARREST

- Art.10 - Security to Keep the Peace (29)
- Art.11 - Proceedings before Committing Magistrate (3)
- Art.12 - Bail (32)

TITLE IV - PROCEEDINGS TO COMMENCE PROSECUTION

- Art.13 - Indictment (34)
- Art.14 - Information (37)
- Art.15 - Grand Jury (38)

TITLE V - PROCEEDINGS PRIOR TO TRIAL

- Art.16 - Arraignment (43)
- Art.17 - Pleas (46)

TITLE VI - PRE-TRIAL RELIEF

- Art. 18 - Dismissal of Criminal Actions (50)
- Art. 19 - Motion to Set Aside Indictment (52)
- Art. 20 - Demurrer (53)
- Art. 21 - Motion to Inspect Grand Jury Minutes (54)
- Art. 22 - Venue (55)
- Art. 23 - Compromise of Crimes (56)

TITLE VII - PROCEEDINGS AT TRIAL

- Art. 24 - Trial
 - Sect.7 - Trial in General (57)
 - Sect.8 - Evidentiary Matters (58)
 - Sect.9 - Challenges (Grand Jury and Petit Jury) (60)
 - Sect.10- Petit Jury (64)
 - Sect.11- Direction of Verdict (67)
 - Sect.12- Verdicts (68)
- Art. 25 - Post-Trial Motions
 - Sect.13- Motion for New Trial (71)
 - Sect.14- Motion in Arrest of Judgment (73)

TITLE VIII - PROCEEDINGS AFTER TRIAL

- Art. 26 - Judgment (74)
- Art. 27 - Prior Crimes (77)
- Art. 28 - Probation (79)
- Art. 29 - Appeal (81)

TITLE IX - MISCELLANEOUS

- Art. 30 - Death Penalty (90)
- Art. 31 - Reprieve, Commutation, Pardon (92)
- Art. 32 - Disposal of Stolen or Embezzled Property (93)
- Art. 33 - Removal of Civil Officers (94)
- Art. 34 - Crimes and Penalties in Code (96)
- Art. 35 - Double Jeopardy (102)
- Art. 36 - Blood Tests (105)
- Art. 37 - Fingerprints (106)

- Art. 38 - Insanity (109)
- Art. 39 - Extradition (115)
- Art. 40 - Witnesses (117)
- Art. 41 - Peace Officers (122)
- Art. 42 - Treason: Outlawry (123)
- Art. 43 - Children (124)

* * * * *

SLATED FOR RE-LOCATION IN PENAL LAW
OR ELSEWHERE, OR FOR REPEAL

- Animals (126)
- Coroners (127)
- Corporations (128)
- Riot, Resistance to Execution of Process (129)
- Silverware (131)
- Status Offenses (132)
- Support of Patients of Mental Institutions (133)
- Support of Poor Persons (134)

SUMMARY
OF
CODE OF CRIMINAL PROCEDURE

PRELIMINARY PROVISIONS

The Act, known as the "Code of Criminal Procedure", is divided into 6 Parts:

- (1) Courts of original "criminal" jurisdiction.
- (2) The prevention of crime.
- (3) Proceedings for removal of public officers by impeachment or otherwise.
- (4) Proceedings in criminal actions prosecuted by indictment.
- (5) Proceedings in Special Sessions and Police Courts.
- (6) Special Proceedings of a criminal nature.

A crime must be prosecuted by indictment except: impeachment of a civil officer; removal of an inferior court justice; a crime arising in the militia or in the land or naval forces in time of war; such crimes as by special statute are cognizable in courts of special sessions or police courts.

The defendant, in a criminal action, is entitled to the following:

- (1) To a speedy and public trial.
- (2) To be allowed counsel, or he may appear and defend in person.
- (3) To produce witnesses in his behalf, and to be confronted with witnesses against him in the presence of the court.

No person can be compelled in a criminal action to be a witness against himself; and no person can be subjected to a second prosecution for a crime for which he has once been prosecuted, and duly convicted or acquitted.

The Code of Criminal Procedure took effect on September 1, 1881, and no part of such Code is retroactive unless expressly so declared.

(See C. Cr.Pr. §§1,2,4,8-10,954,963).

TERRITORIAL JURISDICTION

Duelling or Prize-Fighting Outside State

A person: who leaves this state with the intent to elude any law against duelling or prize-fighting; or, who is a resident of this state and does an act out of it which is violative of such a law; may be indicted and tried in any county of this state.

Parts of Crime in Different Counties

When a crime is committed partly in one county, and partly in another, the jurisdiction is in either county.

Crime Committed On or Near Boundary of Counties

When a crime is committed on the boundary of two or more counties, or within 500 yards of such boundary, the jurisdiction is in either county.

Crime Committed on Bridge or in Tunnel in New York City

When a crime is committed upon a bridge or in a tunnel in New York City, the jurisdiction is in any of the respective terminal boroughs.

Crime Committed on Railway Train, Truck, Aeroplane

When a crime is committed in this state on a railway train, truck, aeroplane, or other common carrier, the jurisdiction is in any county through which the vehicle has passed in the course of the same passage or trip, or in the county of destination.

Crime Committed on Board a Vessel

When a crime is committed on a vessel navigating a river, lake, or canal, the jurisdiction is in any county through which the river or canal passes, or in which the lake is situated.

Crime Committed on Hudson River or in New York Bay

When a crime is committed on the Hudson River (southward of the northern boundary of New York City), or in New York Bay (between Staten Island and Long Island), the jurisdiction is in any borough of New York City which borders upon such waters.

Homicide

In a homicide case, the prosecution may take place in the county where the killing occurred, or in the county where the victim's body is found,

Larceny or Perjury by Trustee

When a larceny (as defined in §1302-c of the Penal Law) is committed, the jurisdiction is in the county where the improvement is situated, or the county where defendant resides, or the county where defendant has a place of business, or the county where the larceny was committed.

When perjury in the second degree (as defined in §1634 of the Penal Law) is committed, the jurisdiction is in the county in which the statement was mailed, or the county in which it was served, or in the county in which it was received.

Libel

When the crime of libel is committed by publication in a paper in this state, against a person residing in this state, the jurisdiction is in the county where the paper is published, or the county where the complainant resides. But, upon compliance with certain conditions, defendant may require the trial to take place in the county where the paper is published. If the victim were not a resident of this state, jurisdiction is in the county where the paper purports upon its face to be published - if no particular county appears upon its face, the jurisdiction is in any county where the paper is circulated.

In no event may defendant be prosecuted for publication of the same libel against the same person in more than one county.

Desertion or Abandonment

When the crime of desertion or abandonment of one's family is committed - and the family has changed its place of residence to another county - the jurisdiction is in the county where the desertion or abandonment occurred, or the county of residence of such family.

Nuisance

When a nuisance exists on or near the boundary lines of the several counties of New York City, of Nassau, and of Westchester, the nuisance's author may be prosecuted in any county "injuriously affected thereby."

Double Jeopardy

When a crime is within the jurisdiction of another state or country, and of this state, a conviction or acquittal thereof in the former is a bar to a prosecution therefor in this state.

When a crime is within the jurisdiction of two or more counties of this state, a conviction or acquittal in one county is a bar to prosecution in another.

(See C.Cr.Pr. §§133-140, 953-a)

STATUTES OF LIMITATION

There is no limitation of time within which a prosecution for murder or kidnapping must be commenced.

A prosecution for a felony (or for the crime of conspiracy to commit a felony) must be commenced within 5 years after its commission. A prosecution for a misdemeanor or for an "offense" must be commenced within 2 years after its commission.

A prosecution is deemed "commenced": (1) when an information is laid before a magistrate charging that a crime has been committed and a warrant of arrest has been issued by him; or (2) when an indictment is duly presented by the grand jury and it is received and filed by the court.

A prosecution for larceny by a person in violation of his duty as fiduciary may be commenced within 5 years, if a felony, and within 2 years, if a misdemeanor, after the facts constituting the crime have been or, by dint of reasonable diligence, should have been discovered.

A prosecution for a misdemeanor consisting of a violation of any provision of Article 20-A of the Labor Law must be commenced within 2 years after the facts constituting the crime have been or, by dint of reasonable diligence, should have been discovered by the Industrial Commission or by an officer in the Department of Labor.

If the commencement of the prosecution were timely and, subsequently, the indictment is set aside or dismissed for want of prosecution or otherwise, or a demurrer to the indictment is sustained with a direction that the case be resubmitted to the grand jury, or a motion in arrest of judgment is granted and defendant is recommitted to answer a new indictment, the time limitation does not run while the prosecution is pending, but a new prosecution for the same offense must be commenced within 60 days after the order is entered.

If, when the crime is committed, the defendant be outside the state, the time limitation does not begin to run until he returns to this State. If, after the crime is committed, the defendant departs from this State, or he remains herein under a false name, the time of his absence or of such residence is not deemed part of the relevant time limitation.

(See C.Cr.Pr. §§141, 141-a, 142, 143, 144, 144-a).

RIGHT TO COUNSEL

In General

In a criminal action, the defendant is entitled "to be allowed counsel as in civil actions, or he may appear and defend in person and with counsel". Thus, when a defendant is brought before a magistrate on a charge of having committed a crime, "the magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any further proceedings are had". The magistrate must allow the defendant "a reasonable time to send for counsel, and adjourn the examination for that purpose", and, upon defendant's request, must require "a peace officer to take a message to such counsel."

Assignment of Counsel

If the defendant appear for "arraignment" without counsel, he must be asked if he desires the aid of counsel, and if he does "the court must assign counsel".

If a witness is to be "conditionally examined" on behalf of the People (as per §§219, 620-635), and "the defendant have no counsel", he must be assigned counsel "for the purpose of such examination".

On an appeal from a judgment of death, no compensation shall be allowed counsel unless the appeal were brought on for argument within the time prescribed by §536.

(See C. Cr. Pr. §§8, 188, 189, 219, 308, 308-a, 699).

COURTS OF ORIGINAL CRIMINAL JURISDICTION

The courts of original criminal jurisdiction in new York are:

- (1) Supreme Court
- (2) County Court
- (3) Courts of Special Sessions and Police Courts
- (4) Criminal Court of the City of New York
- (5) Local courts of inferior jurisdiction established for cities which are expressly authorized by law to act in criminal matters.
- (6) Court for the trial of Impeachments.

(See C. Cr. Pr. §11).

SUPREME COURT

The Supreme Court has jurisdiction:

(1) To enquire, by a grand jury, into all crimes committed in the county. But in respect to such minor crimes as the Courts of Special Sessions, Police Courts, City Courts, or the New York City Criminal Court have jurisdiction to hear and determine, the jurisdiction of the Supreme Court attaches only upon removal to the supreme court or presentment of an indictment in accordance with §§57, 58 and 59, and the applicable provisions of the N.Y.C. Criminal Court Act. (2) To try and determine all such crimes and to try all persons indicted for the same. (3) To try any indictment found in a County Court which has been sent by such Court to the Supreme Court, or which has been removed from such Court to the Supreme Court, if, in the Supreme Court's opinion, it is "reasonable"

SUPREME COURT

that it be tried therein. (4) To exercise the same jurisdiction as a County Court in a cause transferred in accordance with §41. (5) To send any indictment found by it to the County Court in the county. But in respect to such minor crimes as the Courts of Special Sessions, Police Courts, City Courts, or the New York City Criminal Court have jurisdiction to hear upon any criminal charge whatever. (6) To grant new trial in all cases tried therein. (7) To let to bail to any person committed, before and after indictment found upon any criminal charge whatever. (8) To exercise the powers conferred upon it by other provisions of the Code and by special statutes.

indictment in accordance with §§57, 58 and 59, and the appli-

(See C.Gr.Pr. §22). of the N.Y.C. Criminal Court Act. (2) To

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indicted for the same. (3) To try any indictment found in

a County Court which has been sent by such Court to the Supreme

Court, or which has been removed from such Court to the Supreme

Court, if, in the Supreme Court's opinion, it is "reasonable"

that it be tried therein. (4) To exercise the same jurisdiction

as a County Court in a cause transferred in accordance with

COUNTY COURT

The County Courts have jurisdiction:

(1) To enquire, by a grand jury, into all crimes committed in the county. But in respect of such minor crimes as the Courts of Special Sessions, Police Courts, or City Courts have jurisdiction to hear and determine, the jurisdiction of the County Court attaches only upon removal to the county court or presentment of an indictment in accordance with §§57, 58 and 59. (2) To try and determine all such crimes and to try all persons indicted for the same. (3) To determine any motion to inspect grand jury minutes. (4) To review the convictions of disorderly persons actually imprisoned. (5) To compel relatives of poor persons and committees of lunatics to support such persons. (6) To let to bail, either before or after indictment, persons held for any crime. (7) To grant new trials in all cases tried therein. (8) To exercise the powers conferred upon it by other Code provisions and by special statutes.

A county court may send an indictment found by it to the Supreme Court for determination. But if it is returned without trial by the Supreme Court, the County Court may proceed thereon.

At any time after defendant has waived examination in the court of original jurisdiction and before a charge is presented to the grand jury, the County Court (upon motion of defendant, with the consent of the district attorney; or upon motion of the district attorney alone) may order the return of the defendant to the court of original jurisdiction. Upon his return thereto, the Magistrate "shall be empowered" to rescind the order holding the defendant for the grand jury.

(See C. Cr. Pr. §§39, 41, 190-a).

LOWER CRIMINAL COURTS OUTSIDE N.Y. CITY

Courts of Special Sessions

Subject to the power of removal as per §§57 and 58, and subject to being divested of jurisdiction as per §59, the Courts of Special Sessions (outside N.Y. City) have in the first instance exclusive jurisdiction to hear and determine those charges of misdemeanors, offenses, violations of ordinances and infractions, as are expressly set forth in §56, such as petit larceny and assault in the third degree. In respect of a misdemeanor not enumerated in §56, the Court of Special Sessions has jurisdiction to hear and determine such a charge if the defendant (when he appears before the committing magistrate) elects to be tried by such court, as per §211. This exception applies, however, only when the unenumerated misdemeanor is not punishable by a fine exceeding \$50.00, or by imprisonment exceeding six months.

Subject to being divested of jurisdiction as per §59, the Court of Special Sessions have exclusive jurisdiction to try and determine all complaints for violations of §§1221, 1912 and 1913 of the Penal Law, and for violations of Article 4 of the Conservation Law.

Police Courts

The courts held by Police Justices are called Police Courts, and Courts of Special Sessions are also called Police Courts in various parts of the Code.

Removal Proceedings

When a charge for a §56 crime is pending before a Magistrate, upon filing with such Magistrate a certificate of a County Judge or a Supreme Court Justice that the charge should be prosecuted by indictment and fixing the amount of bail; and upon the defendant's giving bail, all proceedings before the Magistrate shall be stayed; and the district attorney shall

present such charge to the grand jury. The Magistrate must inform the defendant of his right to apply for such a removal.

Divestment of Jurisdiction

A Court of Special Sessions, Police Court, or City Court shall be divested of jurisdiction to hear and determine a charge of misdemeanor if, prior to trial, a grand jury returns an indictment for the same offense. The district attorney may move for an adjournment of the proceedings for the purpose of presenting the charge to the grand jury.

(See C.Cr.Pr. §§56, 56-a, 56-b, 57-59, 74.)

LOWER CRIMINAL COURT IN N.Y. CITY.

In General

As of September 1, 1962, the lower criminal courts in New York City were abolished - i.e., the Court of Special Sessions and the City Magistrates' Courts. They have been replaced by the "Criminal Court of the City of New York". (The same Act, incidentally, abolished the Court of General Sessions of New York County and the County Courts of the other counties - courts of original criminal jurisdiction - and the jurisdiction of such courts now resides in the Supreme Court. Further, the Children's Courts and Domestic Relations Courts have been abolished, and a new state-wide Family Court system has been created). Provisions governing the jurisdiction and procedure of the newly-created "Criminal Court of N.Y. City" are found in the new "N.Y. City Criminal Court Act."

Jurisdiction

The N.Y. City Criminal Court has jurisdiction to hear, try, and determine all charges of misdemeanor (except libel) and all offenses of a grade less than misdemeanor committed within the City of New York.

Removal of Misdemeanor Cases

The court, however, shall be divested of jurisdiction to hear, try and determine any charge of misdemeanor: (1) If, prior to trial, a grand jury returns an indictment against the defendant for the same offense; or (2) if, prior to trial, a Justice of the Supreme Court certifies that it is reasonable that such charge be prosecuted by indictment. All proceedings in the lower criminal court shall be stayed while the district attorney presents the charge to the grand jury.

Transfer of Cases to N.Y. City Criminal Court

In connection with a misdemeanor charge relating to gambling, it may be prosecuted by an information signed and

filed by the district attorney in the New York City Criminal Court, if the grand jury so directs and the Supreme Court approves.

Miscellaneous Powers

The Judges of this court also have the power: (1) To punish for criminal contempt; to order the taking of fingerprints; to grant a new trial for after-discovered evidence; to send process into any county of the state; (2) When sitting as a "committing magistrate", to reduce a felony charge to a misdemeanor, but if granted before a hearing, the district attorney must consent; (3) In connection with a misdemeanor charge, on the recommendation of the district attorney, to accept a plea of guilty to an "offense" and to dismiss the misdemeanor charge; but the reasons for the recommendation must be stated in open court and upon the record.

Mode of Trial

All trials shall be held without a jury. Where the defendant has been charged with a misdemeanor (other than a misdemeanor charge for "gambling"), the procedure following arraignment shall be as follows: (1) Defendant shall be advised of his right to a trial by a panel of three Judges; (2) At any time before the court hears any trial testimony, defendant may demand a trial before such a panel, or the district attorney may make such a demand, or the court on its own motion may direct that the trial be held before such a panel. In any such instance, the Judge shall sit as a magistrate, and if defendant does not waive examination, he shall proceed to examine the case, and then either discharge the defendant or hold him for trial before a panel; (3) In any case, after defendant's plea, the court (single judge) shall proceed to try and determine the action.

Procedure

Every prosecution in this court shall be based upon a written information supported by deposition, as provided by the Code. But when the trial is to take place before a panel of three judges, or when the grand jury has directed with court approval the trial of a misdemeanor charge in this lower court, the action must be prosecuted by information made by the district attorney.

Appeal

Defendant may appeal from an adverse judgment in the same manner as from a judgment in an action prosecuted by indictment. If the Appellate Division decision is adverse to defendant, or to the People, an appeal may then be taken to the Court of Appeals, as per the Code. The Appellate Division may provide, by Rule, that appeals in some cases be taken in the first instance to an appellate part of the Supreme Court - rather than to the Appellate Division.

Sentencing

After conviction, the court may remand defendant for a period not to exceed 10 days or admit him to bail for a period not to exceed 30 days, for investigation before pronouncing sentence.

An adult may be placed on probation, but the period cannot exceed 3 years. Probation may be revoked at any time and, if revoked, the court may impose any sentence it might have originally imposed.

If the conviction be for an offense less than a misdemeanor, the Judge may suspend sentence without placing defendant on probation. However, at any time within one year the court may revoke such suspension of sentence and pronounce any judgment it might have originally pronounced.

(See C.Cr.Pr. §272-a; N.Y. City Criminal Court Act §§31-33, 40-47, 60).

MAGISTRATES

The term "magistrate" signifies any one of the magistrates mentioned in §147. A magistrate is defined as "an officer having power to issue a warrant for the arrest of a person charged with a crime." In §147, the following persons are deemed "magistrates": (1) Supreme Court Justices, (2) Judges of Local Courts of inferior jurisdiction established for cities with express power to act in criminal matters, (3) County Judges, (4) Judges of the Family Court, and Judges of the Criminal Court of the City of New York, (5) Justices of the Peace, (6) Police Justices (and other special Justices) in a Village or Town, (7) Mayors and recorders of cities, (8) The Judge of the Nassau County District Court.

(See C.Cr.Pr. §§146, 147, 959).

ARREST

In General

An "arrest", defined as "the taking of a person into custody that he may be held to answer for a crime," may be made by a "peace officer" (with or without a warrant) or by a "private person". An arrest is made "by an actual restraint" of the defendant or "by his submission to the custody of the officer". Upon his arrest, the defendant must be taken "before the magistrate without unnecessary delay, and he may give bail at any hour of the day or night."

(See C.Cr.Pr. §§165, 167, 168, 171).

Arrest by Peace Officer Without a Warrant

A peace officer may arrest without a warrant: (1) For a crime committed in his presence; or where a "police officer" (as defined in §154-a) has reasonable grounds for believing that a crime is being committed in his presence"; or (2) When the person arrested has committed a felony; or (3) When a felony has been committed, and he has "reasonable cause for believing the person to be arrested to have committed it"; or (4) When he has "reasonable cause for believing that a felony has been committed, and that the person arrested has committed it; although it later appear that no felony had been committed or the person arrested did not commit it"; or (5) When he has "reasonable cause" to believe that a person has been "legally arrested" by a citizen as per §§185-187.

In making such an arrest, the officer must inform him of his "authority" and the "cause" of an arrest, except when the person is "in the actual commission of a crime," or is "pursued immediately after an escape."

(See C.Cr. Pr. §§177, 180).

Temporary Questioning of Persons and Search for Weapons ("stop and frisk" statute).

As of 1964, a police officer, without making an arrest, "may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit" a felony or any crime specified in §552, and "may demand of him his name, address and an explanation of his actions." If, after stopping a person, the police officer "reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon." If he finds such a weapon or any other thing in the possession of which constitutes a crime, he may seize it until he completes the questioning, whereupon he must return it, "if lawfully possessed", or arrest such person. (See C.Cr.Pr. §180-a).

Arrest by Private Person

A private person may arrest:

(1) For a crime committed in his presence; or (2) When the person arrested has committed a felony.

In making such an arrest, the private person must inform him of the "cause" of the arrest, and "require him to submit," except when the person arrested is "in the actual commission of the crime," or is pursued immediately after an escape. After such an arrest, the private person must "without unnecessary delay, take him before a magistrate, or deliver him to a peace officer." (See C.Cr.Pr. §§183-185).

Warrant of Arrest

A "warrant of arrest" is an order in writing, signed by a magistrate, commanding the arrest of the defendant. The warrant must contain the defendant's name, the offense for which he is arrested, and the time and place of its issuance. It must be "directed to, and executed by, a peace officer."

If the offense be a felony, the arrest may be made at any time; but if it be a misdemeanor, the arrest cannot be made on Sunday or at night, unless the magistrate has so indorsed the warrant.

In making such an arrest, the officer must inform the defendant that he is acting "under the authority of the warrant", and he must show the warrant, if required.

(See C.Cr.Pr. §§151-153, 170, 173).

Summons

If a magistrate is satisfied that the crime complained of has been committed, and is one over which a Court of Special Sessions has exclusive jurisdiction or is one of the offenses enumerated in §56 (or if against a child and the magistrate has jurisdiction to commit), the magistrate may, in his discretion, instead of issuing a warrant, issue a "summons". If the person summoned "does not appear", this shall constitute a "contempt" which the magistrate may punish by a fine of not more than \$25; and a warrant of arrest may be issued.

(See C.Cr.Pr. §150).

Bench Warrant

If the defendant fails to appear to be arraigned, the court may direct the clerk to issue a bench warrant for his arrest. Indeed, at any time after an indictment is found, a bench warrant for the arrest of the defendant may be issued by the district attorney.

If the defendant fails to appear for judgment, when his personal attendance is necessary, the court may direct the clerk to issue a bench warrant for his arrest.

(See C.Cr.Pr. §§299, 300, 475).

Animals

A police officer must, and an agent of the S.P.C.A. may, arrest, and bring before a court or magistrate, any person

violating any of the provisions of Article 16 (relating to Animals) of the Penal Law.

(See C.Cr.Pr. §117-a).

Habitual Criminal

A person who has been adjudged an "habitual criminal" (under §510) is liable to summary arrest, with or without a warrant, and to punishment as a disorderly person, when he is found (without being able satisfactorily to explain) either: In possession of a deadly or dangerous weapon, or of any tool used by criminals to commit crime; or in a situation which gives rise to a reasonable belief that he is awaiting the "opportunity to commit some crime".

(See C.Cr.Pr. §512).

Surety

For the purpose of surrendering the defendant, any surety may himself arrest him or, by a written authority endorsed on the undertaking, "may empower any person of suitable age and discretion to do so."

(See C.Cr.Pr. §591).

Uniform Witness Act

If a person comes into this state in obedience to a subpoena directing him to attend and testify here, he shall not, while in the state, be subject to arrest or the service of process, civil or criminal. Nor shall he be subject to arrest here if he is simply passing through this state in obedience to a subpoena from some other state.

[See C.Cr.Pr. §618-a (4)]

Coroner

If, pending an inquisition by a coroner to determine whether a given death was occasioned by criminal means, it

appears that an accused is not in custody, the coroner must issue a warrant for his arrest and, upon his arrest, he must be arraigned before the coroner for examination; and the coroner may commit such a person to await the result of the inquisition or decision.

If the inquisition or decision places criminal authority upon a given accused, but he is not in custody, the coroner must issue a warrant for his arrest.

(See C.Cr.Pr. §§773, 780).

Uniform Criminal Extradition Act

If the Governor decides that a demand (for the surrender of a person charged with a crime in another state) should be complied with, he must sign a warrant of arrest, directed to any peace officer or other suitable person. The warrant may be executed at any time and any place within the state, and authorizes delivery of the accused to the agent of the demanding state. Before such delivery, however, the arresting officer must cause the accused to be brought before a judge of a court of record so that he may be informed of the charge and be accorded a hearing - the officer's failure to do so is a felony carrying imprisonment of one year.

A peace officer or private person may, without a warrant, lawfully arrest a person upon "reasonable information" that the accused stands charged in another state with a crime punishable by death or imprisonment for more than 1 year; but, when so arrested, he must be taken before a Magistrate "with all practicable speed."

(See C.Cr.Pr. §§835, 836, 838, 839, 843).

Uniform Close Pursuit Act

A peace officer of another state, "who enters this state in close pursuit" of a person "in order to arrest him", has the same authority to arrest and hold him in custody as a

peace officer in this state has for a like offense. If such an arrest is made, the person arrested must "without unnecessary delay" be taken before a magistrate to determine solely whether the arrest was a "close pursuit" one. If so, the officer may take such person to the state from which he fled. If not, the magistrate must discharge the person arrested.

(See C. Cr. Pr. §860).

Close Pursuit Within the State

As of 1964, a peace officer who is authorized to arrest a person without a warrant or to issue a traffic summons for an offense committed within the geographical confines of such officer's police district, may make such arrest or issue such summons "in any part of this state", provided "continuous close pursuit" was necessary in order to make the arrest or issue the summons.

(See C. Cr. Pr. §182-a).

Children - Parents

When complaint is made to a magistrate against any vagrant under §887(8) - a truant child between 5 and 16 years of age, found wandering in the streets - such magistrate must cause a peace officer to bring such child before him for examination, and shall also cause the parent to be summoned to attend such examination. If the child is deemed a vagrant, the magistrate must require the parent to enter into an engagement in writing (and may require security for its faithful performance) that he will cause him to be sent to some school.

When a child (between 16 and 21 years of age) is adjudged a "wayward minor" under §913-a, the magistrate may, in his discretion, issue a summons for the appearance of such wayward minor, or issue a warrant of arrest.

Whenever a child has been committed to an institution,

a magistrate may issue a summons or warrant for a parent of the child and examine into his ability to maintain such child in whole or in part.

(See C. Cr. Pr. §§888, 913-b, 921).

SEARCH WARRANTS

A "search warrant" is defined as "an order in writing in the name of the people, signed by a judge, justice or magistrate, of a court of criminal jurisdiction, directed to a peace officer, commanding him to search for personal property, and bring it before the judge, justice or magistrate." The following property may be the subject matter of a search warrant: (1) Stolen property; (2) unlawfully possessed property; (3) property possessed with intent to use it in committing a crime; (4) property constituting evidence of a crime.

A search warrant can be issued only upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched. In addition, the Judge may examine the applicant, and any witnesses he may produce, under oath.

A search warrant may be executed only in the daytime. However, if there be probable cause for the belief that the warrant cannot be executed in the daytime, or that the subject property will be removed or destroyed if not seized forthwith, the Judge may, in his discretion, insert a direction in the warrant that it may be executed at any time of the day or night. The warrant is void unless it is executed within 10 days.

As of 1964, a peace officer may break into a building to execute a search warrant without first giving the occupant notice of his authority and purpose if the judge who issued the warrant inserted a direction therein that such notice need not be given. The judge may so direct only upon sworn proof to his satisfaction "that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given".

If the grounds on the basis of which a search warrant was

issued be controverted, the Judge must take the relevant testimony.

It is a misdemeanor if: (a) a person maliciously and without probable cause procures the issuance and execution of a search warrant; or (b) a peace officer, in executing the warrant, wilfully exceeds his authority or uses unnecessary severity.

(See C. Cr. Pr. §§791-796, 799, 801, 802, 807, 811, 812).

UNLAWFUL SEARCH AND SEIZURE

In General

A person claiming to be aggrieved by an unlawful search and seizure, and having reasonable grounds to believe that such property may be used as evidence against him in a criminal proceeding, may move for its return or for the suppression of its use as evidence. The court shall hear evidence on any issue of fact raised.

If the motion be granted, the property must be returned (unless it may be lawfully detained) and, in any event, it shall not be admissible as evidence in any criminal proceeding against the moving party.

If the motion be denied, the order may be reviewed on appeal from a judgment of conviction - even if it were predicated upon a plea of guilty.

The motion must be made prior to trial, except that a motion must be entertained during the trial if: (a) Defendant was unaware of the seizure until after the trial commenced; (b) Defendant obtained evidence of "unlawful acquisition" only after the trial commenced; or (c) Defendant has inadequate time to make the motion prior to the trial.

If a motion made before trial is denied, but during the trial the defendant has obtained additional evidence of "unlawfulness", the trial court must enter in another motion.

When a motion has been made during the trial, the court must "decide all issues of fact and law", in the absence of the jury.

If no motion is made, the defendant shall be deemed to have "waived" any objection to "unlawfulness".

Appeal

If the motion be denied, the order is reviewable on appeal from a judgment of conviction.

If the motion be granted, the People may appeal as of right provided that the following statement is filed: That the deprivation of the use as evidence of the property ordered to be returned or suppressed, has rendered the sum of proof available either (a) insufficient as a matter of law, or (b) so weak that prosecution would not be successful. The taking of an appeal and filing of a statement shall be a bar to further prosecution unless and until the order of return or suppression is reversed on appeal and vacated.

An appeal may be taken from an intermediate appellate court to the Court of Appeals (if a certificate as per §520 is obtained) from an order affirming or reversing an order which granted a motion to return property or suppress evidence.

(See C. Cr. Pr. §§518(6), 518-a, 519(7), 813-c, 813-d).

EAVESDROPPING

An ex parte order for eavesdropping [as defined in §738(1) (2) of the Penal Law] may be issued by a Supreme Court Justice or County Court Judge, upon oath of a district attorney, attorney-general, or a police officer above the rank of sergeant, "that there is reasonable ground to believe that evidence of crime may be thus obtained". Such an order is effective for the time specified therein but not for more than 2 months unless extended by the original Judge.

A law enforcement officer may engage in the §738(2) kind of eavesdropping without a court order only when he has reasonable grounds to believe that, in order to obtain evidence of crime, time does not permit an application to be made for such an order. In any event, he must apply for a court order within 24 hours. Any violation of this section is a felony carrying imprisonment for not more than 2 years. (See C. Cr. Pr. §§813-a, 813-b).

SECURITY TO KEEP THE PEACE

An information may be laid before any magistrate that a person has threatened to commit a crime against the person or property of another. If, after hearing the complainant and any witnesses he may produce, it appears that there is just reason to fear the commission of the crime threatened, the magistrate must issue a warrant for that person's arrest. If, in a hearing before the magistrate it appear that there be just reason to fear the commission of a crime, that person may be required to enter into an undertaking (not exceeding \$1000), to abide the order of the next county court, and in the interim to keep the peace. If the undertaking be given, that person must be discharged; if not, he must be committed to prison. If the undertaking has been given, the next county court may hear the parties' proofs and either discharge the undertaking, or require a new one (for a time not exceeding one year).

An undertaking is deemed broken if the person fails to appear at the next county court, or upon his being convicted of a crime involving a breach of the peace - in which case the court must order the undertaking to be prosecuted by the district attorney.

Every court of criminal jurisdiction before which any person shall be convicted of any offense (except libel), not punishable by death or imprisonment in a state prison, shall have power, in addition to such sentence as may be authorized by law, to require such person to give security to keep the peace for any term not exceeding two years, or to stand committed until such security be given.

(See C. Cr. Pr. §§84-99).

PROCEEDINGS BEFORE COMMITTING MAGISTRATE

After an arrest, the accused must be taken before a magistrate "without unnecessary delay", and "he may give bail at any hour of the day or night."

The magistrate must immediately inform him of the charge against him and of his right to the aid of counsel. After affording defendant an opportunity to procure counsel, the magistrate must proceed to examine the case, unless defendant waives examination and elects to give bail.

At any time after waiver of examination and before the charge is presented to the grand jury, the County Court (upon motion of defendant with the consent of the district attorney, or upon motion of the district attorney alone) may order the defendant's return to the court of original jurisdiction and, upon such return, the Magistrate "shall be empowered to rescind the order holding the defendant for the grand jury."

If, on the other hand, an examination be held, the magistrate must read to the defendant the depositions of the witnesses examined on the taking of the information and, if defendant requests, must summon such witnesses for cross-examination. After the People's witnesses have been examined the magistrate must inform defendant of his right to make a statement in relation to the charge and of his right to waive the making of such a statement. If he decides to make a statement, the magistrate must put to him only the following questions: (1) Name, age, where born, place of residence and how long there, business or profession? (2) Give any explanation you may think proper, and state any facts you think will tend to your exculpation. After the defendant's statement or waiver thereof, his witnesses, if any, must be examined.

After the examination, if it appear either that a crime

has not been committed, or that there is insufficient cause to believe the defendant to be discharged. If the contrary appear, the Magistrate must order that defendant be held to answer the charge (if defendant had not reached the age of 19 years at the time the crime was committed, the order shall so state and shall set forth his age).

(See C. Cr. Pr. §§165, 188-190, 190-a, 194, 196, 198, 201, 207-208, 699).

BAIL

In General

The "taking of bail" consists in the acceptance, by a competent court or magistrate, of the undertaking of sufficient bail for the appearance of the defendant, or that the bail will pay to the People a specified sum.

When defendant has been held to appear for examination, bail for such appearance may be taken by a Magistrate, Justice of the Supreme Court, or County Judge.

However, defendant cannot be admitted to bail, before or after indictment, except by a Justice of the Supreme Court or a County Judge, where he is charged: (1) With a crime punishable by death; (2) With the infliction of such an injury - probably fatal - that if death ensued, the crime would be murder; (3) With a felony, or with one of the misdemeanors enumerated in §552, and defendant has a prior felony conviction, or has been twice convicted of any one of such misdemeanors or convicted of any two of them.

If the charge be for any other crime, defendant may be admitted to bail, before conviction, thus: (1) As a matter of right, in cases of misdemeanor. (2) As a matter of discretion, in all other cases.

Bail Pending Appeal

After the conviction for a crime not punishable with death or life imprisonment, a defendant who has appealed (and where there is a stay), may be admitted to bail: (1) As a matter of right, when the appeal is from a fine; (2) As a matter of discretion in all other cases, except that he shall not be admitted to bail: (a) if he is a fourth offender, (b) if he committed a felony while armed with a weapon, or (c) if he was convicted of any crime described in §552.

The order admitting defendant to bail may be made either

by the court from which the appeal is taken (or a Judge thereof), or by a Judge of the Supreme Court.

Courts of Special Sessions (outside New York City)

Before or after being committed, the defendant must, if he require it, be admitted to bail; and he may be admitted to bail pending an appeal if "there is a reasonable doubt whether the conviction should stand."

(See C. Cr. Pr. §§550-555, 583, 736, 753).

INDICTMENT

In General

The first pleading on the part of the People is the "indictment". The Code authorizes 3 kinds of indictments: (1) an indictment which was good at common law; (2) an indictment in accordance with §§273-295 of the Code; and (3) a "simplified" indictment as per §§295-a to 295-1 of the Code.

An indictment (in any form) has been defined as "an accusation in writing, presented by a grand jury to a competent court, charging a person with crime."

Ordinary "Code" Indictment (as per §§273-295)

The indictment must contain "a plain and concise statement of the act constituting the crime, without unnecessary repetition", and may be in the form set forth in §276. The statutory language defining a crime need not be strictly pursued.

The indictment must charge only one crime and in one form, except as provided in §279. In a multi-count indictment, the People need not "elect between the counts" at the commencement of the trial, unless for good cause the court require it. If there be two indictments pending against the same defendant, for the same matter, the more recent indictment is deemed to have superseded the older one.

When, by reason of a prior conviction, a crime of misdemeanor grade is designated a felony, such prior conviction shall not be alleged in the indictment. The indictment shall merely describe the basic crime "as a felony". A separate information (charging the previous conviction) shall be filed with the indictment and be part of the official court record. The People shall not be permitted, in its opening to the jury, to refer to such prior conviction. After the trial has commenced and before the close of the People's case, the court

(in the jury's absence) must arraign the defendant on the prior conviction. If the defendant admits it, no proof need be adduced before the jury and the court must later charge the jury that the crime charged in the indictment is a felony. If he denies the prior conviction or stands mute, the People must prove the prior conviction before the jury as an element of the People's case.

An indictment is not insufficient nor are proceedings thereon affected, "by reason of an imperfection in matter of form, which does not tend to the prejudice of the substantial rights of the defendant, upon the merits."

When, in the course of trial, a "variance" appears between allegations in the indictment and the proof, in respect to time, or the name or description of any place, person or thing, the court may (if the defendant cannot be thereby prejudiced in his defense on the merits) direct the indictment to be amended, according to the proof, on such terms (as to the postponement of the trial) as the court may deem reasonable. In such case, the trial shall later proceed as if no such variance had occurred.

"Simplified" Indictment (as per §§295-a to 295-1)

Such an indictment need contain merely "a statement of the specific crime with which the defendant is charged" - such as murder, arson, or the like; or, if it be a misdemeanor having no general name, a brief description of it as is given by statute. The "statement of crime" may also contain a reference to the relevant statute. The "form" of such an indictment is set forth in §295-d.

Proof of any act proscribed by the relevant statutes constitutes sufficient support for the indictment. Where the acts complained of may constitute different crimes, such crimes may be charged in the same indictment in separate counts.

At the arrignment, the court must, at defendant's request, direct the district attorney to file a bill of particulars. The bill of particulars (the "form" of which is set forth in §295-i) must contain "a statement, in ordinary language, without stating items of evidence or necessarily setting forth all the elements of the crime, of such particulars as may be necessary to give the defendant and the court reasonable information as to the nature and character of the crime charged" - such as, the time and place of the crime charged, and (if it be an assault) that A assaulted B "by stabbing him", or (if it be larceny) that A "stole a gold watch" from B.

At the trial, when a variance shall appear, the court may (absent prejudice to defendant on the merits) direct the indictment to be "amended according to the proof", on such terms (as to the trial's postponement) as the court may deem reasonable. It may add "new counts" charging crimes related to the transaction upon which the defendant stands indicted.

Indeed, upon the same terms and under similar circumstances, the court may direct the "bill of particulars" to be amended according to the proof.

The district attorney may (not less than 8 days before trial) serve a demand upon defendant which shall require that if such defendant intends to offer testimony "to establish his presence elsewhere than at the scene of the crime", he must (within 4 days) serve upon the district attorney a bill of particulars setting forth the place he claims to have been, together with the names, addresses, and places of employment of the witnesses upon whom he intends to rely. If the defendant fails so to comply, the court, upon the trial, may exclude the testimony of such a witness if it is sought to be introduced. If the court, nevertheless, allows such testimony, it must, upon motion of the district attorney, grant an adjournment of not more than three days.

(See C. Cr. Pr. §§273-285, 292-a to 295, 295-a to 295-1).

INFORMATION

In General

An "information" is defined as "the allegation made to a magistrate, that a person has been guilty of some designated crime".

The information shall not allege a prior conviction, unless such previous conviction affects the degree of crime charged in the information or is an element of such crime.

Simplified Traffic Information

This is an information or complaint charging the violation of any of the provisions of the Vehicle and Traffic Law, or of any ordinance made by local authorities in relation to traffic (except prohibited parking, stopping or standing). But an information (as per §145) shall, nevertheless, continue to be sufficient.

This "simplified" information need contain merely "a statement of the specific violation with which the defendant is charged" - such as speeding, reckless driving, or the like; or, if it be a violation having no general name, a brief description of it as is given by the statute or ordinance. The "form" of such an information is set forth in §147-e.

At the arraignment or a later stage, the court must advise the defendant of his right to a bill of particulars of the violation charged and, at his request, shall direct the peace officer to file such a bill of particulars. The bill of particulars must contain "a statement, in ordinary language, without stating items of evidence or necessarily setting forth all the elements of the violation, of such particulars as may be necessary to give the defendant and the court reasonable information as to the nature and character of the violation charged".

(See C. Cr. Pr. §§145, 147-a to 147-g).

GRAND JURY

In General

A "grand jury" is defined as "a body of persons, returned at stated periods, from the citizens of the county, before a court of competent jurisdiction, and chosen by lot, and sworn to inquire of crimes committed or triable in the county". It consists of not less than 16 and not more than 23 persons, and the presence of at least 16 is necessary for the transaction of any business.

Courts for which drawn

A grand jury must be drawn for every term of the Supreme Court, except that in counties outside New York City, upon order of the Appellate Division, the grand jury may be required to attend at a lesser number of terms.

A grand jury may also be drawn, upon order of the Appellate Division, for every county court; for an extraordinary term of the Supreme Court; or, in New York City, for the Supreme Court "whenever the public interest requires an additional grand jury".

Selection of Grand Jurors

Grand jurors must be selected as prescribed in §§609 and 684 of the Judiciary Law. However, in any county whose population is less than 100,000, the grand jurors may be selected as per §531 of the Judiciary Law if the county has so elected.

Grand Jury Proceedings in General

From the persons summoned to serve as grand jurors, the court must appoint a foreman. Then the oath (set forth in §238) must be administered to the foreman and other grand jurors. After the grand jury has been impaneled and sworn, the court must charge them thus: It must read to them (or give them a copy of) sections 245 to 260 of the Code, and must inform them as to the nature of their duties, and any charges and crimes likely to come before them.

The grand jury must then retire to a private room. It must appoint one of their number as clerk, who is to preserve minutes of their proceedings (except the individual votes) and of the evidence given before them.

The grand jury has the power, and it is their duty, to inquire into all crimes committed in the county, and to present them to the court.

The grand jury may ask the advice of the court or district attorney regarding any matter; and, "whenever required by the grand jury, it shall be the duty of the district attorney" to attend them "for the purpose of examining witnesses in their presence, or of giving them advice upon any legal matter, and of issuing subpoenas or other process for witnesses." The district attorney, however, "must be allowed, at all times," to appear before the grand jury "for the purpose of giving information relative to any matter before them", but no district attorney or other person shall be present with the grand jury "during the expression of their opinions or the giving of their votes upon any matter."

Whenever required by the grand jury, the district attorney must provide an interpreter to attend the grand jury for the purpose of interpreting the testimony of any witness who does not speak the English language. Such interpreter must first take the oath of faithful interpretation and of secrecy.

When a person held in custody is a witness before the grand jury, his guard may accompany and guard him in the grand jury room while he is testifying; but such guard must first take the oath of secrecy.

Each grand juror must keep secret what any grand juror has said or how any grand juror has voted; and he cannot be questioned in either respect, except for perjury on his part in giving testimony to his fellow jurors.

But a grand jury may be required to disclose the testimony of a witness in order to determine whether it is consistent with that given by the witness before the trial court, or to determine whether a witness committed perjury in his testimony before the grand jury.

In order to find an indictment, at least 12 grand jurors must concur. If so found, it must be endorsed "a true bill" and signed by the foreman. If not so found, the depositions transmitted to them must be returned to the court, with an endorsement thereon, signed by the foreman, to the effect that "the charge is dismissed."

If an indictment is found, it must be presented by the foreman, in open court, and must be filed with the clerk as a public record - but it cannot be shown to any person until defendant has been arrested or has appeared.

An indictment, then, consists of "an accusation in writing, presented by a grand jury to a competent court, charging a person with a crime."

Evidence Before the Grand Jury

The grand jury "can receive none but legal evidence." In investigating a charge for the purpose of indictment it can receive no other evidence than: (1) Such as is given by "witnesses" produced and sworn before them; (2) such as is furnished by "legal documentary evidence"; (3) the deposition of a witness [as per §8 (3)].

An "accused" may, as a matter of right, file with the foreman of the grand jury and with the district attorney a "request" that he be heard before such grand jury. Before finding an indictment - if a request has been filed - the grand jury must notify the accused that it will hear him at a given time. But he may appear and testify only if he executes a "waiver of immunity" (as per §2446 of the Penal Law).

If he appears at the appointed time, the grand jury may permit him to testify under oath and it may cross-examine him, but it need not hear any witness on his behalf. If the grand jury has found an indictment but has not honored an accused's "request", the court must set the indictment aside upon defendant's motion at or before the arraignment. Nevertheless, the court may direct that the case be submitted to another grand jury.

As a general matter, the grand jury must weigh all the evidence submitted, and if it appear that other available evidence may explain away the charge, they should order such evidence to be produced and require the district attorney to issue process for the attendance of witnesses.

An indictment "ought" to be found by the grand jury "when all the evidence before them, taken together, is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury."

Other Duties of the Grand Jury

If a grand juror know that a crime has been committed in the county, he must disclose the fact to his fellow jurors, who must thereupon investigate it.

It must inquire into the "wilful and corrupt misconduct in office", of public officers in the county; and it may inquire into the "condition and management of the public prisons in the county." The grand jury has "free access, at all reasonable times, to the public prisons"; and to the examination, without charge, of all "public records" in the county.

The grand jury also has the power to submit a "report" to the court for which it was impanelled dealing with, inter alia, "non-criminal misconduct" by a public officer as the basis for a "recommendation of removal or disciplinary action". The procedure governing "appeals" from orders concerning grand jury reports is set forth in §517-a.

Motion to Inspect Grand Jury Minutes

A grand jury stenographer shall not permit any person (except the district attorney) to take a copy of, or to read, the testimony introduced before the grand jury, "except upon the written order of the court" duly made after hearing the district attorney.

Dismissal of Indictment and Re-Submission

The dismissal of a "charge" by the grand jury prevents the case from being submitted again to a grand jury or from being prosecuted in a lower criminal court, unless a Supreme Court Justice or County Court Judge so directs.

If an "indictment" be dismissed (as per §313), the defendant must be discharged unless the court direct that the case be re-submitted to the same or another grand jury. Unless a new indictment be found before the next grand jury is discharged, the defendant must be discharged.

If, in the course of trial, the proof discloses a higher crime than that charged in the indictment, the court may discharge the jury, suspend proceedings, and order the defendant to answer any new indictment which may be found. But if a charge for the higher crime be dismissed by the grand jury, or be not found at or before the next term, the court must again proceed to try the defendant on the original indictment.

In New York City, by direction of the grand jury, approved by the court, a misdemeanor relating to gambling may be tried by a district attorney information in the New York City Criminal Court.

(See C. Cr. Pr. §§225, 226, 229, 237-260, 268-272-a, 317-320, 400, 401, 517-a, 952-t).

ARRAIGNMENT

After an indictment has been filed, the defendant must be arraigned before the court. If an attorney has duly appeared for the defendant, the district attorney must give at least one day's notice to such attorney of the time and place of defendant's arraignment.

If defendant appears for arraignment without counsel, he must be asked if he desire the aid of counsel and, if he does, the court must assign counsel.

If the indictment be for a felony, the defendant must be personally present at the arraignment; but if indicted for a misdemeanor, he may appear at the arraignment by counsel.

The arraignment consists in stating the charge to the defendant and asking him whether he pleads guilty or not guilty. Upon defendant's request, the indictment must be read or a copy thereof furnished to him. If the defendant requests additional time to answer the indictment, he must be allowed until the next day or such time as the court may deem reasonable. The defendant's answer to the indictment may consist of: (1) a motion to set it aside; (2) a demurrer; (3) a plea.

If the motion to set aside the indictment as per §313 (because the formality, required by §§268 and 272, in finding and presenting the indictment, had not been observed; or because an unauthorized person had been present during the session of the grand jury) is not interposed at the arraignment, defendant is precluded from afterward availing himself of such objection. If the motion be denied, the defendant must immediately interpose a demurrer (as per §323, where five grounds are set forth), or a plea. If, however, the motion be granted, the defendant must be discharged, "unless the court direct that the case be re-submitted to the same or another grand jury."

If the motion to set aside the indictment as per §313 be denied, and a demurrer to the indictment as per §323 be overruled, the court must permit the defendant to plead. If he does not plead, and the crime charged is a felony, a plea of "not guilty" must be entered; but if the defendant, who stands mute, is charged with a misdemeanor, "judgment must be pronounced against him." If, however, the demurrer be sustained, it is a bar to another prosecution for the same offense and the defendant must be discharged unless the court, feeling that the relevant objection may be avoided in a new indictment, "direct the case to be re-submitted to the same or another grand jury."

The plea of the defendant may be: (1) guilty; (2) not guilty; or (3) former judgment of conviction or acquittal of the crime charged.

If the arraignment is referable to a "simplified indictment" (as per §§295-a-295-1), the defendant, upon request, is entitled to a bill of particulars of the crime charged.

If the defendant - out on bail, or where his personal attendance is necessary - fails to appear for arraignment, a bench warrant for his arrest may be issued. Such a warrant may be served in any county and, when served in "another" county, it need not be endorsed by a magistrate of that county.

If the defendant had given bail before the finding of an indictment, the court, after an indictment has been found-- and it is for a felony - may commit the defendant to actual custody, either without bail, or unless he give bail in an increased amount.

When the defendant against whom an indictment has been found is a "prisoner" - and the charge relates to an "offense committed during imprisonment", or it relates to a "felony" - the court (in which the indictment is pending) may issue a writ of habeas corpus in order to bring the prisoner before the court for arrignment.

When the grand jury has found an indictment against a child, who was 15 years of age but less than 16, at the time of the commission of a crime punishable by death or life imprisonment, he must be arraigned - and, ultimately, may be tried and convicted in the same manner as an adult - unless the court orders the action removed to the Family Court.

In the cases in which the Courts of Special Sessions or Police Courts (outside New York City) have jurisdiction, the magistrate, after informing defendant of his right to the aid of counsel and, if counsel is desired and sought, after waiting a reasonable time for his appearance, must cause the charge to be read to the defendant and he must plead thereto. He "may plead the same plea as upon an indictment": guilty, not guilty, or former conviction or acquittal of the same crime charged. (See C. Cr. Pr. §§295-g, 296, 296-a, 297, 298-a, 298-b, 299, 300-312, 312-b to 312-h, 313-317, 323, 327-330, 332, 699, 700).

PLEAS

In General

At the arraignment, the defendant is asked whether he pleads guilty or not guilty to the indictment. The Code, however, provides for three kinds of pleas: (1) guilty; (2) not guilty; or (3) former judgment of conviction or acquittal of the crime charged.

(See C. Cr. Pr. §§309, 322, 332).

Plea of Guilty

A conviction cannot result from a plea of guilty "where a crime charged is or may be punishable by death", except that (as per §§1045 and 1250 of the Penal Law), he may plead guilty to non-capital murder in the first degree or kidnapping, with the consent of the court and district attorney.

A plea of guilty can be put in only by the defendant himself in open court, except (1) in an indictment against a corporation, it may be put in by counsel; and (2) where it is otherwise provided by law in relation to violations of traffic laws, ordinances, rules and regulations.

At any time before judgment, the court, in its discretion, may permit a guilty plea to be withdrawn, and a plea of not guilty substituted.

The court may, upon the recommendation of the district attorney and in furtherance of justice, accept a plea of guilty to a crime or offense of a lesser degree or for which a lesser punishment is prescribed than the crime or offense charged. If such a plea be accepted, the district attorney must submit to the court a written statement setting forth the reasons for his recommendation. Such statement shall be filed by the court as a public record subject to inspection by any person. (See C. Cr. Pr. §§332, 335, 337, 342-a).

Plea of Not Guilty

The plea of not guilty is deemed a denial of every material allegation in the indictment and, under such a plea, all matters of fact tending to establish a defense may be given in evidence.

Evidence of insanity is not admissible upon a trial, unless defendant served upon the district attorney, within 20 days after his plea of not guilty (or later for good cause), a notice that he intended to rely upon such defense.

Under a plea of not guilty, the defendant, at the trial, may raise the following objections: (1) the court has no jurisdiction over the subject of the indictment; (2) the facts stated in the indictment do not constitute a crime.

(See C. Cr. Pr. §§331, 336, 338, 339).

Plea of Former Conviction or Acquittal

The plea of former conviction or acquittal of the crime charged may or may not be combined with the plea of not guilty.

Where the defendant had been "acquitted on the merits", this is deemed a "former acquittal of the same crime", even though the former indictment had been defective in form or substance.

Where, however, the defendant had been acquitted on the ground of a variance between the indictment and the proof, or the indictment had been dismissed upon an objection to its form or substance, it is not deemed a "former acquittal of the same crime."

(See C. Cr. Pr. §§332, 340, 341).

Effect of Refusal to Plead

If the defendant refuses to answer an indictment, "by demurrer or plea, a plea of not guilty must be entered".

If, at the arraignment, after the defendant's demurrer

to the indictment has been overruled, he refuses to enter a plea, and the crime charged is a felony, a plea of not guilty must be entered. But if the defendant, who stands mute, is charged with a misdemeanor, "judgment must be pronounced against him."

If, in impeachment proceedings (as per §§118-131), the defendant refuses to plead to the articles of impeachment, "the court must render judgment of conviction against him."

(See C. Cr. Pr. §§124, 330, 342).

Warnings Before Plea

Upon the arraignment of a person charged with a violation of the Vehicle and Traffic Law, the magistrate, before accepting a plea, must inform the defendant as follows:

"A plea of guilty to the charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motor cycle, and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law."

The foregoing instruction need not be given by the Magistrate if such instruction had been included (in bold red type and at least twelve point type) on the summons or ticket issued.

Where the crime or offense with which defendant is charged or to which he pleads guilty is one for which a different or additional punishment is authorized by reason of a prior conviction, the court, before accepting a plea of guilty, must inform the defendant that if he had been previously convicted, he may be subject to such different or additional punishment.

(See C. Cr. Pr. §§335-a, 335-b).

Youthful Offender

Where a defendant against whom an indictment or information has been laid is a "youth" (16-18), and the court feels that he ought to be investigated in order to determine whether

he is eligible to be adjudged a "youthful offender", the indictment or information must be held in abeyance pending such investigation. If the court determines that he is eligible to be so adjudged, no further action shall be taken on the indictment or information, and the defendant shall be required to enter a plea of "guilty" or "not guilty" to the charge of being a youthful offender.

If the defendant pleads not guilty, or if the court on its own motion so direct, the defendant shall be tried by the court (without a jury) to determine whether he should be adjudged a youthful offender.

(See C. Cr. Pr. §§913-g, 913-h).

Courts of Special Sessions (outside New York City)

In the cases in which the Courts of Special Sessions or Police Courts (outside New York City) have jurisdiction, the magistrate, after informing defendant of his right to the aid of counsel and, if counsel is desired and sought, after waiting a reasonable time for his appearance, must cause the charge to be read to the defendant and he must plead thereto. He "may plead the same pleas as upon indictment": guilty, not guilty, or former conviction or acquittal of the crime charged.

Where the crime or offense with which the defendant is charged or to which he pleads guilty is one for which a different or additional punishment is authorized by reason of a prior conviction, the court, upon the arraignment and before accepting a plea, must inform the defendant that if he has been previously convicted, he may be subject to such different or additional punishment.

(See C. Cr. Pr. §§332, 699, 700).

DISMISSAL OF CRIMINAL ACTIONS

Dismissal of Indictment: Defendant Denied Access to Grand Jury

If an indictment has been found against a defendant and his request to appear before the grand jury had not been honored, the indictment must be dismissed, but the court may direct "that the case be submitted to another grand jury".

Dismissal of Charge by Grand Jury

If the grand jury dismisses a charge, it cannot again be submitted to a grand jury, unless the court so directs.

Nolle Prosequi Abolished

The entry of a "nolle prosequi" has been abolished. Hence, the district attorney cannot discontinue or abandon a prosecution for a crime. The court, however, upon its own motion or upon the application of the district attorney, may, in furtherance of justice, order an action (after indictment) to be dismissed - in which case the court must file a written statement of its reasons.

Such a dismissal is a bar to another prosecution if it be a misdemeanor; but, except as provided in §669-b ("Agreement on Detainers Act"), it is not a bar, if the offense charged be a felony.

Delay in Finding Indictment

When a person has been held to answer for a crime, if an indictment has not been found against him at the next term of court, the court may (on defendant's application) order the prosecution to be dismissed (unless good cause to the contrary be shown).

Such a dismissal is a bar to another prosecution if it be a misdemeanor; but, except as provided in §669-b ("Agreement on Detainers Act"), it is not a bar, if the offense charged be a felony.

Delay in Trial of Indictment

If an indicted defendant is not brought to trial at the next term of court, the court may, (on defendant's application) order the indictment to be dismissed (unless good cause to the contrary be shown).

Such a dismissal is a bar to another prosecution if it be a misdemeanor; but, except as provided in §669-b ("Agreement on Detainers Act"), it is not a bar if the offense charged be a felony.

Prisoner's Request for Final Disposition of Pending Action

A prisoner, against whom there is pending any untried indictment, information, or complaint, must be brought to trial within 180 days after sending to the district attorney and the appropriate court a written request for a final disposition. If he is not so brought to trial, the court must order the dismissal of such indictment, information, or complaint. Such a dismissal shall be "with prejudice."

Agreement on Detainers Act

A prisoner in a "party" state, against whom there is pending in another "party" state any untried indictment, information or complaint (on the basis of which a detainer was lodged against him), must be brought to trial within 180 days after sending to the prosecuting officer and the appropriate court a written request for a final disposition. Such a request shall constitute a "waiver of extradition". If he is not so brought to trial, the court must order the dismissal of such indictment, information or complaint. Such a dismissal shall be "with prejudice".

(See C. Cr. Pr. §§250, 270, 667-669, 669-a, 669-b, 671-673).

MOTION TO SET ASIDE INDICTMENT

The defendant may move to set aside an indictment on either of the following grounds: (1) the indictment was not found, indorsed, and presented as per §§268 and 272; (2) a person was present during the session of the grand jury, except as provided in §§252, 256, 257 and 952-t. Unless such motion is made at the time of arraignment, the defendant is precluded from afterward raising the above objections.

If the motion be denied, the defendant must then demur or plead.

If the motion be granted, the defendant must be discharged, "unless the court direct that the case be resubmitted to the same or another grand jury". When the court has directed that the case be re-submitted, the defendant must be discharged unless a new indictment be found before the next grand jury is discharged.

Nevertheless, an order to set aside an indictment "is no bar to a future prosecution for the same offense".

(See C. Cr. Pr. §§313, 314, 316, 317, 319, 320).

DEMURRER

The defendant may interpose a demurrer to the indictment when any of the following defects appears upon its face: (1) the grand jury had no legal authority to inquire into the crime charged; (2) the indictment does not conform substantially to the requirements of §§275 and 276; (3) more than one crime is charged in the indictment within the meaning of §§278 and 279; (4) the facts stated do not constitute a crime; or (5) the indictment contains matter which, if true, would constitute a legal justification or excuse. Unless the demurrer distinctly specifies the ground of objection, it may be disregarded.

The demurrer must be interposed "at the time of the arraignment, or at such other time as may be allowed to the defendant for that purpose". (It may be noted that objection (1) or (4) may be taken at the trial under the plea of not guilty, or later by way of a motion in arrest of judgment).

If the demurrer be sustained, the judgment is final and is a bar to another prosecution for the same offense and the defendant must be discharged, unless the court, feeling that the relevant objection may be avoided in a new indictment, "direct the case to be re-submitted to the same or another grand jury". When the court has directed that the case be re-submitted, the defendant must be discharged unless a new indictment be found before the next grand jury is discharged.

If the demurrer be overruled, the court must permit defendant to plead. If he does not plead, and the crime charged is a felony, a plea of "not guilty" must be entered; but if the defendant, who stands mute, is charged with a misdemeanor, "judgment must be pronounced against him." (See C. Cr. Pr. §§319, 321-324, 327-331).

MOTION TO INSPECT GRAND JURY MINUTES

A grand jury stenographer shall not permit any person (except the district attorney) to take a copy of or read, the testimony introduced before the grand jury, "except upon the written order of the court" duly made after hearing the district attorney.

Outside the city of New York, the County Courts, concurrently with the Supreme Court, have jurisdiction "to determine any motion for an order of inspection of such grand jury minutes."

(See C. Cr. Pr. §§39, 952-t).

VENUE

A criminal action, prosecuted by indictment, may, at any time before trial (or, where a new trial has been ordered, at any time before the new trial), on the application of the defendant or the district attorney, be transferred from the court wherein it is pending in the following cases: (1) from a county court to the supreme court in the same county, "for good cause shown" - the application must be made to the supreme court; (2) from a county court or the supreme court to the supreme court in another county, on the ground that "a fair and impartial trial cannot be had" - the application must be made to the appellate division of the department within which the indictment is pending. If, in the latter case, a transfer is ordered on the application of the district attorney, the court may impose such conditions as it deems equitable to insure that such transfer does not impose an unreasonable burden upon the defendant in presenting his defense.

In order to permit an application for transfer to be made, a justice of the appropriate supreme court or appellate division may, upon good cause shown by affidavit and after reasonable notice, make an order staying the trial until such application can be made and decided - but such a stay cannot exceed the period of 30 days. If an application for such a stay be denied, a similar application "by that party" cannot be made to another justice - a violation of this provision is punishable not only as a misdemeanor, but as a contempt of the court wherein the indictment is pending.

(See C. Cr. Pr. §§344-347, 349, 350).

COMPROMISE OF CRIMES

When a defendant is charged with a "misdemeanor" and the victim has a remedy by civil action, the crime may be compromised, except when it was committed: (1) by or upon an "officer of justice" during the execution of his duties; (2) riotously; or (3) with an "intent to commit a felony". When, in the appropriate case, the victim appears before the court, at any time before trial, and acknowledges in writing "that he has received satisfaction for the injury", the court in its discretion may (on payment of the costs and expenses incurred, if it sees fit so to direct) order the prosecution stayed and the defendant discharged. Such an order of compromise is a bar to another prosecution for the same offense. (See C. Cr. Pr. §§663-665).

TRIAL IN GENERAL

The defendant must be personally present at the trial if the indictment be for a felony; but if the indictment be for a misdemeanor, the trial may take place in his absence, if he appear by counsel.

After the jury has been impaneled and sworn, the trial proceeds in the following order: (1) the district attorney must open the case; (2) defendant may then open his defense; (3) the district attorney must then offer evidence in support of the indictment; (4) the defendant may then offer evidence in support of his defense; (5) the parties may then offer rebutting testimony; (6) when the evidence is concluded, defendant must commence and the district attorney conclude the argument to the jury; (7) the court must then charge the jury.

At the trial, questions of law are to be decided by the court (except in the trial of an indictment for libel, in which case the jury have the right to determine the law and the fact); and questions of fact by the jury.

(See C. Cr. Pr. §§356, 388, 418, 419).

EVIDENTIARY MATTERS

In General

Except as otherwise provided in the Code, the rules of evidence in civil cases are also applicable to criminal cases. But a civil action pleading cannot be used in a criminal prosecution against the party as proof of a fact alleged or admitted therein.

When the defendant offers evidence of his character, the prosecution may offer in rebuttal thereof proof of any previous conviction of a crime.

When identification is in issue, a witness who has on a previous occasion identified such person may testify to such previous identification.

Presumptions

In a criminal action, a defendant is presumed to be innocent until the contrary be proved; and if there be a reasonable doubt as to his guilt, he is entitled to an acquittal.

When it appears that defendant has committed a crime, but there is a reasonable doubt as to which of two or more degrees he is guilty, he can be convicted only of the lowest degree.

While the defendant may testify in his own behalf, his neglect or refusal to testify does not create any presumption against him.

Corroboration

While a confession of a defendant may be given in evidence against him (absent fear produced by threats, or absent a district attorney's stipulation that he shall not be prosecuted therefor), it is not sufficient to warrant his conviction, without additional proof that the crime was committed.

A conviction cannot be had upon an accomplice's testimony, unless he be corroborated by other evidence tending to connect defendant with the commission of the crime.

When a child under the age of 12 years is permitted to testify without being placed under oath (as per §392), no person "shall be held or convicted" of a crime upon such testimony unsupported by other evidence.

Treason

Defendant cannot be convicted of treason except upon the testimony of two witnesses to the same overt act, or of one witness to one overt act and another witness to a different overt act. Evidence is not admissible nor may defendant be convicted unless the relevant overt act be expressly alleged in the indictment.

Conspiracy

Upon the trial of a conspiracy (where proof of an overt act is necessary), defendant cannot be convicted unless an overt act be expressly alleged in the indictment and proved at the trial.

Abortion

In an abortion prosecution, the dying declaration of the subject woman is admissible as evidence subject to the same restrictions as in cases of homicide.

(See C. Cr. Pr. §§389, 390, 392, 392-a, 393, 393-b, 393-c, 395-398 398-a, 399).

CHALLENGES (GRAND JURY AND PETIT JURY)

Grand Jury

No challenge is allowed to the panel or to the array of the grand jury. However, the court itself may discharge the panel and order another to be summoned for any of the following causes: (1) the requisite number of ballots were not drawn from the grand jury box; (2) notice of the drawing was not given; (3) the appropriate officers were not present at the drawing; (4) the drawing was not held "at least fourteen days before the court."

The district attorney and the defendant may challenge an individual grand juror for any of the following causes: (1) he is a minor; (2) he is an alien; (3) he is insane; (4) he is a prosecutor upon a charge against the defendant; (5) he is a witness for either party, if the court is satisfied that he cannot act impartially; (6) his state of mind is such that in the court's judgment he cannot act impartially. Such a challenge may be oral, and must be entered upon the minutes and tried by the court. If the court allows a challenge for causes (1), (2), or (3), the individual grand juror must be discharged; but if allowed for causes (4), (5), or (6), the individual grand juror is simply not permitted to participate in the instant case. A violation of such a prohibition is "punishable by the court as a contempt."

(See C. Cr. Pr. §§230-236).

Petit Jury

With regard to the petit jury, there are two kinds of challenge: (1) to the panel; (2) to an individual juror - and, where two or more defendants are tried together, they must "join" in their challenges.

A challenge to the panel, which must be taken before a juror is sworn, can be founded only on a material departure,

to defendant's prejudice, from the requirements of the Judiciary Law relating to the drawing and return of the jury, or on the intentional omission of the sheriff (or in New York City, of the County Clerk) to summon one or more of the jurors drawn.

A challenge to an individual juror must be taken when the juror appears and before he is sworn, except that for good cause the court may set aside a juror at any time before evidence is given.

There are two kinds of challenges to an individual juror which may be taken by the people or by the defendant: (1) peremptory; (2) for cause.

A "peremptory" challenge is an objection to a juror, for which no reason need be assigned, and as a result of which the juror must be excused. The number of peremptory challenges allowed varies in accordance with the punishment available for the crime charged: (1) if punishable by death, 30 for the regular jury, and 3 for each alternate juror; (2) if punishable with imprisonment for life or for a term of ten years or more, 20 for the regular jury, and 2 for each alternate juror; (3) in all other cases, 5 for the regular jury, and one for each alternate juror.

There are two kinds of challenge "for cause": (1) "general", that the juror is disqualified from serving in any case; (2) "particular", that the juror is disqualified from serving in the instant case.

Either of the following is a ground for "general" challenge for cause: (1) conviction of a felony; (2) a want of any of the qualifications prescribed by the Judiciary Law to render a person a competent juror.

There are two kinds of "particular" challenge for cause: (1) implied bias - "for such a bias, as, when the existence

of the facts in ascertained, does in judgment of law disqualify the juror"; (2) actual bias - a state of mind in reference to the case or to either party which satisfies the court that the juror cannot try the case impartially. But a previous or present opinion regarding the guilt or innocence of the defendant shall not constitute actual bias, if the juror declare on oath that such opinion will not influence his verdict and that he will be able to render an impartial verdict according to the evidence.

A challenge for "implied bias" may be taken on any of the following grounds: (1) consanguinity or affinity within the ninth degree, to the complainant, or to the defendant; (2) bearing to the complainant, the defendant, or counsel for the people or defendant, a relation such as attorney-client, guardian-ward, or master-servant; (3) being a party adverse to the defendant in a civil or criminal proceeding; (4) having served on the grand jury which indicted the defendant, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment; (5) having served on a trial jury which tried another person for the same crime; (6) having been a member of the trial jury in a prior trial referable to the same indictment, whose verdict was set aside or which was discharged without reaching a verdict; (7) having served as a juror in a civil action brought against the defendant for the act charged as a crime; (8) if the crime is punishable by death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty - "in which case he shall neither be permitted nor compelled to serve as a juror."

A challenge for "actual bias" may be taken only, as mentioned earlier, for a juror's inability to try the case impartially.

Of course - and it is expressly so provided - an "exemption" from jury service is not a ground for challenge, but merely a privilege of the person exempted.

Challenges - which must be taken first by the people and then by the defendant - must be presented in the following order: (1) to the panel; (2) to an individual juror for "general" cause; (3) for "implied bias"; (4) for "actual bias"; (5) peremptory.

The first twelve persons who appear and are not discharged or excused must be sworn, and constitute the jury.

For purposes of a trial in a court of special sessions outside the City of New York, the same challenges may be taken by either party - as on the trial of an indictment - "except that the number of peremptory challenges shall not exceed three and one additional for each alternate juror."

(See C. Cr. Pr. §§359-387, 707).

PETIT JURY

In General

An "issue of fact" arises upon a plea of not guilty, and must be tried by a jury in the county where the indictment was found [unless the action be removed into another county as per §344(2)]. The trial jury in criminal courts is formed as prescribed by the Judiciary Law. After the jury has been impaneled and sworn, the court may direct the calling of one or more additional jurors (but not more than 4), to be known as "alternate jurors." Such alternate jurors sit with the regular jurors; they shall take the same jurors' oath; and they must at all times attend upon the trial. If, before the final submission of the case, a juror die, or become ill, or otherwise be unable to perform his duty, the court may discharge him and draw the name of an alternate juror who will then participate as a regular juror. After final submission of a case, the court may discharge the alternate jurors or order them held "separate and apart" from the regular jurors. If, after submission and before agreement upon a verdict, a juror be "unable" to perform his duty, the court may discharge him and draw the name of an alternate, who shall then take his place in the jury room and the jury deliberations shall then be renewed.

Conduct of Jurors Prior to Submission of the Cause.

In the court's discretion, the jurors may be permitted to separate or be kept together until the next meeting of the court. In any event, at each adjournment of the court, the jury must be admonished that they are "not to converse among themselves on any subject connected with the trial, or to form or express any opinion thereon." When, in the court's opinion, "it is proper that the jury should view the place" where the crime was committed, the jury may be conducted, in a body, to such place.

Province of the Jury

Questions of fact are to be decided by the jury; and questions of law by the court, except that on the trial of an indictment for libel, "the jury have the right to determine the law and the fact."

Charge to Jury

In its charge, the court must inform the jury of all relevant matters of law; that they are the exclusive judges of all questions of fact; and that, in determining the question of guilt, they must not consider the punishment - that being the function of the court.

Jury Deliberations After Submission of the Cause.

After the charge, the jury may either decide in court, or retire for deliberation. If they choose to retire, they must be kept together "in some private and convenient place", and returned into court when they have agreed upon a verdict. The court, in its discretion, after giving both sides an opportunity to be heard, may permit the jury, upon retiring for deliberation, to take with them any exhibit that has been received in evidence. They may also take with them "notes of the testimony" on the trial, "taken by themselves". If, in the course of deliberations, there be a disagreement as to certain testimony, or if they desire information on a point of law, they must be conducted into court, at which time the information required must be given, after notice to both counsel and, if a felony trial, in the defendant's presence.

Discharge of Jurors Before Agreement

If, "before the conclusion of the trial", a juror is unable to perform his duty because of sickness, the court may order him to be discharged, "and another jury to be then or afterward impaneled."

After the jury have retired to deliberate, they can be discharged before they agree upon a verdict only in the following cases: (1) An injury or casualty affecting the defendant, a juror, or the court, rendering it inexpedient to keep them longer together; (2) After a reasonable time, they declare themselves unable to agree upon a verdict; or (3) When, with leave of court, both sides consent to such discharge. In any such case, "the cause may be again tried at the same or another term."

Courts of Special Sessions (Outside New York City)

Upon a plea of not guilty, the court must try the issue unless, before any trial testimony is heard, the defendant demand a trial by jury.

The jury is formed as prescribed by the Justice Court Act, except that not less than 12 nor more than 40 of the ballots provided by such act shall be drawn.

When 6 jurors appear and are accepted, they constitute the jury. After they are sworn, they must hear the proofs of the parties, which must be delivered in public and in the presence of the defendant. After hearing the proofs, the jury may either decide in court or may retire for deliberation and, when they have agreed upon a verdict they shall be returned into court.

The jury cannot be discharged after the cause has been submitted to them, until they have agreed upon a verdict, unless the court sooner discharge them for "injury or casualty" as per §428. If so discharged, the "court may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict is rendered."

(See C. Cr. Pr. §§354, 355, 358, 358-a, 411-421, 425-430, 710, 712, 713).

DIRECTION OF VERDICT

If, after the evidence on either side is closed, the court deem such evidence insufficient to warrant a conviction, "it may advise the jury to acquit the defendant" and "they must follow the advice".

(See C. Cr. Pr. §410)

VERDICTS

In General

The jury may either render a "general verdict" (guilty or not guilty) or, when they are in doubt as to the legal effect of the facts proved, they may (except in a libel case) find a "special verdict."

If the crime for which the defendant was indicted consists of different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any inferior degree, or of an attempt to commit the crime. If, in a trial for murder or manslaughter, the act complained of is not proven to have been the cause of death, the defendant may be convicted of assault in a degree warranted by the evidence. A conviction of assault is not a bar to a subsequent prosecution for murder or manslaughter, if the person assaulted dies after the conviction. In any event, the defendant may be found guilty of any crime which is necessarily included in that charged in the indictment.

If, after a verdict of guilty, it appears to the court that the jury have mistaken the law, the court may explain it to the jury and direct them "to reconsider their verdict". If, after reconsideration, the same verdict is returned, it must be entered. In no event, however, may the court direct a reconsideration of the verdict where it was one of not guilty.

If the jury's verdict is neither a general nor a special one, the court may, with proper instructions as to the law, direct them to reconsider it. Such verdict may not be recorded until it be rendered in such form as to permit a clear understanding of the jury's intent to render a general or special verdict.

But if the jury persist in returning an "informal" verdict - and it can be clearly understood that their intention is to find

in favor of the defendant - it must be entered in such form and the court must give judgment of "acquittal". But an "informal" verdict cannot be the basis for a "conviction".

Special Verdict.

By a special verdict, the jury finds the facts only, and leaves the judgment to the court. The jury must present the "conclusions of fact" (and not the evidence to prove them) in such form that nothing remains to the court but to draw from them the appropriate "conclusions of law. "Either party, on notice, may bring the special verdict to argument. If the jury returns a "defective" special verdict (i.e., it fails to find affirmatively or negatively on the facts; or it finds the evidence of facts merely, and not the conclusions of fact), the court must order a new trial.

Polling the Jury

Before a verdict is recorded, the jury may be polled, at the request of either party. In such case, they must be severally asked whether it is their verdict, and if anyone answer in the negative, they must be sent out for further deliberation. Indeed, a "recorded" verdict itself is not "complete" until the clerk reads it to the jury and inquires of them whether it is their verdict. If any juror disagree, they must again be sent out for further deliberation.

Presence of Defendant

If the indictment be for a felony, the defendant must be present when the verdict is received; but if it be for a misdemeanor, it may be returned in his absence.

Insanity

If the jury acquit the defendant on the ground of insanity, it must state the fact in its verdict.

Courts of Special Sessions (outside New York City)

When, in such a court, defendant is acquitted (by court or by jury), and the court (or jury) find "that the prosecution was malicious or without probable cause", the court must order the prosecutor to pay the "costs of the proceedings" (or give security to make payment to the county within 30 days).

(see C. Cr. Pr. §§433,-454, 719).

MOTION FOR A NEW TRIAL

In General

A "new trial" is defined as a "re-examination of the issue, in the same court, before another jury, after a verdict has been given." It may be granted by the court in which the former trial was had - when a verdict was returned against the defendant - on defendant's motion, only upon any of the following grounds: (1) If it be the trial of a felony indictment, and the trial was had in defendant's absence; (2) The jury received some evidence "out of court" - except that resulting from "a view" as per §411; (3) After retiring to deliberate upon their verdict, the jurors "separated" or were guilty of other "misconduct"; (4) The verdict was decided by lot; (5) The court misdirected the jury or refused to instruct them as per §420, and defendant excepted; (6) The verdict was "contrary to law or clearly against evidence"; (7) After-discovered evidence.

The motion for a new trial must be made "before judgment," except; (a) where the ground is "after-discovered evidence", it may be made within one year; and (b) where the sentence is of death, it may be made at any time before execution.

The granting of a new trial "places the parties in the same position as if no trial had been had." Testimony must be produced anew, and reference cannot be made to the former verdict.

After Appeal

In cases of "reversal", the appellate court "may, if necessary or proper, order a new trial". If a judgment against the defendant be reversed, "without ordering a new trial", the appellate court must direct that the defendant be discharged. When a new trial has been ordered, it must proceed in all respects "as if no trial had been had."

Miscellaneous

When a jury is discharged, or prevented from giving a verdict, "by reason of an accident or other cause" (except where defendant is discharged from the indictment), the cause may be again tried at the same or another term.

If, when the jurors return to the court to deliver their verdict, "all do not appear", the entire jury must be "discharged without giving a verdict"-in which case, the cause may be again tried, at the same or another term.

When the jury has returned a "defective" special verdict, the court "must order a new trial".

If, in the trial of an indictment against two or more, the jury cannot agree upon a verdict as to all, they may render a verdict as to some (and judgment will be entered accordingly); and the case, "as to the rest, may be tried by another jury."

Courts of Special Sessions (outside New York City)

In such a court, if the jury has been discharged (after the cause has been submitted to them, but before they have rendered a verdict) for some cause within the meaning of §§428, 429, the court "may proceed again to the trial, in the same manner as upon the first trial; and so on, until a verdict is rendered."

The appropriate appellate court may, when it reverses, order a new trial. When a new trial has been ordered, it may be had in the county court or in the court of "former trial", and it shall "proceed in all respects as if no trial had been had." Where, however, the appeal was from a judgment of commitment made under §486 of the Penal Law (*i.e.*, for juvenile delinquency), the new trial "shall be had before the county court without a jury."

(See C. Cr. Pr. §§430, 433, 443, 446, 462-466, 543-545, 716, 764, 768).

MOTION IN ARREST OF JUDGMENT

The motion in arrest of judgment must be made before or at the time when the defendant is called for judgment. It is an application on the part of defendant that no judgment be rendered on a plea or verdict of guilty, or on a verdict against defendant upon the plea of a former conviction or acquittal. The grounds for such a motion are: (1) that the court has no jurisdiction over the subject of the indictment; (2) that the facts stated in the indictment do not constitute a crime. (It may be noted that the same objections may be raised at the trial under the plea of not guilty; and the same objections, inter alia, may be raised at the arraignment stage by way of demurrer). Indeed, it is expressly provided that the court, for any of the defects mentioned above, may arrest the judgment without motion.

When judgment is arrested, and it appears that there is not sufficient evidence to convict the defendant of any crime, he must be discharged, in which case the arrest of judgment operates as an acquittal. But if there is reasonable ground to believe the defendant guilty, and a new and proper indictment can be framed, the court may order him to be re-committed to answer the new indictment; or if there is reasonable ground to believe him guilty of another crime, he must be held to answer therefor. In no case, when re-committed or held to answer, is the "former verdict a bar to a new indictment."

(See C. Cr. Pr. §§331, 467, 468, 469, 470).

JUDGMENT

After a plea or verdict of guilty, the court must appoint a time for "pronouncing judgment," which must be at least two days thereafter. For the purpose of judgment, defendant must be "personally present" only if he were convicted of a felony.

When defendant appears for judgment the clerk must ask him "whether he have any legal cause to show why judgment should not be pronounced against him." He may show for cause: (1) That he is insane (and if ultimately so adjudged, he must be committed to an asylum until he becomes sane); (2) that he has good cause to offer, either in arrest of judgment or for a new trial, in which case the court may order the judgment to be deferred and proceed to resolve the motion.

If no sufficient cause appear, the judgment must be pronounced.

Before pronouncing judgment, however, the court must examine the defendant's previous criminal record, if any, and any reports that may have been made as a result of a mental, psychiatric, or physical examination of such person, and any information that will aid the court in determining the appropriate treatment of such defendant.

Where additional punishment is authorized by reason of the previous conviction of a crime, and the previous conviction was not alleged in the indictment, the issue of whether he has previously been so convicted shall be determined thus: An "information" must be filed accusing the defendant of such previous conviction, and the defendant must be brought before the court, whereupon the proceedings must be had in the same manner as proceedings upon an indictment. If defendant does not plead to the information, a plea of not guilty must be entered.

When it appears by the certificate of a clerk that no record of the judgment on a prior conviction has been signed

and filed, a copy of the minute of any conviction, with the sentence of the court thereon, entered by the clerk of any court and duly certified, together with a certified copy of the relevant indictment, "shall be evidence in all courts and places of such conviction."

A certificate of a custodian of finger print records of persons convicted of crime that such records show a previous conviction of a person whose finger prints are identical with those of defendant, "shall be presumptive evidence" of the fact of such previous conviction.

If, on the other hand (assuming the court has discretion as to the extent of the punishment), "there appear to be circumstances in mitigation of the punishment", the court may place the defendant on probation: (1) Upon suspending sentence or suspending the execution of the judgment, the court may place defendant on probation during such suspension. (2) If judgment pronounced is that defendant pay a fine and be imprisoned until it is paid, the court may suspend the execution of the judgment of imprisonment and place defendant on probation until the fine is paid. (3) At any time during the probationary term, the court may, in its discretion, revoke and terminate such probation, in which case, if sentence had been suspended, it may impose any sentence which might have been imposed at the time of conviction; or if execution of the judgment had been suspended, the court may order the execution of that judgment or modify such judgment so as to permit the imposition of any punishment which might have been imposed at the time of conviction. But, it is expressly provided, "the imprisonment directed by the judgment shall not be suspended or interrupted after such imprisonment shall have commenced."

For the purpose of indictment and conviction of a second offense, the suspension of sentence or suspension of execution

of judgment shall be regarded as a "conviction", and "shall be pleaded according to the fact." It may be proved in the manner provided by statute for proving a conviction "for the purpose of affecting the weight of the defendant's testimony in any action or proceeding, civil or criminal."

When judgment upon a conviction has been rendered, the clerk must enter it upon the minutes, stating the offense briefly; and, upon the service upon him of a notice of appeal, he must immediately annex together and file the papers described in §485, which shall constitute the "judgment-roll."

Comparable provisions are applicable in the lower criminal courts outside New York City.

(See C. Cr. Pr. §§470-a, 470-b, 471-473, 480-485, 717-721, 764-a).

PRIOR CRIMES

Information

The "information" shall not allege a prior conviction, unless it affects the degree of crime charged or is an element of such crime or is a circumstance affecting the jurisdiction of the court or magistrate to hear and determine the charge.

Habitual Criminal

A person convicted of a felony (who has previously been convicted of any other crime) may be adjudged by the court an "habitual criminal." If so, notice must be sent to the police department of each city, and to the district attorney of each county.

Such a person is liable to arrest summarily with or without a warrant, and to punishment as a disorderly person when he is found (without reasonable explanation) in possession of a dangerous weapon or in any place under suspicious circumstances. Further, the person and premises of an "habitual criminal" shall be liable at all times to search and examination by an magistrate, sheriff, or other officer, with or without a warrant.

Indeed, such a person may be described in a subsequent complaint or indictment as an habitual criminal; whereupon, upon proof of such adjudication, the prosecution may introduce, upon the trial, evidence as to his previous character, just as if he himself had first given evidence of his character and put the same in issue.

Courts of Special Sessions (Outside New York City)

Where additional punishment is authorized by reason of a prior conviction and the previous conviction was not alleged in the information, the issue of whether the defendant has previously been so convicted shall be determined thus: An information shall be filed accusing the defendant of such previous

conviction - but it shall not be filed before a plea of guilty is entered or a verdict of guilty is recorded. When so filed, the proceedings shall be had in the same manner as an information alleging the commission of a crime. If defendant does not plead, a plea of not guilty shall be entered.

(See C.Cr.Pr. §§145, 510-514, 717).

PROBATION

The term "placed on probation" includes suspension of sentence, or suspension of execution of judgment; the term "probation officer" means one who either investigates for the court prior to sentence or supervises a probationer, or both; and the term "violation of probation" means any of the following acts during the period of probation: the commission of a crime, the violation of a condition of his probation, or absconding.

When directed by the court, a probation officer must investigate the circumstances of the offense, criminal record, and social history of a defendant (and, wherever desirable and practicable, he must also obtain a physical, mental and psychiatric examination of the defendant), and submit a written report thereon to the court prior to the time of sentence.

If the court decides to place a given defendant on probation, it may require as conditions of probation any of the conditions set forth in §932 (such as periodic reporting to the probation officer, and the avoidance of persons of disreputable character), or any other condition.

The period of probation may be fixed as follows: (a) Where defendant was convicted of a felony, the court may fix any term up to the maximum time for which he might have been sentenced - except that for "abandonment", the probation period may continue until the 17th birthday of the youngest child; (b) for a misdemeanor, the probation period may not exceed 3 years; and (c) for a child, the period may not exceed beyond his minority. If, however, a probationer has absconded, the time during which he has remained away may be added to the probation period.

The court may, at any time, discharge a probationer from further supervision. But at the end of his probation, or upon discharge therefrom, the probationer must appear before the court to be admonished or commended, as the case may dictate.

Whenever he violates his probation, the court may issue a warrant for his arrest and, upon being arraigned and after an opportunity to be heard, the court may revoke, continue, or modify his probation. If it is revoked, the court may impose any sentence it might have originally imposed.

(See C. Cr. Pr. §§927, 931-935).

APPEAL

In General

Writs of error and certiorari in criminal actions have been abolished, and the only method of reviewing a judgment or order is by way of "appeal". The party taking the appeal is the "appellant", and the adverse party is the "respondent". An appeal by the defendant or people must be taken within 30 days after the judgment was rendered or service of a copy of the order with notice of entry thereof. After obtaining a \$520 Certificate, a party's appeal to the Court of Appeals is in all respects timely if the application for leave to appeal had been made within 30 days after judgment and if the Notice of Appeal had been served and filed within 15 days after the Certificate was granted. But the latter period of 30 days shall not begin to run until a copy of the intermediate appellate court order was served by mail upon defendant at the place of his imprisonment or his last known place of residence. Provision is made for extensions of time to appeal where an attorney dies, is removed or suspended, or becomes mentally or physically incapacitated. The appeal is heard upon the judgment-roll, including a copy of the trial minutes. The appeal is taken by serving a written notice of appeal in duplicate upon the Clerk with whom the judgment is filed, and by serving such notice upon the adverse party. In turn, the clerk transmits a copy of the notice to the court to which the appeal is being taken.

The appellate court must give judgment "without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties." It may correct an erroneous judgment to conform to a lawful verdict or finding of fact; it may reverse, affirm, or modify; if it reverses, it may, if necessary or proper, order a new trial; it may reduce

the defendant's sentence; and, if the appeal relates to a felony conviction, the appellate court may reduce the judgment to a lesser degree of felony or to a misdemeanor, and affirm the judgment as so modified. If the appellate court reverses or modifies "without opinion", it must "briefly state the grounds of its decision".

When a new trial is ordered, it must proceed as if no trial had ever been held. If, upon reversal of a judgment of conviction, the appellate court does not order a new trial, it must direct that the defendant be discharged, that his bail be exonerated, or that a deposit of money be refunded, as the case may dictate. If the judgment is affirmed, it must be executed as the appellate court may direct and, if defendant is at large, a bench warrant may be issued for his arrest.

A defendant, adjudged a "youthful offender" (as per §913-j), has the right to take an appeal.

(See C.Cr.Pr. §§458, 485, 515, 516, 521, 521-a, 522, 523, 524, 542, 543, 544, 545, 546, 913-r).

Appeal to Intermediate Appellate Court

Defendant may appeal, as of right, from a judgment of conviction (other than death) or from an order denying a motion to vacate a judgment of conviction (coram nobis): (1) in New York City, to the Appellate Division from a conviction by the Supreme Court or, unless otherwise provided by the Appellate Division, from a conviction by the Criminal Court of the City of New York; (2) outside New York City, to the Appellate Division; but if convicted by a Court of Special Sessions or Justice of the Peace, to the County Court, unless otherwise provided by the Appellate Division. Upon any appeal from a judgment of conviction, intermediate orders forming a part of the judgment-roll (as per §485) are also reviewable. Indeed it is expressly provided that an order denying a motion to suppress the use as

evidence of property allegedly the product of an unlawful search and seizure may be reviewed on appeal from a judgment of conviction - and this is so even where the conviction was predicated upon a plea of guilty. A conviction is deemed a "final judgment" even though the defendant's sentence has been suspended or stayed.

The People may appeal, as of right (to the court where a judgment of conviction, other than death, would have been reviewable): (1) From a judgment sustaining defendant's demurrer to the indictment; (2) from an order granting a motion in arrest of judgment; (3) from an order dismissing the indictment on a ground other than the insufficiency of evidence adduced at the trial; (4) from an order granting a motion to vacate a judgment of conviction (coram nobis); (5) in all cases where an appeal may be taken by defendant, except where a verdict or judgment of not guilty had been rendered. The People may also appeal, as of right, from an order entered prior to trial granting a motion for the suppression of evidence, provided that the People file, in addition to a Notice of Appeal, a statement that the deprivation of the use of such evidence has rendered the sum of the proof available to the People insufficient as a matter of law, or so weak that any reasonable probability of successfully prosecuting the charge has been destroyed. This shall constitute a bar to the prosecution of the relevant criminal charge unless and until the order of suppression is reversed on appeal and vacated.

When the intermediate appellate court reversed or modifies, its order must state whether its determination was upon the law or upon the facts, or upon both. Absent compliance with this requirement, it is presumed, for the purpose of an appeal to the Court of Appeals, that the questions of fact were not considered by the intermediate appellate court.

The intermediate appellate court may order a new trial if it feels that the verdict against the defendant was against

the weight of evidence or against the law, or that justice requires a new trial, whether or not an exception had been taken in the lower court.

(See C.Cr.Pr. §§517, 518, 518-a, 527, 543-a, 813-c).

Appeal to the Court of Appeals

Upon the determination of an appeal (taken by the defendant or by the People) by an intermediate appellate court, the aggrieved party may take an appeal to the court of appeals (provided such party obtains a Certificate granting permission to appeal as per §520) in the following cases: (1) From an affirmance or reversal of a judgment of conviction, including an order granting a new trial; (2) from an affirmance or reversal of an order dismissing an indictment, arresting judgment, or sustaining a demurrer to an indictment; (3) from an affirmance or reversal of an order granting or denying a motion to vacate a judgment of conviction (coram nobis); (4) from an affirmance or reversal of an order granting a motion for the suppression of evidence; (5) from a "final determination affecting a substantial right of the defendant."

Permission to appeal is obtained when a Judge of the Court of Appeals or a Justice of the Appellate Division of the appropriate Department certifies that a question of law is involved which ought to be reviewed by the Court of Appeals.

Where the Court of Appeals reverses or modifies an intermediate appellate court's determination, and the latter court did not affirm or consider the lower court's findings of fact, the Court of Appeals must remit the case to the intermediate appellate court for its consideration of the facts.

(See C.Cr.Pr. §§519, 520, 543-b).

Stay

An appeal to an intermediate appellate court stays the execution of judgment upon filing with the notice of appeal a Certificate of the convicting court (if it be a court of record) or of the Supreme Court that "there is a reasonable doubt whether the judgment should stand." Such Certificate must "recite briefly the particular rulings believed to have been erroneous."

An appeal to the Court of Appeals, from a judgment affirming a judgment of conviction, stays the execution of the former judgment upon filing with the notice of appeal a Certificate of a Judge of the Court of Appeals or a Justice of the Appellate Division that "there is reasonable doubt whether the judgment should stand."

In either case, an application for a Certificate must be made on notice to the district attorney. If such an application has been denied, no other application for such a certificate may be made.

(See C.Cr.Pr. §§527, 528, 529).

Death Cases

When the judgment is of death, defendant may appeal as of right directly to the Court of Appeals. Where, however, defendant seeks to appeal from an order denying a motion to vacate a judgment of death (coram nobis), directly to the Court of Appeals, permission to appeal as per §520 must be obtained--and, only a Judge of the Court of Appeals may give permission in such a case. An appeal to the Court of Appeals in either case, "stays the execution, of course, until the determination of the appeal"; and, the granting of a motion for re-argument by the Court of Appeals "stays the execution, of course, until determination of the re-argument." If the judgment of death is affirmed, or if a re-argument results

in an affirmance, the Court of Appeals, "by an order under its seal, signed by a majority of the judges, shall fix the week during which the original sentence of death shall be executed."

In a death appeal, the Court of Appeals may order a new trial "if it be satisfied that the verdict was against the weight of evidence or against law, or that justice requires a new trial" whether or not any exceptions had been taken in the lower court.

Where the judgment appealed from is death, or is a conviction of kidnapping (except where the kidnapper is the victim's parent), the district attorney must expedite the appeal and, if such an appeal is not brought on for argument within 90 days, "the district attorney shall forthwith communicate to the governor a written statement of the reasons for the delay."

Assigned counsel is not entitled to compensation for services in prosecuting a defendant's appeal from a judgment of death, unless such appeal shall have been brought on for argument within 90 days.

While, in the ordinary case, the Court of Appeals may restrict the argument to one counsel on each side; in a death appeal, "two counsel on each side must be heard if they require it." In either case, the defendant's counsel is entitled to the closing argument.

(See C.Cr.Pr. §§308-a, 517, 520, 528, 528-a, 536-a, 540, 543-c).

Bringing Appeal on for Argument

In connection with either an appeal to the appellate division or to the court of appeals, the appeal must be brought to argument by either party within 90 days, unless the court for good cause shown grants an enlargement of time.

(See C.Cr.Pr. §§535, 536).

Argument

A judgment may be affirmed, without argument, if the appellant fails to appear, or in a death appeal where it was not brought on for argument within 6 months. But a judgment may be reversed only upon argument "though the respondent fail to appear." In no event is the defendant's presence required in the appellate court.

(See C.Cr.Pr. §§539, 541).

Dismissal of Appeal

If the appeal be "irregular in a substantial particular" the court may, on motion, order it to be dismissed.

If the record on appeal is not filed (as per §458), the court upon like motion may dismiss the appeal, unless for good cause the time to file such record be enlarged.

When the appeal is called for argument (except where the judgment is of death or life imprisonment as per §1045-a of the Penal Law), the appellant must furnish the court with copies of the record; otherwise, the appeal must be dismissed "unless the court otherwise direct."

Where the People move to dismiss an appeal for delay in bringing it on for argument (as per §§535 and 536), notice of such motion and, when received, a copy of the order, must be served by mail upon defendant at the place of his imprisonment or his last known place of residence.

(See C.Cr.Pr. §§533, 534, 537-a, 538).

The County Court

The County Courts (in counties outside New York City) have jurisdiction, expressly, "to review the convictions of disorderly persons actually imprisoned."

(See C.Cr.Pr. §39(6)).

Appeals from Courts of Special Sessions (Outside New York City)

A judgment of conviction (or a judgment of commitment of a neglected or delinquent child under the age of 16, as per §486 of the Penal Law) rendered by a Court of Special Sessions, Police Court, Police Magistrate, or Justice of the Peace, may be reviewed upon appeal by the appropriate County Court. A further appeal is available from the County Court to the Supreme Court and, ultimately, to the Court of Appeals as per §§519,520. A conviction is deemed a "final judgment" even though the defendant's sentence has been suspended or stayed.

An appeal is taken by filing an affidavit with the trial court within 30 days after judgment, setting forth the alleged errors.

The County Court Judge, or a Justice of the Supreme Court, "if satisfied that there is a reasonable doubt whether the conviction should stand," may take a written undertaking from defendant that he will abide by the determination of the County Court upon appeal, in which case he shall be discharged from imprisonment or, if not in custody, the execution of judgment shall be stayed.

The defendant must bring the appeal to argument at the next term, upon notice to the district attorney. Absent such compliance, the court must dismiss the appeal, unless for cause shown it is continued. Where the People move to dismiss an appeal for delay in bringing it on for argument (as per §760), notice of such motion and, when resolved, a copy of the order, must be served by mail upon the defendant at the place of his imprisonment or at his last known place of residence.

If the appeal were brought on for argument by the defendant, he must argue it even though there is no opposition; but if brought on by the district attorney, he may take judgment of affirmance unless the defendant appear to argue the appeal.

A Court of Special Sessions may correct an illegal sentence at any time, and its term shall be deemed to continue for that purpose.

The County Court, after hearing the appeal, must give judgment "without regard to technical errors or defects which have not prejudiced the substantial rights" of the defendant, and may render the judgment that the lower court should have rendered, or it may affirm or reverse, or may order a new trial, or may modify the sentence. If it reverses, its judgment must state whether it was for errors of law or for errors of fact, or for both.

If, upon appeal, a new trial is ordered, it may be had in the County Court or in the former trial court, and it shall proceed as if no trial had ever been had. Where, however, the appeal was from a judgment of commitment (as per §486 of the Penal Law), the new trial must be had in the County Court without a jury.

(See C.Cr.Pr. §§749, 750, 751, 753, 756, 759, 760, 760-a, 762, 764, 764-a, 765, 768).

DEATH PENALTY

In General

When a defendant is sentenced to death, the trial judge must issue a warrant to the sheriff of the county (or, in New York City, to the City Commissioner of Correction) appointing the week within which sentence is to be executed. Within 10 days, the sheriff (or N.Y.C. Commissioner of Correction) must deliver the defendant and the warrant to the Warden of Sing Sing Prison. The defendant must be kept in solitary confinement, and no person has access to him except prison officers, his counsel, his physician, a priest or minister of religion, and his family. The week appointed for execution must be not less than four weeks and not more than eight weeks after the sentence, and the Warden has the discretion of selecting the day within the appointed week for carrying out the execution.

The trial judge must also send to the Governor a statement of the conviction and sentence, and a copy of the trial testimony. The Governor may require the opinion of the Judges of the Court of Appeals and of the Supreme Court, and the Attorney-General regarding such death sentence; and, only the Governor has the power to reprieve or suspend the execution of a death sentence--except, of course, for a stay of execution pending an appeal.

Insanity

If defendant appears to be insane, the Governor may appoint a commission to hold a hearing and report to the Governor as to his sanity. If such a commission finds defendant insane, the Governor may, in his discretion, order him removed to a state hospital for insane convicts, there to remain until restored to sanity. When sane, he must be returned to the custody of the Warden where the sentence of death is to be executed, and the Governor must issue his warrant appointing a time for the execution.

Female

If a Warden believes that a female is pregnant, he must impanel a jury of six physicians to inquire. If the inquisition finds that the defendant is "quick with child," the Warden must suspend the execution until he receives a warrant from the Governor ordering execution. When the Governor is satisfied that the defendant is "no longer quick with child," he may issue his warrant appointing a time for her execution.

Time of Execution; Court of Appeals

If for any reason, other than insanity or pregnancy, the execution is not carried out during the appointed week, the Court of Appeals, by order, must appoint the week during which the execution is to take place.

Method

Death must be inflicted "by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death."

Witnesses

The Warden must be present at the execution, and he must invite the presence of a Supreme Court Justice, the District Attorney, and the Sheriff of the County where the conviction took place. He must also invite two physicians and 12 reputable (adult) citizens. At the criminal's request, two ministers of the gospel, priests or clergymen of any religious denomination may also be present. The Warden must also appoint seven assistants to attend the execution. After the execution, a post-mortem examination is made by the physicians present. Thereafter, the body, unless claimed by a relative must be interred in the cemetery attached to the prison.

(See C.Cr.Pr. §§491-507).

REPRIEVE, COMMUTATION, PARDON

The Governor has the power to grant a reprieve, commutation, or pardon, after conviction, for all offenses except treason and cases of impeachment. He must annually communicate to the Legislature each case in which he has taken action.

If the Governor grants a pardon on the stated ground that the defendant was innocent of the crime for which he was convicted, and it is further stated that the finding of innocence was based upon evidence discovered after the conviction and after the time within which to make a motion for a new trial on newly discovered evidence had expired, the trial court (upon motion made therefor) must set aside the judgment of conviction and dismiss the relevant indictment or information. Thereupon, the defendant shall be in the same position as if the indictment or information had been dismissed at the conclusion of the trial by the court because of the failure to establish the defendant's guilt beyond a reasonable doubt.

If a person, discharged from imprisonment by virtue of a parole, conditional pardon, or conditional commutation, violates any condition, his parole, pardon or commutation shall be void and he may be remanded to prison.

With regard to a conviction for treason, the Governor may suspend the execution of the sentence until the case can be reported to the legislature, at which time the legislature must either direct the execution of the sentence, grant a further reprieve, commute the sentence, or issue a pardon.

(See C.Cr.Pr. §§692-694, 696, 697).

DISPOSAL OF STOLEN OR EMBEZZLED PROPERTY

When property, alleged to have been stolen or embezzled, comes into the custody of a peace officer or magistrate, it must, "unless its temporary retention be deemed necessary in furtherance of justice," be delivered to the owner on satisfactory proof of his title. If such property is not claimed by the owner within six months after the conviction of a person for stealing or embezzling it, the property must be delivered to the County Superintendent of the Poor or, in New York City, to the Commissioners of Charities and Corrections, to be applied for the benefit of the poor.

Outside New York City, the arresting officer (when money or other property is taken from a defendant) must prepare duplicate receipts for such property--one receipt is given to the defendant, and the other is filed with the Clerk of the Court.

In New York City, the Commissioners of Police may designate some person to take charge of all property alleged to be stolen or embezzled, and all property taken from a prisoner.

(See C. Cr. Pr. §§685-691).

REMOVAL OF CIVIL OFFICERS

Impeachment

The "court for the trial of impeachments" has jurisdiction to try impeachments, when presented by the assembly, of all civil officers of the State (except Justices of the Peace, Justices of Justices' Courts, Police Justices, and their clerks) for "willful and corrupt misconduct in office."

The court, consisting of the president of the senate (who is the presiding judge of such court), the senators (or a majority of them), and the Judges of the Court of Appeals (or a majority of them), is regarded as a court of "original criminal jurisdiction." The court must meet in Albany on a day not less than 30 nor more than 60 days from the day of the delivery of the articles of impeachment.

Upon delivery by the assembly of the articles of impeachment to the president of the senate, a copy of such articles with notice of the time and place for appearance and answer (at least 20 days hence) must be served upon the defendant (public officer). If the defendant fails to appear, the court may nevertheless proceed to trial and judgment. If the defendant does appear, he is required to answer the articles of impeachment--either by challenging their sufficiency, or by denying their truthfulness. If a sufficiency objection is not sustained, he must address himself to the truthfulness of the articles. If he pleads guilty, or refuses to plead, the court must render judgment of conviction against him. If, however, he interposes a denial (a plea of not guilty), a trial must be held. In order for the defendant to be convicted, two-thirds of the members present during the trial must concur; otherwise, he is deemed acquitted. If defendant is convicted, the judgment must be either: (1) that he be removed from office; or (2) that he be removed from office and disqualified to hold a particular office

or any office of profit, trust or honor under this State. If the subject matter of the impeachment happened to be a crime, its criminal prosecution is not barred by the impeachment. (See C.Cr.Pr. §§11-20, 118-131).

Removal by Appellate Division

An inferior court judge (i.e., a judge of the Civil Court or Criminal Court of the City of New York, or, outside New York City, of the District Court, or of a Town, Village or City Court) may be removed "for cause" by the Appellate Division. The Appellate Division may in its discretion prohibit a judge so removed from holding office thereafter. The Appellate Division has the power to order that the proofs upon any removal proceeding be taken before a referee. On its own motion, the Appellate Division has the power to investigate such inferior courts and their judges, and may designate a justice of the supreme court or a referee to conduct such investigations.

(See C.Cr.Pr. §132).

CRIMES AND PENALTIES IN THE CODE

Felony

A violation of §813-b, permitting eavesdropping by law enforcement officers without court order under certain circumstances, is a felony punishable by imprisonment for not more than two years.

An officer who, in connection with extradition, delivers the subject person to the agent of the demanding state, without having first delivered him to a court of record in this State-- in order to accord the subject person an opportunity to test the legality of his arrest--is guilty of a felony and, "upon conviction, shall be sentenced to imprisonment in a state prison or penitentiary for the term of one year."

(See C.Cr.Pr. §813-b, 839).

Misdemeanor

A person who, without lawful cause, refuses or neglects to obey the command of a public officer to assist him in the execution of process.

A public officer who, aware of a riotous assembly, neglects to proceed to the scene in order to suppress it.

A person who, in connection with the execution of a death sentence, fails to comply with the formalities required by §507.

A person, firm or corporation who, without a license, conducts a "bail bond business."

A member of the bar who has any financial interest by which he is to profit from the giving of bail.

A person who inserts the names of witnesses in a subpoena issued for the people, intended for the prisoner, with intent thereby to deceive any person.

A person who maliciously and without probable cause, procures the issuance and execution of a search warrant.

A peace officer who, in executing a search warrant, willfully exceeds his authority or acts with unnecessary severity.

A peace officer who, after a defendant has been acquitted, fails, upon demand, to return to defendant, any photograph, fingerprint, photographic plate or proof, and copies or duplicates thereof under his control.

A grand jury stenographer who violates any provision of Title XIV (§§952-p through 952-y).

(See C.Cr.Pr. §§104, 109, 507, 554-b(1), 554-b(4), 611-a, 811, 812, 944, 952-u).

Misdemeanor in Office

An officer who willfully violates any provision of Title IV (§827-859) relating to "extradition."

(See C.Cr.Pr. §839).

Misdemeanor (with punishment specified)

A person who, without lawful cause, refuses or neglects to obey the command of a peace officer to aid him in the arrest of a §887-a(7) kind of vagrant--i.e., a person having his face painted or otherwise disguised appears in a public highway or field--is guilty of a misdemeanor and is punishable by a fine not exceeding \$250, and/or by imprisonment not exceeding one year.

(See C.Cr.Pr. §897).

Misdemeanor and Contempt

Where the application for a stay of trial--to permit the making of a motion to transfer the action to another court--has been made before one judge and has been denied, a similar application to another judge is punishable "not only as a misdemeanor, but as a contempt of the court."

The parent, spouse, or child of a patient in a State Department of Mental Hygiene institution, who willfully fails

to comply with an order of support, is guilty of a misdemeanor and, in the court's discretion, may be punished for a criminal contempt.

(See C.Cr.Pr. §§350, 926-e).

Misdemeanor and Treble Damages

A person or corporation that charges compensation in excess of that which is authorized by statute for giving bail shall be guilty of a "misdemeanor and in addition thereto shall in any action brought to recover any such overcharge be liable to treble damages."

(See C.Cr.Pr. §554-b(4)).

Misdemeanor and Forfeiture of Office

A justice of the peace or police justice who willfully fails to comply with the provisions of §220, relating to the keeping of a "Justices' Criminal Docket," shall be guilty of a misdemeanor and, upon conviction, shall, in addition to the misdemeanor punishment, forfeit his office.

(See C.Cr.Pr. §220).

Criminal Contempt

Where a child under the age of 16 is arrested and charged with juvenile delinquency, a police officer may accept, in lieu of bail, the personal recognizance in writing, without security, of a parent or guardian of such child to produce him before the court the following day. The failure so to produce such child is punishable as a criminal contempt.

A witness in this state, upon whom a subpoena has been served to testify in another state, or a witness in another state, upon whom a subpoena has been served to testify in this state-- assuming due compliance with the provisions of §618-a--must appear and testify or be punishable as for a criminal contempt.

Disobedience to a subpoena or a refusal to be sworn or to testify by a person--whose deposition had been taken earlier but whose presence is desired at the trial--may be punishable for a criminal contempt.

A witness--upon whom a subpoena has been served to appear and testify at a coroner's inquest to determine "cause of death"--who fails to comply may be punished by the coroner as for a criminal contempt.

The Courts of Special Sessions and Police Courts (outside New York City) may punish disobedience of subpoenas issued for witnesses as for a criminal contempt.

All courts, before which "special proceedings of a criminal nature" are maintained, may issue subpoenas for witnesses and punish their disobedience as for a criminal contempt. (See C.Cr.Pr. §§554(9), 618-a, 619, 635, 729, 776, 952).

Contempt

A grand juror, against whom a challenge has been sustained precluding him from participating in given grand jury proceedings, who fails to comply, is punishable for a "contempt."

§709 provides, inter alia, that the appropriate officer's failure to return the venire (in court of special sessions outside New York City), as required by §704, may be punishable as a "contempt." But, it is noteworthy, §704 was repealed in 1956! (See C.Cr.Pr. §§236, 709).

Attachment and Contempt

The court before which a witness for the people shall have been "recognized" to appear, by recognizance duly taken, may proceed against such witness for default in appearance by process of "attachment," in the same manner and with like proceedings thereon "as if such witness had failed to appear in obedience to a subpoena"--i.e., i.e., the default would apparently be punishable as for a criminal contempt (as per §619)

The payment of costs and expenses (in connection with an application to compel support of a poor person) and the payment of an order of support may be enforced against the relatives of a poor person "by attachment and by proceedings for civil contempt." (Emphasis supplied)

(See C.Cr.Pr. §619-a, 919).

Forfeiture

The people or the defendant may apply to the court for an order to cause to be brought before the court a prisoner (detained in a New York prison) to testify as a witness in a pending criminal action. If the appropriate officer, upon whom such an order is served, refuses or neglects to produce the prisoner, he forfeits to the people (if the applicant were the district attorney) or to the defendant (if he were the applicant), the sum of \$500.

Where the Magistrate holds a defendant to answer, he may take from a material witness examined before him in behalf of the people, a written undertaking, that he will appear and testify at the trial, or that he will forfeit the sum of \$100.

If, in a court of special sessions (outside of New York City), a person summoned as a juror fail to appear, he may be punished by a fine not exceeding \$5.00, and such an order shall be deemed a judgment in favor of the poor of the town or city. (See C.Cr.Pr. §310-c, 215, 730).

Perjury

A willful misstatement in an affidavit--made by one giving bail in a criminal case, describing the nature of the security or indemnity--shall be punishable as perjury.

(See C.Cr.Pr. §554-c).

Riot

A person, who is commanded to aid officers in putting down a riot, but neglects to do so, "is deemed one of the rioters"

and "is punishable accordingly."

(See C.Cr.Pr. §108).

Other Crimes and Penalties in Code

A person who fails to assist an officer conveying a person to prison (§490).

A material witness who fails to enter into an undertaking may be "committed" (§618-b).

The punishment of a "prostitute" (i.e., the §887 (4) kind of vagrant) involving sentence to a reformatory (§891-a).

Commitment of vagrants generally (§892).

Summary punishment of a professional criminal (such as a professional thief, burglar, or pickpocket) (§898-a).

Punishment (or security required) for the "disorderly person" (§901).

Imprisonment of a "disorderly person" for no more than six months at hard labor (§911).

Probation (or commitment) of the "wayward minor" (§913-c).

Release, parole or transfer of the "wayward minor" (§913-d).

Probation (or commitment) of the "youthful offender" (§913-m).

"DOUBLE JEOPARDY"

In General

It is expressly provided that a person cannot be "subjected to a second prosecution for a crime for which he has once been prosecuted, and duly convicted or acquitted." This objection may be raised by the defendant, by plea, at the time of his arraignment, or at such other time as may be allowed.

Where jurisdiction over a given crime is concurrent, a conviction or acquittal thereof in another state, territory or country is a bar to a prosecution therefor in this state. Similarly, where a crime is within the jurisdiction of two or more counties of this State, a conviction or acquittal thereof in one county is a bar to a prosecution therefor in another.

(See C.Cr.Pr. §§9, 139, 140, 322).

Motions

An order granting a motion to set aside an indictment on the ground that it was not found, endorsed and presented as per §§268 and 272, or that an unauthorized person was present during the session of the grand jury, is not a bar to a future prosecution for the same offense.

A judgment sustaining a demurrer to an indictment is a bar to another prosecution for the same offense, unless the court, feeling that the relevant objection may be avoided in a new indictment, direct the case to be re-submitted to the same or another grand jury.

(See C.Cr.Pr. §§320, 327).

Delay in Prosecution

Where a prosecution is dismissed for delay in finding an indictment, or an indictment is dismissed for delay in bringing the case to trial, the order is a bar to another prosecution for the same offense, if it be a misdemeanor; but it is not a bar if it be a felony.

When a prisoner, against whom there is pending during his imprisonment an untried indictment, information or complaint, formally "requests" that a final disposition of his case be made, and it is not brought to trial within 180 days, the court must enter an order dismissing the untried case "with prejudice." Similarly, under the "Agreement on Detainers" Act--to which, of course, the relevant states must be parties--a failure to bring a prisoner to trial within 180 days after his "request" must result in a dismissal of the untried case "with prejudice." (See C.Cr.Pr. §§669-a, 669-b, 673).

Miscellaneous

A conviction of assault is not a bar to a subsequent prosecution for murder or manslaughter if the person assaulted dies after the conviction.

An order of compromise (as per §§663,664) of a misdemeanor where the victim has received satisfaction is a bar to another prosecution for the same offense.

In connection with a prosecution for violation of §§422-431 of the Penal Law, relating to the manufacture or sale of spurious silverware or goldware, proof that the people have recovered the whole amount named in the bond (given as per §952-e) may be pleaded in bar of a subsequent criminal prosecution for the same violation.

Where the people have taken an appeal from an order granting a motion to suppress evidence--claimed to have been the product of an unlawful search and seizure--and have filed a statement that without such evidence the available proof would be insufficient or so weak as to preclude successful prosecution, the people are barred from further prosecuting the defendant for

the related offense unless and until the order of suppression is reversed on appeal and vacated.

When the subject matter of an impeachment proceeding amounts to a crime, its criminal prosecution is not barred by the impeachment.

(See C. Cr. Pr. §§131, 444, 518-a, 665, 952-g):

BLOOD TESTS

Whenever it shall be relevant upon "any criminal investigation, proceeding or trial to determine the parentage of any child, or the identity of any person or corpse", the court, upon defendant's motion, must order "any party to such action and the person involved in the controversy" to submit to "serologic blood tests." But the results of such tests shall be receivable in evidence only where definite exclusion is established. Such tests are to be made by court-appointed physicians and, where their findings are disclosed to a court or jury, they are subject to cross-examination by both parties. If, in the face of a court order, a party refuses to submit to such a blood test, "such fact shall be disclosed upon the trial unless good cause is shown to the contrary."

To the end that accurate information as to the identity of persons charged with crime may be available, a peace officer making an arrest must cause to be taken, at the time of arrest, finger-prints and thumbprints, and if necessary the photograph, and if necessary the blood grouping tests, of every person arrested and charged with: (1) a felony; (2) a crime that is felonious in light of the prior conviction of a crime; (3) a misdemeanor or offense specified in §552; (4) the §887(4) kind of vagrancy; (5) any misdemeanor specified in Articles 88 (gambling), 106 (Indecency), or 130 (Lotteries) of the Penal Law; or (6) the §899(3) kind of disorderly person. (See C. Cr. Pr. §§684-a, 940).

FINGER PRINTS

Upon Arrest; Conviction; Incarceration

To the end that accurate information as to the identity of persons charged with crime may be available, a peace officer making an arrest must cause to be taken, at the time of arrest, finger-prints and thumbprints, and if necessary the photograph, and if necessary the blood grouping tests, of every person arrested and charged with: (1) a felony; (2) a crime that is felonious in light of the prior conviction of a crime; (3) a misdemeanor or offense specified in §552; (4) the §887(4) kind of vagrancy; (5) any misdemeanor specified in Articles 88 (Gambling), 106 (Indecency), or 130 (Lotteries) of the Penal Law; or (6) the §899(3) kind of disorderly person.

Within 24 hours after the arrest, one copy of such fingerprints must be forwarded to the state central bureau of identification of the Department of Correction at Albany, and one copy must be forwarded to the criminal identification unit of the United States Department of Justice at Washington. Each copy must be accompanied by a request for all information relating to the arrested person's previous record, if any. The Commissioner of Correction must cause such fingerprints to be classified, and must promptly comply with the request for information. When the peace officer receives any such information, he must turn it over to the district attorney.

If the defendant has been found guilty, the district attorney must submit to the court, before which the defendant was brought for sentence, the information received from the Department of Correction - together, of course, with all the other relevant information authorized by law. After sentence is imposed, the Clerk of the Court must report such disposition to the Department of Correction and to the peace officer who made the original arrest.

If the defendant was sentenced for a felony or for a misdemeanor or offense specified in §552, his finger-prints must be taken: (1) Such fingerprints must be forwarded to the police department of the locality in which the original arrest was made; and when received, they must be compared with the finger-prints taken at the time of arrest in order to make certain that the person arrested is the same person as the person convicted. (2) Such finger-prints (taken after conviction) must be inserted in a sealed envelope, and must accompany the defendant to the prison in which he is to be confined; and, when the prisoner arrives at the prison, his finger-prints must be taken and they must be compared with the finger-prints accompanying the prisoner in order to make certain that he is the same person as the person convicted.

(See C. Cr. Pr. §§940, 941, 942, 942-a, 943)

Bail

A person charged with a felony or with a misdemeanor or offense specified in §552 (C. Cr. Pr.), or in §§483 and 483-b of the Penal Law (endangering life, health or morals of a child; and carnal abuse of a child) cannot be admitted to bail "until his finger-prints shall be taken to ascertain whether he has previously been convicted of crime."

(See C. Cr. Pr. §552-a)

Prior Convictions

The report of a custodian of finger-print records that, based upon such records, defendant has previously been convicted of a crime or offense, shall be presumptive evidence of the fact of such conviction.

(See C. Cr. Pr. §§482-b, 552-a, 942).

Return of Finger-Prints

Upon the dismissal or acquittal of the charge, unless another criminal action is pending or unless such person has previously been convicted of disorderly conduct, vagrancy, or being a disorderly person, his photograph, photographic plate or proof, fingerprint impressions, photographic copy or photographic plate, that might have been taken, and all duplicates and copies made thereof, shall be returned on demand to such person. A peace officer who fails to comply with such a demand is guilty of a misdemeanor.

(See C. Cr. Pr. §§552-a, 944).

Youthful Offender

The records of a person adjudged a "youthful offender", including finger-prints, shall not be open to public inspection, but such records submitted to the division of identification of the State Department of Correction shall be retained as confidential matter in its files. However: (1) the court in its discretion, in any case, may permit an inspection of such records; (2) the institution to which the youthful offender has been committed has the right to inspect such records, without a court order.

(See C. Cr. Pr. §913-o).

INSANITY

Insanity as a Defense

Evidence of insanity is not admissible upon a trial unless defendant serves upon the district attorney and files with the court a written notice of his purpose to rely on the defense. Such notice must be served and filed within 20 days after his plea of not guilty; or later, if the court for good cause may permit.

Where the defense of insanity has been offered, the jury must be instructed that if they see fit to acquit him on that ground, the fact must be stated in their verdict. If acquitted on the ground of insanity, the court must order the defendant to be committed to the custody of the Commissioner of Mental Hygiene to be placed in an appropriate institution in the State Department of Mental Hygiene or the State Department of Correction.

If (after defendant has been committed) the Commissioner feels that the defendant may be discharged or released on condition "without danger to himself or to others", he shall apply for such relief to the committing court. The court may then appoint up to two psychiatrists to examine defendant and to report (within 60 days) their opinion as to his mental condition.

If the court is satisfied that the person may be discharged or released on condition "without danger to himself or to others" the court shall so order. If not satisfied, the court must order a hearing to resolve the question. After such a hearing, the person must be discharged or released on condition, or recommitted to the Commissioner of Mental Hygiene.

If, within five years after a "conditional release", the court determines, after a hearing, that for the person's safety or the safety of others his release should be revoked, the court must order him recommitted to the Commissioner of Mental Hygiene.

It is always open to the committed person himself to apply for his discharge or release to the committing court. If, after a report from the Commissioner, the court feels "that there may be merit in the application", it shall appoint psychiatrists and conduct an appropriate hearing.

Insanity Impairing Capacity to Stand Trial (After Indictment)

If, after a defendant has been indicted for a felony or a misdemeanor - and, at any time thereafter until final judgment - it appears to the court that defendant is in such state of insanity as to be incapable of understanding the charge, indictment, or proceedings, or of making his defense - or if defendant makes a plea of insanity to the indictment - instead of proceeding with the trial, the court, on its own motion, or that of the district attorney or defendant, may, in its discretion, order the defendant to be examined to determine the question of his sanity.

Outside New York City, the court may request that such examination be made by the Superintendent of a State Hospital; in New York City, the court may request that the examination be made by the Director of the Division of Psychiatry of the Department of Hospitals of New York City. The Superintendent or Director shall appoint two psychiatrists to make the examination. In addition to examining the defendant, the psychiatrists may consult witnesses and compel their attendance by subpoena.

After the examination, the Superintendent or Director must transmit a report to the court of the psychiatrists' findings and their opinion as to his present capacity. (If the two psychiatrists do not agree, a third one may be appointed to examine defendant and report to the court). In no event may this report be received in evidence upon the defendant's trial. Such report shall be filed with the court and copies served upon

the district attorney and defendant's counsel. If either of the latter does not accept the report's findings and wishes to controvert them, the court must give him the opportunity to do so.

If, ultimately, the court is of the opinion that defendant has the requisite condition of sanity, the proceedings against him must be resumed as if no examination has been ordered.

If, on the other hand, the court is of the opinion that defendant lacks the requisite capacity, the trial must be suspended and the court must commit him to an institution of the Department of Correction (from which he later may be transferred to another institution). If and when he regains his sanity, the Director of the institution must so inform the court; whereupon, he must be returned to the original custody of the court and brought to trial or legally discharged.

However, the Court, with the consent of the district attorney, may dismiss the indictment, upon a showing that the defendant resides in another state or country and that he may be removed thereto upon the dismissal of the indictment. In any event, the court may dismiss the indictment, with the consent of the district attorney, at any time after 2 years from the date of commitment, upon a showing that the defendant has "remained continuously confined because of mental illness or mental defect."

Insanity Impairing Capacity to Stand Trial (No Indictment or Prior Thereto)

If it appears to a court or magistrate (with respect to a defendant charged with a felony or misdemeanor, but not yet under indictment; or charged with a non-criminal offense; or, in New York City, charged with a misdemeanor, but an information has not yet been filed) that the defendant is in such

state of insanity as to be incapable of understanding the charge, or proceedings, or of making his defense, the court or magistrate, on its own motion, or that of the district attorney or defendant, may, in his discretion, order the defendant to be examined to determine the question of his sanity. (The provisions of §§659, 660, 661 and 662-e shall then apply). But if the two psychiatrists appointed do not agree in their findings, the Superintendent (or, in New York City, the Director of the Division of Psychiatry of Bellevue Hospital or Kings County Hospital) must appoint a third psychiatrist to examine the defendant and report to the court. During the time when the defendant is confined for the purpose of examination, the hospital head may cause to be administered to such defendant, such psychiatric, medical, or other therapeutic treatment as in his discretion should be administered.

If two psychiatrists find that defendant lacks the requisite capacity, the Superintendent or Director must so inform the court, in which case all proceedings against the defendant in the committing court must terminate, and the court may commit the defendant to an appropriate state institution of the Department of Correction or Department of Mental Hygiene. But the district attorney is not precluded from reopening the matter and presenting evidence to the grand jury. If he does so, and an indictment is found or, in New York City, if an information is filed for a misdemeanor, the warrant must be lodged with the head of the institution where he is confined. In order, however, to reopen the case and present evidence to the grand jury, the district attorney must so act within six months from the date of the defendant's commitment.

If, with respect to a defendant charged with a non-criminal offense (or, outside New York City, with a misdemeanor as to which a Court of Special Sessions has exclusive jurisdiction), two psychiatrists find that he is lacking in the requisite

capacity and that he should be committed in order to receive immediate care and treatment, the court or magistrate must be so informed, and the ensuing commitment shall be deemed a final disposition of the offense or misdemeanor charged. If the defendant is found "incapable", but is not committed, the court or magistrate may, in his discretion, dismiss the charge and discharge the defendant, or make such other order as may be appropriate.

If, of course, two psychiatrists had found that defendant were not insane, the proceedings against him must be resumed as if no examination had been ordered.

Insanity Impairing Capacity to Stand Trial (After Information Filed in New York City Criminal Court).

If, after an information has been filed against a defendant - and, at any time thereafter until final judgment - it appears to the Criminal Court of New York City that defendant is in such state of insanity as to be incapable of understanding the charge, information, or proceedings, or of making his defense - or if defendant makes a plea of insanity to the information - instead of proceeding with the trial, the court, upon its own motion, or that of the district attorney or defendant, may, in its discretion, order the defendant to be examined to determine the question of his sanity - in accordance with the procedure set forth in §§659, 660, 661, 662, 662-a, 662-b and 662-c.

Insanity After Sentence of Death

If, after a sentence of death, defendant appears to be insane, the Governor may appoint a commission to hold a hearing and report to the Governor as to his sanity. If such a commission finds defendant insane, the Governor may, in his discretion, order him removed to a State hospital for insane convicts, there to remain until restored to sanity. When sane, he must be returned to the custody of the Warden of the State Prison where the sentence of death is to be executed, and the Governor must issue his warrant appointing a time for the execution.

Support of Inmates of State Institutions Under the Control of
the Department of Mental Hygiene

The parent, spouse, or child of a patient committed to a state institution under the control of the Department of Mental Hygiene shall be liable, if of sufficient ability, for the support and maintenance of such patient, and appropriate proceedings may be maintained to compel such support and maintenance.

(See C. Cr. Pr. §§336, 454, 495-a, 498, 499, 658 to 662-f, 870-876, 926-a to 926-g).

EXTRADITION

Under the "Uniform Criminal Extradition Act", it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of another state any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.

When a demand has been made by another state for the surrender of a person so charged with crime, the Governor may call upon the attorney-general to investigate the demand and to report whether the accused ought to be surrendered.

If the Governor decides to comply with the demand, he must issue a warrant for the fugitive's arrest, and the arresting officer must deliver him to the authorized agent of the demanding state. But before so delivering him, he must first be taken before a Judge of a Court of Record who shall inform him of the demand, of the crime charged, and of his right to counsel. If the prisoner desires to test the legality of the arrest, a hearing must be conducted. (If the arresting officer delivers the prisoner to the agent of the demanding state without first bringing him before a court of record, it is a felony carrying imprisonment for one year).

If, at the time of demand, a criminal prosecution has been instituted against such fugitive in this state, the Governor, in his discretion, may either surrender him, or hold him until he has been tried and discharged, or convicted and punished in this state.

When a demand for surrender has been made, the Governor may not inquire as to the guilt or innocence of the accused.

A fugitive may "waive" extradition proceedings by executing in the presence of a Judge of a court of record a writing which states that he consents to return to the demanding state. If such consent has been executed, the Judge must direct an officer to deliver the fugitive to the agent of the demanding state.

(Of course, the fugitive may return voluntarily, and without any formality, to the demanding state).

A person brought into this state after extradition (or waiver thereof) shall not be subject to service of process in civil actions arising out of the same facts as the criminal charge in question, until he has been convicted or, if acquitted, until he has had reasonable opportunity to return to the surrendering state. But, when extradited to this state, he may be tried for any crimes committed in this state - not only those specified in the requisition for his extradition.

(See C. Cr. Pr. §§827-859).

WITNESSES

In General

A "subpoena" is defined as the "process by which the attendance of a witness before a court or magistrate is required." Disobedience to a subpoena, or a refusal to be sworn or to testify, may be punished by the court or magistrate, as for a criminal contempt in the manner provided in the Judiciary Law.

While the defendant may testify as a witness in his own behalf, "his neglect or refusal to testify does not create any presumption against him."

Grand Juror as a Witness

The court may require a grand juror to disclose the testimony of a witness examined before the grand jury in order to ascertain whether it is consistent with that given by the witness before the court, or in connection with a charge of perjury by any such witness.

Petit Juror as a Witness

If, during a trial, it appears that a juror has personal knowledge of a fact in controversy, he must declare it in open court; and if a juror, during the jury's retirement, declare a fact of his own knowledge which could be evidence in the cause, the jury must return into court. In either case, that juror must be sworn as a witness and examined in the presence of the parties.

Witness Under the Age of 12 Years

When a child under 12, offered as a witness, does not in the opinion of the court understand the nature of an oath, his evidence nevertheless may be received if, in the court's opinion, "such child is possessed of sufficient intelligence to justify the reception of the evidence." But a conviction cannot be predicated upon such testimony unless it is supported by other evidence.

Witness Under the Age of 16 Years

When a child under 16 is a witness he may be committed temporarily to an institution for children as per §486 of the Penal Law, subject to the order of the trial court.

Names of Alibi Witnesses

In any case where a defendant has been indicted by a grand jury ["simplified indictment" or otherwise, it would appear], the district attorney may (not less than eight days before trial) serve a demand upon defendant which shall require that if such defendant intends to offer testimony "to establish his presence elsewhere than at the scene of the crime", he must (within four days) serve upon the district attorney a bill of particulars setting forth the place he claims to have been, together with the names, addresses, and places of employment of the witnesses upon whom he intends to rely. If defendant fails so to comply, the court, upon the trial, may exclude the testimony of such a witness if it is sought to be introduced. If the court, nevertheless, allows such testimony, it must, upon motion of the district attorney, grant an adjournment of not more than three days.

Material Witness for the People

The magistrate, upon holding the defendant to answer, may take from a material witness examined before him on the part of the People, a written undertaking that he will appear and testify at the trial, or that he will forfeit \$100. Indeed, if there is reason to believe that any such witness is an accomplice, the written undertaking may be in such sum as the magistrate deems proper. If a witness refuse to enter into such an undertaking, the "magistrate must commit him to prison until he comply or be legally discharged."

If, in connection with a pending criminal action, a "Judge of a court of record" is satisfied that a person residing in this state is a "necessary and material witness

for the people", he may order such person to enter into a written undertaking (in such sum as he may deem proper) that he will appear and testify at the trial. If such person fails to do so, he must be committed to such place (other than a state prison) as he may deem proper, until he comply or be legally discharged.

Uniform Act to Secure the Attendance of Witnesses from Within and Without the State in Criminal Cases.

If a Judge of a court of record in a "party" state certifies that there is a pending criminal prosecution or grand jury investigation as to which a person being within this state is a "material" witness, a Supreme Court Justice or a County Judge must conduct a hearing and, if the judge determines that the witness is "material and necessary" and that it would not cause undue hardship to the witness to compel his attendance in such other state, he shall issue a subpoena directing the witness to attend and testify there. If the certificate recommended "that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance" there, the Judge may, in lieu of issuing a subpoena, order that such witness be forthwith taken into custody and delivered to an officer of the requesting state.

The same procedure is available to compel the attendance of a "material" witness from another "party" state to testify in a pending criminal action or grand jury investigation in this state.

If a witness is thus compelled to come into this state (or he is passing through, in obedience to a subpoena to testify in another state), he shall not "be subject to arrest or the service of process, civil or criminal."

Comparable procedure (to that described above regarding "material" witnesses) is available to compel the attendance of a "material" witness (who is a prisoner in this state) to

testify in a pending criminal action or grand jury investigation in another state (with which state there is reciprocity).

Examination of Witnesses Outside of the State on Commission,
By Defendant

When a "material witness for the defendant" resides out of the state, defendant may apply for an order that the witness be examined on a "commission". A "commission" is a process issued by the court directed to one or more persons (in another state) authorizing them to examine the witness upon oath, on interrogatories annexed to such process, and to return the deposition of such witness. The People must be permitted "to join in the commission, and to examine witnesses in support of the indictment." Defendant's interrogatories are served upon the district attorney, and the district attorney in turn may serve cross-interrogatories upon the defendant - in which, "either party may insert any question pertinent to the issue." Upon final settlement of the interrogatories, the Judge must annex them to the Commission. The Commission and return must, when received, be filed with the clerk of the court where the indictment is pending. The deposition may be read in evidence by either party at the trial, and the same objections may be taken as if the witness had been examined orally in court.

Examination of Witnesses Conditionally, By People or Defendant

When a defendant has been held to answer a charge of crime, he may, either before or after indictment, have witnesses examined conditionally on his behalf. Defendant may apply for such a conditional examination upon a showing that the testimony of a given witness is material to his defense, and that such witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds to apprehend that he will be unable to attend the trial. If the court be satisfied, an order must be made that the witness be examined conditionally, on notice to the district attorney. After such examination, the

deposition must be filed with the clerk of the court. Such deposition may be read in evidence by either party at the trial only if it appear that the witness is unable to attend "by reason of his death, insanity, sickness or infirmity, or of his continued absence from the state." But if the deposition be read in evidence, the same objections may be taken as if the witness had been examined orally in court.

The same procedure is available for the conditional examination of a witness on behalf of the People, on notice to the defendant. Indeed, "if the defendant have no counsel", he must be assigned counsel "for the purpose of such examination." (See C. Cr. Pr. §§215-219, 259, 295-1, 392, 393, 413, 607, 618-a, 618-b, 618-c 619, 620-635, 636-657, 729, 952).

PEACE OFFICERS

"Peace Officer" signifies any one of the officers mentioned in §154. In that section, the gamut is run from sheriff to game protector.

A 1963 amendment provides that the peace officers described in §154-a "shall also be known as police officers." Such a "police officer", as per recently amended §177(1), may, without a warrant, arrest a person when he "has reasonable grounds for believing that a crime is being committed in his presence."

(See C. Cr. Pr. §§154, 154-a, 177, 960).

TREASON: OUTLAWRY

If, after defendant has been convicted of treason, a bench warrant issued for his arrest discloses that he "cannot be found", the district attorney may apply to the court for "judgment of outlawry". If the court is satisfied "that the defendant has escaped, and cannot, upon diligent search, be found", it must make an order that he appear on the first day of the next term "to receive judgment upon conviction or be outlawed." Such order must be published in a newspaper once a week for six successive weeks. If defendant fail to appear, the court must render judgment "that the defendant be outlawed, and that all his civil rights be forfeited." Thereupon, the defendant is deemed civilly dead, and forfeits to the People during his lifetime, all freehold estate in real property of which he was seized in his own right, at the time of the treason or thereafter, and all his personal property. Notwithstanding judgment or outlawry, defendant may be arrested at any time to receive judgment upon the conviction.

An appeal may be taken by the defendant at any time from a judgment of outlawry, and if it be reversed the defendant is restored to his civil rights.

(See C. Cr. Pr. §§814-826).

CHILDREN

In General

When a magistrate orders an accused to be held to answer a charge, and the accused had not reached the age of 19 years at the time the crime was committed, the order must set forth the accused's age.

When the grand jury has found an indictment against a child, who was 15 years of age but less than 16, at the time of the commission of a crime punishable by death or life imprisonment, he must be arraigned and, ultimately, may be tried and convicted in the same manner as an adult, unless the court orders the action removed to the Family Court.

Wayward Minors

A "wayward minor" is a person between the ages of 16 and 21 who, inter alia, associates with dissolute persons; or is found in a house of prostitution. If, in a hearing before a magistrate the charge is established, the child may be adjudged a "wayward minor". The complainant may be a peace officer, or his parent, guardian, next of kin or teacher.

If practicable, a "wayward minor" should be placed on probation for a period not to exceed two years. If he is not fit for probation, he must be committed to an appropriate institution for an indeterminate period not to exceed three years.

In no event, however, shall a person "adjudged a wayward minor" be disqualified from subsequently holding public office; nor shall he be deemed a "criminal"; nor shall such determination be deemed a "conviction".

Youthful Offenders

A "youthful offender" is a "youth" (16 years of age or over, but not yet 19) who has committed a crime not punishable by death or life imprisonment, who has no prior felony conviction, and who has been "adjudged a youthful offender".

If the grand jury (in finding an indictment), or the district attorney or the court (after an indictment or information) recommends that the defendant-youth "be investigated" to determine his eligibility to be adjudged a youthful offender, and if the defendant consents to physical and mental examinations, to investigation and questioning, and to a non-jury trial, the indictment or information must be held in abeyance.

After such investigation has been completed, the court shall determine whether defendant is eligible to be adjudged a youthful offender and, if so, the defendant is required to plead "guilty" or "not guilty" to the "charge of being a youthful offender." (If deemed ineligible, his prosecution must be resumed).

If he pleads "not guilty", a non-jury trial must be held. But no admission made during the "investigation" may be admissible as evidence against him, except that it may be considered by the court at the time of sentencing.

If defendant pleaded "guilty" or, after trial, was adjudged a youthful offender, the indictment or information must be considered a "nullity".

When a person has been adjudged a youthful offender, the court may: (1) Commit the defendant to an appropriate institution for a period not to exceed three years; or (2) suspend sentence or suspend the execution of sentence, in which case the defendant may be placed on probation for a period not to exceed three years (which, in the court's discretion, can be extended to five years).

The finger-prints and photographs of a youthful offender shall not be open to public inspection, except by court order.

In no event, however, shall a person "adjudged a youthful offender" be disqualified from subsequently holding public office nor shall he be deemed a "criminal"; nor shall such determination be deemed a "conviction."

(See C. Cr. Pr. §§208, 312-b, to 312-h, 913-a to 913-dd, 913-e to 913-r).

ANIMALS

A police officer must, and an agent of the S.P.C.A. may, summon or arrest, and bring before a magistrate, a person violating any provision of Article 16 of the Penal Law ("Animals," §§180-197). A magistrate apprised by sworn complaint that an Animals' provision is being, or is about to be, violated in a building or place, must issue a warrant authorizing the entry and search of such building or place and the arrest of any person there found violating such law. Provision is made describing the circumstances under which, and the manner in which, lost, strayed, homeless, neglected or unwanted animals may lawfully be seized by an agent of the SPCA. The Society may humanely destroy such an animal (1) if maimed, diseased or disabled, or (2) if not redeemed by the owner within five days. In lieu of destruction, and in the absence of a redemption by the owner, the Society may deliver the animal to another person. The owner, at any time prior to the animal's destruction or other disposition, may redeem such animal and pay the Society for its care and maintenance. Any officer authorized by law to arrest, may seize animals or implements employed in carrying on fights among animals. If this seizure is followed by the conviction of the party in charge, the animals or instruments are deemed forfeited; but if an acquittal ensues, they must be returned. It is expressly provided that nothing contained in the provision authorizing seizure of lost, strayed, homeless, neglected or unwanted animals shall restrict the power of the Society, under the Agriculture and Markets Law, to seize unlicensed dogs.

(See C.Cr.Pr. §§117-a to 117-f).

CORONERS

Whenever a coroner is informed that a person has been killed or has committed suicide, he must inquire into its cause. For purposes of inquisition, he shall summon 9 to 15 persons to serve as jurors. The coroner may issue subpoenas for witnesses, and examine every person who has knowledge of the facts; and he must summon a physician who, in the jury's presence, must inspect the body and state his opinion as to the cause of death. If it is found that death was occasioned by criminal means, and the suspect is not already in custody, the coroner must issue a warrant for his arrest.

If, outside New York City, the coroner be absent, any Justice of the Peace may act in his stead with the same authority as a coroner; and in New York City, if the "medical examiner" be absent, his duties may be performed by a Judge of the Criminal Court who shall have the same authority as a coroner.

(See C.Cr.Pr. §§773, 775, 780, 789, 789-a).

CORPORATIONS

Upon an information against a corporation, the magistrate must issue a summons requiring the corporation to appear before him to answer the charge within a period of not less than 10 days. Service of such summons may be made upon its president, secretary, cashier, or managing agent. If, after investigation of the charge, the magistrate finds the requisite "sufficient cause" and holds the corporation for the grand jury, and if, subsequently, an indictment is filed, the corporation must be arraigned. This is accomplished by the service of a summons upon the corporation requiring it to appear and answer the indictment--of course, the corporation may voluntarily appear by counsel, in which case a summons need not be served. If the corporation fails to appear at the specified time, "judgment must be pronounced against it." When, upon conviction, a fine is imposed, it may be collected in the same manner as a judgment in a civil action; and, if an execution issued upon such judgment be returned unsatisfied, the district attorney may thereupon bring an action in the name of the People to obtain judgment sequestering the property of the corporation as provided by the General Corporation Law. In New York City, all such proceedings shall be maintained by the district attorney where the fine was imposed in a proceeding in which he was the prosecutor; by the Attorney-General where he was the prosecutor; or by the corporation counsel when he was the prosecutor.

(See C.Cr.Pr. §§675-682).

RIOT, RESISTANCE TO EXECUTION OF PROCESS

Public Meeting

A police force must be ordered to attend any public meeting when it appears that a breach of the peace is to be apprehended.

(See C.Cr.Pr. §101).

Execution of Process

When a public officer has reason to apprehend that resistance is about to be made to his execution of process, "he may command as many male inhabitants of his county as he thinks proper, to assist him in overcoming the resistance." One who, without lawful cause, refuses to obey such command, is guilty of a misdemeanor. If the apprehended resistance is actually encountered, the officer must inform the court of the names of the resisters "to the end that they may be proceeded against for contempt."

(See C.Cr. Pr. §§102-104).

Riot

When five or more persons armed with dangerous weapons, or ten or more (armed or not), are unlawfully or riotously assembled in a city, village or town, the local police officer (such as the sheriff, mayor or justice of the peace) must "go among the persons assembled, and command them, in the name of the people of the state, immediately to disperse." If they do not disperse, the officer must arrest them "that they may be punished according to law" and, in order to effect such arrests, he may "command the aid of all persons present or within the county." A person so commanded who refuses to render aid is deemed one of the rioters and is punishable accordingly.

If a public officer, with notice of riotous assembly,

neglects his duty to suppress it, he is guilty of a misdemeanor.
(See C.Cr.Pr. §§106-109).

Governor

When the Governor is satisfied that, in a given county, the execution of process is being resisted by bodies of men, and that the county's exercise of power to counter such resistance has been unsuccessful, he may, on the application of an appropriate county officer, by proclamation, "declare the county to be in a state of insurrection"--in which case he may order the state militia into service to render aid to such county.
(See C.Cr.Pr. §§115, 116).

SILVERWARE

§§952-a to 952-g of the Code govern the procedure for prosecuting violations of §§421-429, 431 of the Penal Law (Dealers in Silverware).

The Penal Law provisions have been slated for relocation in the General Business Law. Perhaps the related Criminal Code provisions should either accompany the Silverware article in the General Business Law or be repealed.

STATUS OFFENSES

Under the proposed revision of the Penal Law, the material relating to Vagrants and Tramps (§§887-898-a) and Disorderly Persons (§§899-913) has been slated for deletion in its entirety from the Criminal Code and for relocation in different form in the revised Penal Law.

SUPPORT OF PATIENTS OF MENTAL INSTITUTIONS

The parent, spouse, or child of a patient committed to a state institution under the control of the Department of Mental Hygiene is liable, if of sufficient ability, for the support of such patient, and appropriate proceedings may be maintained to compel such support. If an order for support is made, the court may require the giving of security, by bond or undertaking. Unless such security is given, the court may commit such person to jail until he does so, but for no longer than six months.

A willful failure to comply with a support order constitutes a misdemeanor and may, in the court's discretion, be punished as and for a criminal contempt.

(See C.Cr.Pr. §§926-a to 926-g)

SUPPORT OF POOR PERSONS

§§914 to 926 of the Code deal with the procedure for the "support of poor persons." The Court Reform Act, effective September 1, 1962, effected repeal of §§914-917. The remaining sections are, on the whole, unintelligible without the introductory statutes. Hence, no attempt is made here to summarize those provisions which remain in force.